

OPEN

## **Corporate Policy Committee**

**21<sup>st</sup> March 2024**

### **Council Nominations to the Board of Peaks and Plains Housing Trust**

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**Report of: Peter Skates – Acting Executive Director – Place and  
Director of Growth and Enterprise**

**Report Reference No: CP/74/23-24**

**Ward(s) Affected: All**

#### **Purpose of Report**

- 1 On 17<sup>th</sup> July 2006, the former Macclesfield Borough Council transferred their housing stock to Peaks and Plains Housing Trust (formally Cheshire Peaks and Plains Housing Trust Ltd). This was executed by both parties entering into a Stock Transfer Agreement.
- 2 The Stock Transfer Agreement outlines the basis on which both organisations will work together and included the opportunity for the former Macclesfield Borough Council to nominate members to sit on the Housing Trust's Board along with a corollary right to remove them. The Stock Transfer Agreement was transferred to Cheshire East Borough Council following Local Government reorganisation in 2009.
- 3 In 2015 Cheshire East Council's former Cabinet approved the reduction of nominees for all Stock Transfer organisations to one nomination.
- 4 This report presents a request from Peaks and Plains Housing Trust to remove the Council's opportunity to nominate a member to sit on the Peaks and Plains Housing Trust Board. It outlines the rationale for the request and seeks approval to enter into a Deed of Variation to allow this to happen.
- 5 This is in line with the Corporate Plan objective to be an open and enabling organisation.

## Executive Summary

- 6 Peaks and Plains Housing Trust have formally requested that Cheshire East Borough Council remove the requirement in the Stock Transfer Agreement to provide the Council with the opportunity to nominate representatives to the Board of the Trust.
- 7 In 2015, Cheshire East Council's former Cabinet agreed to reduce the requirement to one nomination for all Stock Transfer Organisations. Peaks and Plains Housing Trust have now formally requested that this opportunity be removed completely via a Deed of Variation to the Stock Transfer Agreement.
- 8 The rationale for the request is that Registered Housing Providers are regulated by the Regulator of Social Housing and there is strict guidance in relation to the governance of organisations, including representation on Boards. Board members are required to have the right skills and knowledge to be accepted onto the Board and they are not able to act on behalf of the Council or any other third party.
- 9 Whilst Cheshire East Council can currently nominate one member to become a Board member, there is not a reserved space for a nominee and the Trust are not under an obligation to appoint the nominee. If, however, a nominee were accepted onto the Board, they would have to act in the best interests of Peaks and Plains Housing Trust and exercise independent judgement.
- 10 The removal of nomination rights does not preclude members from applying independently to become a Board member, should they feel they have the right requirements and skills to become a Board member. They can apply independently when a seat on the Board becomes available.
- 11 The removal of the opportunity to nominate to the Board of Peaks and Plains does not impact the other requirements set out within the Stock Transfer Agreement.

### RECOMMENDATIONS

The Corporate Policy Committee is recommended to:

1. Approve the removal from the Stock Transfer Agreement dated 17<sup>th</sup> July 2006 of the clause giving Cheshire East Borough Council the opportunity to nominate a member to sit on the Board of Peaks and Plains Housing Trust, to be done via a Deed of Variation.

2. Delegate authority to the Executive Director Place, in consultation with the Chair of the Corporate Policy Committee, to deal with other such requests from other Stock Transfer Organisations.

## Background

12 Clause 13 to Schedule 14 of the Stock Transfer Agreement provides:

13. **NOMINATE BOARD MEMBERS**
  - 13.1 To provide the Council the opportunity to nominate its representatives to the Board of the Trust (currently five representatives) in accordance with the Trust's Memorandum and Articles of Association and Board Membership Policy.
  - 13.2 To allow the Council to remove its representatives in accordance with the Trust's Memorandum and Articles of Association.
  - 13.3 The Trust shall as soon as reasonably practicable and in any event within one month notify the Council in writing of any vacancies which arise among the Council's nominated representatives.

13 In July 2015, Cheshire East's former Cabinet approved the reduction of nominations to Stock Transfer Organisations (Peaks and Plains Housing Trust, The Guinness Partnership (formally Wulvern and Plus Dane)), retaining the right to make one nomination per organisation. This resulted in a reduction from five nominations to one nomination for Peaks and Plains Housing Trust.

14 Peaks and Plains have formally requested that the ability to make a nomination to their Board be removed completely via a Deed of Variation to the Stock Transfer Agreement. The variation will remove paragraph 13 of the Fourth Schedule of the Stock Transfer Agreement and replace it with the words "not used". This does not have any impact on any other requirements within the agreement.

15 All Registered Housing Providers are regulated by the Regulator of Social Housing and they are bound by regulatory requirements, including the Governance and Financial Viability Standard. This stipulates that "*Registered Housing Providers shall adopt and comply with an appropriate code of governance. Governance arrangements should establish and maintain clear roles and responsibilities and accountabilities for the board, chair and chief executive and ensure appropriate probity arrangements are in place. Areas of non-compliance with their chose code of governance should be explained. Registered Providers should assess the effectiveness of their governance arrangements at least once a year. Registered Providers shall ensure*

*that they manage their affairs with an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight.”*

- 16 Peaks and Plains Housing Trust has elected to adopt the National Housing Federation’s Code of Governance, which includes the following requirement: *“3.4 Board election, selection and appointment: the board has a diverse membership with the collective skills and attributes needed to govern effectively...[]... Prospective board and committee members undergo an open and merit-based assessment process to establish their suitability. Where the organisation’s constitution provides for one or more board members to be nominated by an external body, or directly elected, the organisation ensures that those coming forward have the necessary attributes and qualities, and that they are aware of the responsibilities of the role, including those of exercising independent judgement.”*
- 17 Whilst Cheshire East Council can nominate one member to Peaks and Plains, there is no obligation for Peaks and Plains to accept the nomination. The individual would have to demonstrate that they have the skills and knowledge required to become a Board member. If the nominee is accepted and appointed to the Board, they will have duties under company law and under the National Housing Federation Code of Governance. They will have to act in the best interests of Peaks and Plains and not those of the Council. They would not be representing the Council or making decisions on behalf of the Council.
- 18 Stock Transfer organisations have matured since their inception and have developed into independent organisations, some taking the decision to merge with other Registered Housing Providers. They are regulated, and therefore it could now be argued that they no longer need the Council’s involvement in their governance arrangements. The Housing and Planning Act 2016 (in section 93) led to regulations being issued [The Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017] to limit the control Local Authorities have over Stock Transfer Housing Associations such as Peaks and Plains and it has the ability by regulations to make provision for the purpose of limiting or removing the ability of local Authorities to exert influence over private registered providers.
- 19 Cheshire East has three Stock Transfer agreements in place with the Stock Transfer organisations, each of which is different, and any amendments would have to be considered independently of one another to ensure that there were no implications. Therefore, the request by Peaks and Plains has been considered in relation to their Stock Transfer Agreement and further requests by other Stock Transfer Organisations of a similar nature would have to be considered on an individual basis. Delegated authority has therefore been requested to enable the requirement to remove the right to nominate on an individual basis.

## Consultation and Engagement

- 20 Wider consultation is not required in relation to this request as it relates solely to the Stock Transfer Agreement in place between Peaks and Plains Housing Trust and Cheshire East Borough Council.

## Reasons for Recommendations

- 21 Peaks and Plains Housing Trust was established in 2006 and is now a mature, independent organisation, which is regulated by the Regulator of Social Housing and under this regulation they must demonstrate strong governance arrangements, including appointments to their Board.
- 22 On 3<sup>rd</sup> April 2017 PPHT converted from a company limited by guarantee to a community benefit society in accordance with Section 115 of the Co-operative and Community Benefit Societies Act 2014. They have adopted a revised constitution and Board Structure, which follows both the National Housing Federation's Model Rules. The Trust has also adopted the National Housing Federation's Code of Governance, which sets out certain expectations in terms of good governance. There are no reserved places on the Board for any constituent group.
- 23 Under the Stock Transfer agreement, the Council (formally Macclesfield Borough Council) had the opportunity to nominate on to their Board. However, as there is no longer a requirement for Peaks and Plains to accept a nomination, and individuals have to act in the interest of the company and not the Council, it is felt that this requirement should be removed from the Stock Transfer Agreement.

## Other Options Considered

- 24 The alternative options which are available to Committee are outlined below:

Option	Impact	Risk
Do nothing – Retain the requirement within the Stock Transfer Agreement and do not take up the opportunity to nominate.	There is no impact on the Council, but Peaks and Plains will have to advise the Regulator that this action has not been undertaken.	Criticism from the Regulator, which could potentially impact on the Trust's Governance score.
Retain the right to nominate and take up the opportunity.	There is no requirement for Peaks and Plains to accept any nomination.	This could potentially damage the relationship with Peaks

	The individual will have to demonstrate they have the required skills and knowledge and will act in the interest of the Trust.	and Plains Housing Trust, if the nomination was not accepted.
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## Implications and Comments

### *Monitoring Officer/Legal*

- 25 Cheshire East's constitution states that the Corporate Policy Committee (Chapter 2, Part 4) is responsible for appointing representatives to serve on outside bodies and organisations and for reviewing the process for considering appointments to outside organisations. It is therefore appropriate for the Committee to consider the proposed recommendations.

To amend the current Stock Transfer Agreement, there would be a requirement to enter into a Deed of Variation. The Deed of Variation has been drafted by solicitors appointed by Peaks and Plains and therefore if the Committee is in agreement, Clause 13 of Schedule 14 of the Stock Transfer Agreement dated the 17<sup>th</sup> of July 2006 will no longer have effect once the Deed is executed.

- 26 There are no further implications in relation to the Stock Transfer Agreement; the contract remains enforceable between the parties.

### *Section 151 Officer/Finance*

- 27 There are no financial implications and there is no impact on the MTFs as the cost of entering into the Deed of Variation by Legal Services would have to be covered by Peaks and Plains Housing Trust.

### *Policy*

- 28 There are no policy implications of this report.
- 29 The recommendations link to the following Corporate Plan objectives

<b>An open and enabling organisation.</b>	<b>A council which empowers and cares about people</b>	<b>A thriving and sustainable place</b>
Ensure that there is transparency in all	Work together with residents and partners to support people and	N/A

aspects of council decision making.	communities to be strong and resilient.	
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*Equality, Diversity, and Inclusion*

30 There are no equality, diversity and inclusion implications to this report.

*Human Resources*

31 There are no human resources implications of this report and its recommendations/decisions.

*Risk Management*

32 The only risk to the recommendation is that it sets a precedent for other Stock Transfer Organisations. However, each Stock Transfer Agreement is different and would have to be considered individually.

*Rural Communities*

33 There are no implications for rural communities of this report and its recommendations/decisions.

*Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

34 There are no implications for children and young people, and cared for children, of this report and its recommendations/decisions.

*Public Health*

35 There are no public health implications of this report and its recommendations/decisions.

*Climate Change*

36 The recommendation will not contribute towards assisting the Council to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles. However, the Council works closely with its Registered Housing Provider to improve the energy efficiency of their housing stock.

**Access to Information**

Contact Officer:	Karen Carsberg – Head of Housing Karen.carsberg@cheshireeast.gov.uk
Appendices:	N/A
Background Papers:	The request from Peaks and Plains and Deed of Variation (exempt).