1. SUMMARY

This report sets out the considerations the Council should have in nominating Council members to the Committee of Management of Argyll Community Housing Association (ACHA) which is shortly to be constituted and incorporated under the Industrial and Provident Societies Act 1965.

2. RECOMMENDATION

The Council is invited to appoint 5 Council members to be members of the Committee of Management of the Argyll Community Housing Association having regard to the implications highlighted in this report.

3. DETAIL

Background

3.1 On 8 May 2003 the Council, in order to move forward the implementation of the proposed Housing Stock Transfer, appointed 5 Council members to a Shadow Board of the proposed and emerging Housing Association. On 17 December 2003 the makeup of the Shadow Board was re-visited by the Council with the following Councillors being appointed or confirmed to the Shadow Board.

Councillor Moyra Stewart
Councillor Gordon McKinven
Councillor Bruce Robertson
Councillor Sidney MacDougall
Councillor Isobel Strong

3.2 There are no prescriptive rules for the composition of a Board of a Housing Association but the Draft rules of ACHA provide for a Committee of Management of 20 persons, not more than 5 of whom shall be members of Argyll and Bute Council. In terms of these draft rules Argyll and Bute Council may appoint and remove Council members from the Committee of Management at any time. The Draft rules provide that the remaining members of the Committee of Management shall be not more than 5 independent members and not more than 10 tenant members.
Constitution of the Housing Association

3.3 The Housing Association is shortly to be constituted under the title Argyll Community Housing Association. This will be constituted under the Industrial And Provident Societies Act 1965. Incorporation is expected to take place on or around December 2004. The process of registering ACHA as a registered social landlord with Communities Scotland is underway and will be completed after the Association is constituted.

The Way Forward

3.4 In implementation of the Council’s earlier decisions and bearing in mind the intention imminently to incorporate the Housing Association it is recommended that the Council now nominate 5 members to be members of the Committee of Management of the newly constituted Housing Association.

Declarations of Interests

3.5 It should be borne in mind that the Council members appointed as members of ACHA will require very carefully to consider their position in relation to the matter of declaration of interests when Argyll and Bute Council and/or any of its Committees is required to make any decision in relation to matters of the proposed Housing Stock Transfer and/or ACHA. Any Councillor appointed as a member of the Housing Association will require to pay particular attention to the Councillors’ Code and the Guidance and Dispensation notes issued by the Standards Commission.

3.6 While it is a matter for Councillors individually to be satisfied about their position at any time in relation to the Code, there has been discussion and correspondence with the office of the Standards Commission for Scotland regarding the position of Councillors who are appointed to ACHA. The advice from the Commission indicates that the proposed Argyll Community Housing Association will likely be regarded by the Commission as falling within the definition of a “public body” in terms of paragraph 13 (1) (b) of the Commission’s July 2004 Dispensations Note. The effect is that individual Councillors who have been appointed to ACHA by the Council may claim, if they choose, the benefit of the dispensation, permitting them to participate in discussion and voting where matters affecting housing stock transfer or ACHA are raised at Council/Committee meetings.

3.7 The dispensation would not apply in respect of any matter of a quasi-judicial or regulatory nature where ACHA is applying to the Council for a licence, a consent or approval, is making an objection or representation concerning such a licence, consent or approval, or is the subject of a statutory order of a regulatory nature made, or proposed to be made by the Council.
3.8 The Councillors appointed to ACHA will require to register an interest in terms of Section 4 of the Councillors’ Code in regard to their membership of ACHA and will require to declare an interest accordingly at all meetings of the Council or Committee where matters relating to the ACHA are discussed, even if they proceed to claim the benefit of the dispensation, before participating in any discussion or voting.

3.9 Whilst there are many Housing Associations that may each be considered as a “public body” in terms of s 13(1)(b) of the Dispensations Note, it is not settled that every Housing Association will fall within this definition. The position of each Council member requiring to declare an interest due to their membership of a Housing Association may require to be examined with regard to whether they have been nominated or appointed to the Housing Association by the Council, or their appointment has been approved by the Council, and the facts and circumstances of the constitution of the particular Housing Association of which they are a member. However, the Standards Commission has indicated that, having regard to the advice that it has given in relation to the position of ACHA and housing stock transfer, it is likely to take an inclusive approach in relation to other Housing Associations such as those currently in Argyll and Bute.

4. IMPLICATIONS

Legal The Council, and particularly Council members appointed as members of the Committee of Management of the Housing Association, will require to pay particular attention to the Councillors’ Code and the Guidance and Dispensations note.

Financial None

Personnel None

Equal Opportunities None

Policy The Council having established an overall goal of moving forward to implementation of Housing Stock Transfer the nomination of Council members as members of the Committee of Management of the Housing Association fulfils a further step in that process.

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