

## LHC - CONSIDERATION OF WITHDRAWAL FROM THE JOINT COMMITTEE

<b>Cabinet Member(s)</b>	Councillor Edward Lavery
<b>Cabinet Portfolio(s)</b>	Cabinet Member for Environment Housing & Regeneration
<b>Officer Contact(s)</b>	Raj Alagh, Borough Solicitor
<b>Papers with report</b>	None

### HEADLINES

<b>Summary</b>	To seek Cabinet approval to withdraw from the LHC Joint Committee and not to participate in any future corporate legal entity which the LHC may set up.
<b>Putting our Residents First</b>	This report relates to the Council objective of: Our Built Environment.
<b>Financial Cost</b>	Financial implications are minimal and have been factored into budget considerations going forward.
<b>Relevant Select Committee</b>	Environment, Housing & Regeneration
<b>Relevant Ward(s)</b>	All

### RECOMMENDATIONS

#### That Cabinet:

1. Notes that at a meeting on 7 December 2012, the LHC was formally established as a Joint Committee, pursuant to the Local Government Act 1972, with the London Borough of Hillingdon as a Constituent Member.
2. Further notes that Councillor Edward Lavery [Executive] and Councillor Philip Corthorne [non-Executive] are appointed as the London Borough of Hillingdon's Members on the LHC Joint Committee with effect from 21 January 2021.
3. Agrees that the London Borough of Hillingdon should withdraw as a Constituent Member of the LHC Joint Committee and as Lead Authority and that it notifies LHC in writing of this accordingly by 25 February 2022.
4. Further agrees that Councillors Edward Lavery and Philip Corthorne cease to be Members of the LHC Joint Committee upon the Council's withdrawal.
5. Confirms that in the event that LHC decides to become a corporate legal entity at a future date, the London Borough of Hillingdon does not participate in it in any form.

## Reasons for recommendations

To consider the Council's withdrawal from the LHC Joint Committee. There is no benefit, financial or otherwise, for the Council to continue to be associated with the LHC.

## Alternative options considered/risk management

The alternative would be for the Council to continue to be a member of the LHC Joint Committee, which is not recommended.

## Democratic compliance / previous authority

There have been three previous Cabinet decisions, approving the establishment of the Joint Committee and the Council's membership of it. Cabinet has also approved the executive and non-executive Councillor membership of the Joint Committee.

## Select Committee comments

None at this stage.

# SUPPORTING INFORMATION

## Background

1. The London Housing Consortium [LHC] was established in 1966 by a group of London Boroughs known as the LHC Founder Members. These Boroughs were Barnet, Brent, Camden, Camden, Ealing, Hillingdon, Islington and Tower Hamlets.
2. Although the LHC purported to act under the auspices of a Joint Committee established under section 101[5] of the Local Government Act 1972 and Part 4 of the Local Authorities [Arrangements for the Discharge of Functions] [England] Regulations 2012, the reality was that it was never properly constituted as such and it instead operated as an unincorporated association with no legal powers and therefore it could not, for example, employ staff, hold property or contract in its own right. Furthermore, the individual appointed members to the LHC were exposed to personal liability.
3. At a meeting on 7 December 2012, the LHC resolved to formally establish a Joint Committee pursuant to the Local Government Act 1972 and the 2012 Regulations referred to above. A written Constitution for the Joint Committee was subsequently agreed.
4. Each Local authority who was a member of the Joint Committee had been required to obtain the necessary democratic approval to become a member.
5. At its meeting on 26 January 2012, Cabinet agreed that the LHC should be established as a Joint Committee and that the Council should become a member together with other participating authorities. Cabinet also resolved to appoint Councillors Corthorne, J Cooper and Nelson as the initial Council's representatives on the Joint Committee.

6. Cabinet was presented with a report on the LHC at its meeting on 24 January 2013. It was recommended that Councillors Corthorne [Executive] and J. Cooper [non-Executive] be appointed as the Councillor's representatives on the Joint Committee. This was agreed by Cabinet.
7. On 24 May 2018, Cabinet was presented with a further report on the LHC. It was recommended that Councillors Corthorne [Executive] and J. Palmer [non-Executive] be appointed as the Councillor's representatives on the Joint Committee. This was agreed by Cabinet.
8. The Councillor's representatives on the Joint Committee were changed again by a resolution of Cabinet on 21 January 2021 when it was agreed that they would now be Councillor Lavery [Executive] and Councillor Corthorne [non-Executive].

### **Current Position**

8. There are currently 10 constituent authorities of the Joint Committee which are the London Boroughs of Brent, Ealing, Enfield, Hackney, Haringey, Hillingdon, Islington, Lambeth, Tower Hamlets and finally, Buckinghamshire Council.
9. The LHC has over several years built a position as a procurement consortium and its stated aims are to:
  - work with social landlords and public sector building owners throughout Great Britain to deliver better buildings, homes and communities through improved procurement. Apparently, LHC now has a pipeline of almost 5000 homes on 133 live projects with over 40 social landlords;
  - bring buyers and suppliers together to improve the efficiency and effectiveness of building procurement and to benefit the local community;
  - earn its income through a levy on the total value of all procurements undertaken and return surpluses to its clients for investment in community benefit schemes.
10. The LHC Joint Committee appoints a team of dedicated professional staff to run the LHC Operations on a day-to-day basis. The management team of LHC report to the LHC Joint Committee twice a year.
11. It is important to note that a joint committee is not recognised as a legal entity in its own right and therefore it cannot be an employer. The Council is recognised as the lead authority and it therefore employs all LHC staff and holds all contracts in its name.

### **Future Proposed Arrangements**

12. The LHC has recognised that although its current arrangements have served it well, the pace of growth of the LHC business, together with the increasingly competitive nature of the market, requires a more agile governance structure and one which is more representative of its current and future operations.
13. At its meeting on 3 December 2021, the LHC resolved to disband the Joint Committee and to establish in its place an alternative corporate entity for LHC to be effective from 1 April

2023. LHC has indicated that the exact form of that corporate entity will be recommended to the LHC Joint Committee in March 2022.

14. In the meantime, a new LHC Board of Directors has been established, essentially operating as a sub-committee of the Joint Committee, with delegated authority for the stewardship of LHC.
15. In light of LHC's decision to disband the LHC, the Council and the other nine participating authorities can decide to withdraw from the LHC Joint Committee. If a decision to withdraw is made, the respective representatives on the LHC from each of these authorities will also cease to be members of the Joint Committee upon its dissolution. Each authority will require democratic approval to formally withdraw and it is not known at this stage what the other authorities' decisions are likely to be. However, constituent local authorities have been requested to make a decision on this matter by 25 February 2022, in order to report back to the March 2022 meeting of the Joint Committee.
16. The Council is, irrespective of the position of the other authorities, however, free to withdraw from the Joint Committee and thereby would also cease to be the lead authority.
17. It should be noted, however, that under the LHC Joint Committee's Constitution [extract below], that there is a transition period to formally cease being a member, upon giving notice to withdraw:

*"If any of the authorities wishes to withdraw from membership of the Joint Committee that authority shall give notice to the Secretary to the Joint Committee by no later than 30 September in any year and that authority shall cease to be a member of the Joint Committee on 1 April in the following year.*

*From the date of giving notice up to and including 31 March in the following year the authority which has given notice shall remain a full member of the Joint Committee and shall be entitled to receive its full share of any distributed surplus or will be liable to pay its full share of any deficit, as the case may be, for the financial year in which its membership ceases."*

This, therefore, means that the Council, in deciding to withdraw, would continue to be a participant member of the Joint Committee until 31 March 2023. If all constituent authorities decide to withdraw from the Joint Committee, it will then obviously no longer exist from 31 March 2023. In these circumstances, as lead authority, this transition time will support the TUPE transfer of LHC staff and the novation of contracts to be effected to a new corporate legal entity once it has been set up.

18. If the Council withdraws from the Joint Committee, and in the event that two or more of the other constituent authorities wish it to continue, then one of these authorities will have to agree to take on the role of lead authority. If these circumstances were to arise, similarly, TUPE of the LHC staff and novation of contracts to the other local authority would need to take place as part of the transition period.
19. The following considerations are apposite in relation to the recommendations proposed. The rationale for joining the LHC Joint committee was to work collaboratively with other

London Councils to improve the procurement of housing and construction products and services. The Council has benefitted annually from a share of LHC's surpluses.

20. However, the position has changed in recent years. LHC has expanded its operations widely throughout Great Britain, servicing around 300 public sector organisations. LHC surpluses are now shared widely across the country resulting in a reduced annual return for the Council. The Council also receives an annual community benefit fund from LHC surpluses of £10,000.
21. The expansion of LHC's services has also added risk to the Joint Committee, particularly in relation to staffing and employer liability, arising from the widespread nature of LHC operations and geographic location of LHC staff and offices and also the rapid growth of the LHC workforce.
22. It also has to be recognised that the Joint Committee arrangement is old fashioned in nature and that a more modern legal structure may be advantageous for the LHC.
23. There is also the question of whether the LHC decides to set itself up as a future corporate entity such as, for example, a company limited by guarantee or an industrial and provident society. This is ultimately a matter for the LHC, but it is difficult to see what benefits there would be for the Council to participate in a future company if it has already made the decision to withdraw from the Joint Committee arrangement. Cabinet may therefore prefer to have a 'clean break' from the LHC and it should be recognised that the Council is perfectly capable of being responsible for its own future procurement arrangements.

## **Financial Implications**

Under the terms of the existing arrangement, the Council currently receives a share of the annual surplus generated by LHC. If it decided to no longer participate in the LHC, it would no longer be in receipt of the surplus. The most recent distributions for the Council in 2019/20 and 2020/21 were just £441 and £2,701 respectively, and therefore do not represent a material revenue stream for the authority.

In addition to these surpluses, the Council currently receives circa £30k per annum for the provision of Human Resources support which will end as the LHC transitions towards a new commercial model. Provision for the loss of this income has been factored into the Council's budgets from 2022/23 onwards, with capacity within the Human Resources service redirected to meet local priorities.

As outlined in previous sections, the commercialisation and extended presence of the LHC across the UK presents increasing financial risks for the Council relating to potential general legal disputes, employer liability issues and other commercial risks as well as continued minimal surplus distributions. As such the recommendations outlined in this report will contribute towards minimising risk to the Council from activities outside its core business.

## RESIDENT BENEFIT & CONSULTATION

### Effect on residents, service users and communities.

There will be neutral resident benefit/impact of this proposed decision.

### Consultation carried out or required

None required.

## CORPORATE CONSIDERATIONS

### Corporate Finance

Corporate Finance has reviewed this report and associated financial implications, noting that the recommendations to disassociate from the LHC will release additional capacity for officers and elected members to focus on local priorities and minimise the Council's exposure to commercial risks arising from the LHC's national operations.

### Legal

The Borough Solicitor is the author of the report and therefore all necessary legal implications are contained in the body of the report.

### HR implications

These are included in the report.

## BACKGROUND PAPERS

- [Cabinet report / decision – 26 January 2012 - to establish the Joint Committee](#)
- [Cabinet report / decision - 24 January 2013 - to appoint Members](#)
- [Cabinet report / decision – 24 May 2018 – to appoint Members](#)
- [Cabinet decision – 21 January 2021 – to appoint Members](#)