

	REPORT TO THE OVERVIEW AND SCRUTINY BOARD 16 APRIL 2018 AND CABINET 17 APRIL 2018	
	Topic	Yorkshire Coast Homes
Corporate Aims People/Place/Prosperity/ Council	Task Group (if applicable)	N/A
	Cabinet Portfolio Holder	Leader of the Council

REPORT OF: DIRECTOR (LD) – 18/078

WARDS AFFECTED: ALL

SUBJECT: MERGER OF YORKSHIRE COAST HOMES AND COAST AND COUNTRY HOUSING ASSOCIATION LIMITED

RECOMMENDATIONS

The Overview and Scrutiny Board and the Cabinet, informed by the scrutiny of the Overview and Scrutiny Board, are recommended to:

Consider the proposal of Yorkshire Coast Homes (YCH) to merge with Coast and Country Housing Association (CCH) with a view to recommending to the Council either to:

- (A) Provide in principle support for YCH to merge with CCH, noting that in doing so the Council gives up its right to nominate 24% of the Board Membership, and therefore:
- Approve the Heads of Terms for inclusion within a 'Commitments Agreement' that aims to safeguard the interests of the Council and residents, and
 - Delegate authority to Director (LD), in consultation with the relevant Portfolio Holder, to enter into the required legal contracts to facilitate the merge, on the basis of no financial detriment to the Council, or

- (B) Oppose the proposed merger, noting that new legislation prevents the Council from stopping it from happening, but sends a strong message back to YCH before a final decision is taken.

PURPOSE OF REPORT:

The Boards of YCH and CCH have formally approved a proposed merger.

YCH is asking that the Council give its support to the proposed merger and approves changes to the way that YCH is constituted that shall allow the planned merger to proceed.

This report seeks the views of the Overview and Scrutiny Board and the Cabinet about the proposed merger prior to consideration by the Council on 14 May.

The report also seeks Members' views in relation to matters for inclusion within a new Commitments Agreement between the Council and the newly formed organisation.

RISK ISSUES:

Risks associated with either the Council giving its backing to the merger or opposing it are highlighted within the Risk Matrix.

1. INTRODUCTION

- 1.1 The Boards of YCH and CCH have formally approved a proposed merger. This is to be achieved through YCH converting its legal status to a Community Benefit Society (CBS) and CCH then transferring its engagements to YCH. This transfer of engagements is a statutory process (under the Co-operative and Community Benefits Act 2014).
- 1.2 They are working towards a target completion date for this merger of 1 October 2018.
- 1.3 YCH's conversion to a CBS is a necessary first stage of the merger process. In order to convert, YCH members will need to pass a resolution approving the conversion and the new constitution of the new entity.
- 1.4 Through its 33.3% 'Golden Share' of the voting rights of YCH's membership, the Council is currently able to determine a resolution as to whether the conversion to a CBS (and the merger) proceeds. However from 15 May, The Local Authority Influence Regulations 2017 mean that from that date the Council will be required to give up its membership of YCH. The Council's associated 33.3% voting rights shall cease. The Council loses its ability (through the board and its membership of YCH) to determine YCH's future.

- 1.5 Nevertheless YCH would prefer the support of the Council to implement these changes. The Council's on-going strategic support is important for YCH to ensure that the aims and ambitions of the new entity (for example the development of new homes along with investment in services) are achieved.
- 1.6 They have therefore requested that the Council gives its backing to the merger and specifically gives its approval for the constitution of the new organisation.
- 1.7 This report seeks the views of the Overview and Scrutiny Board and of the Cabinet, informed by the scrutiny of the Overview and Scrutiny Board, on this request prior to decision by the Council.
- 1.8 The report provides:
- 1) Background to why a merger is being considered.
 - 2) An overview of the proposed new organisation
 - 3) Background to the merger process and the implications to the Council of the Local Authority Influence Regulations 2017 on the way that YCH is constituted.
 - 4) An overview of the implications of these changes to the Council, including;
 - Future governance implications
 - Financial implications and;
 - Strategic Housing implications
 - 5) A range of proposed commitments for inclusion within a new Commitments Agreement.
- 1.9 A recommendation is made to the Council either to give its backing to the proposed merger (subject to delegated final approval) or to oppose the proposed merger.
- 1.10 If the Council opposes the proposed merger then it is important to note that new legislation means that the Council cannot veto it happening. It would however send a strong message back to YCH that could have a bearing on their final decision.
- 1.11 Risks associated with both approaches are highlighted within the Risk Matrix.
- 1.12 Members are also asked to consider and approve or reject the proposed constitution of the organisation and in particular take a view as to whether the Council should give up its right (under the new legislative rules) to appoint 24% of the Board as Council nominees.
- 1.13 Members are also asked to consider some 'heads of terms' for inclusion within a Commitments Agreement that will safeguard the interests of the Council and residents with the new organisation.

2. CORPORATE AIMS

2.1 Supports the 'People' Aim of the Council Corporate Plan

3. BACKGROUND AND ISSUES

3.1 Background to the proposed merger

3.1.1 In 2003 the Council transferred its housing stock to a newly formed housing association Yorkshire Coast Homes (YCH). YCH is a Registered Provider (RP), a not-for-profit housing organisation regulated by the Social Housing Regulator. It manages 4,394 homes in the Borough.

3.1.2 In May 2017, the Chief Executive of YCH left the association and an experienced Interim Chief Executive (ICE) was appointed.

3.1.3 Following a quick review of the association by the ICE a number of key issues were reported to the Chair and Vice Chair. These included;

- No growth aspirations
- Expectations of the HCA were not being met
- Issues within the governance
- Large executive and poor functioning team
- IT systems were complex and did not talk to each other
- Business planning and budgets were not in modern formats
- Better risk planning and reporting required
- Poor relations with the Council
- Departments working in silos

3.1.4 The Chair and Vice Chair supported the recommendation of the ICE to have an Option Appraisal undertaken so that the Board could review its future plans.

3.1.5 The expectation of the Homes and Communities Agency (HCA) through co-regulation is that associations provide key information when there are any changes. The HCA were notified of the departure of the CEO and the background. They were also notified of the decision of the Board to have an Options Appraisal report undertaken and some of the key reasons behind their thinking.

3.1.6 The HCA had not made a recent visit to YCH but indicated that an In-Depth Assessment (IDA) was in the planning stage. An IDA is when a team of HCA staff undertake a planned visit to interview board members, staff and the Executive to ensure that all aspects of governance, planning, financial planning and reporting align. Associations are then judged and their Governance and Viability rated.

3.1.7 The Options Appraisal was completed by consultants in July 2017. This appraisal provides an overview of the strategic, economic and regulatory challenges faced by RPs and the rationale for change. It looks at a range of options to mitigate the risk of these challenges. It provides an overview of a number of areas including:

- Strategic context
- Local Plans (LEP)
- Financial viability and performance
- Growth options
- Governance, capability and control
- Growth through merger – the likely scenarios
- Alternative routes to growth
- An evaluation of options

3.1.8 Subsequent to the completion of the options appraisal, in October the HCA undertook a desktop review of YCH. They issued an updated Regulatory Judgement downgrading its governance arrangements rating (G1 to G2) with the viability rating remaining at V1. They indicated however that YCH would have been subject to an In-Depth assessment if the options appraisal had not been undertaken.

3.1.9 The option appraisal looks at several types of growth and merger strategies as well as some of the key associations that would be worth considering as merger partners.

3.1.10 The key recommendation of this appraisal was that YCH should move forward toward a partnership approach with another provider.

3.2 The Proposed Merger with CCH

3.2.1 YCH have advised the Council that prior to commencing any discussions with potential merger partners a number of key 'red lines' were in place. Some of these were:

- A sense of place
- A local office with a senior staff presence
- No head office far away from Scarborough
- Governance as close to Scarborough as possible
- Local staff
- Local contractors and suppliers

3.2.2 Further to discussions between Chairs of Boards and Chief Executives Coast and Country Housing (Redcar and Cleveland Council's LSVT partner) was chosen by YCH as the 'best fit' as partner for merger.

3.2.3 Coast & Country is the largest registered housing provider in Redcar and Cleveland. Its current rental housing stock totals over 10,500 properties.

3.2.4 As well as a geographical link between the two organisations, it is also understood that synergies between the aspirations of both Boards include:

- The desire to create one new organisation rather than risk an aggressive takeover.
- Both have a very similar culture and set of beliefs
- Both wanted to be able to use the new organisations assets to the maximum to develop new homes
- Both wanted to be a stronger influencer in the region with resources to back ambition.
- Both wanted to ensure strong strategic partnership with 'host' local authorities and retain a strong sense of 'place' and commitment to meeting the needs of the communities within each district.

3.2.5 In addition to ensuring that the regulatory requirements of the HCA were met a number of benefits were identified from a merger. These included:

- Increased financial capacity for developing new homes.
- Growth of the organisation with increased security and influence.
- Economies of scale, efficiencies and increased value for money.
- Ongoing development of customer service
- No changes to customer tenancies

3.2.6 As part of the merger process a formal consultation process was undertaken with tenants. This included letters to all tenants, an on-line consultation page, the use of social media and various drop in sessions throughout the Borough. Overall the level of feedback from tenants was fairly low with just 301 tenants responding. Overall the majority of responses (81%) were either in favour or neutral towards the proposals.

4.0 OVERVIEW OF THE NEW ORGANISATION

4.1 Constitutional Changes

4.1.1 YCH is currently a company limited by guarantee and a registered charity. It is planning to convert into a Community Benefit Society (CBS). This change would help facilitate the merger with CCH (who will transfer its engagements to YCH). This transfer is a statutory procedure only open to registered societies and affords YCH the benefits of charitable status (such as tax treatment) without the requirement to be registered or regulated by the Charities Commission.

4.1.2 A new constitution is proposed. This constitution includes significant changes to the way YCH is governed. Key points to note are:

- The Council's 'shareholding' membership of YCH ceases along with its associated 33.3% Golden Share of the voting rights.
- The Council's nominated board membership of three persons ceases.

- As the board members will be appointed on a skills basis and there will be no group designations, the Council will not have a seat on the board or any voting rights at Board level.
- The Board will consist of 10 people.
- There are clear and approved job descriptions for the Chair, the Senior Independent Director and other non-executive directors. The model of governance will be to the National Housing Federation Code of Governance. There is a clear appointment process with external advisors on the panel for all posts.
- The Chair and the Senior Independent Director will be recruited from the existing chairs of both associations.
- The Board will be appointed on a skills based recruitment in line with good governance principles. The Board will appoint two people from each association's members with the appropriate skills; adverts will be placed for a further three, of which some could be existing board members.
- The Chief Executive will also be a board director.
- The Board will be remunerated.
- Voting will be on an individual basis as the rules will not specify any 'groups' of shareholders.

4.2 Structural Changes

- 4.2.1 The new organisation would remain a Registered Provider with a combined stock of over 15,000 properties.
- 4.2.2 The merging of the two organisations would generate efficiencies by combining resources and adopting a single operating model. Assumed savings in the region of 5% have been assumed within the Combined Business Plan including initial projected savings of £300K in the executive team structure alone.
- 4.2.3 A new executive team structure has been agreed. The top tier structure is a Chief Executive with an Executive Director of Resources an Executive Director of Property and Development and an Executive Director of Customer and Communities.
- 4.2.4 The further structure and exact details of future operating arrangements going forward have yet to be agreed. Whilst going forward it is inevitable that some back office functions shall be combined, YCH have advised that no decisions have been made on where they shall be located. YCH have assured officers that the 'local' emphasis on front line service delivery shall be maintained. It is recommended however that this commitment forms part of the **Commitments Agreement** with the new organisation.
- 4.2.5 A name for the new organisation has yet to be agreed.

4.3 Operational Changes and Impact on Tenants

4.3.1 Throughout its discussions with the Council YCH have been clear that on a day to day basis services to tenants within the Borough shall largely be unaffected by the proposed changes.

4.3.2 In order to provide Members an overview of the impact on services 'on the ground' YCH have provided a copy of the consultation letter sent to tenants. This includes a list of frequently asked questions see **Appendix A**. These provide a simple overview of the reasons for the merger and the impact on services to tenants.

4.3.3 Key points to note are:

- Tenancy agreements shall be unaffected
- The rights of tenants shall be preserved
- Rents shall be unaffected (subject to Government guidance).

4.3 Additional Development Capacity

4.3.1 A key purpose for the proposed merger is the increased capacity to build more affordable homes to meet local need.

4.3.2 It is important to note that future levels of growth for the new organisation are dependent on a number of factors including the level of savings generated, the refinancing agreement, the availability of land, and levels of public subsidy.

4.3.3 However an initial business plan for the two associations (which bolts together the two existing plans) shows a number of scenarios to illustrate potential levels of increased capacity. For example:

a) Making savings on the combined entity of 7.5% produces an additional capacity of 450 units over a four-year period.

b) If borrowing levels are maximised then this will increase the combined development capacity to an additional 1184 units over a four-year period.

4.3.4 In 2011 CCH formed Coast & Country Developments (CCD) a wholly owned subsidiary and in 2015 created a further owned subsidiary, Coast and Country Sales (CCS). These subsidiaries give CCH the ability to effectively compete with private house builders and use 'profit' from house sales to build additional affordable homes. In addition CCH have a broader range of experience generally. Unlike YCH who have focused on general needs housing (primarily on public owned land) CCH have experience of developing both supported housing and experience of involvement in regeneration schemes.

4.3.5 YCH have advised that they are looking to novate/transfer over both CCD and CCS into the new organisation to give the flexibility to develop and sell homes for outright sale properties.

5. ASSESSMENT OF IMPACT TO THE COUNCIL

5.1 Governance Issues

5.1.1 The Council currently has a 33.3% Golden Share of the voting rights of YCH's Membership. In addition three out of the twelve Board Members are Council appointed nominees.

5.1.2 The proposed new constitution has fundamental implications for the Council because the Council's 'shareholding' membership of YCH ceases along with its associated 33.3% Golden Share of the voting rights.

5.1.3 This change however broadly reflects the requirements of **the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017** that comes into force from 15 May 2018.

5.1.4 In October 2015 the Government announced that it would introduce a range of measures designed to reduce the level of public sector influence within Registered Providers (RPs).

5.1.5 These measures were set out in the **Housing and Planning Act 2016**. One of these measures gave the Secretary of State the power to make regulations to reduce the level of local authority influence over RPs.

5.1.6 On 16 November 2017 the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 were made. These Regulations reduce local authority influence because

- 1) Local Authorities cease to be 'shareholding' Members of RPs.
- 2) A 24% limit on the percentage of local authority nominees onto RP Boards is imposed and;
- 3) The new rules preclude a local authority from holding or exercising any "local authority" voting rights in the RP.

5.1.7 These changes mean that regardless of any proposed merger, in order to comply with the new regulations YCH need to adopt a new constitution and change their governance arrangements. If this is not done by 15 May 2018 then the Council's voting rights will automatically cease and will be reassigned pro rata among the remaining Members of YCH.

5.1.8 The adoption of a new constitution also has implications for the Deed of Covenant that was agreed by YCH at stock transfer. This Deed prevents YCH from changing its constitution so as to alter the proportion of SBC or tenant representation without the written consent of the Council. Consent from the Council cannot be unreasonably withheld. The legal changes brought in by the Government clearly impact on this.

- 5.1.9 A key point for the Council to consider is the proposal to appoint all board members on skills basis and the proposal to end the appointment of **any** Council nominees on the Board. This change, whilst reflecting the requirements of a CBS and good practice principles within the National Housing Federation Code of Governance is over and above the legal requirements as set out in the new Legislation.
- 5.1.10 These Regulations do still allow for no more than 24% of Board appointments to be Council nominees. On a Board with 10 Members this would equate to one Council nominated Member from each Local Authority area. However Redcar and Cleveland Council has already relinquished its influence of the Board of CCH and is no-longer a shareholding Member.
- 5.2.11 It is also important to note that even if the Council exercised its right to have a proportion of its 24% of Board membership going forward, the Council could not block any voted decisions at Board level and, due to the Council losing its shareholding membership of YCH from May, could not block any constitutional changes. Also given that any Council appointed nominee on the Board could not exercise voting rights on behalf of the Council it is unclear as to what the role of this nominee would be. The duty of the Board member would be to act in the best interests of the company.
- 5.2.12 Overall it is clear that these legislative changes significantly reduce the Council's influence over YCH. The immediate implication being that from May 15 the Council cannot block any constitutional change or proposed merger even if it wanted to.
- 5.2.13 The new organisation nevertheless would prefer the strategic support of the Council in order to realise its ambitions. It is proposed therefore that new formalised liaison arrangements are put in place between the Council and the new organisation and are included within a new **Commitments Agreement** (See Appendix B).
- 5.2.14 This Commitments Agreement gives the opportunity both to set out the nature of the future working relationship between the Council and the new organisation and seek to ensure that new 'commitments', (a combination of commitments being made by YCH and the needs and aspirations of the Council) are met.
- 5.2.1 Should the Council not approve the merger (and the new constitution) then the Boards or YCH may either a) decide to proceed with the merger anyway without the support of the Council or b) not merge. In either scenario the current governance arrangements would automatically end from 15 May 2018. The Council would be entitled to nominate 24% of the Board of the new organisation however these Council nominees could not vote on behalf of the Council and would be required to act in the best interests of the company.

5.3 Other Legal Implications

5.3.1 There are wider legal implications for the Council as a consequence of the changes. In order to ensure that the Council's own interests are safeguarded the Director (LD) commissioned some external legal advice to clarify the full legal implications.

5.3.2 In summary this advice clarifies that neither the conversion of YCH into a registered body nor the merger with CCH will cause the termination of any agreements made between the Council and YCH which are still in force.

5.3.3 These agreements include such matters as:

- The Transfer Agreement
- The Nomination Rights Deed
- The Housing Agency Agreement (relating to the waiting list)
- The Garage Sites Maintenance Agreement
- The Legal Services Agreement
- The pension clauses in the Transfer Agreement and the Pensions Admission Agreement and Guarantee and;
- YCH's Deed of Covenant with the Council (which includes such matters as the requirement on YCH to pay for minor disabled adaptations up to a financial limit).

5.3.4 Whilst some of these agreements are time limited, including the Agency Agreement and the Legal Services Agreement others are held in perpetuity.

5.3.5 There are also a range of other agreements that were agreed at stock transfer that over time have become defunct or irrelevant.

5.3.6 It is recommended that all the relevant existing agreements and commitments are refreshed and updated, either as standalone documents, or included within the new Commitments Agreement.

5.3.7 Should the Council not approve the merger and the new constitution, all existing legal agreements would continue to run in perpetuity. However YCH have advised that in this scenario notice is likely to be given on the 'time limited' agreements e.g. the Agency Agreement and the Legal Services Agreement. This would have direct financial implications for the Council (see 5.4.5).

5.4 Financial Implications

5.4.1 A key principle that Members may wish to consider in relation to its support for the merger is the need to ensure that any changes undertaken are at no financial detriment to the Council.

5.4.2 Should the merger proceed the biggest area of potential financial risk to the Council is in respect of pension liabilities. The Council has existing agreements with YCH in respect of its 2003 admission into the North

Yorkshire Pension Fund (The Fund). When YCH became the employer of transferring employees into the new organisation YCH became responsible for their pension arrangements. However the Council guarantees YCH's pension liabilities in the event of a default.

- 5.4.3 The pension agreement could be terminated by the winding up of YCH or by it ceasing to be an admission body in the Fund in its own right due to the merger. This could trigger an exit debt which the Council would be liable to pay if YCH could not pay it.
- 5.4.4 External legal advice has been commissioned by the Council to ensure that pension funding agreements between YCH, NYCC and the Council going forward are framed in such a way as to ensure the merger does not result in any financial detriment to the Council and that the Council does not risk any additional financial exposure.
- 5.4.5 Should the Council not approve the merger (and the new constitution) then the Boards or YCH may either a) decide to proceed with the merger anyway without the support of the Council or b) not merge. Either scenario is likely to have direct financial implications for the Council. As highlighted, a key driver for the proposed merger is the need to operate more efficiently and cost effectively within an ever more challenging environment. YCH have indicated that in either scenario, without the support of the Council going forward, notice would be given on the time limited' Agency Agreement relating to the management of the housing register, the value of which is estimated to be in the region of £120-£150K per annum and the Legal Services Agreement £55K per annum.

5.5 Housing Register and Allocations Policy

- 5.5.1 As highlighted, a key area of potential financial risk to the Council is in relation to the management of the Housing Register. The commitment to manage the register forms part of a time limited Agency Agreement agreed at the point of stock transfer.
- 5.5.2 Elements of that agreement have over time become defunct because of the Council's decision to bring the homelessness service back 'in-house' in 2008. The management of the register however still sits with YCH. Whilst the Council contributes 50% of the cost of the IT software, the Council does not pay YCH to undertake this function, although the statutory responsibility to have an allocation scheme sits with the Council.
- 5.5.3 The commitment from YCH to continue to manage this scheme tallies with the original consultation document at stock transfer that envisaged a 'joint housing register' and shared allocation scheme. The Council by law must have an allocation scheme to determine how social rented homes within its area are allocated and in order to be able to discharge its nomination requirements. Similarly YCH need a mechanism to allocate homes on the basis of need.

- 5.5.4 Joint working arrangements around the allocation scheme were further embedded when both the Council and YCH entered into partnership with other North Yorkshire Councils and RPs as part of the Home Choice, Choice Based Lettings Scheme. This scheme (or at the very least the set-up of the scheme) afforded partners savings through economies of scale derived from a partnership approach.
- 5.5.5 The Agency Agreement in respect of the management of the housing register is however time limited. YCH (or the newly formed entity) could terminate this agreement by giving 12 months' notice to the Council. This would result in additional financial cost to the Council in the region of £120-£150K per annum.
- 5.5.6 Members will also be sensitive to issues around housing allocations. In addition to the financial risk to the Council of the new entity terminating the agency agreement there are also risks around 'allocations policy' and the potential for the new entity to move away from joint allocations policy commitments. Existing allocations policy is framed around the North Yorkshire Partnership area and the need for a connection to that area. The majority of the operating area for CCH is however outside of North Yorkshire. The policy also reflects the legal requirements on the Local Authority partners to allocate homes in accordance with the Housing Act 1996.
- 5.5.7 In order to mitigate both the financial and policy risks to the Council, Members may wish to consider that support from the Council to the merger is conditional upon a firm agreement to ensure the new entity continues to work in partnership with the Council and in accordance with existing policy and partnership arrangements for a period of no less than 5 years. It is also recommended that the administration of the register continues to be undertaken at no financial cost to the Council during this period and that this is included within the new Commitments Agreement. YCH have agreed to this approach.
- 5.5.8 Should the Council not give its support to the move and the Board of YCH either decide to proceed with the merger or not, YCH have advised that notice would be given to the Agency Agreement.
- 5.5.9 This would have implications for the Council as the Council has the legal responsibility to have an allocation scheme. The Council would effectively have 12 months to either bring this service back 'in house' or to source an alternative provider to manage the register on its behalf. Either scenario would have direct financial implications.
- 5.5.10 In these scenarios the Council would continue to have nomination rights to YCH's stock, e.g. 75% of the homes sold at stock transfer and 100% on some newer schemes. However YCH or the new organisation would adopt their own policy and approach to the letting of the remainder of their stock. Unlike the Council RPs are not bound by the same legal requirements imposed on the Council. Overall the existing 'shared' and 'joint' policy approach to

allocations would cease. The Council would lose control over the letting of a proportion of YCH's stock.

5.6 Supporting the Council's Housing Strategy

- 5.6.1 The Council's adopted Local Plan and its Housing Strategy contains ambitious targets around housing growth and around meeting housing need through the provision of affordable housing. The Housing Strategy for example aims to support the development of 150 new affordable homes a year. It also seeks to ensure that a range of needs are met, for example the provision of social rented housing, affordable rents, opportunities for shared ownership and the need to meet the needs of older and vulnerable households.
- 5.6.2 Whilst YCH has broadly played its part in helping to meet these objectives and has developed 317 new homes since 2003, it is accepted by YCH's Board that they should be doing more to support the Council's aspirations and help meet housing need.
- 5.6.3 In order to meet its objectives the Council needs a range of RP providers willing to invest and build homes in the Borough. Clearly, YCH (and any newly formed organisation) has a key role to play in this. Any additional development capacity, where backed with a clear strategic development plan and a proactive approach to securing development opportunities will assist the Council in meeting its objectives.
- 5.6.4 CCH has a broader range of development experience than YCH. YCH has focused on general needs housing (primarily on public owned land). CCH has experience of developing both supported housing and experience of involvement in regeneration schemes. In addition the transfer of CCD and CCS that enable the new organisation to effectively compete for the acquisition of sites with private house builders and build homes for sale brings added value to the new organisation.
- 5.6.5 It is important to ensure however that the potential 'benefits' of growth that will arise from a merger are realised and that growth is broadly proportionate across the Council areas and is focused on meeting need. It is also important that opportunities to support growth between the Council and the new organisation are maximised. It is therefore proposed that commitments to growth and how it shall be achieved are included as part of the new Commitments Agreement.
- 5.6.6 Should the Council not support the merger, the Boards of YCH and CCH may decide to proceed with the merge anyway. In this scenario, without the support of the Council (and the associated **Commitments Agreement**) there would be no real obligation on the new organisation to work with the Council to deliver additional affordable homes in the Borough. Whilst it is likely that the new organisation would continue to develop affordable housing in the Borough, potential opportunities for a more planned and integrated approach between the Council and the new organisation could potentially be lost.

5.6.7 Alternatively should the Council not support the merger, the Boards may decide not to proceed. In this scenario the Housing Regulator would undertake a full inspection of YCH and there is a potential risk that YCH's governance and viability rating would be affected. The HCA regard the development of additional affordable homes 'critical' within the business planning for RPs and lower regulatory ratings could impact on the ability of YCH to develop affordable homes going forward. Any reduction in the ability or capacity of YCH to develop affordable housing would have a direct impact on the Council's own housing strategy and plans to boost affordable housing development within the Borough

5.7 Sustainable Communities and Future Services to tenants

5.7.1 The majority of obligations on YCH as a landlord to provide effective services to their tenants are contained within statute and do not require separate agreements with the Council. These requirements are embedded within the rights of assured tenants.

5.7.2 In addition the legal commitments made by YCH at stock transfer (including the promises made to tenants) are not affected by the proposals and must be honoured by the new organisation.

5.7.3 There are nevertheless a range of additional requirements that the Council may wish to consider over and above statutory requirements and existing commitments.

5.7.4 These include an on-going commitment to 'place' and the need to ensure that front line management services (including the provision of offices in Scarborough and Whitby) are safeguarded.

5.7.5 Other commitments include the need to ensure close partnership working around tackling anti-social behaviour and vulnerability. Again it is recommended that these commitments are embedded within a new Commitments Agreement going forward. YCH have confirmed that they are agreeable to this. Again however, should the Council not support the merger the Commitments Agreement would not be agreed.

5.8 Other Implications

5.8.1 Communications, Staffing Implications, Planning Implications, Environmental Implications, Equalities and Diversity implications.

“I have considered whether the following implications arise from this report and am satisfied that there is no identified implication to the Council that will arise from this decision”



Lisa Dixon
Director

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Background Papers:

Please give details of all publicly accessible (non private) background papers applicable to the report.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT THE AUTHOR.