

WIRRAL COUNCIL

CABINET – 9 OCTOBER 2014

SUBJECT:	REVISION OF CONSTITUTION ARRANGEMENT FOR WIRRAL PARTNERSHIP HOMES TRADING AS MAGENTA LIVING TO ENABLE A PROPOSED GROUP STRUCTURE
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF REGENERATION, HOUSING & PLANNING
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR GEORGE DAVIES
KEY DECISION? <i>(Defined in paragraph 13.3 of Article 13 'Decision Making' in the Council's Constitution.)</i>	YES

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to inform Wirral Council, as the Council Member of Magenta Living, of proposals to develop a group structure for the organisation and to seek support at a General Meeting of the Company for the changes.
- 1.2 Magenta Living's Board have agreed to establish a group structure in order to be able to provide a wider range of services to its customers. Magenta Living will become a member of a new group which will have a new Registered Provider at its head, allowing Magenta Living to continue providing social and affordable housing as it currently does.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 In 2005 the Council's housing stock transferred to Magenta Living (Wirral Partnership Homes at that time). Since then they have met the 89 promises made to tenants at transfer and continued to work in partnership with the Council both on a formal constitutional basis and via informal relationships with many departments across the authority.
- 2.2 In 2013, Magenta Living carried out a governance review to comply with their regulator's, the Homes and Communities Agency (HCA) latest good practice. This involved reducing the number of Board Directors from 15 to 12 (each constituency group – Tenant, Independent and Council, reduced their number from five to four members) and to change Board Directors' terms of office from three terms of three years to two terms of four years. At this time it was also agreed that Magenta Living

would commence trading as 'Magenta Living' from July 2013, however the company's registered name is still Wirral Partnership Homes.

- 2.3 The Council have continued to have a presence on the Board of Magenta Living with four elected members taking up one-third of the seats (previously five prior to the governance changes referred to above). The Council is also corporately a 'Company Member' of Magenta Living in its registered company capacity with a one-third share of the votes at any General Meeting.
- 2.4 This is important to note as changes to the Constitution of Magenta Living require the Council to consider what they wish to do and how to exercise their vote. A General Meeting of Magenta Living would not be quorate without the Council's representative present and he/she must therefore be instructed how the Council would wish them to vote in any particular instance.
- 2.5 Magenta Living is subject to regulation by the HCA. The HCA's focus is very much on governance and viability and therefore boards need to have the skills, competencies and diversity to ensure the success of the company. To this end Magenta Living has adopted the National Housing Federation (NHF) Code 'Excellence in Governance'. This is a code for members of the NHF and contains good practice guidance in governance and regulation for the social housing sector. The NHF is the trade body for Registered Providers (RP) like Magenta Living.
- 2.6 In the future, Magenta Living will face a number of upcoming challenges to its revenue streams. These challenges include the need to replace and build more properties, the continued provision of existing services with pressures on public funding, and lack of grant funding. The proposal is to create a group structure to diversify into wider markets to deliver a range of different services to generate alternative sources of income to help fund new housing and social housing services.
- 2.7 As part of considering strategically its future direction and identifying potential business, revenue and funding streams, Magenta Living is keen to ensure that its corporate structure is flexible enough to enable it to develop and implement these strategies, should they prove viable, and to respond to other opportunities that may arise in the future.

3.0 PROPOSED NEW GROUP STRUCTURE

- 3.1 Magenta Living has developed a Heads of Terms document which is attached at Appendix 1 to this report. The Heads of Terms is a document which is signed by two parties agreeing how a legal contract would be structured and records the future intentions of the parties. The remainder of this report sets out the broad principles of Magenta Living's proposals.
- 3.2 New Group Structure
Magenta Living proposes to establish a new group structure in order to be able to provide a wider range of services. Magenta Living will become a member of a new group which will have a new Registered Provider (RP) at its head. This will allow Magenta Living to continue to provide social and affordable housing as it does now – a diagram of the proposed structure is set out in the Head of Terms appended to this report.

- 3.3 It is proposed that the new group will be registered with the HCA providing a number of benefits for the Group and Magenta Living including;
- Allowing Magenta Living to focus on its core business which is the excellent delivery of its social and affordable housing portfolio and associated services to customers;
 - Ensuring the whole group operates within a regulated environment which would provide assurance to all stakeholders;
 - Allowing Magenta Living to access new funds on competitive terms;
 - It would be more attractive to other RPs looking for a group to join than one headed by a non-registered organisation.
- 3.4 If the group did not have an RP at its head the HCA would not have an overview of any of the Group's activities carried out outside Magenta Living. These activities would not, therefore, be subject to the same rigorous risk management expectations as they would if the new group was registered. The HCA would impose stringent restrictions on Magenta Living funding non-social housing activities carried out by the Group which would remove some of Magenta Living's freedom to use its own resources. Within the group, this could reduce Magenta Living's status and influence, arising out of its position as the principal asset-holder and could impact on the Group's ability to meet its ambitions to grow and prosper for the benefit of residents in the Wirral. If the Group is an RP, it may make it easier for other members of the Group to raise their own funding over time to carry out the diversification and growth which Magenta Living would not be able to carry out itself.
- 3.5 The HCA will only register stock holding RPs therefore the new Group will require some units of stock. It is proposed that Magenta Living would transfer one or two of its properties and manage them on the Group's behalf.
- 3.6 The Group structure will allow other subsidiaries to be put in place sitting alongside Magenta Living to deliver diversified, non-social housing activities. These are likely to include a company building homes for sale and a company managing and building homes for market rent. Any surpluses generated by these subsidiary companies would be used for the benefit of the group including building further social housing or provide wider services for tenants and residents. The idea being to use the surpluses to replace public subsidy which would be required for social housing.
- 3.7 Given the wider diverse activities the HCA would require the Group Board to be recruited solely on the basis of skill and experience to oversee the Group's strategy, direction and regulatory compliance. The Group Board will have wider commercial, charitable and social enterprise experience to manage all initial and potential future activities. Magenta Living will continue to have its own Board as it does now and the Magenta Living Board will appoint its own Chair as currently. The Council will continue to have a presence on Magenta's Board with four elected members taking up one third of the seats.
- 3.8 Management Arrangements
The Chief Executive and Deputy Chief Executive will be employed by the new Group. The Group Board will oversee and line manage the two positions. The HCA will expect the Group Chief Executive and Deputy Chief Executive to act in the best interests of both organisations to enable them to continue to meet the requirements of the Regulatory Framework.

3.9 Group Governance Arrangements

Governance arrangements of the Group will comprise;

- New Group Board – consisting of up to nine members (as per NHF good practice) with housing, commercial, finance, governance, charity and risk management skills / experience.
- Chairs' Group – the forum through which Magenta Living is engaged directly with and influences Group-wide issues overseen by the Group Board. The Chairs' Group will be consulted on strategic and Group-wide issues and its support on a particular decision would be seen as crucial for the implementation of that decision by the Group Board.
- Governance and Membership Committee – will include three representatives from the Group Board, one representative from the Council, a Tenant representative and a representative from the Magenta Living Board. The Governance and membership Board will oversee appointments to the Group Board and will support Group Members in the recruitment of their Boards if required.
- Magenta Living Board – will remain as a Board of 12 comprising four Tenants, four Independents and four Councillors with social housing, asset management, human resources and customer service skills / experience. It is proposed that Magenta Living will retain its existing committee structure, alternatively Magenta Living may choose to participate in Group committees.

3.10 Safeguarding the Group

The HCA will regulate the new Group and will expect the head of the Group to ensure that other RPs in the Group comply with the HCA's expectations.

3.11 The HCA will intervene where an RP's actions or inactions threaten the ongoing compliance or viability of itself or its' Group with the Regulatory Framework. An example could include where there is a breach of the Regulatory Framework, its charitable status, company law or of its funding documents or where an RP's solvency is in jeopardy.

3.12 To reflect the requirements of the HCA, the Group will have 'step-in rights' which will be included in Magenta Living's Articles of Association to ensure that the Group has adequate control of Magenta Living and any other subsidiaries to enable it to step in if any serious issues were to arise, as required by the HCA's proposed revised Governance and Financial Viability Standard. Company law requires a group parent to be able to control its subsidiaries via step-in rights in order for a group to function as a group for accounting and tax purposes.

3.13 The circumstances in which the step-in rights will be exercised will be set out in a Group Membership Agreement. The inclusion of these provisions will give Magenta Living and the Council comfort that the Group will not exercise its step-in rights in bad faith or capriciously, and the Group and the HCA comfort that the Group has appropriate control over the Group.

3.14 Future Decisions on Joining Another Group

Any decision as to whether to take the structure into a wider group in the future would sit with the Group Board however there will be an obligation for the Group Board to consult the subsidiary RPs in the Group and the Council and HCA consent would be required.

3.15 The HCA needs to ensure it has the ability to 'rescue' the Group if necessary, for example by directing the Group to take it into a larger group structure – the HCA already has the power to direct Magenta Living to enter a group structure should it choose to do so. However, Magenta Living would have a right of veto over such a decision if it could be demonstrated that this was not in the best interest to join a wider group based on financial / business related criteria.

3.16 Dispute Resolution

Any disagreements between members of the Group will be resolved;

- Locally, wherever possible, by agreement between the parties to the disagreement
- Via the Chairs or by reference to the boards of the two organisations
- Via an agreed independent external mediator

This will be reflected in the intra-group agreement between the Group and Magenta Living.

3.17 Magenta Living's Assets

It is proposed that all of Magenta Living's current social housing assets (other than the two properties to be transferred to the new Group) will remain in the ownership of Magenta Living. The HCA expect that the Magenta Living Board will retain control over those assets and will control how those assets are used subject to Magenta Living's Business Plan.

3.18 As a charity and a RP, Magenta Living's ability to use its funds for non-charitable / non-social housing purposes is strictly limited, it can only do so where there is a very strong business case and Magenta Living's charitable assets would not be put at risk of any on-lending. Magenta Living would therefore never be in a position where it was expected to fund risky activities or those that may not be in accordance with the investment criteria for charities prescribed by the Charity Commission and the HCA.

3.19 Heads of Terms

The key principles of the new Group structure and governance arrangements are;

- Changes will be required to Magenta Living's Articles of Association to make it a subsidiary of the new Group.
- The Group's Governance and Membership Committee will recommend candidates to the Group Board and can also recommend candidates to other Board's within the Group. The Council will have the right to appoint one member to the GMC and can nominate candidates for consideration for the Group Board, subject to skills and experience. The nomination to the Governance and Membership Committee can be any sitting councillor, officer or Council Board Director from the Magenta Living Board.

3.20 Further details on all of the information outlined above can be found in Appendix 1 to this report.

4.0 **TIMETABLE**

4.1 Officers from Magenta Living have met with officers from the Council to discuss the proposals as outlined in this report. Following these discussions Magenta Living have incorporated Council officer comments in the Heads of Terms document.

4.2 The proposed target date for implementation of the new Group structure is April 2015. In order to achieve this target date, Council's Cabinet are therefore requested to consider and recommend approval of the Heads of Terms to Full Council at its meeting on 13 October. Magenta Living would then call a General Meeting of all Company Members to consider resolutions to form the Group structure in early 2015.

5.0 RELEVANT RISKS

5.1 The Council is a Company Member of Magenta Living holding one-third of the membership therefore it is essential that the Board of Magenta Living is fit for purpose, in order to ensure effective decision making mitigating any risk to the Council's reputation and interests in the Company.

5.2 If Magenta Living were to remain as they are now they could be at risk of being directed to a merger with another larger group structure that already exists.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 Representatives or individuals from voluntary, community and faith groups may apply for independent positions on the Magenta Living Board, or tenant positions if they qualify as tenants or leaseholders of Magenta Living.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 This relates to the structure of 'Magenta Living' so there are no financial implications for the Council.

8.0 LEGAL IMPLICATIONS

8.1 This relates to the structure of 'Magenta Living' so there are no legal implications for the Council.

9.0 EQUALITIES IMPLICATIONS

9.1 Magenta Living's Constitution is a fundamental part of its approach to equality and diversity.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 None.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 None.

12.0 RECOMMENDATION/S

12.1 Cabinet is recommended to;

- Agree the proposal for Magenta Living to enter into a group structure and proposed Heads of Terms;
- Cabinet is requested to note that these changes will also require changes in the drafting of the rules of Magenta Living, its constitution.

- Authorise the relevant Council officer to vote on the changes (and associated matters) proposed and referred to in this report at the forthcoming Magenta Living General Meeting.
- Refer this report to 13th October Full Council for approval.

13.0 REASON/S FOR RECOMMENDATION/S

13.1 That Wirral Council, as the Council Member of Magenta Living, indicate their agreement to the proposed group structure and Heads of Terms prior to presentation at Magenta Living's General Meeting early in 2015.

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APPENDICES

Heads of Terms

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date