

CITY OF PLYMOUTH

Subject: Housing Stock Transfer
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Cabinet Member: Councillors Bowyer and Brookshaw
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Ref:
Part: I

Executive Summary:

This is the final report to the Council on the housing stock transfer proposals. It provides information on the key financial, legal, operational and corporate implications of the transfer, and seeks authority to complete the transfer on Monday 16th November, subject to consent from Government and subject to final negotiations with Plymouth Community Homes.

Corporate Plan 2009-2012:

The successful achievement of Housing Stock Transfer will move the Council significantly nearer to achieving its Corporate Improvement Priority 5 New Affordable and Decent Housing.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

This report provides the final summary of the key implications of the housing stock transfer. The transfer has significant financial, legal, staffing and resource implications which are set out in this report. Where possible, mitigation or contingency measures have or will be put in place to limit any negative impact on Plymouth City Council. There are nevertheless implications for the Medium Term Financial Forecast which the Council will have to manage in coming years. Negotiations on final details will continue to the date of transfer and delegated responsibility will need to be authorised to complete the transaction.

Other Implications: e.g. Section 17 Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment, etc.

Council approved a decision to progress to transfer following the formal consultation process and ballot of tenants in November last year. The aim now is to deliver and sustain the Decent Homes standard set out in the Government policy framework” Sustainable communities – Building for the future”. Progressing housing transfer is consistent with achieving CIP 5 of the Council’s Corporate Plan.

Increasing the range and supply of affordable housing is an important factor in improving opportunities and the quality of life for vulnerable groups within our local community. The aim of transfer is to secure the future of the current housing stock, to contribute to our housing strategies, to improve the availability of affordable housing, and to regenerate key areas of Plymouth. The transfer of housing is to Plymouth Community Homes; a new registered housing provider which will operate in a stringent regime of regulation by the Tenant Services Authority; a statutory Government sponsored organisation tasked with the monitoring and regulation of registered housing providers.

It was agreed at the outset that in the brief for the development of Plymouth Community Homes, it would seek to achieve the following:

“The landlord will work with partners and others to build a better, safer and cleaner Plymouth”

To achieve this, Plymouth Community Homes will:

- Be locally focused and locally accountable
- Not just focus on the bricks and mortar
- Work with voluntary and statutory agencies
- Work closely with the City Council to help achieve the Council’s Housing Strategy
- Work with the Local Strategic Partnership on the delivery of the City’s priorities
- Encourage local partnerships that work across tenure boundaries, providing Community Development support to facilitate tenant involvement in those partnerships
- Work with the City Council to develop better homes for residents in the City
- Focus on the delivery of improvements to existing homes and the regeneration of estates
- Support Community Development and provide ‘wider than housing’ involvement
- Continue to work with Plymouth City Council to ensure that the housing needs of vulnerable groups are met

The Stock transfer will therefore deliver a strong collaborative new partner for the City Council to work with in addressing wider deprivation and community cohesion issues.

The transfer project is listed in the Council’s strategic risk register, and is monitored accordingly.

Recommendations & Reasons for recommended action:

The Council is recommended to:

- 1) Approve the transfer of the Council's housing stock to Plymouth Community Homes currently scheduled to take place on the 16th November 2009 under the terms of the transfer contract and associated documentation, subject to the Council obtaining all necessary consent and final agreement on terms.
 - 2) Agree that officers seek Secretary of State's consent to the disposal and transfer.
 - 3) Agree that the Director for Corporate Support continues to exercise his delegated authority, in consultation with the Corporate Impact Project Board to continue to negotiate and resolve matters outstanding.
 - 4) Note that the final transfer contract will be signed by the Leader and the Chair of Plymouth Community Homes on the 16th November 2009.
 - 5) Note officers' continued work to address the revenue / capital funding issue described within the report.
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Alternative options considered and reasons for recommended action:

- 1) The Council considered all available options through its Stock Options process, determining that a whole stock transfer was the preferred route to realise the necessary investment of its stock of council houses.
 - 2) A decision to move away from this position would mean that the Council would likely breach its promises to tenants, which formed the formal consultation prior to ballot. The Council would also have to write off the set up and project costs of transfer estimated at approximately £5m with no resolution to the problems of its housing stock.
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Background papers:

- Report to Council 5th February 2007 – Stock Options
 - Cabinet Report 3rd June 2008 - Plymouth Housing Stock Transfer proposal – formal consultation document
 - Delegated decision 25th July 2008
 - Housing Transfer Offer Document
 - Cabinet Report 14th October 2008 – Proposal to proceed to ballot.
 - Cabinet Report 16th December 2008 – Plymouth Housing Stock transfer including Proposal – Section 25 Funding and Corporate Impact Governance Arrangements
 - Cabinet Report 11th August 2009– Stock Transfer.
 - Cabinet report 15th and 28th September 2009 – Housing Stock Transfer
 - Cabinet Report– Housing Stock transfer
 - Council Report 12th October 2009 – Housing Stock Transfer
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Sign off: Fin	AB 161 009 29	Leg	LT1058	HR	KB 161 009	Corp Prop	KB 01/ 161 009	IT		Strat Proc	
Originating SMT Member: Stuart Palmer, Assistant Director Strategic Housing											

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1. Introduction

- 1.1 The reports to Cabinet on 15th and 28th September 2009 set out the context of negotiations during the transfer process and gave direction on the likely issues which would be included in the transfer contract. The Council report of 12th October updated Members and agreed the deferment of the final decision to transfer to this meeting to allow time for completing the substantive negotiations, so that this report could contain a full and final position for members to debate and agree.

2. Background

- 2.1 Prior to this Extraordinary General Meeting of the Council, Members have received a considerable amount of information through the meetings of the Cabinet on 11th August, 15th and 28th September 2009, and through the Member briefings on 22nd September and 19th October 2009. The Corporate Impact Board has met regularly throughout the process also to give guidance and obtain a steer from Members. Finalising the transfer proposal has involved a substantial amount of detailed work carried out by officers and the Council's advisers following the ballot of the Council's tenants in favour of transfer in November 2008, together with significant negotiation on detailed elements of the contract and valuation.
- 2.2 The drivers for the Council in considering such substantial change in its housing service delivery rest with the Council's desire to achieve the Decent Homes standard for all its tenants and seek the investment required to deliver this together with the renovation of key areas of the City. The Council carried out a rigorous Housing Options appraisal following government guidelines, with transfer as our chosen solution to sustaining the housing service, and the delivery of CIP 5. Fundamentally, the Council would be unable to sustain its current basic housing services without further resources, and substantial cuts in services and staffing would be needed to balance the HRA, which is a statutory requirement.
- 2.3 Based on the acceptance of this position, a transfer proposal and offer was worked up, and formally adopted by the Council in June 2008, with an endorsement to consult with tenants through formal ballot in October 2008. The result of the ballot was a resounding endorsement of the proposals with 67% of tenants who voted, voting in favour of the transfer. Cabinet then agreed to move forward to transfer with the development of a contract to transfer the housing stock and assets to Plymouth Community Homes, and to negotiate on the valuation.

3 Valuation

- 3.1 The current position on the valuation is set out in a report from the Council's consultants (Tribal) in Appendix 1. In summary, members will be aware that unlike other South West transfers Plymouth has a negative valuation requiring significant government gap funding of £118m, debt write off of £91m, and £44m of investment in North Prospect, bringing total government funding to £253m to effect Plymouth's stock transfer. There will be no capital receipt to the Council from the transfer of its assets, as the liabilities, and responsibilities

to deliver the promises to tenants in Decent Homes and regeneration by far exceed the TMV (Tenanted Market Value) of the landlord stock transferring.

- 3.2 Furthermore, further funding is required to achieve a successful transfer for both Plymouth Community Homes business plan, and to mitigate the negative corporate impact on the City Council through the adoption of a VAT shelter.

4.0 Financial Negotiations

- 4.0.1 A major part of the negotiations for the Council have centred on the need for the Council to receive sufficient sums from the VAT shelter and the Right To Buy (RTB) receipts to mitigate the corporate Impact in the first full 5 years following transfer i.e. until the end of March 2015. This will give the Council the time it needs to manage this impact down over time. The Council's estimate of the corporate impact of transfer is set out in detail in the table in Section 5 of this report.
- 4.0.2 There remain a few relatively minor issues still to be completed, such as final costings on service level agreements, the purchase price of vehicles and miscellaneous assets which will continue to be negotiated under the Director for Corporate Support's delegated authority, to finalise negotiations on the transfer contract in conjunction with the Corporate Impact Project Board.

4.1 VAT Shelter Arrangements

- 4.1.1 The VAT shelter arrangement is a mechanism for Plymouth Community Homes to take advantage of the Council's VAT status whereby the Council can reclaim VAT on certain works it undertakes. This will allow Plymouth Community Homes to reclaim VAT on certain elements of its capital works, which it would be unable to do in the normal course of its business. This is achieved by the Council contracting for Plymouth Community Homes to carry out works to the stock, just before the transfer completes. The Council then transfers the stock with the benefit of the contract in place to PCH. The VAT shelter applies to first time improvement works only and therefore will diminish over a period of time. Usually VAT shelters last between 10 and 15 years.
- 4.1.2 To assist both the Council and Plymouth Community Homes in making the necessary arrangements, a joint appointment of PriceWaterhouseCoopers (PWC) as VAT shelter advisers was made. Based on an assessment of works to be undertaken, PWC estimated that approximately £53m of VAT will be able to be recovered under the VAT shelter arrangement. Of this sum £30.3m is programmed to be recovered in years one to six, with the remaining £22.7m to be recovered in years seven to fifteen. The VAT will be recovered by PCH as works are undertaken and normal practice is for the actual recoveries to be shared between the RSL (PCH) and the transferring authority (PCC). The actual amount and timing of VAT recovered will vary depending on progress of works, and will be closely monitored.
- 4.1.3 PCH has identified a number of items which it wishes to be reimbursed from the VAT Shelter monies, and likewise the Council has also identified areas which require funding from the VAT shelter.

- 4.1.4 The demands of both the Council and Plymouth Community Homes on the VAT Shelter exceed the probable receipt. Therefore an agreement has been negotiated to share this risk. PCH has demands of £15m to support the business plan (required by government), £10.6m for North Prospect, £10m for asbestos removal, and up to £2m to complete the clearance of the two Devonport blocks of flats still housing tenants and owner occupiers. The Council has an ongoing negative corporate impact as a result of the closure of the HRA, and loss of economies of scale for support services of around £10m over the first full five years. The Council is also responsible for meeting a pensions deficit of £19.2m to ensure that the pension fund for transferring staff is fully funded at the date the transfer takes place.
- 4.1.5 Following detailed negotiations, it has been agreed that the VAT shelter receipts are to be shared between the Council and PCH in the following proposed formula:

VAT Shelter arrangements – estimated figures

<i>Year</i>	<i>PCC %</i>	<i>PCH %</i>	<i>Estimated Amount to PCC £</i>
1-6	50%	50%	15.2m
7-15	30%	70%	6.7m
Total	41%	59%	21.9m

- 4.1.6 Overall this amounts to approximately 41% of the VAT shelter being paid to the Council. Based on estimated cash flows it is anticipated that the Council will receive £15.2m in years 1-6 and a total of £21.9m over 15 years. Any sums in excess of the estimated £53m are to be shared equally between the two parties.
- 4.1.7 This agreement, together with the RTB sharing agreement outlined below, will help to mitigate both parties' risks. However, it should be noted that any sums received by the Council under this arrangement will need to be treated as a Capital receipt.
- 4.1.8 It is also important to stress that the VAT shelter figures above are a best estimate. The actual figure will vary depending on the precise timing of PCH doing work, VAT rates for the future and changes to legislation. Nationally the VAT shelter system has been in place since 2002.

4.2 Future Right to Buy Receipts

- 4.2.1 As part of the transfer, the Council are securing an entitlement to a proportion of any post transfer net RTB sale proceeds arising from sales to transferring tenants. Whilst RTB receipts are particularly difficult to predict in the current economic climate, the Council has secured the following formula in relation to the sharing of any RTB receipts that are generated after transfer.

RTB Sharing arrangements – estimated figures

<i>Year</i>	<i>PCC %</i>	<i>PCH %</i>	<i>Estimated Amount to PCC £</i>
1-6	50%	50%	1.8m
Year 7 until additional £10m is rec'd by PCC	100%	0%	10.0m
After £10m until year 30	50%	50%	1.0m
Total	80%	20%	12.8m

- 4.2.2 Although almost impossible to predict in the current economic climate, the above formula results in approximately 80% of the RTB receipts coming to the Council. Based on estimated cash flows it is anticipated that the Council will receive £1.8m in years 1-6 and a total of £12.8m over 15 years. **Please note that the above figures are estimates and cannot be guaranteed due to current uncertainty in the economy.**
- 4.2.3 Additionally it has been agreed that the Right to Buy sharing agreement runs for 30 years; the life of the business plan of Plymouth Community Homes, with an agreement that the Council receives 50% of any further receipts up until year 30.
- 4.2.4 The net receipt to be received by the Council is the sum after deducting the tenant's discount, a figure representing the loss to PCH of future rental income due to the sale of the property and after PCH's administrative costs, such as legal and valuation costs incurred as a result of the sale.
- ### 4.3 Disposals Clawback arrangements
- 4.3.1 The Council will be transferring the stock and certain areas of land to PCH for "nil" value. Earlier negotiations allowed for a development clawback arrangement whereby the Council would receive 50% of any monies realised from land disposals during the first 30 years.
- 4.3.2 As part of the detailed negotiations, PCH funders have requested that the Council revisit the disposals clawback arrangements in light of the current

financial markets. To meet the funder's concern that PCH need flexibility in its management of its stock and finances , it has now been agreed that;

- a) PCH will receive all sale income from assets sold for the first 12.5 years from transfer subject to formal consultation with PCC to how this is spent and subject to any monies received being spent on Housing/Regeneration within the boundaries of Plymouth's administrative area at the time the disposal takes place;
- b) If PCH sell housing stock to another RSL, that RSL must commit to complete the works set out in the offer document in respect of those homes;
- c) If PCH sell assets after 12.5 years purely for commercial gain, the net proceeds must be split 50:50 with PCC;
- d) If PCH sells assets after 12.5 years for affordable housing there will be no clawback.

4.3.3 The rationale for this claw back agreement is to underwrite the risk for PCH of North Prospect. No newly formed organisation has started its life with a new regeneration project with £44m attached to it. It allows the funder some reassurance. If PCH chose to sell they would still be constrained under PCH's charitable status to use the receipt in line with their business objects.

5.0 Financial Implications for Plymouth City Council

5.0.1 The transfer has significant financial implications for the Council, these are summarised in the table below, with a more detailed analysis of costs and savings shown in Appendix 2

	Year 1 2009/10 £m	Year 2 2010/11 £m	Year 3 2011/12	Year 4 2012/13	Year 5 2013/14	Year 6 2014/15	Total
Corporate Impact Pensions Deficit payment	0.7	0.7	3.2	3.4	3.4	3.4	14.8
Total cost to GF	0.7	0.7	4.5	4.7	4.7	4.7	20.0
VAT Receipts *	(0.5)	(3.1)	(3.0)	(3.1)	(3.1)	(2.4)	(15.2)
RTB Receipts *	0	(0.1)	(0.3)	(0.4)	(0.5)	(0.5)	(1.8)
Total Receipts	(0.5)	(3.2)	(3.3)	(3.5)	(3.6)	(2.9)	17.0
Net Cash Effect	0.2	(2.5)	1.2	1.2	1.1	1.8	3.0

* Note Capital issue of VAT shelter Receipts in table above

5.0.2 This impact should be viewed in light of other pressures on the Council's General Fund budget in the medium term, particularly around the uncertainties of Government grant funding in future years in light of the next comprehensive spending review, and messages from all parties that there will be tighter constraints on public sector expenditure. In addition, the costs to the Council listed above remain a prudent estimate, and will be subject to challenge and review throughout the budget process.

5.0.3 The following paragraphs of this report aim to explain the main issues for the Council. Further details of estimated costs are shown in Appendix 2.

5.1 Corporate Impact on Central Support Service Recharges

5.1.1 The HRA is currently recharged via support services for costs incurred by the Council including HR, IT, Finance, Legal, grounds maintenance and accommodation etc. In addition to this the HRA also contributes to the Council's Central Democratic costs. In total the current budgeted charge from the General Fund to the HRA including the building operation is in the region

of £5.7m per year. Following transfer, the General Fund will no longer receive this income from the HRA and hence will bear the costs in full. However, there are a number of actions that the Council has already taken to mitigate these costs.

- 5.1.2 Approximately 66 support staff will transfer to PCH. These staff were selected to transfer under the TUPE protocol as in the main they support that part of the Housing service transferring for over 50% of their time. The employee costs of these support staff will therefore be paid direct by PCH.
- 5.1.3 A number of Service Level Agreements will be set up from transfer which will enable the Council to continue to provide some of these services to PCH for the period up to 31 March 2011. The SLA's are shown in Appendix 3. The income that these SLA's will generate for the Council is approximately £1.7m in a full year.
- 5.1.4 At the end of March 2011, and in the case where any of the SLA's are not renewed, staff working on the SLA's may have a right under deferred TUPE to transfer to either PCH or to the new service provider. Although details will change during the course of the SLA in the 15 months following transfer, an estimated 30 posts are expected to transfer at the end of the SLA's. This is estimated to reduce the Council support service costs from April 2011 by approximately £0.9m per year.
- 5.1.5 The Council has already built in budget allowance in it's MTFP for a shortfall in support service costs of £0.541m per annum as a result of transfer.
- 5.1.6 If the SLA's end there will also be a reduction in direct costs to the Council and although we are not yet in a position to fully quantify these, an estimated reduction of £0.2m per year has been forecast.
- 5.1.7 Finally, the Council will continue to provide accommodation to PCH in the short term following transfer and this income will be used to offset some of the Council's support costs. Accommodation leases and licences are being drawn up for varying periods at Windsor House, Midland House, Prince Rock and Fort Austin depots. Income for a full year is approximately £0.3m.
- 5.1.8 Appendix 2 outlines the overall anticipated impact on support service budgets for the 5 years following transfer. This ranges from £0.7m in 09/10 to a full year effect of £2.8m if all SLAs are not renewed in 2011/12. The cost to the Council will need to be addressed as part of the drive to change the shape of the organisation. It is also imperative that where possible during the forthcoming financial year every effort is made to ensure SLA costs are competitive, so that when PCH is required to review them we are in a good position to successfully tender and to provide these services.

5.2 Additional costs of the Housing Retained Service

- 5.2.1 The Council's Housing Retained Service will need to increase post (outlined in section 8) transfer. The increased costs to the General fund are estimated to be £0.7m per year. Again, the MTFP already allows for an increase of costs of £0.459m per annum. The final budget for Housing Retained Services will be subject to challenge through the normal budget setting process.

5.3 Additional Costs to the Council

- 5.3.1 Due to the nature of the interdependency of the HRA and the Council's General Fund prior to transfer, there will be additional costs to the Council in carrying out its statutory functions. These are fairly minimal but include additional management requirements at Prince Rock depot, loss of Housing assistance in investigating public protection complaints and the costs of monitoring the transfer agreement and promises made to tenants in the offer document. These costs will be scrutinised in the next few weeks but are currently estimated at £0.5m pa.

5.4 Pension Deficit

- 5.4.1 Government guidance requires the Local Government Pension Scheme (LGPS) pension fund to be fully funded for the staff transferring from the Council to PCH. In order to achieve this, Devon County Council will effectively transfer additional pension fund assets from the City Council's share of the pensions fund to the new fund set up for PCH. Effectively this crystallises the share of the pension fund deficit attributable to the transferring staff by £19.2 m.
- 5.4.2 PCH have applied for admitted body status into the Devon LGPS which will enable existing staff within the Devon County pension scheme to remain in the scheme and to transfer over any benefits earned to date.
- 5.4.3 It is important to note that the additional cost to the Council arise from the fact that it will no longer receive contributions towards the back-funding of the deficit into the pensions fund from transferring staff, thus increasing the burden across existing Council staff. The council's overall deficit will be taken into account by the pensions actuary in the next triennial review which will be undertaken during 2010/11 and will be reflected in the Council's revised contribution rates with effect from 2011/12. This effectively results in the Council spreading the cost of the pensions deficit liability over 25 years and reduces the Council's exposure to risk.
- 5.4.4 For the Council keeping the pension deficit, the Council's actuary has indicated a notional increase to the current Council contribution rates of 1.1%, based on a deficit of £19.2m and this would translate into an increase in the Council's annual pension bill of £1.3m.

5.5 HRA Arrears

- 5.5.1 The HRA is currently showing uncollected income (arrears) in respect of housing rents, shop rents, service charges and other general debtors. Normal practice in a stock transfer is that an element of these arrears would be sold to the RSL, with the balance remaining a Council residual liability. The HRA currently includes a bad debt provision (BDP) calculated in accordance with a CIPFA recommended formula. This is currently in the region of £2.3m and is an assessment of debts that may become uncollectable. This may not be enough to meet the residual arrears following transfer. Recovery of these debts after transfer will become increasingly difficult not least due to limited access to information. Any residual arrears in excess of the current bad debt

provision would be a cost to the Council should these arrears not be subsequently recovered.

- 5.5.2 Final negotiations around arrears to be transferred to PCH can not be completed until after transfer. Until these negotiations have been completed the Council is not able to identify the final impact, but will of course seek to minimise any residual costs in excess of the bad debt provision.

5.6 Corporate Impact of Stock Transfer Project costs

- 5.6.1 The Corporate Impact Project team has been driving the transfer process from the Council's side, as well as identifying the impact of stock transfer on the Council and managing all the HR, land transfer aspects and SLA's in relation to the transfer. The costs of the Corporate Impact Project team will be in the region of £0.6m. The Council has set up a reserve to manage these costs.

5.7 Interest savings on repaid debt

- 5.7.1 As part of the gap funding for transfer, CLG will arrange to repay an element of the Council's PWLB debt on the transfer date, reflecting the fact that Housing subsidy will no longer be received to meet these costs. This payment will be based on the HRA subsidy value of debt which is £91m. This will mean a favourable reduction in borrowing costs to the General Fund in the region of £1.7m per annum. The Council's MTFP already allows for a reduction in its borrowing costs of £1.5m per annum.

5.8 HRA balance on closure of HRA

- 5.8.1 The Council expects to close its HRA at the end of 2010 /11. At present, the account is expected to have a balance of £2m, which will transfer to the Council's general revenue reserves.

5.9 Interest on s25 loan

- 5.9.1 Cabinet agreed to make a loan to Plymouth Community Homes under s25 of the Local Government Act 1988 to enable PCH to meet its set up costs. The loan of £4.8m plus interest currently estimated at £22k will be repaid to the Council on transfer day.

5.10 Rent holiday Payment

- 5.10.1 In light of the recession and pressure facing tenants, the Government encouraged local authorities to keep rent increases to a minimum for 2009/10 with local authorities being reimbursed the loss of income via housing subsidy. Implementing this initiative would have had a negative impact in PCH's business plan and separate arrangements were agreed with DCLG to give tenants a rent free week in lieu of a general reduction in the rent increase. This was implemented earlier this year. As a result PCC has received reduced rental income for the period prior to transfer and PCH have agreed to reimburse the Council for its net loss of income. This is currently estimated at £0.158m and will be reimbursed as part of the transfer completion costs.

5.11 Vehicles and Miscellaneous assets payment

5.1.1 There are a number of vehicles and miscellaneous assets that will transfer to PCH, the value of which are subject to ongoing negotiations between the Council and PCH. The outcome of these negotiations will be agreed with the Corporate Impact Project Board.

5.12 Overall Financial Impact on PCC

5.12.1 Overall the impact on the Council to the end of the first full 5 years following transfer is estimated to be £20.1m, notwithstanding items yet to be agreed.

5.12.2 As mentioned previously, there is no capital receipt from transfer, but the Council has negotiated the receipt of income from the proposed VAT Shelter and Right to Buy sharing agreement, estimated at £17m over the same period. It is important to note that this income will be paid in the form of a capital receipt, whilst the majority of the corporate impact costs are revenue in nature. The next section outlines potential actions to mitigate this funding mismatch.

6. Mitigating the Corporate Impact costs of transfer

6.1 A significant issue for the Council in determining the corporate impact of the transfer are the current rules on the use of capital receipts. Most of the financial pressure resulting from the housing stock transfer will be from ongoing revenue costs, including the pension deficit for staff transferring to PCH, while most of the resources generated will be capital receipts. Discussions have been held with our external auditors Grant Thornton and the audit manager who have confirmed their view that the VAT shelter and any other receipts arising from the disposal of assets that are capital in nature (i.e. council housing stock) should be treated as a capital receipts as, by their nature, they have only arisen as a result of the capital disposal”.

6.2 The Council can only use capital receipts to mitigate the revenue impact of the transfer by doing the following:

- a) Investing the capital receipts to earn interest. This would realise revenue income. In the current climate revenue interest earned under this option would not be sufficient to meet all the ongoing revenue costs.
- b) Investing the capital receipts to earn an investment return, such as investing in the rationalisation of the corporate estate, which could realise rent revenue savings.
- c) Repaying existing borrowing which would reduce ongoing interest costs charged to the General Fund. Options to repay borrowing remain limited given the repayment of £91m PWLB debt under the transfer arrangements. In addition in the current climate, any debt repayment would be likely to result in a premium payment thus negating any benefits.
- d) Using the capital receipts to replace planned borrowing or direct revenue financing
- e) Identifying expenditure currently being treated as revenue that could potentially be classed as capital.

- 6.3 The capital receipts generated from the transfer could be used to finance additional capital spending, in which case, there would be no revenue benefit to the Council's General Fund.
- 6.4 It may be possible to overcome the local authority accounting restrictions by pursuing the following options:
- a) Capitalisation Directions – the Council can apply to the Secretary of State under section 16 of the Local Government Act 2003 for consent to capitalise the pension deficit which could then be financed from the capital resources generated from the transfer. This approach may involve a number of applications for consent so that the capitalised expenditure matches the availability of the capital resources which will be generated over the next 15 years.
 - b) Plymouth specific regulation – The Secretary of State can make specific regulations under section 9 of the 2003 Act. The Council would need to obtain a specific regulation that allowed the Council to treat the future VAT shelter receipts as revenue resources which would allow the Council to use the VAT shelter to finance both the pension deficit and other ongoing revenue costs.

Either of these options would benefit the Council significantly but both rely on the Secretary of State's consent and therefore there is a risk that any applications could be declined. The Council is currently exploring options with colleagues in Government Office (South West) GOSW and Department for Communities and Local Government (DCLG).

7 Staffing Implications / TUPE

- 7.1 The transfer contract will include a list of all staff who will transfer to Plymouth Community Homes under TUPE (The Transfer of Undertakings (Protection of Employment) Regulations 2006). In order to produce this list a TUPE protocol was developed so that both parties had a clear framework within which to decide which posts should transfer under TUPE. The aim of the TUPE protocol was to provide a basis to meet the needs and expectations of the Council, PCH, the Unions and employees, but also allowing flexibility to deal with individual cases. The main principle being that all those staff who work for more than 50% of their time on the transferring housing function will be eligible to transfer to Plymouth Community Homes.
- 7.2 Following four appeals, this work has resulted in the production of a list of 515 staff to transfer to PCH. This may change by a small number due to the potential for leavers and new starters and any final changes due to the final negotiations.

8 Retained Housing Services

- 8.1 The retained housing service for the council will sit within the Development and Regeneration Directorate and will be formed by the amalgamation of the existing Strategy and Renewals teams and the Housing Operations teams which are not transferring and which have been determined are responsibilities of the council. These are:

- Housing Strategy and Development, - Housing needs / housing market assessment, new affordable housing delivery and part of Devonport and North Prospect Regeneration Project , Empty Homes, Home Energy and housing strategy
- Private Sector Housing and Regeneration , - Private Rented Housing, Housing Renewals, Neighbourhood Management (North Prospect and Stonehouse) , Efford Building Communities Initiative, East End Renewal Area
- Business Support – performance management, client monitoring , administrative support, health and safety, customer feedback, service improvement, housing finance and Freedom of Information
- Housing Operations - Homelessness, housing advice, temporary housing and SHIP hostel, housing register and nominations , choice - based lettings (Devon Home Choice)
- Anti-Social Behaviour Unit – Anti social behaviour, Family Intervention Project.
- Transfer Monitoring - The service will take the corporate lead in developing the working relationship with Plymouth Community Homes and monitoring the delivery of the transfer promises to tenants.

8.2 Devonport Regeneration and North Prospect Regeneration will be a shared project with PCH as set out above.

9 Assets to Transfer

9.1 List of Assets to transfer

9.1.1 Appendix 4 sets out the final list of assets which it is proposed to transfer to Plymouth Community Homes. The split of land was agreed on a principle which defined that where land sits within or adjoining estates of more than 50% tenure by PCH tenants, ownership largely fell to PCH. In some areas pragmatic decisions were made to reduce the likelihood that two separate contractors would be maintaining adjoining land at different standards. Members have had a number of opportunities to input into the detailed plans of land to transfer.

9.1.2 Public Open Space notices were formally advertised producing ten responses. As a result of comments received some plans were revised and one site was removed from the list of assets to transfer. This was determined at the Cabinet meeting of 28th September 2009. All respondents have been written to with details of the outcome of their comments.

9.2 West End Shops

9.2.1 Plymouth Community Homes' original business plan allowed for the income associated with the West End shops as these properties are currently part of

the HRA. It has been agreed that the West End shops should transfer to PCH to enable the investment in the tenants' flats above the shops to proceed unhindered.

10 Service Level Agreements

- 10.1 Detailed discussions have also taken place with Plymouth Community Homes on the range of services (SLA's) to be provided by each party to the other. This allows continuity for PCH in its first few years and also mitigates the corporate impact on the council. Specifically the SLA's will:
- a) Allow Plymouth Community Homes to become established in areas such as IT, payroll etc as it is not feasible for them to acquire and implement complete new systems from the date of transfer.
 - b) Allow consistency of service between PCH owned land and PCC owned areas e.g. grass cutting etc
 - c) Provide income to the Council which will be offset against the residual costs which the Council faces.
- 10.2 The majority of the SLA's will run from transfer day until 31st March 2011. At the end of any Service Level Agreement there will be issues to resolve about whether staff involved in this service provision have TUPE rights to transfer to Plymouth Community Homes, or alternative service providers if they do not continue with the Council. Therefore a provisional 'deferred TUPE list' of posts affected is being agreed.
- 10.3 The final list of Service Level Agreements is as attached at Appendix 3. Final discussions on the details of the agreements and review terms are taking place with Plymouth Community Homes but the basic cost framework has been agreed and is in line with costs currently incurred by the Council in providing these services to the Housing Revenue Account. Where the transfer results in a loss of recharge income to the Council's General Fund (either now or at the end of the SLA period) the strategy will be to reduce costs wherever possible. However some costs are likely to prove to be fixed or irreducible, in which case the impact on the General Fund will need to be managed over a period of time through the Medium Term Financial Plan. These costs are currently reflected in the corporate impact figures in Appendix 2.

11 Monitoring the Delivery of the Promises to Tenants

- 11.1 A formal structure for monitoring the delivery of promises to tenants has been developed by the Council and agreed by PCH. This is attached at Appendix 5. and will form part of the transfer contract which is explained further below in section 13.
- 11.2 While the promises to tenants, in the main, will be covenanted to PCH to deliver, they remain the responsibility of the Council, as it was the Council which consulted with its tenants. The retained housing services will take a corporate lead both in monitoring, and developing a strong collaborative relationship with Plymouth Community Homes for the future, especially in the regeneration of North Prospect and Devonport.

12 North Prospect and Devonport Regeneration

12.1 North Prospect

12.1.2 The transfer brings with it a solution to the regeneration of the North Prospect estate with additional funding of £44m through the Homes and Communities Agency (HCA) as Social Housing Grant (SHG). Within the transfer promises PCH are defined as the lead in developing a Master Planning exercise in partnership with the Council and local residents, following the set of principles agreed through the StuF (Strategic Urban Futures) consultation. The transfer contract includes a Development Agreement setting out the respective roles of the parties and links to a tripartite funding agreement between the Council, PCH and the HCA.

12.2 Devonport

12.2.1 The transfer straddles the completion of the regeneration work within Devonport; however agreements will be put in place at transfer to ensure continuity and the completion of the project. Key staff, while transferring to PCH, will provide the services needed to fulfil the requirements of the project through a Service Level Agreement. The Council, Plymouth Community Homes and Devon & Cornwall Housing Association are to enter into an agreement documenting exactly what is to happen with the remaining two tenanted blocks so each party will be clear on its roles, rights and responsibilities.

12.2.2 All of the decanted properties and sites within Devonport will remain with the Council prior to their transfer and sale to DCHA for re-development. The remaining two tenanted blocks of flats will transfer to PCH until they are decanted prior to redevelopment. Funding from the VAT Shelter is included to assist with the decanting costs.

13 Transfer Contract

13.1 The Transfer Contract is where all of the legal issues between the parties described above are contractualised. It is a significant document that defines the rights, roles and responsibility of the partners in delivering the promises to tenants and the related disposal and conveyance of assets, property, staff TUPE arrangements and the funding agreements as defined above. A report summarising its contents is attached at Appendix 6.

13.2 This Contract will inevitably, not be finalised until completion of the transfer on 16th November 2009, as remaining issues and points of detail are identified and resolved. On this basis it will be necessary for the Council to delegate authority for the finalisation of these remaining points before the contract can be signed. It is recommended that Council delegate this authority to the Director for Corporate Support, in conjunction with the Corporate Impact Project Board.

14 Risks

14.1 Contaminated land.

14.1.1 As part of the transfer, the Council must give to Plymouth Community Homes certain warranties (set out in more detail in the report on the transfer contract at Appendix 6). This is a standard transferee and funder requirement and avoids the cost and time involved in all parties to the transaction having to do full size investigations. In effect, on transfer, the Council will warrant to PCH that none of the land or properties transferring to it is contaminated. If contamination is found in the future (and PCH can demonstrate that it existed at transfer) and PCH or its funders suffer a loss, then a claim can be made against the Council.

14.1.2 It is important to note that the warranties do not necessarily create liabilities which previously do not exist. The Council has responsibility and liability for the environmental state and condition of the land and properties transferring now. The key difference, though, is that after transfer the Council do not have control over the handling of this liability.

14.1.3 The Transfer Contract will contain mitigation provisions, however, and there is a general law of mitigation which means that PCH, on becoming aware of any contamination, must legally limit the potential clean up and other costs to the Council.

14.1.4 Although environmental insurance could be an option for the Council, this is expensive and would be tightly limited. The proposal is that Council sets aside a contingency in the event of environmental claims in future and this sum has been taken into account in the financial negotiations.

14.2 Asbestos

14.2.1 As with contaminated land, asbestos is a significant issue in housing stock transfer but is extremely difficult to quantify. A mechanism has developed within the context of stock transfer whereby the cost of asbestos works can be quantified with some reasonable degree of certainty and a sum for this has been taken into account in PCH's business plan. Because of the significance of this issue, the Council, as with most other Councils, will give PCH an indemnity for 20 years so that if the cost of asbestos works exceeds the cost currently in their business plan (£10 million), the Council will pay for whatever is spent over the £10 million threshold. If any personal injury is caused to residents due to asbestos currently in the properties, the Council will be liable for claims brought within 30 years.

14.2.2 The Transfer Contract will, reflect the agreement PCH and the Council have reached, which is that:

- a) in carrying out the works PCH will do what is necessary to make a property safe when an asbestos problem is identified and;
- b) The Council, before transfer, will be given the opportunity to carry out its own due diligence on the information that PCH has worked from in calculating the £10 million threshold.

15 Next Steps

- 15.1 Following today's Council meeting, there are a number of essential steps the Council must take to finalise the process. These are listed below.
- 15.1.1 Send Council minutes to CLG immediately following Council decision as these form a critical part of the Secretary of State's judgement in approving the disposal and transfer of stock to PCH.
- 15.1.2 Write to the Public Works Loan Board (PWLB) to give formal permission for CLG to see our debt profile. Once CLG agree the final figure, PCC need to inform PWLB within 5 days of transfer of its intention to repay the loans.
- 15.1.3 The Council and PCH needs to take the necessary steps to put in place the VAT shelter. This will involve the raising of invoices on both sides on transfer day. This will cover the improvement works to be undertaken under the development agreement which forms a separate arrangement to be completed immediately before completion of the transfer. The works schedule within this invoice will form the basis of the VAT Shelter.
- 15.1.4 The Corporate Impact Project Board is to meet on two more occasions prior to transfer day to finalise the outstanding issues.
- 15.1.5 After formal Council sign off, both parties will need to complete the remaining legal work with final signing of the transfer contract on the 16th November by the Leader of the Council and the Chair of Plymouth Community Homes.

16 Conclusions and Recommendations

16.1 Conclusion

- 16.1.1 The work to complete transfer has been both complex and demanding on both organisations, and is the culmination of some three years work to deliver a sustainable solution for 15,000 households within Plymouth. It has been an inclusive process engaging residents, members and staff, together with a range of government agencies in achieving this positive outcome.
- 16.1.2 The transfer brings in substantial funding from government, which is matched by private sector borrowing from Plymouth Community Homes to achieve our mutual objectives on affordable and decent homes for our residents. The Council retains significant housing responsibilities to the remainder of its residents and a structure is in place to meet these with the retained housing service. This service takes the lead for the Council in ensuring the delivery of the transfer objectives in the spirit of partnership with a newly formed collaborative partner in Plymouth Community Homes.

16.2 Recommendations.

The Council is recommended to:

- 1) Approve the transfer of the Council's housing stock to Plymouth Community Homes currently scheduled to take place on the 16th November 2009 under the terms of the transfer contract and associated documentation subject to the Council obtaining all necessary consent and final agreement on terms.
- 2) Agree that officers seek Secretary of State's consent to the disposal and transfer.
- 3) Agree that the Director for Corporate Support continues to exercise his delegated authority, in consultation with the Corporate Impact Project Board to continue to negotiate and resolve matters outstanding.
- 4) Note that the final transfer contract will be signed by the Leader and the Chair of Plymouth Community Homes on the 16th November 2009.
- 5) Note officers' continued work to address the revenue / capital funding issue described within the report.

PLYMOUTH CITY COUNCIL

SUMMARY OF FINANCIAL NEGOTIATIONS

TRIBAL CONSULTING

OCTOBER 2009

Services for life

Housing stock transfer financial negotiations

1 Introduction

- 1.1 This paper has been prepared to provide information on the outcome of the stock transfer negotiations with PCH. It provides information on the history of gap funded transfers, how the CLG requirements have developed and the financial settlement agreed with PCH.

2 Valuation of the housing stock

- 2.1 The valuation of the housing stock is known as the tenanted market value (TMV) and the methodology is prescribed by the government. The TMV can either be positive, in which case it represents the purchase price for the housing stock, or negative in which case additional funding is required to make the transfer viable.
- 2.2 The TMV is based upon on a discounted cash flow calculation to reflect the value of money over time. The calculation uses estimates of income from rents and service charges and spending on management, repairs and improvements over 30 years which are then discounted to current prices using a discount rate of 6.5%. In Plymouth, the estimated need to spend over 30 years is greater than the income generated and so the TMV is negative. The TMV agreed with CLG is minus £118m which will be covered by a government grant known as gap funding. This grant will be paid to PCH and without it the transfer would not be possible.

3 Resources generated by the stock transfer

- 3.1 Although there is no initial capital receipt from the transfer the Council will benefit from a share of the income generated by PCH through a VAT shelter and future right to buy (RTB) sales.
- 3.2 A housing association cannot normally reclaim VAT paid on the costs of major works and improvements to its housing stock because the provision of social housing is an exempt supply for VAT purposes. However, the transfer will be set up using a mechanism known as the VAT shelter so that PCH will be able to reclaim the VAT on the first replacement of building components. The VAT shelter is well established for stock transfers and it is likely to generate £53.0m over the next 15 years.
- 3.3 The transfer will also include a RTB sharing agreement whereby the proceeds from future RTB sales are shared between the Council and PCH. RTB sales have a detrimental effect on housing association business plans and so a mechanism known as the net income foregone is used to ensure that the sales have a neutral impact on the PCH business plan. The first call on the RTB receipts will be the net income foregone, which includes an administration allowance, and the remainder will be available to share between the Council and PCH.

3.4 Sharing these resources will provide the Council with a future stream of capital receipts. However the main financial impact on the Council will be the residual corporate costs and the pension deficit in respect of staff transferring to PCH. These additional costs are revenue costs and so they cannot be financed directly from capital receipts. Therefore the Council is exploring options to overcome this with CLG. These options include CLG directions allowing the Council to capitalise the pension deficit and the potential for CLG to make specific regulations allowing Plymouth to treat VAT shelter receipts as revenue income.

4 Development of gap funded transfers

4.1 The first gap funded transfer was completed on 21 March 2005 and since then there have been a further 35 transfers completed with gap funding from CLG.

4.2 In the early gap funded transfers the terms were more favourable than could be negotiated with CLG today. For example, CLG did not require the valuation to take account of VAT shelter savings in the early gap funded transfers.

4.3 By 2007 the VAT shelter receipts were being used by CLG to mitigate the need for gap funding and typically 50% of the estimated savings were used to increase the valuation thereby reducing the amount of gap funding needed. However, up until now, reliance on RTB receipts in gap funded valuations has not been required by CLG.

4.4 The Plymouth transfer will be the last to go through with gap funding from CLG. The gap funding of up to £118m agreed with CLG takes account of £15m from the VAT shelter (50% of the original estimate) and £10m over the first 5 years from RTB receipts.

4.5 As the gap funded route has developed there have been resources available to deal with unforeseen issues not included in the valuation agreed with CLG and to manage the Council's residual costs and risks. However, the potential to address these issues has diminished over time.

5 Experience from other gap funded transfers

5.1 No two transfers are exactly the same and the major issues vary. However, the difficulties to be addressed through the financial negotiations often include:

- Pension deficit for transferring staff
- Unforeseen costs excluded from the valuation and hence the business plan
- Resources to mitigate the Council's residual costs and risks

5.2 As gap funded transfers have developed CLG have taken resources from the transfer to reduce the need for gap funding. The Council's share of VAT shelter receipts has tended to decline over time as the VAT shelter has been used to cover the cost of pension deficits and other property related costs not covered in the valuation agreed with CLG. In recent transfers these have covered items such as:

- Asbestos provision
- Provision for unadopted roads and sewers
- Remodelling of unsustainable stock
- Regeneration schemes (although CLG would now be unlikely to allow this)

5.3 Because the gap funding has been squeezed by CLG and has been used to finance the pensions and unforeseen costs, Councils have tended to get a better deal on RTB receipts. This is because it can be argued that the Council is effectively transferring the stock at nil value and so the RSL would benefit from a capital receipt at the Council's expense. Furthermore the RSL business plan is unlikely to rely on RTB receipts and once the net income foregone has been allowed for there is no detriment to the business plan.

6 The Plymouth context

6.1 There are number of issues that affect the financial settlement in Plymouth. The valuation agreed with CLG of minus £118m which sets the ceiling for gap funding did not fully cover the expenditure needed to be incurred by PCH in so far as:

- North Prospect costs were not included £10.6m
- CLG requirement for £15m to reduce the need for gap funding
- Insufficient provision for asbestos encapsulation and containment £10m
- Devonport not included with likely additional cost of £2m

6.2 These additional costs amount to £37.6m.

6.3 The most significant factor is the pension deficit of £19.2m which is significantly higher than we have come across before. This increases the overall expenditure to be covered from the VAT shelter to £56.8m.

6.4 The latest estimate of the VAT shelter is £53.0m over 15 years which should be reclaimed as follows:

- Thereafter to Year 30 £1.0m

- 7.6 Based on current forecasts this is likely to provide the Council with future capital receipts of £12.8m, subject to demand.
- 7.7 After taking into account both the VAT shelter and estimated RTB receipts the Council would receive £17.0m by the end of year 6 and £34.7m over the next 30 years.

8 Conclusion

- 8.1 Gap funded transfers do not provide an initial capital receipt and the resources available to address future costs and risks are limited. This is because CLG only provide gap funding as a last resort once other resources like the VAT shelter have been exhausted.
- 8.2 The financial settlement seems reasonable given the additional pressures in this transfer, particularly the pension deficit of £19.2m and the contribution of £10.6m needed for the redevelopment of North Prospect. The Council's 41% share of the VAT shelter is good news given the overall financial constraints and CLG pressure to reduce the level of gap funding.

CORPORATE IMPACT OF STOCK TRANSFER	Year 1 2009.10 £'000	Year 2 2010.11 £'000	Year 3 2011.12 £'000	Year 4 2012.13 £'000	Year 5 2013.14 £'000	Year 6 2014.15 £'000
Support Services impact						
Current SS income form HRA to GF	2,154	5,780	5,780	5,780	5,780	5,780
TUPE transfers	(660)	(1,772)	(1,772)	(1,772)	(1,772)	(1,772)
SLA income	(637)	(1,710)	0	0	0	0
Deferred TUPE transfer	0	0	(922)	(922)	(922)	(922)
Non staffing savings at end of SLA	0	0	(238)	(238)	(238)	(238)
Accommodation leases	(133)	(325)	(286)	0	0	0
Impact of Support Services	723	1,973	2,562	2,848	2,848	2,848
Additional Costs of Housing Retained	323	751	751	751	751	751
Other increased costs to PCC	200	538	538	538	538	538
Interest Savings on repaid debt	(827)	(1,720)	(1,720)	(1,720)	(1,720)	(1,720)
Pension deficit	0	0	1,263	1,263	1,263	1,263
Project costs	600					
Impact of Arrears *						
Environmental Provision		500	500	500	500	500
Other	25	87	60	34	9	(1)
Total	1,045	2,129	3,955	4,214	4,189	4,179
Offset by:						
HRA Balance		(2,000)				
Interest on s25 loan	(22)					
Rent holiday Payt	(158)					
Misc assets *						
Total offset	(180)	(2,000)	0	0	0	0
Net effect	865	129	3,955	4,214	4,189	4,179
Impact of MTFP budget	(156)	547	547	547	547	547
Net impact	709	676	4,502	4,761	4,736	4,726
* to be agreed						20,111

Service Level Agreements (SLA)

SLA – Service from PCC to PCH	
1	Cashiering, cash office, secure cash collection and banking of monies from branch offices
2	IT system / infrastructure
3	Post and courier services
4	HR Payroll
5	Environmental Services: Grounds Maintenance
6	Environmental Services: Public Protection Sector and Pest Control
7	Environmental Services: Waste & Street Scene
8	Anti Social Behaviour
9	Translate Plymouth
10	Management of shops
11	Supply of Fuel

REVERSE SLA'S – Service from PCH to PCC	
12	Out of hours Emergency
13	Manufacturing & Building Services
14	Elections
15	Gas, Electrical & Asbestos
16	Devonport regeneration team
17	Repairs & Maintenance to Raglan Court & The SHIP
18	Cash collection for non housing council funds at PCH local offices

**Land and assets to transfer to
Plymouth Community Homes
as part of Housing Stock Transfer**

Asset Type	Number
Dwellings	14,812
Right to Buy Leases	1,458
Shared Equity Properties	8
Garages	2,901
Parking Spaces	127
Shops	178
Other commercial lettings	22
Housing Offices	9
Playgrounds	12
Ball courts	3
Plus Unadopted roads, footpaths, parking areas, garage forecourts and grassed areas	

Monitoring Arrangements

Effectively Managing and Monitoring Post Transfer Issues, and Promises to Tenants by Plymouth City Council and Plymouth Community Homes

- 1.1 This is a framework that not only encapsulates the formal monitoring of transfer promises, but also creates the conditions for developing an effective and collaborative partnership between the City Council and Plymouth Community Homes. While the transfer agreement has an agreed legal statement, (see below) previous LSVT experience suggests that a clear and robust framework of operational and strategic engagement will effectively build trust and foster creative, efficient and positive working relations.
- 1.2 "For six years from the Completion Date, the Chief Executive of the Association (or his nominated representative, who shall be a Senior Officer or Director of the Association) will attend quarterly liaison meetings (or at such other intervals as the Parties shall agree) with a Senior Officer or Director of the Council and subject to any unavoidable requirements of the Data Protection Act 1998, FOIA and any other confidentiality requirements provide all necessary information reasonably and properly required by the Council to enable the Council to satisfy itself that the Association is fulfilling its obligations under this Agreement. Thereafter the Parties shall meet as often as reasonably necessary, as the Parties shall agree"
(Extract from Transfer agreement)

2 Governance Arrangements

While PCH is covenanted to deliver the promises to tenants, it is the Council which consulted its tenants and made commitments to deliver them following the formal vote. It is therefore proposed that twice yearly, the Chief executive of Plymouth Community Homes presents a progress report to the council, hosted either by the Cabinet Member /s with responsibility for housing or by the appropriate chair of Scrutiny. This should be open to all council members to attend. Board members of PCH and tenant representatives could also be invited.

3. Executive and Officer Arrangements

It is proposed that there are two levels of regular joint formal meetings **(3.1 and 3.3)** between the organisations, and mirrored internal corporate meetings **(3.2)** as set out below.

3.1 PCC and PCH Quarterly Partnership Meetings (joint)

3.11 Purpose - To discuss:

- Progress on the 'promises' to tenants (format to be agreed but example offered – see NSH example)
- PCH and PCC relevant strategic direction and objectives and how we can work together to achieve them where appropriate
- Financial issues as a result of transfer and the robustness of financial plans
- Issues raised by the Post Transfer Core Officer Group that cannot be addressed through operational liaison meetings. This will include Core Officer Group recommendations on decisions that need to be made at a corporate level and at the formal Partnership Meeting.

3.12 Frequency – quarterly starting January 2010

3.13 Membership: To be agreed but suggested from the following:

- Chief Executive PCH
- Operations Director PCH
- Finance Director/ Manager PCH
- Director of Development and Regeneration PCC
- Director of Corporate Support PCC
- Assistant Director Strategic Housing PCC

3.14 Reporting Mechanism – Minutes of quarterly meeting circulated to Post Transfer Core Group (PCC), Management Team PCH and Operational Liaison meetings and for them to cascade as appropriate wider to PCC (CMT and Cabinet Member), PCH (Board) .

3.2 PCC Transfer Core Officer Group and PCH Management Team (internal)

3.2.1 Purpose – To discuss and make decisions if appropriate on:

- Issues that cannot be resolved at an operational level
- Joint working on new or existing initiatives and progress made
- Issues from new protocols and SLAs
- To make recommendations decisions on any of the above, so that those attending Partnership Meetings have an agreed corporate view, and the authority to agree a resolution to individual issues.

3.2.2 Frequency – quarterly timed to be 2/3 weeks prior to Formal Partnership Meeting starting December 2009

3.2.3 Membership - Managers in each organisation (to be agreed) who either:

- Have responsibility to deliver services under SLA's
- Managers who receive services under SLA's
- Managers responsible for the delivery of promises to tenants
- Managers responsible for monitoring the delivery of promises to tenants
- Managers of services affected by services delivered through the transfer.

3.2.4 Reporting Mechanism – Minutes of core group copied to appropriate Assistant Directors/Directors and members of Operational Liaison Group and updates to Departmental Management Meetings, if appropriate, and Cabinet Member / Board Chair for guidance.

3.3 Operational Liaison Meetings (joint)

3.3.1 Purpose – To discuss

- Day to day operational issues
- Monitoring of individual SLA's or protocols if appropriate
- Joint working on new or existing initiatives where appropriate
- Development of new protocols where/if necessary
- Any other items relevant to service delivery

For Example:

- Allocations/ homelessness and Temporary Accommodation

- Anti Social Behaviour

3.3.2 Membership: To be agreed but based on:

- Appropriate operational managers PCC
- Appropriate operational managers PCH
- Any other relevant staff e.g. partner agencies involved

3.3.3 Frequency: To be decided by managers but probably monthly, with ad hoc as necessary to resolve urgent issues.

3.3.4 Reporting Mechanism – Updates to relevant Management Teams and other relevant service teams. One member of each Operational Liaison Meeting should also be a member of the Core Group and take responsibility for reporting issues that cannot be resolved and need a corporate decision to the Core Group.

PLYMOUTH CITY COUNCIL

REPORT ON TRANSFER AGREEMENT

1. INTRODUCTION

Following the successful ballot of tenants, Plymouth City Council (the "Council") and Plymouth Community Homes ("PCH") now need to enter into a formal contract to complete the housing stock transfer. The Transfer Agreement is the contract which sets out the rights, responsibilities, covenants and requirements of both parties. It also contains all of the necessary arrangements to enable PCH to receive and manage the properties and the Council to enforce the promises made to tenants during the consultation period.

2. THE TRANSFER AGREEMENT

The Transfer Agreement takes the form of a contract for sale with numerous schedules and annexes containing supporting information.

In particular, the agreement contains:

- (i) covenants by the Council and PCH in favour of each other;
- (ii) an Assignment of Rent Arrears which will be entered into within 28 days of the completion of the transfer;
- (iii) a Nominations Agreement to sit behind the Choice Based Lettings Scheme. The Nominations Agreement gives the Council the right to make nominations into 75% of the transferring dwellings as they become vacant in the event that the Council and PCH withdraw from the Choice Based Lettings Scheme. Because of the redevelopment of the sites at Devonport and North Prospect, PCH and the Council have agreed that if a property is required to decant a resident of either of these sites, a home will not be available for nominations or choice-based lettings;
- (iv) employment provisions in respect of the Council's staff transferring to PCH. These include warranties that the Council has given to PCH all material facts and records relating to transferring staff and that there will be no employment related claims made against PCH following the transfer. PCH and its non-charitable subsidiary Plymouth Community Homes Services Limited will jointly employ the employees currently working in manufacturing;
- (v) provisions dealing with the ongoing contractual obligations of the Council with third parties, which are relevant to the stock being transferred (eg: maintenance contracts);
- (vi) provisions for the actual transfer of the tenanted dwellings and any associated land any commercial properties and open spaces;
- (vii) title warranties by the Council in respect of the property being transferred;
- (viii) a Right to Buy Sharing Agreement which protects PCH from fluctuations in RTB sales and gives the Council a share of RTB sale proceeds following transfer. The Council will receive 50% of net VAT receipts for 5 years from transfer, then the next £10m net receipts, then 50%;
- (ix) leases / licences of office space and the Prince Rock and Fort Austin Depots, enabling PCH to occupy these premises temporarily. PCH are to lease back to PCC certain properties, again on a temporary basis, for instance to allow the social services to continue to occupy certain properties.
- (x) provisions for both parties to apply for and maintain registration as data controllers and to comply with the provisions of the Data Protection Act 1998;

- (xi) agreements for the provision of services by PCH and the Council to each other after transfer;
- (xii) all of the other necessary provisions to transfer the housing function to PCH as a going concern.

Other significant clauses are as follows:-

- (a) Certain of the Law Society's standard conditions of sale used on every day property transactions are incorporated into the contract, changed to reflect the circumstances of this transfer.
- (b) A rent and service charge arrears calculation. On completion the Council will transfer over to PCH the rent and service charge arrears due from existing tenants. The amount to be paid to the Council for these arrears will be a percentage of their value and the actual figure will be worked out after transfer once the Council rent accounts are closed. The figure will reflect the value of the arrears to the Council and the cost to PCH of pursuing them.
- (c) Confirmation that the Council is responsible for payment for goods and services up to the completion date and that PCH is responsible for payment for goods and services on and after the completion date.
- (d) Arrangements covering insurance claims and risk. If any properties are destroyed or damaged before completion then the Council will reimburse PCH for the reasonable cost of reinstatement.
- (e) The legal position of transferring employees. From the completion date, PCH will be the employer of the transferring staff by virtue of the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE"). By giving staff warranties to PCH, the Council retains the risk of any staff claims caused by matters such as breach of a member of staff's contract of employment by the Council, the Council failing to pay a member of staff money due before completion, the Council's failure to consult with trade unions and so on.

The Council's contractual liability under the staff warranties and their liability for all other claims is likely to end some 18 months after completion, but this period is still to be finalised.
- (f) The contract imposes a requirement on PCH and PCH Services Ltd that they will obtain admission to Devon Local Government Pension Scheme and staff pension rights will therefore continue.
- (g) The contract deals also with Council employees who will remain with the Council after transfer and provide services to PCH for a limited period after completion. When these agreements end, those employees may have rights to transfer to PCH.

3. THE SCHEDULES

Much of the information and detail of the transfer is contained in the Schedules to the contract. These are as follows:

- (a) **The First Schedule:** This Schedule gives details of all property to be transferred to PCH including general needs property, sheltered units (including the common areas in sheltered schemes), open spaces, garages, garage plots and shops. The transfer of land and land assets will be with reference to plans which officers are preparing and agreeing with PCH's officers now.

- (b) **The Second Schedule:** Contains the Nomination Rights. PCH will give the Council the right to nominate tenants for housing into 75% of PCH's properties. The nomination procedure is set out in detail in the Nominations Agreement.
- (c) **The Third Schedule:** Contains the contracts affecting the transferring property to be assigned to PCH or retained by the Council.
- (d) **The Fourth Schedule:**
- (i) Part 1 sets out the warranties which the Council will give to PCH in respect of the staff transferring. These have the effect of ensuring that none of the staff transferring have a claim either against the Council or PCH with regard to his or her pre-transfer employment or the transfer itself.
 - (ii) Part 2 contains the disclosures to the staff warranties. There are likely to be few disclosures and are generally for information purposes.
 - (iii) Part 3 will give details of staff loans still to be paid on the completion date.
- (e) **The Fifth Schedule:**
- (i) Part 1 sets out the Council's covenants or commitments in favour of PCH. If the Council breaks any of the covenants, PCH will be entitled to serve a notice on the Council giving details of the breach. If the breach is capable of being put right and is not put right within 28 days of service of the notice, then PCH will be able to claim damages from the Council. Specifically the covenants are likely to be as follows:-
 - (1) to work with PCH in the formulation of wider community initiatives;
 - (2) to assist PCH to answer Land Registry requisitions so that PCH can register its title to the property;
 - (3) to maintain amenity areas, play areas and grounds retained by the Council in good order;
 - (4) to pay Housing Benefit to PCH direct where tenants agree to this;
 - (5) to process claims for Housing Benefit quickly and in accordance with the H.B. Regulations;
 - (6) to enforce any rights that the Council has against its contractors and consultants, for the benefit of PCH;
 - (7) to assist PCH, where it is reasonable and practical, with any enquiries PCH might have as regards the transfer; and
 - (8) to treat PCH's tenants the same as other residents when they seek a Disabled Facilities Grant.
 - (ii) Part 2 of the Fifth Schedule sets out in detail PCH's covenants. Specifically, the covenants are as follows:-
 - (1) to use the income and receipts from rent and any sales of property in the payment of its loans and in the management, maintenance, repair, modernisation and improvement of the housing stock; any surpluses are to be used primarily within Plymouth;
 - (2) to attend quarterly meetings with the Council for six years after transfer so that the Council can monitor its progress;

- (3) not to change its constitution as regards Council or tenant board membership without the Council's agreement;
- (4) to maintain all open space and amenity land in reasonable order;
- (5) to maintain its registration with the Tenant Services Authority (TSA);
- (6) not to do anything which might result in PCH's registration with the TSA being withdrawn and to comply with any of the TSA's mandatory requirements;
- (7) to carry out the promises made by the Council in the Consultation Document and Stage Two Letter;
- (8) to raise rents only in line with what is allowed in the consultation document and to comply with the Government's rent convergence regime;
- (9) not to take possession proceedings other than on the grounds set out in the tenancy agreement;
- (10) to consult with tenants on any changes in housing management;
- (11) to accept the Council's Board Members, make sure that the Tenant Board Members are properly appointed and act reasonably in considering membership applications from tenants;
- (12) in selecting its tenants, PCH are to act reasonably and in accordance with its Allocation Policy;
- (13) not to vary the tenancy agreement after transfer, without telling the Council the changes and allowing the Council to comment on them;
- (14) to recognise and encourage tenant groups and residents associations and offer them a reasonable level of financial and other support;
- (15) to use reasonable endeavours to employ local people and encourage and support local employment training schemes;
- (16) for 7 years from the Completion Date not to merge with any other Registered Social Landlord ("RSL") without the Council's consent. After that, not to merge with another RSL without formally considering the views of the Council. The Council's consent to the change in PCH's constitution would be necessary under its constitution in any event, as long as the Council is a one-third voting member of PCH.
- (17) to work with the Council in the adoption of joint objectives for housing in the formulation of a crime and disorder strategy and to work with the Council in the formulation of its social housing strategy and regeneration policy;
- (18) to give the Council and its auditors all reasonable and practical information and assistance it needs to complete its annual HIP returns, Homelessness returns, etc;
- (19) to respond promptly to queries raised by MPs, Council members etc.

(f) **The Sixth Schedule:**

The Council is being asked to warrant to PCH that there are no matters in connection with the land or property transferring that could cause PCH financial or other loss. In particular, the Council are to give environmental warranties so that as far as possible, any risk of environmental contamination stays with the Council. The Council will give warranties both to PCH and separately to PCH's funders. The warranties will last for 30 years.

(i) **Title Warranties**

The warranties themselves are as follows:

- (1) that the warranties are true and accurate, clear and not misleading;
- (2) that the legal title to the property is good;
- (3) that the property is free from any mortgages, rents, charges or loans;
- (4) that the current use of the property does not breach the Planning Acts or any other law or regulations;
- (5) that there are no circumstances in which planning enforcement action could be taken and that there are no outstanding or unperformed obligations by the Council;
- (6) that there are no compulsory purchase/demolition/slum clearance orders affecting the property;
- (7) that any leasehold property is held on standard terms;
- (8) that the property is subject only to the Council's tenancies and that there are no claims or known potential claims against the Council by any of the tenants which might affect the value of the property;
- (9) that the information supplied by the Council with regard to the property, including information relating to the stock condition survey and valuation, is correct;
- (10) that properties sold off under the Right to Buy have been sold on appropriate terms;
- (11) that there are no current actions, demands, disputes or liabilities in respect of the property nor circumstances which could give rise to any actions;
- (12) that the Council has the right to go onto adjoining land to carry out works of maintenance of the property and PCH will have the same rights;
- (13) in a nutshell, the Council is warranting that unless formally disclosed, title to the property being transferred is good, marketable and free from encumbrances.

(ii) **Environmental Warranty**

The warranty in respect of environmental pollution is very important to PCH as potentially, claims could be enormously damaging to PCH's business. The wording confirms that:

- (1) the Council is and has complied with all applicable environmental law and environmental approvals relating to the ownership and use of the property;
- (2) there is no current pending or threatened environmental claim against the Council and there are no past or present acts, omissions, events or circumstances that could form the

basis of any environmental claim against the Council or the funders in respect of the ownership and use of the property;

- (3) there is no dangerous substance at, in, on, or under any of the property and no such substance has been used, disposed of, generated (and so on) at, in, on or under the property; and
- (4) no part of the property could lawfully be designated as contaminated within the meaning of the Environment Act 1995. This protects PCH from the key risks if the Property is found to contain contaminated land or buildings.

(iii) Asbestos Indemnity

Because the cost of £10 million worth of asbestos works to the transferring properties has been taken into account in PCH's business plan, the Council is to give an indemnity to PCH for any costs of asbestos remediation over the £10 million budget.

(iv) Other Warranties

Finally, the Council warrants:

- (1) that it has the appropriate power and authority to enter into the transfer;
- (2) that no material adverse entries would have been revealed if individual local authority and other searches had been made against each of the properties to be transferred;
- (3) that the terms under which the leasehold parts of the property (including the sub stations and shops) are held are standard and have not been changed.
- (i) **The Seventh Schedule:** Contains the form of Property Transfer to be used to actually convey any land and property to PCH on completion.
- (j) **The Eight Schedule:** Any outstanding insurance claims will be listed here with details of the claim and the amount to be paid to PCH.
- (k) **The Ninth Schedule:** Contains a protocol setting out the arrangements for the Council to monitor the performance of PCH and of PCH's delivery of the promises made to tenants by the Council in the Consultation Document and Stage Two Letter.
- (l) **The Tenth Schedule:** Contains the forms of leases and licences of office and depot accommodation.
- (m) **The Eleventh Schedule:** Contains details of the services that the parties will provide to each other after Completion. These are:
 - Cashiering and Cash Receipting Services
 - ICT Services
 - Post, Copy and Print Services
 - Payroll Services
 - Environmental Services: Grounds Maintenance – Parks and Open Spaces Services
 - Environmental Services: Pest Control Services
 - Environmental Services: Waste and Street Scene Services
 - Anti-Social Behaviour Unit and Respect Services
 - Translate Plymouth

- Management of Estate Shops
 - Out of Hours Emergency Services
 - Provision of Manufacturing Services
 - Set-Up and Support Services for Elections
 - Provision of Fuel Services
 - Provision of Gas and Electrical Servicing and Asbestos Removal Services
 - Devonport Housing Regeneration Services
 - Raglan Court and The Ship Hostel Repairs Services
- (n) **The Twelfth Schedule:** Contains a standard form of Deed of Assignment of rent and service charge arrears.
- (o) **The Thirteenth Schedule:** Contains the RTB Sharing Agreement documenting the arrangements agreed with PCH.
- (p) **The Fourteenth Schedule:** Contains the Disposals Clawback provisions which will require the PCH to pay the Council a certain proportion of PCH's net profit on the sale of any land sold for commercial gain after 12½ years from the completion date. Until then, PCH will consult with the Council and formally consider the Council's views over where any receipt should be spent.
- (q) **The Fifteenth Schedule:** Contains a list of non-loan assets and equipment transferring to PCH such as office furniture, IT equipment, etc.
- (r) **The Sixteenth Schedule:** This lists those dwellings where the tenant has applied to buy his/her home pursuant to the RTB but the sale will not be completed before completion of the transfer.
- (s) **The Seventeenth Schedule:** Contains a protocol describing how the parties will work together in the administration of housing benefit for PCH tenants.
- (t) **The Eighteenth Schedule:** Contains the potential deeds of variation in case the VAT Scheme changes.
- (u) **The Nineteenth Schedule:** Sets out the arrangements for sharing of the VAT monies received back from Customs. The Council are to receive 50% for 5 years from transfer then 30% up to £53 million of the total VAT received, then 50% of any VAT received over £53 million.
- (v) **The Twentieth Schedule:** Contains the form of Development Agreement which the Council and PCH will enter into just before the transfer is completed. This will ensure that the VAT Shelter is property in place.
- (w) **The Twenty First Schedule:** Lists the Council's setting up costs which will be settled from the cap funding on completion.
- (x) **The Twenty Second Schedule:** Sets out a data sharing protocol between the Council and PCH to ensure the full sharing of information needed by both parties to properly process housing benefit and manage the properties.
- (y) **The Twenty Third Schedule:** Contains the Housing Benefit Verification Agreement which PCH will be carrying out on behalf of the Council.
- (z) **The Twenty Fourth Schedule:** Contains the form of framework Development Agreement which the Council and PCH will enter into in relation to the master planning and development of North Prospect.

SUMMARY

The Transfer Agreement is a lengthy and complex document. It contains all the necessary legal agreements and information for PCH to take over the housing stock and carry out the consultation promises made to tenants.