

Cheshire East Council

Cabinet Member for Housing and Planning

Date of Meeting:	8 August 2017
Report of:	Executive Director of Place
Subject/Title:	Plus Dane – Transfer of Engagement
Portfolio Holder:	Councillor A Arnold – Housing and Planning

1. Report Summary

- 1.1. Plus Dane Housing is one of Cheshire East's three Large Scale Voluntary Transfer Organisations (LSVTs). Dane Housing was the original LSVT until it merged with Plus Housing to form Plus Dane in 2008.
- 1.2. They have just under 4,000 homes in Cheshire East located predominately in Congleton, Sandbach, Alsager, Middlewich, Holmes Chapel, Macclesfield and the surrounding rural areas.
- 1.3. Currently, Plus Dane operates a common Board Member structure across Plus Dane Cheshire, Plus Dane Merseyside and Plus Dane Housing Group. Decisions are taken at the Plus Dane Housing Group level, unless specifically required to be taken at the individual company level. If that is the case, Board members act on behalf of that individual company.
- 1.4. Plus Dane has recently approached Cheshire East to advise that they wish to merge Plus Dane Cheshire Board into Plus Dane Merseyside's and create one single Board. This will be undertaken by a Transfer of Engagement and the proposed new name of the merged entity is to be Plus Dane Housing.
- 1.5. Cheshire East currently has the ability to nominate one representative onto the Plus Dane Cheshire Board and the Council would be seeking to ensure that this is retained under the new Board arrangement.
- 1.6. As part of the original Stock Transfer Agreement there is a requirement for Plus Dane to consult with the Council if any mergers are proposed and to give reasonable consideration by the Company's Board of Management any representations which the Council may make in relation to the Company's proposals.
- 1.7. Plus Dane is seeking Cheshire East's agreement to the merger to enable them to conclude the Transfer of Engagement by 30th September 2017.

2. Recommendation

2.1. To endorse the proposed merger to bring together Plus Dane Cheshire and Plus Dane Merseyside on the basis that Cheshire East Council:

- Retains the ability to nominate one representation onto the Board to represent the interests of the Cheshire East area.
- The new entity is taking over all assets and liabilities by way of a Transfer of Engagement.
- There is a clear client management relationship between the Council and the new entity including the development of a clear set of service standards in order to establish an effective monitoring arrangement.

2.2 To agree to a Deed of Variation of the Collateral Warranty in order to enable an assignment to a Security Trustee on terms to be agreed by the Director of Legal Services.

3. Other Options Considered

3.1. Cheshire East could withhold their support for the proposal, however we would have to have a robust, justifiable rationale for the decision. Plus Dane is only required to consult the Council on the proposal under the original Transfer agreement and whilst they have to take our considerations into account they have to be reasonable, therefore the merger could proceed without the Council's endorsement.

4. Reasons for Recommendation

4.1. Under the Stock Transfer Agreement there is a requirement for Plus Dane to consult with the Council in the event that the Company wishes to merge with another Registered Social Landlord and to submit for formal and reasonable consideration by the Company's Board of Management any representations which the Council may make in relation to the Company's Proposals. Currently the Council has the ability to nominate a representative onto the Board and would wish to retain the ability to continue to do so under the new arrangements. Confirmation from Plus Dane received on the 19th May 2017 indicated that this would be acceptable to them and therefore it is recommended that we endorse the proposed merger based on this being formally confirmed.

4.2. Registered Providers like Local Authorities are seeking to bring forward efficiencies and therefore the streamlining of any organisation has to be considered. The current governance arrangements are being reviewed by Plus Dane and it is felt that this would be the most beneficial approach for the organisation.

4.3. Plus Dane are proposing to undertake the merger by effecting a Transfer of Engagement. This would mean that Plus Dane Cheshire would dissolve

and its assets and liabilities, including the commitments in the transfer agreement (including right to buy) would transfer into Plus Dane Merseyside. It is also proposed that there will be a name change with the “Merseyside” element removed.

5. Background/Chronology

- 5.1. Plus Dane are proposing to merge Plus Dane Cheshire into Plus Dane Merseyside and create one single Board. They are currently seeking to consult with the Council on the proposal and secure endorsement.
- 5.2. When considering the proposal put forward by Plus Dane, we need to consider the implications and seek to protect Cheshire East's interests in relation to the Stock Transfer Agreement. As outlined within the Legal Implications, the Transfer of Engagement will transfer all current obligations under the Stock Transfer agreement.
- 5.3. In relation to governance, on the 21st July 2015 Cabinet considered the appointment of representatives to outside organisations. The report set out the request from Registered Providers to reduce the number of Council nominees to their boards to one. Cabinet approved the reduction and recognised that Board Members do not represent the interests of the nominating local authority, but they do create a key link between the two organisations and can advise both accordingly. It was also noted within the report of the 15th July 2015 that Plus Dane were proposing a Group-wide Board”.
- 5.4. It is recommended that the Council retain the ability to continue to nominate one representative to sit on the new Board as it is felt that this would enable the Council to protect the interests of the residents of Cheshire East.
- 5.5. Previously when any merger was proposed, the Registered Provider had to seek the permission of the Regulator (HCA) and demonstrate a clear business case for the proposal, including evidence of consultation with the Local Authority. Legislative changes introduced on 6th April 2017 have now changed this process and Registered Providers are now required to inform the Regulator of its plans, seek consent from the Financial Conduct Authority (FCA) and complete the appropriate notification and submitting it to the Regulator. The Regulator will then take a decision in relation to Registration.
- 5.6. As the proposal is not to merge with an external organisation, then tenants should not notice any changes to the level of service they currently receive.

6. Wards Affected and Local Ward Members

- 6.1. All Wards

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. Housing is intrinsically connected to a range of strategic priorities emanating from national directives and Cheshire East's strategic and service initiatives including the Local Plan Core Strategy, Cheshire East's Business Plan and the Housing Strategy.
- 7.1.2. Cheshire East relies very heavily on Registered Providers to deliver and maintain good quality social housing to meet the diverse housing needs of our communities. We need to ensure that they have the capacity and ability to deliver this through their structures.

7.2. Legal Implications

- 7.2.1. In order to protect Cheshire East's interests in relation to the Stock Transfer Agreement and other obligations, consideration had to be given to all the potential implications of the proposed merger. These relate to right to buy receipts, disposal of assets, nomination agreements and representation on the Board.
- 7.2.2. Plus Dane has stated that it would be appropriate to create a combined organisation by effecting a Transfer of Engagements of Plus Dane Cheshire into Plus Dane Merseyside. This would mean that Plus Dane Cheshire would dissolve and its assets and liabilities, including the commitments in the local authority transfer agreement along with all other existing contracts, transfer into Plus Dane Merseyside. Plus Dane Merseyside or the proposed Plus Dane Housing would therefore honour the commitments made within the original Sale Contract and Transfer agreement and also under any other contractual or lease agreements between Cheshire East and Plus Dane Cheshire.
- 7.2.3. Plus Dane has advised that as part of the merger they will be refinancing with a Security Trustee. This will require an assignment of the original Collateral Warranty provided by the Council to National Westminster Bank Plc. The original Warranty does permit assignment to specified funding bodies but this does not include 'security trustees' and Plus Dane have requested a variation to the Warranty to allow their preferred refinancing route. The legal advice is that the variation is satisfactory provided that the exposure of the Council is not increased by reason of the new financing facility. Accordingly the proposed variation will be agreed on terms approved by the Director of Legal Services.

7.3. Financial Implications

- 7.3.1. Right to Buy (RTB) receipts are received annually by Cheshire East Council from the three Registered Providers – Peaks & Plains Housing

Trust, Plus Dane and Guinness Housing. Average receipts from Plus Dane are in the region of £200k per annum.

- 7.3.2. The RTB receipts are shared in accordance with the original transfer agreement, which sets out the duration and calculation of receipts under the terms of the merger. This commitment will continue under the proposed merger.

7.4. Equality Implications

- 7.4.1. Plus Dane will continue to provide an equitable level of service under the new arrangements.

7.5. Rural Community Implications

- 7.5.1. Plus Dane has housing stock within our rural communities. It is not envisaged that there will be any changes in relation to the level of service their customers currently receive.

7.6. Human Resources Implications

- 7.6.1. There are no HR implications for Cheshire East.

7.7. Public Health Implications

- 7.7.1. The provision of decent accommodation can have significant health benefits for residents. Poor housing can impact on a person's mental and physical health. Plus Dane are committed to providing high quality provision.

7.8. Implications for Children and Young People

- 7.8.1. There are no identified implications for Children and Young People.

7.9. Other Implications (Please Specify)

- 7.9.1. None identified.

8. Risk Management

- 8.1. The risks to Cheshire East will depend on how the merger is authorised and implemented. Anything other than a Transfer of Engagement could place Cheshire East at risk. A Transfer of Engagement would ensure that all existing liabilities, assets and obligations would be honoured.
- 8.2. The proposal is for Plus Dane Cheshire to merge into Plus Dane Merseyside. The retention of the name Plus Dane

Merseyside could have the potential to cause issues with local residents as they may feel that business is no longer focused on Cheshire, but predominately Merseyside. Plus Dane are proposing to change the name to Plus Dane Housing which would mitigate this risk.

9. Access to Information/Bibliography

9.1. N/A

10. Contact Information

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