

NAME OF COMMITTEE	Council
DATE	7 October 2014
REPORT TITLE	Proposed amalgamation of West Devon Homes with Devon and Cornwall Housing
REPORT OF	Head of Environmental Health and Housing
WARDS AFFECTED	All

Summary of report:

The purpose of this report is to advise Members of the proposed restructure of West Devon Homes (WDH) within the Devon and Cornwall Housing (DCH) Group and to seek approval for the amalgamation of the two organisations.

Financial implications:

There are no direct financial implications for the Council arising from this report. There are, however, significant potential financial benefits arising from the merger that will be directed at improving services to current and future residents of existing West Devon Homes' properties.

RECOMMENDATIONS:

1. That Council approve the conversion of WDH from a company limited by guarantee to a community benefit society and its subsequent amalgamation as a community benefit society with DCH.
2. To authorise the Head of Environmental Health and Housing to act on behalf of the Council and to exercise the Council's vote in support of the conversion of WDH to a community benefit society and its amalgamation with DCH at special general meetings of WDH set up for these purposes.
3. To vary the Transfer Agreement dated 22 February 1999 between the Council and WDH as set out in this report and to authorise the Head of Environmental Health and Housing to complete the Deed of Variation.

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1. BACKGROUND

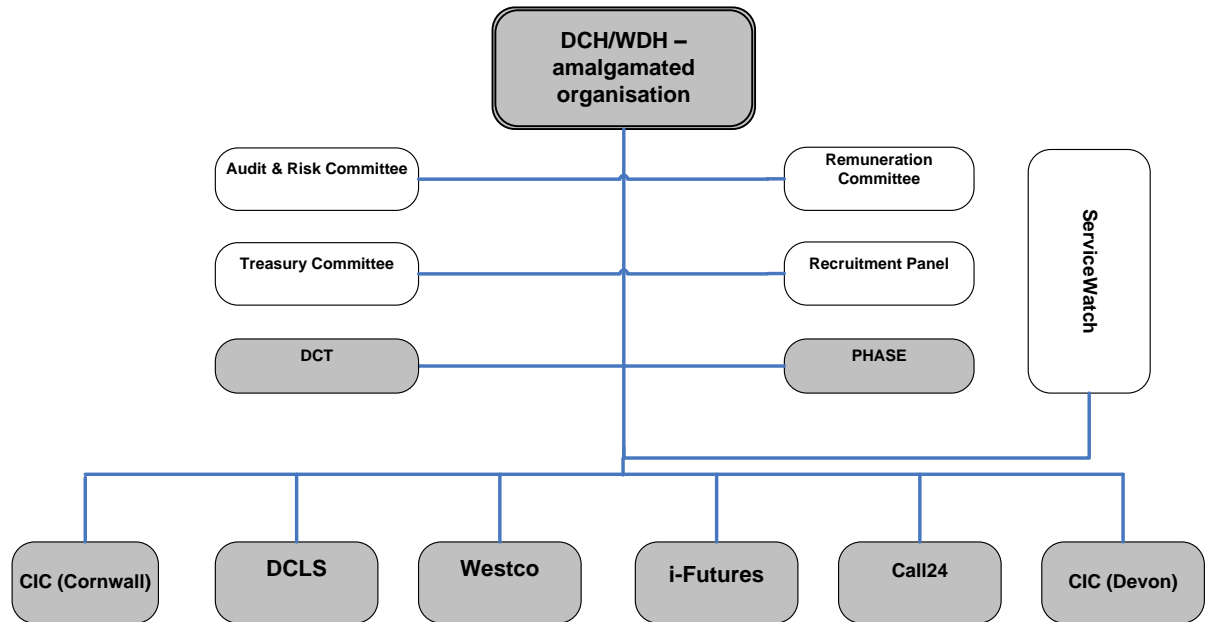
- 1.1 Members will be aware of the transfer of the Councils Housing stock to West Devon Homes in 1999. The organisation is an independent, charitable company limited by guarantee and is a Registered Provider regulated by the Homes and Communities Agency. Its main purpose is to provide affordable housing for rent for local people on low incomes. As at August 2014, it owns a social housing stock of 1,565 homes across West Devon and North Cornwall. WDH also owns and manages 15 shared ownership properties, four commercial rented properties and 255 garages.
- 1.2 WDH currently has seven members on its board comprising four independent and three tenant representative members. The company also employs 52 staff. There are 95 company members of WDH comprising 90 WDH tenants, the 4 independent members of the WDH board and West Devon Borough Council.
- 1.3 WDH is a relatively small Registered Provider of social housing and has for a number of years formed a strategic alliance with DCH including a shared management team. Following the success of this alliance, it is now the intention of WDH and DCH to formally amalgamate.
- 1.4 West Devon Borough Council (WDBC) is a company member of WDH and its agreement and approval to the amalgamation is therefore sought to enable this to happen.
- 1.5 This paper provides background information about the two organisations, outlines the legal process to be followed for amalgamation and explains the proposed governance structure of the amalgamated organisation.
- 1.6 The proposed amalgamation is supported by a business case which supports the proposals recognising the strategic need for a partnering of the two organisations to ensure adequacy for investment in existing housing, the ability to build more new affordable homes and to ensure high levels of customer service.
- 1.7 The consent of the Homes & Communities Agency is also required for the two stages of the amalgamation and meetings of the Registration Advisory Committee of the Homes & Community Agency (HCA) have been scheduled in September and November for this purpose.
- 1.8 The DCH/WDH amalgamated organisation will be a registered provider with the HCA.

2. ISSUES FOR CONSIDERATION

Background to the proposed merger

- 2.1 DCH is a registered society with charitable objectives and was formed in 2012 following the amalgamation of four charitable registered providers (Devon and Cornwall Housing Trust, Devon and Cornwall Housing Association, Penwith Housing Association and Tor Homes) into one charitable registered provider.

- 2.2 As at August 2014, DCH manages 20,450 homes across Devon and Cornwall, employing 834 members of staff across the group.
- 2.3 DCH has a board of ten members, comprising eight non-executive directors, the Group Chief Executive and the Group Director of Finance. The eight non-executive directors are also the shareholders of DCH.
- 2.4 The process of amalgamation is complex and requires a number of stages and various approvals for this to happen. The first step is for WDH to form a 'Community Benefit Society'. This will require the approval of the Homes and Communities Agency, Financial Control Authority, the Charity Commission and West Devon Borough Council. Once the Community Benefit Society has been formed then both WDH and DCH can begin the merger process. Council approval as a shareholder is required for this to happen and will require voting on two separate occasions. Once these votes have been taken, then WDH and DCH will be formally merged.
- 2.5 There are a number of compelling reasons for the two organisations to merge but primarily centre around the need to ensure the long-term financial viability of WDH. In particular, in recent years Government funding for Affordable Housing has decreased significantly and grants from the Homes and Communities Agency to help subsidise developments are now extremely restricted. Registered Providers are now expected to fund investment in Affordable Housing through borrowing money and the new Affordable Rent Model. Smaller providers will find access to competitive financing more difficult. Without ready access to competitive funding, investment in new affordable housing schemes would soon cease especially as the reserves of WDH are limited. DCH are proposing that over the next five years they will be committed to working with the Council to secure approximately 200 new affordable homes in West Devon, through the investment power of the DCH Group.
- 2.6 The amalgamated organisation will be the asset-owning parent and employer of the combined group of WDH and DCH companies. The proposed group structure is outlined below.



The proposed changes

- 2.7 There are a number of variations that are requested to the original LSVT agreement signed between West Devon Borough Council and West Devon Homes. These are set out below.
- 2.8 Currently there is a clause that requires WDH to use all rental income and property sales receipts from the properties acquired from within West Devon in the management and maintenance of those properties and otherwise for the provision of social housing and related services primarily in the Borough of West Devon. As the finances of WDH will be merged with DCH, it is proposed that this clause in the original agreement is removed. This is because one of the benefits of the proposed amalgamation is the enhanced financial strength of the amalgamated entity such that surpluses generated by DCH in the rest of Devon or Cornwall could be applied to West Devon schemes. In this context, it is considered to be inappropriate to restrict the flow of funds in the other direction.
- 2.9 To reflect the changes to board and shareholding membership it is proposed to delete the provision which requires the Council's consent to any changes to the WDH articles relating to tenant or local authority representation. This will be necessary to avoid the restriction carrying on into the amalgamated organisations.
- 2.10 Members will recall that Council agreed to forego the right to nominate members to the WDH Board at its meeting of 18 May 2010 (Minute CM27 refers). The original agreement was, however, never amended and therefore this clause will now be removed from the agreement.
- 2.11 In respect of residents on the boards of the amalgamated group, it should be noted that although there will be no place reserved for a tenant per se on the

amalgamated parent board, tenants of WDH and DCH will be eligible to apply for board membership. The boards of WDH and DCH consider it important to have residents as part of the formal governance structure of the amalgamated group, to ensure that the needs and wishes of its residents are taken into account in its decision-making. Thus, more than one-third of the places on the amalgamated group's community interest company board (the CICs board) will be reserved for its residents, which will include WDH tenants.

2.12 It is proposed to delete the clause that provides WDBC with shareholding rights in WDH. Future shareholding arrangements will reflect the existing DCH arrangements. The Council will no longer be able to attend and vote at general meetings.

2.13 There is a current requirement on WDH to take account of the Councils representations (if any) in the event of merger with another Registered Provider. This clause is being specifically fulfilled by this report and on amalgamation is no longer applicable and should therefore be deleted.

3. LEGAL IMPLICATIONS

3.1 There are various covenants placed upon West Devon Homes contained within the original stock transfer agreement. A number of these which are outlined above will require amendment or deletion in order for the amalgamation to take place. The rest of the original agreement remains valid and there are no plans to change these. Provisions relating to provision of offices and clawback arrangements on right to buy, nomination rights for tenants etc. remain in force.

3.2 Subject to appropriate legal arrangements and documents being put in place to record that confirmation and understanding, the proposed amalgamation should not otherwise affect the legal position of the Council. Once the votes for amalgamation have been agreed, the WDBC will no longer have any voting rights in the amalgamated organisation.

4. FINANCIAL IMPLICATIONS

4.1 Although there are no direct financial implications for the Council contained in this report, access to DCH Group finances will allow WDH greater opportunities to improve existing homes within West Devon and enable them to be in a better position to invest in new affordable homes.

5. RISK MANAGEMENT

Corporate priorities engaged:	Housing
Statutory powers:	Various
Considerations of equality and human rights:	The Council would have conferred various benefits to the tenants on transfer of its housing stock in 1999. Those benefits would largely continue under the proposed arrangements. It is therefore unlikely that any Human Rights issues would arise as a

	result of the proposed amalgamation.
Biodiversity considerations:	N/a
Sustainability considerations:	N/a
Crime and disorder implications:	None
Background papers:	None
Appendices attached:	None

STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1	Non-merger	WDH and DCH do not merge – WDH investment in new homes is limited in future.	3	3	9	↔	Council agrees to amalgamation process	Head of EH&H
2	Merger	The proposal will allow WDH to continue to take a proactive approach to housing management and development within West Devon	1	2	2	↔	WDBC will still retain certain benefits such as offices remaining within the Borough, income from right-to-buy and nomination rights for tenants etc.	Head of EH&H

Direction of travel symbols ↓ ↑ ↔

