

## Agenda Item 9

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<b>Date</b>	6 December 2016

<b>Ward (s) affected</b>	All
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<b>Subject</b>	Circle Housing Governance Review
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### RECOMMENDATIONS

Members are recommended to approve that:

1. The Large Scale Voluntary Transfer contract agreed in October 2007 be varied by way of a Deed of Agreement and Variation.
2. The Deed of Agreement and Variation to include the deletion of Schedule 4, Appendix 1, paragraphs 10 and 13 of the Large Scale Voluntary Transfer contract relating the Association's obligation to seek the Council's prior consent to changes to the rules of Mole Valley Housing Association (MVHA) and the Council's right to nominate board members to the MVHA Board.
3. The Deed of Agreement and Variation to include the deletion of the word 'headquarter' in Schedule 4, Appendix 1, paragraph 21.
4. The Deed of Agreement and Variation to include the Council's agreed variations set out in sections 3.8 to 3.11 of this report.
5. The Executive member for Communities, Services and Housing be approved to exercise the Council's shareholder voting rights at the MVHA Special General Meeting in favour of the Transfer of Engagements to allow the transfer of MVHA's business and assets to Circle 33 Housing Trust.

### EXECUTIVE SUMMARY

In October 2007, Mole Valley District Council (MVDC) transferred its housing stock by way of a Large Scale Voluntary Transfer (LSVT) to Mole Valley Housing Association (MVHA).

The operating environment for housing associations has changed significantly since the transfer in 2007. In response Circle Housing is proposing to merge with Affinity Sutton Group. A report to Council on 12 July explained the background and reasons for the merger. An announcement that the merger has been completed is expected at the end of November/beginning of December and the new organisation will be known as Clarion.

The 12 July report referred to the review of Circle Housing's governance structure and advised that it would affect the status of MVHA within the group and that it would have legal implications for the stock transfer contract agreed in October 2007.

Council was advised that this would be the subject of a future report.

Circle Housing is made up of nine individual housing associations, each with its own governance obligations and over the years this has become costly for Circle Housing to administer. Following a review Circle Housing has decided to streamline the organisation by consolidating the nine associations into one, Circle 33 Housing Trust.

Circle Housing has consulted its 4,416 tenants and leaseholders on the proposal through a range of methods and received a 0.61% response rate. Further details can be found in section 8.7 of the report.

To achieve the objectives of the governance review, Circle Housing has requested a small number of variations to the original 2007 stock transfer contract through a Deed of Agreement and Variation. The changes requested by Circle Housing are contained in section 3 of the report, together with the changes requested by MVDC and agreed by Circle Housing. A summary of the Deed is attached at Appendix 1.

The next procedural step is for Circle Housing to obtain the required consent of the majority of MVHA shareholders to enable the transfer of engagements of MVHA to Circle 33. MVDC has a 33% share in MVHA and accordingly the Council has been asked to attend a Special General Meeting to vote in favour of the proposed resolution to approve the transfer engagements of MVHA to Circle 33. This is explained in section 4 of the report.

A number of the recommendations in this report are considered likely to be overtaken in the future by the Housing and Planning Act 2016 (s.93 Reducing Local Authority Influence over Private Registered Providers). Although not yet in force, this provision gives the Secretary of State the power to make regulations to limit or remove the ability of local authorities to exert influence over private registered providers/housing associations through appointing/removing directors or exercising or controlling voting rights and for such regulations to override or modify any contractual obligations or anything in a private registered provider's constitution.

## **CORPORATE PRIORITY OUTCOMES**

### **ENVIRONMENT**

#### **A highly attractive area with housing that meets local need**

- Identify opportunities to create more affordable housing.

When Circle Housing merges with Affinity Sutton it will have the financial capacity to develop 50,000 new homes over ten years that will include a range of tenures. Circle Housing has agreed to include in a side letter to the Deed of Agreement and Variation its aspiration to develop 500 new affordable homes in Mole Valley over the next 10 years. This is consistent with the Council's current target for new affordable homes.

### **PROSPERITY**

#### **A vibrant local economy with thriving towns and villages**

- Begin the transformation of Leatherhead town centre.

Circle Housing's aspiration to develop more homes in Mole Valley over the next ten years presents the opportunity for Circle Housing to be involved in the development opportunities that may arise from the transformation of Leatherhead.

## **COMMUNITY WELLBEING**

### **Active communities and support for those who need it**

- Promote community spirit, encourage individuals, families and communities to be support each other and help our neighbourhoods to be more resilient in times of need.

The merged organisation is stated to have £1bn to invest over 10 years in local communities. The Council has benefited from past investment by MVHA in community initiatives and Circle Housing has confirmed that investment will be focused in the areas where they have concentrations of homes such as Mole Valley. Circle Housing has agreed to include this in a side letter to the Deed of Agreement and Variation.

### **The Council has the authority to Determine the Recommendations**

As set out in the Part 3 of the Council's Constitution.

## **1.0 BACKGROUND/INTRODUCTION**

- 1.1** In October 2007, Mole Valley District Council ('MVDC') transferred MVDC's housing stock by way of a Large Scale Voluntary Transfer ('LSVT') to Mole Valley Housing Association ('MVHA'), also known as Circle Housing Mole Valley (CHMV) which is a subsidiary of Circle Anglia Limited, known as Circle Housing Group ('Circle Housing'). A list of frequently asked questions about the stock transfer that was prepared for Members previously is attached at Appendix 2.
- 1.2** The operating environment for housing associations has changed significantly since the transfer in 2007. In response Circle Housing is pursuing a merger with Affinity Sutton Group Limited ('Affinity Sutton'), a charitable registered housing association. A report to Council on 12 July, explained the background and reasons for the merger and Council approved comments to be sent to Circle Housing. Consent to the merger has been given by the regulator the Homes and Communities Agency (HCA). An announcement that the merger has been completed is expected at the end of November/beginning of December and the new organisation will be known as Clarion.
- 1.3** The 12 July, report referred to the review of Circle Housing's governance structure that would affect the status of MVHA within the group and have legal implications for the stock transfer contract agreed in October 2007 ('2007 Contract'). Council was advised that this would be the subject of a future report. It had also been explained by Circle Housing at a member seminar on 26 May 2016 and since by Council officers at a member seminar on 23 November.

## **2.0 GOVERNANCE REVIEW**

- 2.1** Circle Housing Group is made up of nine individual housing associations, some of which are stock transfer associations like MVHA. Each association is a separate legal entity with its own governance obligations and their own constitutions ('rules') and over the years this has become costly to administer.

- 2.2** In 2015 the Homes and Communities Agency (HCA) downgraded the Group's governance rating in relation to poor performance of their repairs service in London. In response to this, Circle Housing Group commissioned an independent review into their governance which concluded it was inefficient. In view of this, Circle Housing has decided to streamline the organisation by consolidating the associations into one, Circle 33 Housing Trust ('Circle 33').
- 2.3** At the member seminar on 26 May, Circle Housing explained the following benefits of the governance review.
- Reducing costs by c. £3m a year.
  - Streamlining decision making and accountability.
  - Providing a consistent customer service response across the group, as this currently varies between the individual associations.
  - Aligning the company structure to the management structure.
  - Finally, it was explained that it is the sector norm to consolidate group structures and many have already taken place.
- 2.4** To achieve the objectives of the governance review, Circle Housing has requested a small number of variations to the 2007 Contract through a Deed of Agreement and Variation. The variations explained below are those requested by Circle Housing and by MVDC. A summary of the varied agreement is attached at Appendix 1. The majority of the 2007 Contract will remain unchanged and a summary of the existing key Contract clauses can be found at Appendix 3.

### **3.0 DEED OF AGREEMENT AND VARIATION**

#### **Variations Required by Circle Housing**

- 3.1** Circle Housing has requested the following clauses in the 2007 Contract be deleted:
- Schedule 4, Appendix 1, paragraph 10: Not to change the Rules of the Association relating to MVHA's objects and powers or to local authority or tenant representation without MVDC's prior written consent; and
  - Schedule 4, Appendix 1, paragraph 13: To provide MVDC the opportunity to nominate its representatives (being elected members) to the MVHA board.
- 3.2** The deletion of paragraph 10 is requested by Circle Housing as it is not practical (and there is a cost) for Circle 33 to have to obtain the consent of MVDC, or any other local authority pursuant to a stock transfer contract, each time it wishes to make changes to those specific areas of its constitution. In relation to the requested deletion of paragraph 13, Circle 33's board is limited to 12 members and it is not considered to be practical for MVDC, or any other of the local authorities linked to Circle 33 through LSVT, to have the right to nominate members to the Circle 33 board.
- 3.3** In addition, to the requested deletion of paragraph 13 and in part paragraph 10, it should be noted that although not yet in force, one of the provisions of the Housing and Planning Act 2016 (s.93 Reducing Local Authority Influence Over Private Registered Providers) gives the Secretary of State the power to make regulations to limit or remove the ability of local authorities to exert influence over private registered providers/housing associations. This could be through appointing/removing directors

or exercising or controlling voting rights. Any such regulations would override or modify any contractual obligations or anything in a private registered provider's/housing association/s constitution. These regulations were made to ensure that housing associations are classified in the future as private sector organisations; currently they are classified as public sector organisations and their extensive debt has been added to the National Debt, which the government is actively seeking to change.

- 3.4** In short, should the Council not agree to this deletion, it is likely to be imposed in the near future, removing, by regulation, the Council's rights in these regards and in view of this it is recommended that MVDC approves the deletion of Schedule 4, Appendix 1, paragraphs 10 and 13 of the 2007 Contract.
- 3.5** Schedule 4, Appendix 1, paragraph 21 requires MVHA to consult MVDC if it wishes to move its 'headquarter' outside the boundary of MVDC. Circle Housing has asked that this clause be amended by deleting the word 'headquarter' as the headquarter of Circle Housing and of the proposed merged organisation, Clarion, are not and are not proposed to be within the MVDC boundary. It is recommended that the word 'headquarter' be deleted.

#### **Variations Requested by MVDC**

- 3.6** Before the regulations described are laid there is the opportunity for constructive dialogue with Circle Housing on both the changes requested to the contract by them and those seen as desirable by the Council. From the Council's perspective this is an opportunity to strengthen the long term relationship with Circle Housing.
- 3.7** Taking account of the above changes and that MVDC will no longer have nominated representative on the Circle 33 board it has been agreed with Circle Housing that the following variations will be included in the Deed of Agreement and Variation. These variations focus on the liaison, monitoring and partnership working with Circle Housing. The equivalent clauses in the 2007 Contract expired in 2012 and the new variations will provide assurance for the Council on the reporting of Circle Housing's performance and partnership working for the future.

#### **Regional Panel**

- 3.8** As stated, there will no longer be a Board that MVDC would have representation on. Instead, Regional Panels will be established. MVDC will have the right to nominate one representative to the Circle 33 Regional Panel that will be responsible for monitoring and influencing the delivery of services in Surrey. The Regional Panel will also influence how investment is made in local community initiatives. There will be 8 to 12 members, comprising a mix of residents and other local stakeholders and independents. It will also be open for elected members not nominated by MVDC and local residents, tenants, leaseholders and stakeholders to apply to join the Regional Panel. The Council's right to nominate a representative to the Panel is included in the Deed of Agreement and Variation.

#### **Tenant and Leaseholder Service Improvement Panels**

- 3.9** The Service Improvement Panels (SIP) will work with Circle 33 to identify ways to improve customer service and ensure value for money. The panels will consist of nine to 12 members, who will be a mix of tenants and leaseholders.

**3.10** In addition to the SIP, Circle Housing has agreed that the on-line portal Circle Voice, where tenants can log their comments and views, will include a local section for the Mole Valley area. This is to ensure that local trends and issues can be tracked rather than being lost or diluted on a national portal. These issues as agreed will be included in the Deed of Agreement and Variation.

### **Partnership Working and Monitoring**

**3.11** The following have also been agreed with Circle Housing and will be included in the Deed of Agreement and Variation.

- A senior representative of Circle 33 to attend MVDC's Scrutiny Committee once a year.
- Twice yearly meeting with the Chief Executive or Director from Circle 33 with MVDC's Chief Executive and Executive Member for the first two years of the new organisation and will be reviewed.
- Quarterly meetings with Circle 33's Regional Director and Head of Housing for Mole Valley with MVDC's Corporate Head and Strategic Housing Manager.
- Operational meetings with Circle 33's Mole Valley team to be held at least monthly and as required with relevant MVDC officers.
- Circle 33's Housing Services Manager for Mole Valley to attend multi-agency meetings as required.

Whilst there were previously provisions in the Stock Transfer Contract in 2007 for some levels of engagement with MVHA, these expired within the original contract and this is an opportunity for the Council to have these arrangements contained within the ongoing Agreement.

### **Development of New Affordable Homes**

**3.12** Circle Housing, when merged with Affinity Sutton, will have the financial capacity to develop up to 50,000 new homes over ten years. These will be a range of tenures including outright sales. Circle Housing has agreed to include in a side letter to the Deed of Agreement and Variation its aspiration to develop 500 new affordable homes over the next 10 years in Mole Valley. If achieved, this would meet MVDC's current target for new affordable homes.

### **Investment in the Community**

**3.13** The merged organisation will also have £1bn to invest over 10 years in local communities. MVDC has benefited by past social investment by MVHA in community initiatives and Circle Housing has confirmed that investment will be focused in the areas where they have concentrations of homes such as Mole Valley. This will be reflected in the Deed of Agreement and Variation.

**3.14** It is recommended that Council approve the items contained in the Deed of Agreement and Variation, as explained throughout section 3 of this report, and as summarised in Appendix 1, ahead of regulations being laid that would remove the Council's rights in much of this.

#### **4.0 PROCEDURE FOR THE TRANSFER OF ENGAGEMENTS**

**4.1** The next procedural step for Circle Housing is to obtain the required consent of the majority of MVHA shareholders to enable the Transfer of Engagements of MVHA to Circle 33.

**4.2** MVDC has a 33% share in MVHA and this gives MVDC the right to attend and vote at MVHA's Annual General Meetings (AGM) and Special General Meetings (SGM). For the Transfer of Engagements of MVHA to Circle 33, the consent of the majority of shareholders is required. Accordingly, the Council has been asked to attend and to vote in favour of the proposed resolution to the Transfer of Engagements at a MVHA SGM. The Executive Member for Housing is the Council's nominated representative to exercise the Council's shareholder vote at MVHA AGMs or SGMs.

#### **MVDC Shareholding implications**

**4.3** If the resolution in favour of the Transfer of Engagements is approved by the requisite majority of shareholders, following the Transfer of Engagements, MVHA as a legal entity will still remain in existence, although it will no longer hold any assets. Once all its assets have been transferred, then it may be dissolved. MVDC will not have any shareholdings in Circle 33.

**4.4** As set out in paragraph 3.3 of this report, although not yet in force, one of the provisions of the Housing and Planning Act 2016 (s.93 Reducing Local Authority Influence Over Private Registered Providers) gives the Secretary of State the power to make regulations to limit or remove the ability of local authorities to exert influence over private registered providers/housing associations through exercising or controlling voting rights and for such regulations to override or modify any contractual obligations or anything in a private registered provider's/housing association's constitution.

#### **5.0 POST GOVERNANCE REVIEW**

**5.1** Once the governance review has been completed, and assuming the merger has completed, it is expected that plans will be put in place by Clarion to consolidate Circle 33 Housing Trust with the Affinity Sutton Housing Trust. The Council will be consulted on this proposal in accordance with Schedule 4 Appendix 1 paragraph 15 of the 2007 Contract.

#### **6.0 FINANCIAL IMPLICATIONS**

**6.1** Although MVDC has a 33% shareholding, as MVHA is a community benefit society, an exempt charity and a registered provider of social housing, regulated by the Homes and Communities Agency, MVDC's shares do not have a financial benefit. MVDC's rights are limited to receiving the annual accounts, decisions on changing the Rules of the Association and decisions on transferring engagements, amalgamation or dissolution of the Association. While this does give some control, it is really limited to having an influence over major constitutional decisions, as the day to day activities, including all operational, development and borrowing activities are undertaken by the Board or through delegated authority by the Parent or officers. Given that MVHA is registered with the Homes and Communities Agency as a registered provider of social housing ("registered

provider”) and is registered with the Financial Conduct Authority as a community benefit society (“CBS”), plus is an exempt charity, there are safeguards/restrictions in place to prevent significant changes to key provisions of the Rules, including its objects and charitable restrictions such as the prohibition of distribution of profits.

- 6.2** MVHA’s constitution provides that there is no right to any dividend or other payment of profit to the shareholders of the Association and each share has a nominal value of £1 which carries no right to interest, dividend or bonus. In the event of dissolution of the Association, s167 of the Housing and Regeneration Act 2008 (as MVHA is a registered provider) provides that (2) Any surplus property that is available after satisfying the registered provider’s liabilities shall be transferred either to the regulator or a non-profit registered provider specified by the regulator.

## **7.0 LEGAL IMPLICATIONS**

- 7.1** To effect a Transfer of Engagements, MVHA may by way of a special resolution Transfer its Engagements to Circle 33, being a registered society provided it undertakes to fulfil those engagements (section 110 Co-operative and Community Benefit Societies Act 2014). If the resolution approves the transfer, then the property of MVHA will automatically vest in Circle 33. Under the Act, there is no requirement for shareholders of MVHA to become shareholders in Circle 33 following the Transfer of Engagements.

- 7.2** If the Deed of Agreement and Variation is not approved as set out above, the Transfer of Engagements from MVHA to Circle 33 could still be approved by MVHA shareholders; however it would not be able to proceed as Circle 33 and comply with the terms of the 2007 Contract, and therefore would not be able to undertake to fulfil MVHA’s engagements. Accordingly, not approving the Deed of Agreement and Variation would have the effect of delaying the implementation of Circle Housing’s governance review.

- 7.3** A special resolution is defined in section 111 Co-operative and Community Benefit Societies Act 2014 as set out below:

111 (2) A resolution is a “special resolution” if—

- (a) the resolution is passed at a general meeting by **at least** two-thirds of the eligible members who vote,
- (b) notice of this meeting (“the first meeting”), specifying the intention to propose the resolution, is duly given in accordance with the society’s rules,
- (c) the resolution is confirmed at a subsequent general meeting by over half of the eligible members who vote,
- (d) notice of this meeting (“the second meeting”) is duly given, and
- (e) the second meeting is held at least 14 days, and no more than one month, from the day of the first meeting.

The special resolution must be registered by the Financial Conduct Authority and the resolution does not take effect until registered (s.111(6) and(7)).

- 7.4** On the face of it, MVDC’s shareholding is not sufficient to block a special resolution for the transfer of engagements if all eligible members vote at each of the relevant general meetings, since the tenant shareholders, the independent shareholders and the parent shareholder together hold 67% of the shares. Circle Housing wish,

however, to secure an indication of MVDC's voting intentions prior to the SGM.

**7.5** The potential for section 93 of the Housing and Planning Act 2016 (Reducing local authority influence over private registered providers) to override certain rights secured by the 2007 Contract has been explained in section 3.3 of the report.

## **8.0 CORPORATE IMPLICATIONS**

### **8.1 Monitoring Officer Commentary**

The Monitoring Officer is satisfied that all relevant legal implications have been taken into consideration.

### **8.2 S151 Officer Commentary**

The Section 151 Officer is satisfied that all the relevant financial implications have been taken into consideration.

### **8.3 Risk Implications**

The risk of not agreeing to the recommendations is that:

- the clauses to be deleted in the 2007 Contract requested by Circle Housing and the ending of the shareholding right may no longer be valid should section 93 of the Housing Planning Act 2016 come into force and should the Secretary of State make the requisite regulations;
- Circle Housing would be prevented from progressing the agreed action plan with its regulator, the Homes and Communities Agency, on improving governance and this may reflect poorly on the Council; and
- MVDC may jeopardise its relationship with Circle Housing and the future investment it can bring to the district in new homes and community initiatives.

### **8.4 Equalities Implications**

There are no equalities implications relating to this report.

### **8.5 Employment Issues**

There are no employment issues relating to this report.

### **8.6 Sustainability Issues**

There are no sustainability issues relating to this report.

### **8.7 Consultation**

#### **Consultation by Circle Housing**

In July, Circle Housing wrote to all its Mole Valley tenants and leaseholders about the proposed governance review and they were advised that they could provide their feedback over a six-week consultation period. A 12-page brochure gave further details. The content of the brochure had been tailored to the specific issues for Mole Valley tenants and leaseholders and was approved by the Circle Housing Mole Valley board members and a team of involved tenants and leaseholders residents before distribution.

Both the covering letter and document invited residents to provide feedback through the website, email, freepost or by phone. Information on the proposed changes was also posted on Circle Housing Mole Valley's website. In addition, residents were invited to sign up to the new forum, Circle Voice, to find out more about the progress of the consultation.

Information on the proposed changes to the structure was also communicated internally to Circle Housing Mole Valley staff to ensure that they were aware of the consultation, knew the key messages and who to contact if they needed answers to any questions.

To encourage feedback during the six week consultation period the following was put in place:

- posters displayed in Circle Housing Mole Valley's housing offices and estate noticeboards;
- a consultation 'button' on the Circle Housing Mole Valley website directing residents to provide feedback;
- invitation to customers to join an online forum to give their views;
- a video clip on the Circle Housing Mole Valley website, to help explain the changes; and
- staff were encouraged to promote the consultation to customers.

27 responses were received, which equates to 0.61% of the 4,416 tenants and leaseholders. Of these four were positive, 10 were negative and 13 were neutral or raised different issues.

### **Consultation by MVDC**

Seminars were held for members with Circle on 26 May 2016, (the slides can be found on Moss) and with Council officers on 23 November 2016, to explain the background to this report.

The Large Scale Voluntary Transfer Stock contract has been placed on Moss under the Circle section.

### **8.8 Communications**

A press release regarding the report has been prepared.

### **9.0 BACKGROUND PAPERS**

Correspondence between MVDC and Circle Housing.

## Appendix 1

### Summary of the Deed of Agreement and Variation

#### Summary of the proposed Deed of Agreement and Variation

As the information and liaison provisions at paragraph 4 Appendix 1 expired in October 2012, a new paragraph 4 will be inserted:

- “4.1 A senior representative of the Association shall attend at least once a year (and more frequently if required) a meeting of the Council’s Scrutiny Committee.
- 4.2 The Chief Executive or another director of the parent company of the Association shall meet twice a year with the Council’s Chief Executive and the member of the Council’s Executive with responsibility for housing (or their nominees) during the period ending on the second anniversary of the Transfer (as defined in the Deed of Variation), and unless otherwise agreed by the parties, at least annually thereafter.
- 4.3 The regional director and the head of housing of the Association shall meet quarterly with the Corporate Head with responsibility for Housing and the Strategic Housing Manager of the Council.
- 4.4 Council officers and their counterparts at the Association’s Mole Valley office shall attend operational meetings which shall be held no less than monthly.
- 4.5 The Association’s Housing Services Manager for Mole Valley’s administrative area shall attend all such multi-agency meetings as the Council shall require, including but not limited to Community Incident Action Group, Joint Action Groups and Family Support programme(s).
- 4.6 In the event that the positions named above no longer exist, then the parties shall agree which alternative post holders or positions should be required to attend such meetings, provided that the successor post holders or positions are at an equivalent or higher level within their respective organisations.”

The following paragraphs of Appendix 1 will be deleted:

- paragraph 10 of Appendix 1 of Schedule 4 (Constitution)
- paragraph 13 of Appendix 1 of Schedule 4 (Nominate Board Members)

Paragraph 21 of Appendix 1 of Schedule 4 (Offices) shall read:

“21 To consult with the Council in the event that the Association wishes to cease to occupy office accommodation within the administrative area of the Council and for the Association’s Board to formally and reasonably consider any representation which the Council may make in relation to the Association’s proposal(s)”;

The following new paragraphs shall be inserted at Appendix 1 of Schedule 4 as set out below:

“27 The Council has the right to appoint a representative of its choosing to that body, known as the Regional Panel as at the date of this agreement, which is responsible for

monitoring and informing the delivery of services by the Association in Surrey (or any successor body), and to appoint and remove its representatives at will. The Council may request that one or more additional representatives be appointed to such body, and such request shall be reasonably considered by the Association.

28 The Association shall establish and maintain an online forum for the purpose of enabling the Association to consult with, and to receive representations (formal and informal) from Mole Valley tenants.

29 The Association shall deliver in advance to the Council copies (in electronic form if the Association so chooses) of all those papers to be considered by shareholders at the Association's Annual General Meeting and at any Extraordinary General Meeting and shall provide a copy (in electronic form if the Association so chooses) to the Council its annual audited accounts as soon as reasonably practicable after the end of each financial year. ”

## **Appendix 2**

### **Large Scale Voluntary Transfer**

#### **Frequently Asked Questions**

#### **Why did the Council have to transfer the Council housing stock by way of Large Scale Voluntary Transfer to Mole Valley Housing Association and Circle?**

In the 2003 Community Plan “Sustainable Communities”, the Office of the Deputy Prime Minister (ODPM) required all local housing authorities to submit an objective and rigorous appraisal of investment options for government sign off by July 2005. The Government’s main aim was to ensure that all dwellings owned by local authorities would be brought up to the Decent Homes Standard (DHS) by 2010 and subsequently maintained at that standard.

The options considered by the Council at that time were:

- Retention of ownership and management of the stock if DHS could be met
- Transfer of management to an Arms Length Management Organisation (ALMO)
- Use of Private Finance Initiative
- Transfer of ownership and management to a housing association or Registered Social Landlord (housing association).

Following a full options appraisal a recommendation was made to the Council in July 2005 that the Council housing stock should be transferred to a housing association.

The report highlighted that the Council would need to find a considerable sum of its own capital, (i.e. outside of the Housing Revenue Account – used for accounting purposes when a local authority owns its housing stock), in the following six years to achieve the minimum Decent Homes Standard. This sum, was estimated at £30m, and could not be identified without a considerable negative impact on other services provided by the Council.

Consequently, this recommendation was endorsed and the project to transfer the housing stock to a housing association was initiated.

#### **Why was Circle Housing Selected?**

The project was undertaken using market leading consultants and advisers and it was ultimately decided that a new local housing association, Mole Valley Housing Association, be created to own and manage the Council’s housing stock. It was also agreed that the most expedient way forward would be for the new association to partner an existing housing association to form a group or alternatively join an existing group that could provide all of the necessary central services and thus minimise costs.

A thorough evaluation of submissions made from a range of existing housing associations resulted in the Council agreeing in May 2006 that Mole Valley Housing Association (MVHA) should join the Circle Housing Group.

### **How were Tenants consulted?**

An extensive tenant consultation programme took place in January 2007, and an official ballot was conducted by the Electoral Reform Society in February and March 2007. The result of the ballot was an overwhelming majority (85.9% yes vote) to transfer ownership to Mole Valley Housing Association. Endorsement was also given via a Leaseholders' Test of Opinion that was conducted at the same time as the tenant ballot.

### **When did the Transfer Complete?**

29 October 2007

### **How has Progress of MVHA and Circle been Reported to the Council?**

Annually three Council representatives have been appointed to sit on the MVHA board and these members have had the opportunity to report back to their groups the work of MVHA. The current members are Councillors Sarah Seed and Malcolm Ladell.

MVHA has attended the Scrutiny Committee annually and on request more frequently to explain its progress and performance. From time to time meetings have been held by the Executive Member for Communities, Services and Housing and the Chairman of Mole Valley Housing Association with appropriate officers.

The Executive Member for Communities, Services and Housing has attended each year the Annual General Meeting of MVHA and has exercised the Council's voting right.

## **Appendix 3**

### **Summary of the key provisions of the Stock Transfer Contract**

The provisions of the 2007 Stock Transfer Contract which regulate the relationship between the Council and Circle 33 are summarised below. A copy of the 2007 Stock Transfer Contract has been made available to Members. These provisions (save for those which have expired or only related the transfer itself) will continue to apply to Circle 33 should the Transfer of Engagements from MVHA to Circle 33 proceed and are unaffected by the Deed of Agreement and Variation. Some of the key provisions are set out below.

#### **Nomination Rights (clause 8 and Schedule 2)**

The Council has the right to nominate households and individuals for housing by the Association in accordance with a choice based lettings scheme, or in the absence of such a scheme, to 3 out of every 4 vacant available dwellings.

#### **Liaison (clause 15)**

The Association and the Council have agreed to work together as a cohesive team with a shared vision and objectives to maximise the provision of Social Housing for Mole Valley recognising each other's strengths and resources.

The Association and the Council are committed to active co-operation to secure the provision of additional Social Housing which will meet the needs of people in Mole Valley for Social Housing and in relation to new schemes, to tailoring the mix of tenures to suit the needs of each area based on a jointly assessed analysis of need.

#### **VAT sharing and Right to Buy (RTB) Sharing Agreements (clause 18 and Schedule 14)**

The Council and the Association agree to share proceeds from future disposals under the Right to Buy of any of the Property transferred to the Association and to apply the VAT sharing arrangements set out in Schedule 14. The RTB sharing arrangements generate an opportunity each year for the Council to receive a payment from the Association (or to require it to be reinvested) until 29 October 2037 and the VAT sharing arrangements generate an opportunity for the Council to receive a payment from the Association a share of the VAT savings until 31 March 2022

#### **Associations Obligations (clause 17, Schedule 4 Appendix 1)**

##### **Application of Surpluses (paragraph 1)**

Subject to any statutory or regulatory requirement affecting the Association and the requirements of funders and terms of any finance documents, the Association promises to use all rental income and all receipts from the Property (save where these are to be shared with the Council) in the management, maintenance, repair, modernisation and improvement of the Property. Otherwise for the provision of social housing or for any other purpose permitted in the Association's Rules primarily in the Mole Valley district.

##### **Housing Corporation Requirements (paragraph 3)**

To comply with the Homes and Communities Agency (HCA) requirements and to observe and comply with the standards of service and rights for tenants and

leaseholders. The HCA publications are set out on its website at <https://www.gov.uk/government/publications/regulatory-standards>.

### **Consultation Promises (paragraph 6)**

To comply with the promises and commitments made to the Council's secure and introductory tenants as set out in the Consultation Document and notice on transfer proposal (also known as the Promises document).

### **Security of Tenure (paragraph 7)**

Limits the Association's rights to regain possession of any of the homes occupied by the Council's secure and introductory tenants save as set out in their tenancy agreements, even where the Association has the statutory right to do so.

### **Tenant Consultation (paragraph 8)**

The Association shall use reasonable endeavours to encourage resident involvement in housing management including the provision of financial and other support to enable residents groups to represent effectively the views of Mole Valley district's tenants.

### **Right to Buy for Successors (para 9)**

The Association must permit a tenant who has succeeded to the tenancy of a former Council secure or introductory tenant to exercise a right to buy on the same terms as if that former Council secure or introductory tenant had the preserved right to buy of a successor.

### **Amenity Land (para 11)**

Obligations to maintain amenity land including play areas and grounds and non-adopted roads, parking places, footpaths etc. (including street lighting) and services/conduits comprised in the land transferred to the Association as part of the Stock Transfer.

### **Tenancy Agreement (para 12)**

Obligation not to increase the rent (other than as provided for in the tenancy agreement or where the secure or introductory tenant consents) or otherwise change the terms of the tenancy agreements without first consulting with the Council.

### **Right to Buys (para 14)**

The Council is entitled to any discount in respect of property sold or demised under the right to buy before 29 October 2007 and where the Association as freeholder (in respect of leasehold flats) has knowledge of a subsequent disposal giving rise to an obligation to repay such discount, shall notify the Council and forward the repayment on receipt.

### **Merger/Subsidiary (para 15)**

The Association will not merge or amalgamate with or become the subsidiary of any other body without first giving the Council at least 56 days notice of the change of status and the reasons for it. Any Council representations will be reasonably considered and responded to with reasons.

### **Records and Files (para 16)**

The Association will use reasonable endeavours to supply information to the Council to enable it to recover debts owed to it.

### **Annual Returns (para 17)**

The Association will supply data required by the Council for a number of purposes, including assessment of housing needs as part of the development of the Council's housing strategy.

**Provision of Information (para 18)**

The Association shall use all reasonable endeavours to make certain staff available during business hours to receive and to deal with any reasonable queries raised by elected members and officers of the Council (amongst others.)

**Housing Benefit Overpayment (para 19)**

If the Council makes an overpayment of housing benefit in respect of any of the Association tenants where the benefit is paid direct to the Association at that tenant's request, the Association will pay such recoverable overpayment.

**Crime and Disorder and Anti Social Behaviour (para 23)**

The Association will use reasonable endeavours to help the Council to tackle anti-social behaviour.

**Future Stock Numbers and Disposals (para 25)**

Until 29 October 2037:

- the Association acknowledges that with the exception of any preserved right to buy sales, its intention is to keep the number of Mole Valley social housing units at a level which is no less than the number of units transferred to it under the Stock Transfer less 10%;
- prior to the disposal of any Mole Valley social housing unit, the Association shall give the Council to make representations to the Association about the effect of such disposal on the Council as a housing authority;
- the Association shall maintain a register of such disposals and make it available to the Council on request;
- the Association promises that any proceeds from a disposal shall be ring-fenced for the purposes of providing additional social housing in Mole Valley District and use all reasonable endeavours to identify opportunities to invest such proceeds as expeditiously as possible. The Association shall specify in the register of disposals how the proceeds are to be applied.
- the Association promises that in respect of any disposal which doesn't include residential housing, it will give 50% of the net proceeds to the Council (unless the proceeds are to be reinvested in the provision of social housing).
- the Association promises that if any of the stock transfer property is transferred to another company within its group, the recipient of that stock transfer property will undertake to comply with these obligations.

