



Cabinet
19 June 2017

**Report from the Strategic
Director, Community Wellbeing**

For Action

Wards Affected:
All

**Brent Housing Partnership Transition and Future Options
for BHP Ltd**

1. Summary

- 1.1 On 24th April 2017, Cabinet took a decision to end the management agreement with Brent Housing Partnership (BHP), and bring housing management services back under direct control of the Council.
- 1.2 This paper aims to give an update on progress with the transition of staff and services from BHP to the Council, and to make a recommendation regarding the future of BHP Ltd and the properties in its ownership.
- 1.3 The Council carries out a range of different housing activities through a range of guises;
 - a. Social Housing ownership / management – direct through the Council itself
 - b. Affordable Housing ownership – through BHP
 - c. Private rented sector housing ownership and management – through Investing 4 Brent (I4B)
- 1.4 Each of these bodies is constituted for a slightly different purpose, and has the ability to undertake slightly different activities and offer different tenures. While it is recognised that both national party manifestos include a commitment to making it easier for Councils to develop in their own right, at the present time there are a number of benefits to keeping BHP as a distinct Registered Provider (RP) of social housing.
- 1.5 This paper recommends that at least in the short term, BHP continues to exist in revised form, with new articles of association, new board membership, and a new name, but retaining its RP status, and continuing to own the 331 properties currently within BHP's ownership.
- 1.6 If the recommendations within this paper are agreed;
 - a. The BHP Board and Council Senior Managers will aim to agree revised articles of association and proposed Board membership at the BHP Board meeting July, so that this can be ratified at their AGM in September.

- b. A Service Level Agreement (SLA) would be put in place between the Council and the revised BHP to enable the Council to provide housing management services to the 331 properties in its ownership.
- c. Alternative legal arrangements will need to be put in place to cover services such as Brent Direct Leasing, where BHP provides a service to the Council.

2. Recommendations

- 2.1 That Cabinet note the update on progress with transition of the Council's housing management functions from BHP back to the Council.
- 2.2 That Cabinet approves that moving forward in the short term, BHP is retained as a company that is wholly owned by the Council and as a registered provider of social housing which will include the properties that it owns in its own right. Any change of course that is proposed to deviate from this direction of travel will be put forward to the Cabinet for a decision.
- 2.3 That Cabinet give approval on behalf of the Council to authorise the Strategic Director for Community Wellbeing, in consultation with the Cabinet Member for Housing and Welfare Reform to make the necessary amendments to the company name, the Articles and Memorandum of Association and changes to the Board Membership of BHP which they see fit, in consultation with the Chief Legal Officer and work with the current BHP Board to implement the necessary changes at BHP's next AGM at the end of September 2017.
- 2.4 That Cabinet delegates authority to the Strategic Director for Community Wellbeing, in consultation with the Cabinet Member for Housing and Welfare Reform to novate and assign relevant contracts from BHP to the Council for the reasons detailed in paragraph 3.8.

3. Transition Update

Governance

- 3.1 Both parties are working towards a transition date of 2 October 2017, and negotiations on termination of the management agreement are ongoing.
- 3.2 The Council and the BHP board have agreed the terms of a variation agreement which formally sets out the governance arrangements and decision making powers of each party during the transition period. This contract formalises the strong commitment on both parties to work closely together during the transition period, and includes agreement to second an officer (Hakeem Osinaike) into BHP on a part-time basis during the transition period.
- 3.3 The BHP board retains the right to take decisions regarding service delivery, as it remains legally responsible for delivering services up until 2nd October 2017. However, the legal agreement does prevent specific decisions such as the disposal of stock, and does include provision for ensuring that the Council is given the opportunity to give its view on decisions, which the BHP Board

have committed to giving due regard to. In practice, there is only one contract that requires a procurement decision during this period, which is being carried out in partnership with the Council.

- 3.4 Both officers of the Council, and members of the BHP board, are committed to ensuring that through the transition the service continues to improve and residents see minimal disruption during the transition period.

Contractual Issues

- 3.5 To enable continuity of provision to BHP tenants, the intention is to novate or assign any relevant BHP contracts. This will ensure the Council is able to utilise these contracts pending any re-procurement of contracts by the Council itself. Prior to agreeing to the novation or assignment of contracts to the Council, Officers will undertake relevant due diligence work to assess the risks and appropriateness of any novation or assignment
- 3.6 Where possible, contracts that were due to be reviewed during the transition period have been extended to enable the Council to take a longer term view of them once the transfer has taken place.
- 3.7 Following transfer, BHPs contracts will be mainstreamed with the Council's, with contracts being extended or break clauses exercised to align contract end dates to enable joint procurement. During the Transition period any decisions on contracts will be dealt with in line with both BHP's and the Council's standing orders to ensure complete transparency and appropriate decision making.
- 3.8 Pending the outcome of the decision on the future of BHP, the properties still in BHPs ownership when the management agreement is terminated on 2 October, a reverse SLA will be put in place between BHP and the Council in order to enable to Council to provide services to BHP tenants and ensure continuity of services for residents.
- 3.9 Following the transfer date, all contracts would be let according to the Council's Standing Orders.

Staffing

- 3.10 BHP staff were briefed on the Cabinet decision on 25 April 2017, immediately after the decision was taken. A variety of communications activities are ongoing, including fortnightly drop-ins for staff to ask questions, regular updates via email and team briefings, and an intranet page on both the Brent and BHP intranets to provide updates on both the transformation programme as a whole, and the specifics of the transition process. The Council and BHP will continue to work together to ensure that staff remain informed, are consulted and feel supported as the transition and transfer processes take shape and are implemented. This is vital to promote staff engagement and ensure business continuity during the transition and transfer. The same consultative approach will be adopted for integration of functions into the council once the transfer has taken place.

- 3.11 The transfer of staff that are currently employees of BHP i.e. those on permanent or fixed term contracts, will constitute a “relevant transfer” under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006. Those currently engaged as interims or agency workers by BHP do not have the right to transfer under TUPE, however, the Council and BHP are considering the potential options to provide additional security for these staff in order to stabilise service delivery during this period.
- 3.12 There is a statutory requirement to consult with recognised trade unions and staff about the transfer for a minimum of 30 days before any TUPE transfer takes place, but given the timing of the consultation over the school summer holidays, the intention is to begin formal consultation on the TUPE transfer will begin on 4th July for a period of two months. Staff would then be issued individual transfer letters in September for a proposed “lift and shift” from BHP to the Council on 2nd October 2017 .
- 3.13 As part of the ongoing transformation work, staff are being actively involved in designing the new operating model for the service, and are all aware that there will be a subsequent reorganisation in March 2018 in order to deliver this. Such reorganisations are permitted under TUPE due to ETO reasons (economic, technical or organisational). The Council will ensure that it consults on any new proposed structures with recognised trade unions and staff and that relevant processes are followed.
- 3.14 As stated in the paper that was approved by Cabinet in April 2017, the council intends to, where practicable, establish and recruit to the most senior roles required within the council's housing management structure to manage the integration of the housing management functions into the Council. This approach will ensure continuity, stability and assist with the integration of BHP staff into the council once a transfer has taken place. As it can take several months to recruit to such posts, recruitment activity is likely to start once the decision to transfer housing management functions has been taken.
- 3.15 After the transfer date, BHP will no longer have any employees, and any support services needed to support its activities as a company will be contracted in from third party providers, or provided by the Council under an SLA.

4. Future Options for Brent Housing Partnership Ltd

Background

- 4.1 BHP's Constitution is made up of its Articles of Association and Memorandum of Association. BHP is a limited company, without share capital, which operates on a not-for-profit basis and the Council is the sole guarantor member.
- 4.2 In April 2011, BHP was granted Registered Provider status by the Tenants Services Authority. Since then BHP has gradually been developing its role as a provider of housing in addition to being a housing management organisation. BHP owns properties in its own right as set out in the table below and grants its own tenancies as the landlord in respect of these properties.
- 4.3 BHP acquired a development of social housing stock called Granville New Homes from the Council in 2009 with the assistance of loan funding from the Council. To enable its acquisition from the council, the council lent BHP £17.8m. Broadly, this provides various securities for the council, and provides for interest and capital repayments of £36.2m.
- 4.4 BHP also acquired properties under the Settled Homes Initiative (SHI) to provide housing to homeless households (with the assistance of SHI grant funding from the Homes and Communities Agency and loan funding from the Council) and small-scale developments such as Aldbury Avenue and Ander Close with the assistance of grant funding from the Homes and Communities Agency.

Options Analysis

- 4.5 There are 4 options for the future of the Brent Housing Partnership and its stock
- a. Retain BHP as a Registered Provider (RP) of Social Housing
 - b. Wind up BHP – transferring its properties into Council ownership
 - c. Wind up BHP – transferring its properties into the ownership of Investing4Brent
 - d. Wind up BHP – disposing of its properties to another housing provider

These options will have no bearing on the tenants of properties that are owned by the Council which BHP has been managing on the Council's behalf and will continue to manage until 2 October 2017.

Option 1: Retain BHP Ltd as an RP

- 4.6 This option has the least impact on BHP tenants. Their landlord would not change, and a reverse SLA could be put in place with the Council to provide housing management services alongside the Council's own stock.
- 4.7 BHP's activities as an RP are currently profitable and are likely to continue to deliver a long-term, stable and low-risk return – providing an opportunity for the Council to balance risk across its investment portfolio.
- 4.8 As an RP, BHP is able to provide a mix of tenure types, adding to tenure diversity within the borough. Some of these units would have to be converted to other tenures / uses if transferred into another body.
- 4.9 An RP has the potential to access HCA / GLA grant funding for a wider range of affordable housing products (e.g. rent to buy / shared ownership) than the Council would be able to. RPs are also able to recycle this grant if properties are sold on.
- 4.10 Retention of an RP would allow trading of social / affordable housing assets, in which there is an actively growing market. This would give the Council the opportunity to acquire affordable housing from the market, or divest them and recycle the receipts into further housing.
- 4.11 In delivering new affordable housing, an RP can lower the cost of borrowing and is in a better position to access funding from banks or other private lenders.
- 4.12 The financial implications of Right to acquire (buy) for an RP are more favourable as there are no restrictions on the proportion of the capital receipts that can be used to replace stock.
- 4.13 Keeping an RP demonstrates a clear commitment on the part of the Council to delivering a wide range affordable housing in the borough, and thought should be given to the potential message that could be sent out by closing an RP whilst concurrently setting up an investment company for a linked but distinct purpose.
- 4.14 The articles of association for BHP Ltd would need to be revised and new board membership agreed. While this would be a relatively straightforward exercise and could be done in agreement with the existing board, it would require appointment of a new board / set of company directors for BHP. These are positions of significant responsibility, and would be in addition to a number of other Company Directorships around the Council (Investing 4 Brent, LGA Digital, Regeneration Joint Ventures).
- 4.15 If kept as an RP, BHP would retain the requirement to comply with various regulatory standards and returns as required by the Homes and Communities Agency, though these are relatively light touch as long as it owns less than 1,000 units.

- 4.16 It has been suggested that the name Brent Housing Partnership should be changed, in order to clarify the shift from BHP being the provider of Housing Management Services to an organisation which holds stock. One possible suggestion would be to call it “Homes 4 Brent Ltd” to align with Investing 4 Brent Ltd, and Cabinet may wish to take a view on this.

Option 2: Wind up BHP and Transfer properties into the Council’s ownership

- 4.17 An application can be made for the company to be voluntarily wound up after the stock has been disposed of / transferred into alternative ownership. This is a relatively straight forward process, and could be completed in around three months, pending closure of the accounts and how soon the properties owned by BHP could be disposed of or transferred into alternative ownership. It would likely be necessary to amend the existing Board membership and articles of association in order to complete this closure.
- 4.18 If stock let under assured tenancies with BHP as the landlord is transferred to the Council’s ownership, the tenants will become secure tenants. In terms of the tenants this is a simple process, requiring tenants to be notified of the change. The Council would want to take this further and properly engage tenants in consultation regarding this change, but there is no statutory duty to do so.
- 4.19 With this change, the secure tenants would gain additional tenancy rights, including the Right to Buy (RTB). 89 of these tenants have preserved Right to Buy (RTB) anyway, but through this transfer, the Council would “inherit” a further 195 properties into its portfolio that could potentially be lost through RTB. The Council would then be required to use 100% of the capital receipts to fund replacement social housing.
- 4.20 If properties are transferred into the Council’s ownership, the income and expenditure in relation to the tenanted properties will need to be accounted for within the housing revenue account (HRA). The HRA debt cap (Capital Financing Requirement), is already under pressure in the medium term, with the requirement to utilise Right To Buy receipts and the development of additional housing stock. The transfer of stock would also transfer approx. an additional £39m of debt within the HRA.
- 4.21 Transferring the stock wouldn’t give rise to any liability to pay Stamp Duty Land Tax (SDLT), as the Council and its subsidiaries are all considered as a body corporate for this purpose.
- 4.22 A number of BHP properties utilised Settled Homes Initiative (SHI) grant, and it would be necessary to gain consent from the HCA to transfer the ownership of these properties. The terms of these grants are such that letting the property under a Secure tenancy from the Council could technically trigger the right to recover the grant. However, initial advice suggests that the HCA are unlikely to object in this way, given that the properties are still being let as

social housing, but it would be necessary to confirm this with them, and BHP have begun initial conversations in case this is necessary.

- 4.23 There is a potential risk around novation of contracts. Whilst all BHPs contracts have terms that will allow for them to be novated across to the Council, there is an inherent risk that contractors could cause difficulty for the Council in doing this.

Option 3: Wind up BHP and Transfer properties into the ownership of Investing 4 Brent (or other subsidiary)

- 4.24 A number of the considerations associated with option 2 would also apply here:

- The process remains the same
- The consequences in terms of SDLT and SHI grant terms remain the same

- 4.25 The differences are that;

- There is no obligation to account for the rental income in the HRA, so no effect on borrowing headroom
- I4B would still be able to offer the same tenancy terms and would not be obliged to let properties using Secure tenancies, so the risks around RTB are avoided

- 4.26 It is important to note that I4B was set up with a specific purpose, and its articles of association would need to be revised. While it is a subsidiary of the Council, the Company Directors of I4B have a legal obligation to act in the best interests of the Company, and as such there would be no obligation for them to accept these properties unless there is a clear business case for doing so.

Option 4: Wind up BHP and Dispose of properties to another Housing Provider

- 4.27 While this would generate short term capital receipts, it is assumed that there is no appetite for this. It would be a substantially different proposition to transferring properties within the Council's and its subsidiaries.

- 4.28 There would be a need for a full consultation with residents, and no guarantee of the service that the receiving organisation would offer. This process in itself, along with the due diligence required, would be resource intensive.

- 4.29 The implications in terms of SDLT and SHI grant terms would likely be the same, and residents would be able to keep their existing tenancy terms.

- 4.30 Unlike transferring properties to another Council subsidiary for nil consideration, it is assumed that properties would be sold at market value,

which would give rise to a liability on the part of BHP to pay corporation tax on the chargeable gain.

Summary of options

4.31 A summary of the 4 options is contained within the table below:

	Retain BHP	Transfer to LBB	Transfer to I4B	Dispose to another RP
Impact on residents		Additional rights under secure tenancies		Service changes possible in transfer to new landlord
				Need for significant and full consultation
Strategic	Maintain tenure variety within the Council's direct control	Loss of tenure variety	Maintain tenure variety within the Council's direct control	Loss of direct control
Financial	Improved access to private finance and grant funding			Capital Receipts for BHP / HRA
	No requirement to transfer properties to HRA	Transfer to HRA – implications on borrowing headroom	No requirement to transfer properties to HRA	
	Increased flexibility around RTB receipts	No flexibility with RTB receipts		Corporation Tax liability for BHP
		Increased exposure to RTB risk (195 new properties with right to buy)		
Contractual		Novation risks	Novation risks	
Governance	Articles of association to be revised	Articles of association would need to	Articles of association would need	

		be amended as part of closure	to be amended as part of closure	
	New Board required			
Regulatory		Notify HCA	Notify HCA	Notify HCA

Green = positive
Red = negative
Grey = neutral

5. Recommended Option

- 5.1 Transferring the stock into the Council's direct ownership is not a viable option, and there is no appetite to generate short term capital receipts by disposing of affordable housing stock to a third party.
- 5.2 The two potentially suitable options are keeping the stock within BHP Ltd, and transferring it into I4B.
- 5.3 This paper outlines a wide range of benefits to keeping BHP as an RP at the current time, the only obstacle for doing so being the need for an independent board. In addition, I4B is a new initiative, and needs time to establish itself for the very specific purpose for which it was created.
- 5.4 As such the recommended option is to keep BHP as a separate legal entity as a company that is wholly owned by the Council and as a registered provider of social housing.
- 5.5 In time, the Council may be asked decide to transfer the stock to another body, such as Investing4Brent. That will be a decision for the Cabinet to make at that time.

6. Timeline and Next Steps

- 6.1 If Cabinet are in agreement, Officers would work with the BHP board to begin drafting revised articles of association to enable to continue as an RP and manage the properties it currently owns, and aim to have these agreed in principle between the Council and the BHP Board in July.
- 6.2 Due diligence would be carried out to gather together the necessary information for any incoming company directors / board members, such as stock valuations, loan agreements, liabilities and stock condition information.

Consideration will need to be given to the new Board membership. A sensible approach would be to align this to I4B's board membership if possible, given the similarities in the activities carried out by each party, and the skills required of Board members, however further legal work will need to be undertaken to assess whether there are potential conflicts of interest that could prohibit this.

6.3 The existing BHP board would hold their AGM at the end of September, and at this meeting the existing board would step down, new officers would be appointed, the revised articles of association activated, and the company name changed.

7. Financial Implications

7.1 As a registered provider BHP owns 331 properties:

Accounts Category	Preserved RTB	Tenancy Type	Category	Valuation Type	No. of Properties	Valuation - Vacant Possession £m's
Social	Yes	Assured	General Needs	EUV-SH	89	6.5#
Social	No	AST	Intermediate Rent	EUV-SH	25	14.0
Investment	No	AST	Market Rented	MV-T	45	16.6
Social	No	AST	Settled Housing	EUV-SH	170	60.8
Commercial	No				2	0.0
Grand Total					331	97.9

*EUV-SH, Existing use value – Social Housing

*MV-T, Market value – subject to tenancy

Valuation based on assured tenancies

7.2 The acquisition of these properties has been via loan facilities from the council, made up of £17.8m for the purchase of Granville New Homes as well as £28.8m for the purchase of dwellings in connection with the Settled Homes Initiative (SHI).

7.3 BHP sets its budgets to make a surplus from stock holding activity in the order of £0.3m pa. This is achieved by generating rental income (Rent Debit) of £4.3m pa.

7.4 The financial implications of BHP continuing to hold the stock would not materially be any different to the current arrangements.

7.5 The options analysis describes the specific implications of the transferring the stock in to council ownership. The most significant would be that of managing the applicable stock within the HRA.

7.6 The HRA debt cap (Capital Financing Requirement), is already seen to be under pressure in the medium term, with the requirement to utilise Right To Buy receipts and the development of additional housing stock. The transfer of stock would also transfer approx. an additional £39m of debt within the HRA.

7.7 Any transfer of stock to a council subsidiary would not in itself produce any material liabilities.

- 7.8 The option of disposing of the stock would give rise to a corporation tax liability (Chargeable capital gain), this is estimated to be in the region of £8m.
- 7.9 All 4 options have a common implication in relation to the Settled Home Initiative grant. The HCA will need to be consulted on all 4 options, which could give rise to material financial implications if the grant conditions are seen to be broken.

8. Legal Implications

- 8.1 As described within this report, BHP's articles of association, and possibly its Memorandum of Association, will need to be updated and amended to reflect the shift from service provider to owner of stock. Legal advice is being sought on what exact changes would need to be made to the Articles and Memorandum of Association of BHP and the amendments will be presented to the BHP Board for approval. As for the Council's approval to make and agree such changes, the Cabinet is being asked to delegate these tasks to the Strategic Director for Community Well-Being on the terms as set out in paragraph 2.2 above.
- 8.2 New Board membership of the BHP will need to be agreed if the recommended option is approved and this includes both the structure of the new BHP Board and the new membership thereof.
- 8.3 A reverse SLA will need to be put in place in order for the Council to provide services, in particular housing management services, back to BHP for the properties which they own.
- 8.4 The properties which BHP owns are subject either to assured or assured shorthold tenancies which are regulated under the Housing Act 1988. If those properties are transferred to the Council's ownership, those tenancies will become secure tenancies as local authorities cannot grant or be landlords of assured tenancies as the local authority secure tenancy regime is governed by the Housing Act 1985, rather than the Housing Act 1988 which governs assured tenancies. If those properties are transferred to another organisation which is not a local authority, they will remain assured or assured shorthold tenancies and as far as the BHP tenants are concerned, this will lead only to the change of landlord as opposed to a change of tenancy. However, a subsequent landlord would be able to subsequently change the tenancy terms and conditions under the Housing Act 1988 and any requirements and restrictions laid down by the Homes and Communities Agency.
- 8.5 BHP is a subsidiary company of the Council. BHP's Constitution is made up of its Articles of Association and Memorandum of Association. BHP is a limited company, without share capital, which operates on a non-for-profit basis and the Council is the sole guarantor member. The BHP Board currently consists of seven resident members (including tenants and leaseholders), four independent members and four Brent Councillor members. As for the recommended option in this report, it is envisaged that BHP will remain as a separate legal entity and a wholly owned subsidiary company of the Council.

8.6 Further legal implications are set out in the body of this report. Detailed legal implications regarding the process of transferring the housing management functions from BHP to the Council are set out in the report to the report of Brent Council's Cabinet meeting of 24 April 2017.

8.7 As indicated in paragraph 3.8 and in the Cabinet report of 24 April 2017, there will be a requirement for relevant contracts entered into by BHP to be novated or assigned to the Council to ensure continuity of services. Full details of BHP contracts are being collated to establish novation/assignment provisions and to undertake relevant due diligence. Novation and assignment should only be agreed where liabilities under the contracts are acceptable to the Council.

9. Diversity Implications

9.1 The recommended option does not have any diversity implications.

10. Staffing/Accommodation Implications

10.1 Staff involved with the delivery of BHPs services are in the process of being transferred over the Council to coincide with the end of the management agreement, and as such will not be affected by this decision.

10.2 If the recommended option is agreed, there will be a resource implication in sourcing new Board membership for BHP. If options 2,3, or 4 are chosen, there will be a resource requirement to close down BHP's accounts and deal with the winding up of BHP. Neither of these implications should be considered material to this decision.

Contact Officers

Joanna Walton
Head of CEX Office
Tel: 0208 937 6879
Email: Joanna.walton@brent.gov.uk

PHIL PORTER
Strategic Director, Community Wellbeing