

	<p style="text-align: center;"><b>Executive</b> 6<sup>th</sup> August 2007</p> <p style="text-align: center;"><b>Report from the Director of Housing and Community Care</b></p>
<p>For Action <span style="float: right;">Wards Affected: ALL</span></p>	
<p><b>Authority for the ALMO to deliver affordable homes under the 2008-11 National Affordable Housing Programme</b></p>	

Forward Plan Ref: H&CC-07/08-04

## 1.0 Summary

1.1 This report provides detail on the opportunity for the Council's ALMO Brent Housing Partnership Limited (BHP) to develop new affordable homes under the Housing Corporation's 2008/2011 National Affordable Housing Programme (subject to successful accreditation). The report requests the Executive to agree, in principle, that BHP may be permitted to own, manage and grant tenancies of properties to newly developed properties that haven been developed under the scheme and to agree, in principle, to provide a Performance Guarantee Bond in respect of any funding allocation received by BHP under this programme.

## 2.0 Recommendations

2.1 The Executive to agree for the ALMO to develop bids for the provision of new affordable homes under the Housing Corporation's 2008/2011 Affordable Housing Programme, subject to successfully being selected and accredited as a Preferred Partner at the pre-qualification stage and subject to obtaining specific executive approval on each development scheme that is proposed to be delivered using social housing grant.

2.2 The Executive to agree, in principle, to provide a Performance Guarantee Bond to the Housing Corporation in respect of BHP in order for the ALMO to qualify to receive Social Housing Grant under the

<p>Meeting Executive Date 06.08.07</p>	<p>BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07</p>
--	---

Housing Corporation's 2008/2011 National Affordable Housing Programme, subject to conditions set out in paragraph 3.4. Members will note that a further report will be brought before members setting out the detail of the proposed bond and the risks associated with it.

- 2.3 The Executive is asked to agree, in principle, to permit BHP to own, manage and grant tenancies to newly developed properties which have been funded by the Housing Corporation using social housing grant allocated from the National Affordable Housing Programme (see paragraph 3.3) but subject to approval being given by the Executive to each scheme which BHP intends to submit to the Housing Corporation pursuant to this initiative

### **3.0 Detail**

#### **3.1 Background**

- 3.1.1 The Housing Corporation allocates the funding of affordable housing for rent and shared equity through the National Affordable Housing Programme (NAHP) in line with the regional housing priorities. Social housing grant can only be allocated to organisations that been approved by the Housing Corporation as Preferred Investment Partners, who are then subsequently invited to submit bids for capital funding to support the delivery of affordable housing. Traditionally, this funding opportunity was limited to Housing Associations, however over the last two years the Housing Corporation has encouraged private developers to participate in the delivery of this programme.

- 3.1.2 In April 2007, the Housing Corporation launched the bidding round Pre-Prospectus which sets out the framework for the 2008/2011 National Affordable Housing Programme which for the first time will be a three year funding regime. The Pre-Prospectus invites organisations who are interested in becoming our Investment Partners to apply for pre-qualification. This invitation has now been extended to include 3 star Arms Length Management Organisations (ALMOs) and Local Authorities through Special Purpose Vehicles.

- 3.1.3 The Housing Corporation is keen for top performing ALMOs to be allowed to bid for social housing grant under the 2008/2011 NAHP to help develop a mixed economy model which aims to maximise the delivery of new affordable homes through a range of development partners and increased competition to achieve a better grant rate efficiency. In particular, the Housing Corporation forms a key view that ALMO's can bring with them land, quality of housing management and partnership opportunities with private sector developers which existing partners cannot offer.

- 3.1.4 The Council's ALMO, Brent Housing Partnership (BHP) submitted a Pre-Qualification Questionnaire in response to the Housing Corporation's

Meeting Executive Date 06.08.07	BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07
------------------------------------	--

invitation in May 2007. The Housing Corporation has recently confirmed BHP's status as a Preferred Partner under the 2008/2011 NAHP.

### 3.2 BHP's Development Partnering Arrangements

3.2.1 BHP have submitted an application which includes the Brent Harrow and Hillingdon LIFTCO (Local Improvement Finance Trust Company) as their partner in establishing a joint vehicle (JV) to be able to take advantage of their development expertise, access potential development sites and make use of their procurement framework agreement.

3.2.2 LIFT schemes were introduced by the government in the early 2000's as a method by which a group of geographically linked Local Authorities and Primary Care Trusts could form a joint venture together with a private sector partner to manage, improve and construct additional accommodation in connection with the property portfolios of these entities. The BHH LIFTCO was established on 22<sup>nd</sup> December 2004, following publication of the OJEU notice in December 2002. In addition to Partnerships of Health, the founder shareholders in the LIFTCO are LB Brent, Harrow and Hillingdon PCTS with Babcock and Brown Limited and GSL (UK) Limited as the private sector partners. A strategic partnering agreement has been signed with each of the three PCTS; the London Borough of Harrow and North West London Hospitals Trust. The LIFTCO has obtained approval 'in principle' from the Strategic Partnering Board to these proposals. However, it should be noted that the LIFTCO will not own land or properties delivered through funding received under the National Affordable Housing Programme. BHP anticipates that long leases will be granted on properties developed through the joint venture (JV) company. BHP will also retain freehold interest in some properties such as houses.

3.2.3 It is understood that BHP have carried out due diligence on the LIFTCO. Similarly BHP, LIFTCO and its funders will also be assessing commercially whether the Council is a suitable authority to undertake this sort of arrangement with. As part of the due diligence exercise an assessment of the following areas is covered:

- i) the credibility, experience and good standing of the partner
- ii) Technical capacity (through examples of previous development projects)
- iii) financial capacity and viability of delivery and assessment of partner's audited accounts:

3.2.4 BHP, as part of the development of the JV it intends to use to bid for future development schemes, will formalise its relationship with the LIFTCO through a legal agreement as part of ongoing negotiations. At this stage the parties have entered into a Memorandum of Understanding (MOU) outlining the principles of the proposed structure

Meeting Executive Date 06.08.07	BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07
------------------------------------	--

and basis for the delivery vehicle and the respective roles and responsibilities. As lead partner for the bid for Preferred Partner status, BHP will be required to ensure that they have carried out due diligence of their consortia partners and will be taking appropriate legal and financial advice to establish the JV, subject to a successful outcome from the pre-qualification bid.

### **3.3 BHP's ability to own housing stock and grant tenancies**

3.3.1 One of the key requirements set out by the Housing Corporation is that ownership of new properties that are developed will be restricted to three star ALMOs only.

3.3.2 Given this, for properties developed using social housing grant under this programme, BHP will be required to have authority from the Council to grant an assured tenancy and to be able to hold housing assets.

3.3.3 At present BHP can grant secure tenancies in the Council's name for properties owned by the Council. However, there is no scope in the current BHP Management Agreement for BHP to own land or to grant secure or other forms of tenancies in BHP's name in respect of land it owns or leases. Also, there is currently no scope in the BHP Management Agreement to purchase land, own assets or set up a "Joint Vehicle". The BHP Management Agreement is only concerned with the delegation of housing management functions from Brent Council to BHP and forms the basis of the consent from the Secretary of State. The powers for BHP to own and manage properties and grant assured tenancies are derived from BHP's constitution.

3.3.4 The Council is the only body that can grant secure tenancies subject to exceptions that are set out in Schedule 1 of the Housing Act 1985. Section 80 of the Housing Act 1985 states that the landlord condition for a secure tenancy is that the landlord belongs to one of the following groups: a local authority, new town corporation, housing action trust or a housing co-operative as defined in section 80(4) of the 1985 Act. By that definition, BHP is not a local authority (or any of the other groups listed in section 80 of the 1985 Act) and as a result, if it grants tenancies in respect of land which it owns, then those tenancies are not secure tenancies.

3.3.5 BHP will grant assured periodic tenancies. The Housing Corporation has confirmed to the Council that under this scheme, assured periodic tenancies must be granted in respect of the properties and that rents that are charged are subject to the rent regulation regime.

### **3.4 Performance Guarantee Bond**

3.4.1 This report seeks the Executive's approval for the Council to provide a Performance Guarantee Bond to the Housing Corporation in respect of

Meeting Executive Date 06.08.07	BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07
------------------------------------	--

BHP's delivery performance. This requirement is necessary in order for BHP to qualify to receive social housing grant under the 2008-2011 NAHP.

3.4.2 The Housing Corporation will issue a Grant Agreement to each of the Preferred Partners that receive a social housing grant allocation. There are two types of grant agreement:

- i) one for organisations intending to own housing stock
- ii) one for organisations intending to transfer housing stock

The Performance Guarantee Bond being provided by the Council is intended to protect the Housing Corporation from BHP's failure to meet its obligations as set out in the Grant Agreement that has been entered into for a particular scheme.

3.4.3 Although the Executive is being asked to provide approval to grant a Performance Guarantee Bond to the Housing Corporation in respect of BHP's Pre Qualification Application it is important to note that Performance Guarantee Bond will only take effect where the Council has given approval for BHP to submit a specific development scheme for grant funding to the Housing Corporation, and grant funding is subsequently awarded. The Performance Guarantee Bond will be only for individual schemes and may be called upon by the Housing Corporation where BHP are unable to deliver on schemes where they have received social housing grant or where they have lost their partnering status.

3.4.4 Where the Housing Corporation has selected BHP as a Preferred Partner, the Council will require a separate report to be submitted to the Executive on each development site for which BHP intends to submit an application for social housing grant funding under the Housing Corporation's National Affordable Housing Programme. The report will include a risk assessment on BHP delivery performance and ability and set out any implications in respect of the Performance Guarantee Bond the Council will have signed up to should funding for the scheme be allocated.

3.4.5 The Strategic Partnering agreement of the LIFTCO makes specific provision for the control of risks in both bid submission and development investment. Schedule 4 of the agreement provides the 'Approval Process For New Projects' setting out the initial Business Case which is worked up on an 'at risk' basis by the LIFTCO. Stage 2 provides for the final Business Case and the containment of risks by ensuring that the project proposal:

- Fits within the original affordability cap
- Provides value for money
- Meets tenants' requirements
- Is legally sound

Meeting Executive Date 06.08.07	BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07
------------------------------------	--

3.4.6 Investment risks are contained by a framework of Bonds and Warranties placed on the Contractor and the subsequent Facilities Manager. These provide protection during both the construction and operational phases of projects, and will be structured to provide appropriate protection to the Council. This is the preferred route for BHP, and the JV will provide a means to deliver the homes whilst BHP remains the recipient of the grant. BHP will be able to develop and review the arrangements in liaison with the Housing Corporation as necessary.

3.4.7 Where there are funded schemes that cannot be delivered, BHP would, in consultation with the Council and the Housing Corporation, seek to transfer the funding over the 3 year programme to develop other sites that are available and supported at the time. If no alternative site is available to replace the funded scheme, BHP will need to repay any social housing grant allocation that has been received.

### 3.5 **BHP's ability to deliver new affordable homes**

3.5.1 Whilst at this stage the Council and BHP are considering alternative development opportunities, for example, the Settled Homes Initiative and Round 5 Private Finance Initiative, the Housing Corporation's National Affordable Housing Programme provides the most significant opportunity for ongoing investment into new affordable housing as the other initiatives are pilot programmes or require a much longer term approach in developing. Where BHP are successful in securing partnering status then further consideration will need to be given as to whether some of the sites identified for alternative projects would be more suited to development under the Housing Corporation's NAHP.

3.5.2 As part of the pre-qualification process of BHP's bid, the Housing Corporation will carry out a test of BHP and its consortium partners' longevity and resilience by applying an assessment against a test development programme totalling £15m. The assessment will consider whether BHP can survive as an entity and whether BHP and its joint venture arrangements are able to absorb any risks.

## 4.0 **Financial Implications**

4.1 The Executive is being asked to confirm its general intention to offer a Performance Guarantee Bond to the Housing Corporation in respect of BHP, under the National Affordable Housing Programme. At this stage there are no financial implications for the Council in agreeing this.

4.2 BHP will be required to request the Council's approval (via a report to the Executive) for each development scheme that provides affordable housing using social housing grant allocated under the National Affordable Housing Affordable Programme. On consideration of the development proposal the Council will consider the financial implications and associated risks of each specific scheme. The Council will also

Meeting Executive Date 06.08.07	BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07
------------------------------------	--

need to consider the obligations of any indemnity provided under the Performance Guarantee Bond as it relates to the specific development proposal in considering support for BHP to submit a bid for social housing grant funding in respect to the scheme.

4.3 Typically in London, the Housing Corporation allocates social housing grant of £100,000 to £150,000 per property (based on the provision of rented family homes). The social housing grant allocation does not represent the whole risk to the Council, as BHP will need to fund each development scheme through secured borrowing against future rental income and reserves. As the Council is the sole shareholder of BHP, it ultimately bears the whole risk of development losses on each development scheme for which BHP are allocated social housing grant under the National Affordable Housing Programme. However, it is important for Members to note that these risks will be comprehensively considered for each development scheme which is presented for the Council's approval.

4.4 The Housing Corporation considers any borrowing undertaken by BHP through the joint venture arrangements for developing new homes under this programme to be considered as Other Public Subsidy in their assessment of value for total public subsidy. BHP's current legal advice suggests that borrowing under the joint venture arrangement may be considered as private investment where BHP does not undertake liabilities for any development risk through a leasing agreement that is being entered into for a development scheme. The provision of land for development by an ALMO will be taken as evidence of good fit with local priorities, particularly on large schemes or regeneration projects.

## **5.0 Legal Implications**

5.1 Members are being asked to make only an in principle decision to permit BHP to own, manage and grant tenancies of newly developed properties funded under this scheme. Members will need to consider the detail of each scheme when it is developed and then decide whether it is a scheme which the Executive would support BHP in, in terms of owning the properties. A further decision or decisions will therefore be needed. At that stage members will need to consider the implications arising from that scheme in relation to the bond that may have been or may need to be given.

5.2 Members are also asked to agree, in principle, to give a bond in relation to this initiative. The detail of the bond will need to be reported back to members in due course.

5.3 The Housing Corporation has confirmed to the Council that as the ALMO, BHP will own the housing stock and they can only grant assured periodic tenancies under the National Affordable Housing Programme. This is subject to BHP being granted Preferred Partner stage in the pre-

Meeting Executive Date 06.08.07	BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07
------------------------------------	--

qualification stage of this Programme. BHP's ability to grant assured tenancies is set out in paragraphs in 3.3.1 to 3.3.5 of this report.

5.4 BHP requires the authority and permission of the Council under its Constitution to buy and own housing stock and grant tenancies. BHP does not currently have authority to carry out these functions under the BHP Management Agreement, which was signed on 1 October 2002 between the Council and BHP following consent from the Secretary of State under section 27 of the Housing Act 1985 to allow the Council to set up an ALMO to manage its housing stock. This report seeks the necessary authority and approval as set out above from Members. The Department of Communities and Local Government (CLG) has confirmed to BHP that BHP can legally own property and grant tenancies. This is also confirmed in the CLG June 2006 consultation document entitled "Review of Arms Length Management Organisations". This document refers to ALMOs applying to the Housing Corporation for social grants in the National Affordable Housing Programme and states that the CLG expects ALMOs proposing to own grant-funded funding will need three stars. BHP is a three star ALMO.

5.5 The Council has the power to provide a guarantee for the purposes of providing an organisation or person financial assistance for the acquisition or management of any property that is or is intended to be privately let as housing accommodation under section 24 of the Local Government Act 1988. However, such a power can only be exercised upon obtaining the consent of the Secretary of State under section 25 of the Local Government Act 1988 to provide a Performance Guarantee bond in respect of any funding allocation received by BHP under this programme. It would be also necessary, at the time, to seek consent from the Secretary of State for the use of and any disposal of a Council site to facilitate the development of a scheme.

5.6 The Council will need to be satisfied that it does not require a variation to the section 27 consent although that does seem unlikely. It will also need to consider whether any changes are needed to the management agreement. This will be addressed in the next report.

5.7 The Council will want to satisfy itself that adequate consultation with tenants has been undertaken and that the arrangement with LIFTCO and or any joint venture company complies with the EU rules. These and other technical issues, such as how the JV structure will operate will also be addressed in the next report.

## **6.0 Diversity Implications**

6.1 If selected as a Preferred Partner, BHP will be required to deliver all new homes to Lifetime Homes Standards to maintain the future accessibility of properties.

Meeting Executive Date 06.08.07	BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07
------------------------------------	--



6.2 The Housing Corporations has published a Race Equality Scheme and BME (black minority ethnic) Action Plan which identifies their key strategic objectives that aim to ensure BME communities have equal access to services; are engaged by providers in decision making processes and are equally satisfied with choices available and the quality of services they receive. BHP will be required to satisfy the objectives of this action plan and the Council's Diversity Action Plan in order to participate in the 2008/2011 National Affordable Housing Programme.

**7.0 Staffing/Accommodation Implications (if appropriate)**

7.1 There are no staffing implications.

**Background Papers**

ALMO Scheme File

**Contact Officers**

Manjul Shah  
Head of Affordable Housing Development  
Affordable Housing Development Unit  
7th Floor, Mahatma Ghandi House  
34 Wembley Hill Road  
Wembley, Middlesex, HA9 8AD  
Tel: 020 8937 2523  
Fax: 020 8937 2185

Email [manjul2.shah@brent.gov.uk](mailto:manjul2.shah@brent.gov.uk)

**Martin Cheeseman**  
**Director of Housing and Community Care**

Meeting Executive Date 06.08.07	BHP 2008-11 NAHP Version no.7.1(FINAL) Date 19.07.07
------------------------------------	--