

	<p style="text-align: center;"><b>Executive</b> 18 January 2010</p> <p style="text-align: center;"><b>Report from the Director of Housing and Community Care</b></p>
<p style="text-align: right;">Wards Affected: ALL</p>	
<p><b>ALMO Settled Homes Initiative</b></p>	

Forward Plan Ref: H&CC-08/09-09

**Appendix 1 and 2 are not for publication ('below the line') as they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) pursuant to Schedule 12A of the Local Government Act 1972.**

## **1.0 Summary**

- 1.1 A report to the Council's Executive meeting on 16 August 2007 provided an 'in principle' approval for the Council's Arms Length Management Organisation (ALMO), Brent Housing Partnership Limited (BHP) to deliver a pilot Temporary To Permanent Housing Scheme to provide some 260 new homes using funding of £5m allocated by the Housing Corporation under the Settled Homes Initiative<sup>1</sup>, and agreed that the properties may be owned and managed by BHP and/or an SPV established for that purpose.
- 1.2 A subsequent report on 11<sup>th</sup> February 2008 set out the proposed arrangements for delivering the scheme including the establishment of a special purpose vehicle to deliver the scheme, as a wholly owned subsidiary of BHP. Members were informed that a further report would be presented to the Executive on the detailed financial and operational arrangements to deliver the scheme and any changes that may be required to be made to BHP's constitution and the ALMO Management Agreement with the Council. The Executive delegated authority to the Director of Housing and Community Care to agree a nominations

<sup>1</sup> The SHI scheme is part of the Mayor's Targeted Funding Stream which was introduced to increase the provision of settled accommodation for homeless households in London.

protocol with BHP, subject to a further report being presented on any contractual arrangements that may arise from the delivery mechanism.

- 1.3 Following the Executive's approval, BHP has embarked on a series of soft market testing exercises to identify potential funders. However, due to the downturn in the economic climate, the increasing costs of borrowing from the private sector have impacted adversely on the overall scheme affordability and viability. BHP reviewed the scheme assumptions and submitted a new funding bid to the Housing Corporation in September 2008 for an additional £5m to deliver 286 properties. It was subsequently agreed with the Housing Corporation that the original round one bid would be withdrawn, and the new bid would be treated as a round two submission for £10 million. The outcome due to be announced in February 2009, was made in April 2009, BHP were advised that their funding bid was successful by the newly formed Homes and Communities Agency (HCA)<sup>2</sup>.
- 1.4 There has still been no further improvement in the borrowing terms available from the private lenders. To ensure the delivery of the BHP's SHI scheme, BHP has requested a £8m loan from the Council, secured using its prudential borrowing powers, in order to deliver in the region of 50 properties under tranche 1 of their acquisitions programme. This report sets out the proposed changes that are required to deliver the ALMO SHI scheme.

## **2.0 Recommendations**

- 2.1 The Executive to note BHP at present is not contemplating setting up a special purpose vehicle, as a wholly owned subsidiary of BHP, in order to deliver the scheme.
- 2.2 The Executive to approve the delivery arrangements proposed and note the increased number of dwellings achievable from the additional £5m HCA grant support.
- 2.3 The Executive to give approval to the provision of a loan facility to Brent Housing Partnership Ltd of up to £8million to facilitate the delivery of tranche 1 of SHI scheme and delegate authority to the Director of Finance and Corporate Resources, in consultation with the Borough Solicitor, to agree the final terms and conditions of the loan facility.
- 2.4 The Executive give approval to BHP, to enter into a Grant Agreement for the SHI scheme with the Homes and Communities Agency (HCA) in respect of their £10 million funding allocation, under the Settled Homes Initiative, and delegate authority to Director of Finance and Corporate Resources to agree the terms of that Grant Agreement, in consultation with the Borough Solicitor.

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<sup>2</sup> The Homes and Communities Agency was formerly the investment arm of the Housing Corporation.

- 2.5 The Executive agree to provide BHP a loan facility of up to £8 million to fund the acquisition of approximately 50 properties under the tranche 1 of the SHI programme and also delegate authority to the Director of Finance and Corporate Resources to agree the final loan sum to be provided to BHP and the term over which the loan will be repayable, subject to the following conditions:
- (1) The loan sum will relate only to costs directly attributable to this scheme
  - (2) The loan is seen to be affordable to BHP and that the agreed loan repayment schedule is substantiated within the overall business case model, and
  - (3) The final agreement to provision of the loan remains within the best interests of the council
- 2.6 The Executive note that the terms of the loan are generally neutral on the Council's finances and provide for a nil net contribution on the Council's General Fund.
- 2.7 The Executive authorise the Director of Housing and Community Care to seek consent from the Secretary of State under section 25 of the Local Government Act 1988 in respect of the £8m loan facility once the final terms of the loan agreement have been agreed by the Director of Finance and Corporate Resources.
- 2.8 The Executive authorise the Director of Finance and Corporate Resources to enter in to a Direct Agreement with the HCA, in consultation with the Borough Solicitor in order to satisfy the grant conditions for the SHI grant allocated to BHP.
- 2.9 The Executive agree to permit BHP to acquire, own and manage up to 286 properties and to grant tenancies in connection with the Settled Homes Initiative.

### **3.0 Detail**

#### ***Background***

- 3.1 The Council and BHP had jointly been allocated £5m to deliver a pilot scheme to provide up to 260 new homes as part of the SHI scheme under the 2008/09 Mayor's Targeted Funding Stream. The aim of the SHI scheme is to utilise the public funding stream that supports the provision of temporary accommodation which will ultimately result in the provision of permanent housing which can be let at affordable rents. At present the provision of temporary accommodation is supported by market rents which are largely met from housing benefit. The majority of temporary accommodation properties are leased from private landlords by local authorities and social landlords on a short term basis (typically 3 to 5 years). The costs of financing these schemes are supported by market rents, which in turn are met largely from housing benefit. There are little costs to the council in this arrangement but high levels of public subsidy through Housing Benefit are required for no long term benefit as the investment in the properties

does not result in the conversion of more affordable homes for rent or sale

- 3.2 In August 2007 the Executive gave “in principle” approval for Brent Housing Partnership Limited (BHP) to establish a special purpose vehicle (SPV), as a subsidiary of BHP to deliver a temporary to permanent housing scheme. At this meeting the Executive were advised that a further report would be presented would set out the details on how BHP would deliver the scheme
- 3.3 BHP engaged Grant Thornton in April 2008 to develop the financial model for the SHI, and to provide independent financial advice. Initial modelling showed that the volume of properties deliverable was significantly reduced as a consequence of the impact of the restrictions in the financial markets. As a result BHP reviewed the original terms of the scheme further and considered options to improve the deliverability and their access to funding to commence with their acquisitions programme. Market confidence in lending to Special Purpose Vehicles and housing associations was also declining. This was due to the combined impact of a collapse in the sub-prime mortgage market, and the subsequent global financial crisis, and at a local level, the collapse of Ujima Housing Association.
- 3.4 Lender preference following the restrictions in the financial markets had shifted towards seeking greater security through parent company guarantees and/or a closer link to the group parent, thereby questioning the use of the SPV. As BHP did not own any properties, they could only proceed on the basis that the SHI scheme formed part of its core activities. During this period, BHP sought tax advice from Grant Thornton, and as a consequence of ongoing discussions related to the changes in the financial market, presented a report to the BHP Board on 5<sup>th</sup> August 2009, proposing not to proceed with the establishment of the SPV.
- 3.5 Discussions were held with the Housing Corporation in June 2008 on the deliverability of the scheme on the basis of the original assumptions, and it was agreed that a new bid would be submitted under the SHI scheme, as part of Round 2 of the Mayor’s Targeted Funding Stream, which made new funds available in 2009/10 to deliver Temporary to Permanent schemes. As the SHI scheme was being administered by the Housing Corporation, under the 2008-11 National Affordable Housing Programme, their funding conditions stipulated that only accredited partners would be eligible to receive funding support. Although the original £5m funding allocation was awarded to the Council and BHP on a joint basis, a new funding bid could only be submitted by BHP, who had achieved Housing Corporation Preferred Partner status on the 19 July 2007.
- 3.6 BHP submitted a revised bid requesting £10m to deliver 286 homes in July 2008 on the basis that the previous bid was not deliverable. It was anticipated that a decision would be made by Ministers and announced by the Mayor by December 2008. The evaluation of the bids was partly

delayed as the new Homes and Communities Agency was being set up to take forward the Housing Corporation's previous investment functions. BHP received confirmation that their bid for funding was successful on 6 April 2009.

- 3.7 However, BHP was unable to progress the scheme further, as following the Executive's decision in December 2008 to dispose of the 110 units Granville New Homes development in South Kilburn to BHP, a considerable amount of officer time, from both the Council and BHP, was involved in concluding the Granville New Homes (GNH) sale agreement to the mutual satisfaction of both organisations. This agreement was predicated on the Council providing BHP with a loan through prudential borrowing, and BHP meeting loan obligations through a combination of the rent roll and retained surpluses. On completion of the sale in August 2009, officers from the Council and BHP have been revisiting the delivery mechanism and funding arrangements for the ALMO SHI.
- 3.8 The current market conditions securing housing finance remain challenging and social housing providers such as housing associations face substantial increases in the interest rate payable and more onerous loan conditions – this also materially affects BHP in seeking funding. Lenders have not relaxed their position on containing the assets through an SPV and therefore BHP are not pursuing this option at this stage.
- 3.9 If BHP are unable to secure funding to the acquisition programme there is an increased threat that the borough would lose the £10m HCA investment to provide settled homes for homeless families. Moreover this could also potentially affect the HCA's views on the Council's ability to deliver affordable homes at a strategic level. Given the Council's overall demand for temporary to permanent housing and potential loss of HCA funding, this report requests the Executive's approval to provide a £8m loan facility, using the Council's prudential borrowing powers, to support the first tranche of BHP's acquisition programme of approximately 50 properties.

### ***Demand For Temporary to Permanent Housing Schemes***

- 3.10 The borough is in need of both additional affordable housing and a supply of temporary social housing to meet on-going demand from homeless households. The report on Supply and Demand and Temporary Accommodation presented to Members at the Executive meeting on 16th March 2009 sets out the current forecasts over the next three years. Given the current economic climate, officers anticipate that the demand from all groups will increase by 15% over the next three years. In addition, although the Council had forecast the number of permanent lettings to have fallen by 13% in 2009/10<sup>3</sup>, the actual number of lettings achieved against the pro-rata target is down

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<sup>3</sup> In 2008/09 the council achieved 987 permanent lettings in council housing stock and from nomination received from other social landlords. In 2009/10, the number of permanent lettings is forecast to reduce to 857 lettings.

by 18% to date. This reduction in permanent lettings is due to fall in the number of relets and slippage in the new build development programme on sites which had stalled this year. However, at present the Council has not experienced a surge in homeless demand due to the success of our homelessness prevention initiatives.

3.11 In Brent, we are keen to reduce our procurement of short term leased dwellings as part of our overall strategy to reduce temporary accommodation and meet the Government's target to halve temporary accommodation usage by 2010. As part of developing a successful homelessness prevention strategy we also want to encourage and support private sector landlords to rent their properties to tenants directly rather than rely wholly on the leasing schemes which offer them guaranteed income. The guaranteed rents offered to the private sector landlords make an allowance for costs incurred by the council and its partners in managing these properties on their behalf and therefore create differential from the market rent levels that could be achieved if the private sector landlords were to manage the properties themselves. As the portfolio of temporary leased properties reduces, the fixed costs incurred by the council and its partners will need to be met from a reduced number of properties in management. This in turn may have a knock on effect on the lease rents that can be offered to private sector landlords. Given this, private sector landlords may seek alternative options that can assist them in maximising the rental income that they are able to achieve.

3.12 At present the council has 3,472 households in various forms of temporary accommodation. The council also has a legal duty to provide these households occupying temporary accommodation with suitable accommodation. In particular, short term leased accommodation does not offer settled accommodation for the homeless households that are occupying the properties. Whilst some households are able to stay in the same temporary accommodation property until they are permanently housed, many households have moved from one temporary accommodation property to another, mainly because of the following reasons:

- the lease has expired
- the property is in disrepair and is being handed back to the owner
- the household size or needs have changed

3.13 Over the next two years, the leases on approximately 600 properties are due to expire. The council has recently retendered its contract for the provision of short term temporary accommodation and is reducing it over short term supply requirements in order to address the following objectives:

- Delivery of the 2010 TA reduction target;
- Supporting our homelessness prevention strategies to encourage private sector landlords to rent directly to tenants;
- Replace existing Temporary Accommodation properties which are in disrepair;
- Promote the supply of alternative schemes which provide settled accommodation and contribute to permanent housing supply; and,



- Improving standards in property and housing management.
- 3.14 Given the rate at which these leases expire, the council will need to ensure it has an adequate supply of suitable alternative accommodation to rehouse any homeless households where short term leases are expiring and the leases are not being renewed. Properties delivered from the SHI scheme will help to assist the council in meeting this demand.
- 3.15 In April this year, the Executive gave approval to deliver a sub regional temporary to permanent housing scheme which would have resulted in the supply of over 300 temporary to permanent housing units in Brent over a two year procurement programme. Unfortunately, whilst the Council gave its approval to proceed with the scheme, two authorities withdrew from negotiations on the scheme and therefore the overall scheme and delivery programme became unviable for the Council to proceed on its own. The ALMO SHI scheme provides an opportunity for the Council to address the loss arising from the Sub regional scheme.

### ***Contribution Towards Delivering Council's Strategic Objectives***

- 3.16 The Executive is asked to note that the delivery of the SHI scheme supports the council's delivery of the Brent Community Strategy (2006-2010)<sup>4</sup> and the council's Corporate Strategy 2006-2010<sup>5</sup>, both of which set priority for developing an inclusive community. In particular, the delivery of the Scheme will support the following objectives:
- maintain the supply of affordable new housing and achieve our targets for reducing the use of temporary homes for families with children
  - help to deliver a programme to bring more empty properties back into use
  - allow the council to work with private landlords to provide high quality rented accommodation
- 3.17 The Corporate Strategy specifically sets objectives to improve Health and Well Being of the borough's residents. The benefits to the community of providing housing which meets the standards of accommodation and housing management services offered by the Scheme can be seen from the Government's "Background of the Decent Homes Standard" publication which said:
- Too many live in poor-quality housing or find that their Landlord, private or public, does not provide a proper service
  - Many live on estates which have been left to deteriorate for too long, and which contribute to ill-health, crime and poverty
  - Many families and individuals, including elderly and vulnerable people, live in housing that is not energy efficient and in which it is difficult to keep warm

<sup>4</sup> [Community Strategy 2006-2010](#)

<sup>5</sup> [Corporate Strategy 2006-2010](#)

- 3.18 The impact of these problems is as clear as the benefits of decent housing. There are strong associations between poor housing and poverty, deprivation, crime, educational under-achievement and ill-health. People are discriminated against in looking for work or using services because of where they live. Whole neighbourhoods suffer from neglect.
- 3.19 More specifically, the SHI scheme promotes and improves well being of the borough's residents as follows:

#### Economic Considerations

- Makes best use of public funding and investment in order to contribute towards the provision of longer term affordable housing in the longer term
- Provides a partnership approach towards delivering affordable homes across four authorities in order to achieve consistent approaches towards procurement, standards and quality,
- Improved procurement approach has resulted in a cross borough a risk sharing arrangement

#### Social Considerations

- Provision of good quality, well managed settled accommodation for homeless families
- Supports the delivery of our overall TA reduction plan and Local Area Agreement targets to reduce temporary accommodation usage
- Housing management provision will also be regulated by the Council and Tenants Service Authority providing an extra layer of comfort maintaining higher management standards and support provided to the residents.

#### Environmental Considerations

- Contributes towards bringing empty properties back into use
- All properties will be standards that comply with the property specification agreed with the council and are in line with the HCA's grant conditions.
- BHP will be required to take reasonable steps to ensure properties acquired meet the environmental sustainability requirements of the council, the HCA and TSA.

#### ***BHP's Delivery Mechanism and Governance Arrangements***

- 3.20 BHP will deliver the SHI scheme within their existing structures. Overall responsibility for the delivery of the scheme lies with BHP's Director of Finance, who is ultimately responsible, in conjunction with BHP's Chief Executive, to their board. The BHP board has delegated a number of responsibilities to a sub-committee which in addition to board members includes co-opted expertise.



- 3.21 BHP currently employs three officers/consultants who are wholly engaged in acquisition/development matters. The exact composition of this will be dependent on operational requirements to deliver projects and will change from time to time. However, BHP is committed to providing the level of resources necessary to deliver these projects and officers are satisfied that the current structure supports the overall procurement, development and management requirements. These properties will be managed, on a day to day basis, by a specialist team which has been set up to manage BHP's dwellings (as opposed to their management arrangements for the Council's stock).
- 3.22 The Council's Head of Affordable Housing Development is responsible for overseeing the delivery of the new affordable housing and the delivery of new initiatives, and is supported by a team of officers who also monitor, support and facilitate housing association and the ALMO's development activity in the borough. The Affordable Housing Development Unit is the main point of contact for the Homes and Communities Agency in respect to delivery of the National Affordable Housing Programme.

### ***The Outputs and Key Financial Assumptions***

- 3.23 The HCA funding allocation of £10million to BHP to provide 286 homes is being administered by the HCA and will be allocated on a grant per unit acquired basis once the properties have been acquired and the works programme has been carried out. The HCA has set BHP the following targets:

2009/10	13 properties
2010/11	136 properties
2012/11	137 properties

- 3.24 BHP will apply a ceiling on the maximum total costs of purchasing the property, which will be determined by assessing the minimum rent required to cover its loan debt and operating costs. Given this, BHP will be aiming to acquire predominately two bedroom accommodation in order to meet the Council's housing needs requirement and keep within the affordability parameters. Larger homes may be considered as part of the procurement programme for later tranches and will require BHP to model the impact of increased costs on their financing requirements.
- 3.25 BHP has provided the Council two financial models, one that supports the delivery of the 286 programme, and one which specifically supports the £8m loan facility requests. A summary of the key modelling assumptions applied between the two models is provided in Appendix 1. The total acquisition and works costs for delivering approximately 50 units is estimated at approximately £10.5million (average cost £210,000 per property). As grant is paid on a per unit basis, the total grant attributable to the first tranche is £1.8m (c. £35k per property). The loan to value ratio is on average 80%.

## ***Procurement Strategy***

- 3.26 BHP has established various acquisition routes to identify properties, which include:
- i) direct enquiries;
  - ii) estate agents;
  - iii) targeting ex Right To Buy sales;
  - iv) support acquisitions administered by the council using enfranchisement procedures;
  - v) properties earmarked for disposal by the council or housing associations
- 3.27 BHP will only acquire properties that meet the Council's approved criteria and have agreed to apply the suitability and standards criteria adopted for all West London Temporary Accommodation procurement, which preclude the acquisition of properties in regeneration areas without the written consent of the Council and properties that do not meet pre-defined property sizes. In addition, the BHP has agreed to exclude properties that are in difficult to let areas, unsuitable properties located over shops and with poor access, and those with an unconventional bedroom configuration.
- 3.28 BHP has identified a pipeline of properties to achieve their 2009/10 delivery targets. BHP has acquired three properties from existing reserves to demonstrate to the HCA that they are able to deliver the scheme, and is building up a pipeline of at least 50 properties to acquire over the next eight months. Part of the acquisition programme includes the purchasing of two empty properties that the Council has been able to acquire using the enfranchisement process together with some properties being offered directly with BHP by existing leaseholders, and properties via estate agents. In addition, BHP has been negotiating to acquire seven of two bedroom properties from with Paddington Churches Housing Association (PCHA) who have identified these properties for disposal on the open market as part of their overall stock rationalisation and asset management strategy (the receipts of which will be reinvested in existing homes in or on the provision of new affordable housing in the borough).
- 3.29 BHP has appointed an Acquisitions Manager to lead on the identification and selection of properties and to progress the purchase of suitable properties. All properties that are to be acquired are to be inspected by external valuers to ensure that properties identified for acquisition have been surveyed and represent value for money. In addition, BHP has also appointed an external Certifier to ensure a certificate is issued to confirm that each property meets the specification required by the Homes and Communities Agency a condition of the grant funding requirement. If the loan facility is approved by the Executive, BHP will make available to the Council copies of inspection reports, surveys, valuations and certification required to satisfy the conditions of the loan agreement or as otherwise required.

## **Rent Levels**

- 3.30 The properties acquired under the SHI scheme will be let by BHP under assured shorthold tenancies until their business plan surpluses are sufficient for properties to convert, on an incremental basis, to affordable rents (and assured tenancies granted) at which point BHP will need to grant assured tenancies at rents which are in line with HCA target levels. The current financial model assumes conversions to permanent tenancies can be achieved over a 14 to 17 year period, on a phased basis at a rate of 18 properties per quarter.
- 3.31 Local Housing Allowance rules set limits to the amount of housing benefit that will be paid to landlords in respect of tenants' liability to pay rent for privately rented properties. BHP will apply market rents in line with Local Housing Allowance rent levels. It has been confirmed by the Department of Work and Pensions (DWP) that as BHP is not a local authority or Registered Social Landlord, the rules on Local Housing Allowance (which usually apply to private landlords) will apply and the rules relating to rent rebate (which apply to housing associations and local authorities) will not. The current Local Housing Allowance rents in Brent for two bedroom properties are given in Table 1 below.

**Table 1 Local Housing Allowances as at December 2009**

North Brent	Kenton, Harrow & Kingsbury, Alperton, Wembley	£219.23 per week
Inner West Brent	Park Royal	£300.00 per week
West Brent	Church End, Stonebridge, Cricklewood Harlesden, Kilburn	£340.00 per week

- 3.32 The DWP are currently consulting on proposed changes to replace the current system of limiting Housing Benefit (HB) subsidy<sup>6</sup> in respect of claims from customers living in temporary accommodation by a series of thresholds and caps from April 2010. The proposed changes are only to be applied to new tenants claiming housing benefits from 1 April 2010 and apply to accommodation leased by the Council. The revised arrangement will not be applied to homeless households staying in housing association leased schemes unless the local authority considers the rent levels to be unreasonably high. Given this, officers consider the approach BHP has taken in setting the rent levels can be supported under the proposed changes DWP are considering to implement from April 2010.

## **Nomination Arrangements**

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<sup>6</sup> Housing Benefit subsidy is paid by the Department for Work and Pensions to local authorities as reimbursement for HB payments they make to customers on behalf of the Secretary of State.

- 3.33 One of the key aims for the SHI schemes is to help achieve the Government's target to reduce the use of temporary accommodation. Essentially, those households which are offered assured shorthold tenancy of these properties will cease to be homeless (where a statutory duty is owed), and other households nominated to the properties will cease to be homeless when a dwelling converts from temporary to permanent. The Council's homelessness duty will be discharged if the homeless applicant accepts a qualifying offer of an assured shorthold tenancy on a voluntary basis. The Council will need to explain in writing that the applicant is under no obligation to accept the offer of an assured shorthold tenancy for the purposes of discharging its homelessness duty in advance of accepting the tenancy. Otherwise, the homeless applicant has an assured shorthold tenancy and thereafter, the Council can only then discharge its homelessness duty under section 193 under the circumstances set out in Para 5.9 below. . Given this, the scheme presents a significant advantage over delivering short term leasing schemes and contributes to the council's wider Housing Strategy and TA reduction plans.
- 3.34 The Council and BHP have agreed the principles of the nomination process which is a requirement of the grant conditions. BHP will not be seeking any nomination fees from the Council in respect to nominations that are received. However, further discussions are being held with BHP on how the financial modelling can address voids and rent losses periods which are outside the modelled assumptions, where the Council has not been complying with its obligations under the nomination agreement.
- 3.35 It is the intention of this scheme to offer the sitting tenant the opportunity to remain in the property at an affordable rent so that the Council can discharge any homelessness duty which owed at the point of conversion from temporary to permanent. However, where the tenant does not want to accept an assured tenancy in the existing dwelling, the tenant may continue to remain in their dwelling and bid for other properties under the Council's allocations system, which is currently Locata, or a direct offer can be made in line with the Council's Allocation Scheme and BHP's Allocations policy. BHP would then be able to target another dwelling for sitting tenants to be given the opportunity for conversion to an assured tenancy.
- 3.36 In addition, the Council is also considering how the scheme can assist in rehousing residents that are threatened with homelessness as part of an overall homeless prevention initiative. Further discussions are being taken forward with the CLG's Homelessness Action Team and the Homes and Communities Agency to consider extending the scope of the referral route BHP can apply to include homeless households where a statutory duty to provide housing has not been accepted. However, Members should note that the outcome of this decision is not material in terms of the scheme proceeding.

### ***HCA Grant Agreement***

- 3.37 As part of their preferred partner status with the HCA, BHP is required to enter into a grant agreement for any schemes that have been funded under the 2008-11 National Affordable Housing Programme. Officers are therefore requesting the Executive's approval to permit BHP to enter into a Grant Agreement for the SHI scheme with the Homes and Communities Agency for their £10m funding allocation. The Executive is also being asked to delegate authority to the Director of Finance and Corporate Resources to agree the terms of the SHI Grant Agreement, in consultation with the Borough Solicitor.
- 3.38 For their first development, BHP was required to sign up to the HCA's ALMO Grant agreement. The Council were required to provide a Performance Bond Guarantee in respect of BHP's grant funded development activities to ensure that each development is completed in line with the HCA's requirements. For the SHI scheme the HCA will require BHP to enter into a new grant agreement, which is largely a standardised agreement that is being applied to other SHI schemes. Whilst a bespoke agreement for the ALMO is being consulted upon, the HCA will not agree terms and conditions which would provide an uncompetitive advantage to its other development partners or which would seek to reduce the protection of the investment they are making. Once issued by the HCA, it is unlikely that the Council will not be in a position to renegotiate any variations to the standardised SHI Grant Agreement.
- 3.39 The HCA SHI grant agreement broadly follows the same format as the ALMO New Build Grant Agreement. However, the SHI grant agreement excludes a number of complexities that were inherent to the ALMO New Build Grant Agreement. A key difference the ALMO New Build Grant Agreement and the ALMO SHI Grant Agreement is that the Council is not required to provide a Performance Bond Guarantee as the grant is only payable once BHP have acquired each property, and carried out the works and have let the property. For the ALMO New Build programme, the HCA pays grant in tranches, at acquisition stage and completion stage and given this, the HCA requires the performance bond guarantee to protect their investment to ensure that they are in a position to complete the development with another partner. As grant applicable to the SHI scheme is only payable at the end of the acquisition and works period, on a property by property basis, the HCA have agreed that the performance bond guarantee requirements can be waived.
- 3.40 A form of Rent Charge will be entered into by BHP and the HCA as part of the Grant Agreement terms and conditions. The purpose of the Rent Charge is to protect the HCA's interests if BHP were in breach of their obligations under the grant agreement. The Rent Charge provides BHP with an opportunity to remedy breaches, however if these are not addressed, the HCA can seek possession and recovery of the properties that have been funded, appoint a new property manager or dispose of the properties. If BHP intends to dispose of any properties funded using SHI grant, they are first required to obtain written consent from the HCA before proceeding with the disposal. If approval is

granted, BHP will need to repay the grant and a proportion of the increase in value of the properties being disposed of.

- 3.41 If the Executive agrees to grant BHP the £8m loan facility, then the HCA and the Council will need to enter into a Direct Agreement, which acknowledges that the security interest granted over the properties acquired by BHP will be in the favour of the Council as the senior lender. The aim of the direct agreement is to enable the HCA to submit proposals to the Council (as senior lender) to consider where the HCA considers it appropriate to appoint an alternative manager in the following circumstances:
- i) an interested party has taken a step to enforce security against any properties that have been acquired;
  - ii) an Order has been made to wind down BHP;
  - iii) an administrative Order has been made against BHP;
  - iv) the appointment of a receiver or administrative receiver has been made; and
  - v) the passing of a resolution to wind down BHP has been made.
- 3.42 Where the Council has provided financial assistance, by way of a loan facility, the HCA will require BHP to provide certified copies of statutory consents from the Secretary of State for Communities and Local Government under section 25 of the Local Government Act 1988 as a condition precedent to the SHI grant agreement. Given this, the Executive is asked to authorise the Director of Housing and Community Care to make an application to obtain the statutory consents required to support the £8m loan facility once the terms of the loan have been finalised by the Director of Finance and Corporate Resources.

### ***Loan Agreement***

- 3.43 In May 2009, the Executive agreed to grant BHP a loan facility, using its prudential borrowing powers, in order to finance the acquisition of 110 unit Granville Road New Homes development in South Kilburn. The loan was granted on the basis that BHP were able to service the loan from the net rental income and operating surpluses after factoring into account operating costs for managing and maintaining the properties for the duration of the loan agreement. By reference to the loan terms that were applied to support the acquisitions costs of the Granville New Homes development, BHP is now seeking the support of the Council to secure a loan facility of £8m to deliver their first tranche of approximately 50 properties under the SHI scheme.
- 3.44 The interest rate applied to the prudential loan for the Granville Homes Development was at 5%. The Council's current consolidated rate of interest against its borrowing is around 5%. This rate of borrowing still compares favourably against the lending rates that BHP were being previously quoted from private sector lenders (although the overall effect on the anticipated cash flows is broadly neutral in the early years). At that time, their soft market testing indicated that funding was available in the region of 7%. However, more recently, lenders are requesting an increased requirement to provide a greater degree of



property and cash back security to provide further protection in the current economic climate, and given this it is unlikely that BHP will be able to secure a competitive funding from private lenders in the short term in order to deliver a viable programme. Table 2 show the annual and total loan repayment charges that would be applied on a loan granted by the Council at a 5%, 6% and 7% interest rate.

**Table 2 Loan Repayment Payments on £8m**

Rate of Interest	5%	6%	7%
Annual Repayments Due	£515,092	£581,191	£644,691
Total Amount	£15,452,748	£17,435,738	£19,340,736

3.45 The draft heads of terms for the loan facility have been discussed between BHP and the Director of Finance and Corporate Resources and are set out in Appendix 1. BHP has provided a financial model in support of their business plan to acquire approximately 50 properties over the next 8 months and officers are currently reviewing this financial model to ensure that it demonstrates that BHP are able to support the loan repayments. Officers will require the model to be audited to confirm that it is free from material errors before the loan facility can be finalised. The loan drawdown will be linked to batches of properties that BHP has identified for acquisition. Each loan drawdown request will require BHP to submit a valuation for the property, report on the property condition, details on the required level of works and the works costs. The Council will consider these to ensure that properties are acceptable in terms of the investment commitment. However, Members should also note that number of a safeguards are to be put in place to protect the Council's overall interests further, which include:

- i) BHP will be required to submit a fully audited financial model from their external financial advisors demonstrating BHP's ability to meet their loan repayment obligations;
- ii) BHP will only be permitted to acquire properties in line with the Council's specification that require security for the loan;
- iii) approval in writing by the Director of Finance and Corporate Resources after setting out the business case for acquiring the property;
- iv) The Council will place the first legal charge on all of the properties at the point of each acquisition; and,
- v) The final terms of the Council's Direct Agreement with the HCA will provide safeguards to consider alternative options to service the debt and manage the properties to avoid disposals

3.46 Members should note that a review of BHP's financial strength is carried out annually and it will be possible for officers to identify and

address any exposure to BHP and the Council which may result in the loan not being repaid as a result of BHP's other activities.

3.47 The Executive is asked to delegate authority to the Director of Finance and Corporate Resources to agree the final loan sum to be provided to BHP (not exceeding £8million) and the term over which the loan will be payable, subject to the following conditions:-

- i) The loan sum will relate only to capital costs directly attributable to this scheme including Stamp Duty Land Tax (SDLT);
- ii) The loan is seen as affordable to BHP and the agreed loan repayment schedule is substantiated within the overall business case model; and,
- iii) The final agreement to provide the loan remains within the best interest of the Council.

### ***Meeting Future Funding Requirements***

3.48 In order to fund the acquisition and works costs for the remaining 236 properties over the next two years, BHP have the following options

- i) use of existing resources
- ii) securing loans from private lenders
- iii) securing further loan tranches from the Council

These options are not mutually exclusive and the viability of some of these may be impacted on the longer term status of BHP in respect to the ALMO Management Agreement, and whether BHP are able to continue to manage the Council's wider housing stock.

3.49 BHP has acquired three properties from existing reserves to ensure that operational management arrangements could be put in place to bring the homes into BHP's ownership. BHP may consider the use of future reserves to assist managing cashflow or to provide additional security against properties acquired. The use of reserves will be considered by the Director of Finance and Corporate Resources when finalising the terms of the loan facility arrangements.

3.50 BHP has prepared a funder prospectus to seek private loans, but the continuing impact of the 'credit crunch' is likely to have an adverse impact on both the availability of private loans and the terms and conditions applied to any funding. BHP will continue to explore private funding solutions but it is likely that these will be in smaller packages, say 10 – 15 dwellings. The main impediment to private funding is that BHP's management agreement ceases on 30 September 2012 and private lenders need to be satisfied of BHP's longevity and how this is supported by their overall business plan.

3.51 The Council may be called upon to provide an extended loan facility using its prudential borrowing powers in order to finance future acquisition tranches. However, until BHP has carried out its own funding competition, officers are unaware as to what extent BHP would be seeking further assistance from the Council. If an extension to the

loan facility is requested, a further report will be presented to Members where the Director of Finance and Corporate Resources considers the Council has the financial capacity to assist BHP, after taking into account the Council's own capital borrowing requirements in the short and medium term. If the Director of Finance and Corporate Resources, considers the Council has the capacity to assist BHP, then BHP will be required to provide a fully audited business case which demonstrates they are able to service any existing and new loan repayments without further costs falling on to the General Fund.

- 3.52 If BHP are not able to secure funding for further tranches, then BHP will only be able to deliver the first tranche of 50 or so properties. The HCA will still be required to provide a contribution of £1.8m grant support towards the acquisitions and will not be able to reclaim any of the allocated grant if further acquisition tranches do not proceed. The financial model for tranche 1 of BHP acquisitions programme has been developed to exclusively support the £8m loan facility request and does not therefore depend on the delivery of further tranches. Whilst it will be disappointing for the Council and BHP, if BHP will be able to deliver future tranches because of unavailability of funding, the Council still have been able to secure nominations to c50 properties which would convert to permanent affordable homes in the next 14-17 years.

### ***Key Project Risks***

3.53 Impact in changes to LHA rent levels

The Settled Homes Initiative grant funding requirement stipulates that BHP must set rents which are in line with Local Housing Allowances. This is because Local Housing Allowance rules set limits to the amount of housing benefit that will be paid to landlords in respect of tenants' liability to pay rent for privately rented properties. If there are changes to the level of rents BHP are able to charge, then there are two options

- i) BHP can extend the period on which the properties convert to permanent housing
- ii) BHP can dispose of some properties throughout the term to provide further subsidy from the growth in capital values. Voids can be targeted in these circumstances.

The Council and BHP are to consider whether some headroom can be built in the model and whether the loan term can be extended from 30 years to 40 years to allow more flexibility in the rents that can be charged.

3.54 Maintaining Affordability and Viability

BHP are required to provide a fully audited model which demonstrates the model affordability position and their ability to service the loan repayments before a loan can be approved. The Council will seek to ensure that the financial model has been audited and is free from material errors. In addition, BHP are to ensure acquisitions provide the appropriate level of security cover in order to support the level of borrowing and comply with the Council's requirements.

- 3.55 Managing Exit Costs  
BHP can cancel part or whole of the loan however by giving the Council a reasonable period of notice. Any agreement to cancel the loan will be in made in the Council's sole discretion and if agreed, will require BHP to meet the Council's fees, expenses and any other costs due or owing on the loan. These conditions will be reflected in the Loan Agreement.
- 3.56 Council's Operating Costs  
BHP will need to cover the costs the Council incurs for administering the loan and a margin of 1% of each loan draw down amount will be charged to meet these administrative costs. A condition of the loan will be BHP will meet the council's reasonable legal costs of finalising the terms of the grant agreement with the HCA, in particular finalising the direct agreement, obtaining statutory consents and preparing the loan agreement.
- 3.57 Demand for accommodation reduces  
Whilst the overall numbers of homeless approaches are reducing due to the council's successful homeless prevention strategies, the Council still has the fourth highest number of homeless households in London. The council's TA reduction plan assumes that the Council will have 2,663 temporary accommodation properties in management by December 2010. The Council is considering how the scheme can be extended as part of a homelessness prevention initiative to rehouse those threatened with homelessness or housing need, where the council would otherwise have accepted a homelessness duty. Further discussions are being held with the HCA and the Council is seeking its own legal advice on whether using the scheme in this way is feasible and will allow BHP to satisfy the grant conditions.
- 3.58 Managing voids and rent losses  
The Council proposes to nominate households within 15 working days of a nomination request being received from the BHP. BHP needs to ensure that the property is ready to let so the tenancy can commence within the 15 working day period. The Council will not be liable for any rent loss for failure to nominate, however there will be a direct relationship between the Council's performance in sending nominations and BHP's ability to service the loan, which would need to be reviewed if BHP are unable to service the loan. Where the Council is unable to nominate a household, BHP will seek nominations from other referral sources (as approved by the Council and the HCA) and if the Council is unable to nominate on a frequent basis, then the BHP propose to dispose of a property to generate a receipt in order to manage the cash flows required to support the loan.
- 3.59 Ensuring conversion of properties at end of term  
The SHI scheme has no guaranteed conversion rate to target rents, but seeks to optimise conversion at the end of the loan period. The modelling suggests all of the properties will be converted at the end of the loan period, however, the conversion rate is dependent on a range

of market variables and different scenarios such as interest rates, and inflation.

### 3.60 Availability of Properties

There is a risk that the current state of the housing market will lead to difficulties in procuring properties because there may be too few on the market that meet the requirements of the scheme. However, officers consider that there is a sufficient pipeline of properties to support the tranche 1 acquisition programme without distorting the local market. The general approach to procurement was to focus on former Council owned properties within BHP managed schemes sold under the Right to Buy Scheme, in order to benefit from the fit with existing management arrangements. The timetable for the delivery of the original scheme was over 4 years. The new grant allocation requires delivery to be achieved within the timetable of the NAHP 2008-11 funding allocation, and the bulk of the properties will need to be acquired over 2 years (20010/11 and 20011/12). BHP has appointed an Acquisitions Manager to focus on the identification of properties from various routes, including taking forward negotiations with PCHA to acquire a small portfolio of properties that might otherwise be disposed of on the open market, leaseholder buy backs, and open market acquisitions.

### 3.61 Longer term viability of BHP

The concept of BHP owning and managing stock is a departure from that envisaged for BHP when it was established in 2002 to manage the Council's stock. Stock ownership is an important factor when determining BHP's longer term viability. In particular, the sale of the Granville New Homes Development, the transfer of 45 one bedroom voids<sup>7</sup> for market renting and the delivery of BHP's first new build affordable housing scheme at Aldbury Avenue are key steps taken by BHP to expand their role. With the settled homes initiative and development pipeline, BHP has the capacity to own and manage around 400 homes over the next 2 years, in addition to the properties that they manage under the BHP Management Agreement, which is due to expire on 30 September 2012.

### 3.62 Impact on BHP's Business Plan

This funding request, together with existing or other funding requests that the Council is supporting needs to consider all of BHP's business activities. Officers will carefully review BHP's financial model and obligations under the HCA grant agreement to ensure BHP are able to service the loan repayments on £8m Loan Facility to deliver the acquisitions programme for first tranche of properties. In doing so, officers will consider the impact the delivery of the SHI scheme has on BHP's other activities such as the following:

- i) management of the Council's housing stock under the BHP Management Agreement

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<sup>7</sup> Of which 8 voids have transferred and a further 11 voids are due to be transferred by December 2009.

- ii) the management of Granville New Homes development and BHP's ability to service their loan repayments under the loan facility provided by the Council
- iii) The management of temporary accommodation under the Brent Direct Lease Scheme
- iv) The management of market rented accommodation in respect of the 45 one bed room voids the Council in the process of transferring to BHP

### 3.63 Financing Future Phases

If the BHP is unable to secure further funding for the remaining phases of the SHI scheme, then there may be adverse implications on the Council and BHP in respect to securing funding in the future for other development or new initiatives. Whilst the HCA investment is intended to support the delivery of new homes and regeneration, there is an expectation that both BHP and the Council will be able contribute to the delivery, either through the provision of land or by making a financial contribution. The Council will need to consider the impact of restricting lending to BHP or on the use of prudential borrowing to support its own development activities when proposing investment opportunities to the HCA to consider.

- 3.64 A risk map setting out the risks involved in the Settled Homes Initiative for the Council and BHP is provided in Appendix 3.

## **4.0 Financial Implications**

- 4.1 This report is seeking agreement for the Council to use its prudential borrowing powers to lend up to £8m to BHP to facilitate the delivery of the SHI. The loan facility will be prepared on the basis that there are no net costs to the Council's General Fund.
- 4.2 As of 1st April 2010 local authorities will be required to prepare their statements of accounts in accordance with International Financial Reporting Standards (IFRS) rather than UK standards. The new accounting provisions will be laid down within CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom which is due to be published on 16th December 2009. Under the new form of Financial Reporting the Council will be required to account for many previously established accounting treatments in a different manner which could affect the impact of transactions from the start of the new financial year.
- 4.3 One such area relates to the identification of Service Concessions where a local authority could be deemed to be entering into a lease arrangement through a transaction where it gains a legal charge over a property, such as the granting of a loan. This matter will be fully investigated when the Code of Practice is published and any derived impact on the Council from entering into the proposed loan agreement will be ascertained and evaluated as part of the Director of Finance and Corporate Resources considerations before agreeing to the final terms of the loan. Currently it is not envisaged that there would be a



requirement for retrospective adjustment relating to such agreements entered into prior to November 2009.

- 4.4 Councils are required to follow the Prudential Code issued by CIPFA which sets out how councils ensure they use their new freedoms responsibly. The code sets out indicators which councils are required to set before the beginning of each year, to monitor during the year, and to report on at the end of each year. For external debt, the prudential indicators are as follows:
- a. The authorised limit for external debt. This allows flexibility to carry out debt restructuring or enter into other such arrangements beneficial to the Council's services should opportunities arise.
  - b. The operational boundary for external debt. This sets out the expected total of borrowing for each year. This is lower than the authorised limit and is a key management tool for in-year monitoring. It is set at a level that reflects the council's capital financing requirement, the level of the capital programme, and estimated requirements for cash flow.

It is not forecast that entering into the £8m loan agreement with the BHP would cause these indicators to be breached.

- 4.5 BHP appraises projects in a number of ways including the use of industry standard software for new build developments. In addition, BHP engaged Grant Thornton to build a financial model for both the SHI scheme and GNH and these have been shared with the Council (indeed in the case of GNH formed an important part of the Council's due diligence process). This model is currently being reviewed.
- 4.6. BHP have agreed that it is appropriate at this stage of its SHI scheme development to break down the project into manageable chunks that will facilitate the Council establishing whether for each drawdown BHP can demonstrate the properties being purchased/built are value for money, meet the Council's housing need, are affordable to BHP, and BHP's overall finances are sufficient to manage risk both in the short and long term. A key part of BHP's financial strategy has been to accrue surpluses through efficiency savings in order to comply with accounting standards issues, particularly regarding future pension liabilities. BHP's board policy is that surpluses generated for these reasons are invested for the benefit of the Council's housing strategy.
- 4.7 In all cases BHP will be demonstrating that council loans will be capable of being repaid within the standard 30 year appraisal period, with the rental streams from the acquired/built dwellings being used to finance the repayments (both interest and principal) over the loan term. During the life of the loan, the temporary tenancies let at market rents on assured shorthold tenancies will be transferred to assured tenancies let at affordable rents.

- 4.8 The Council will have the loan secured over BHP's assets in line with the loan facility agreement that was signed between the Council and BHP regarding the Council's loan to BHP in relation to the purchase of the units at Granville New Homes. This will give substantial security over the longer term for the loan. The Council will need to decide on what basis the interest should be charged, and what arrangements should be made if BHP wishes, for commercial reasons, to repay the loan and refinance elsewhere.
- 4.9 It is understood that BHP have been advised that private finance may be more readily available if each scheme is financed through a blend of public and private finance. In these circumstances the Director of Finance and Corporate Resources would need to be satisfied that such arrangements do not materially reduce the Council's security. However, it is acknowledged that this would considerably reduce the recourse to council funding. Members should note that any private borrowing secured by BHP would need to be approved by the Council as this borrowing will be on the Council's balance sheet.

## **5. Legal Implications**

- 5.1 Communities and Local Government (CLG) has confirmed that BHP can own assets and grant tenancies without the requirement for further consent from the Secretary of State (subject to Council approval as required under BHP's constitution).
- 5.2 In terms of BHP's own Constitution, clause 4 of the Memorandum of Association of BHP states that BHP has the power to do anything a natural or corporate person can lawfully do which is necessary or expedient to further its objects unless prohibited by the Memorandum. Under clause 3(11) of the Memorandum of Association of BHP, it states that the objects of BHP include carrying out such activities as Brent Council shall approve.
- 5.3 Under section 24 of the Local Government Act 1988 ("the LGA 1988"), a local authority has the power to give financial assistance to any person for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management of privately let housing. Such financial assistance can include grants, loans, guarantees and indemnities. A local authority can only exercise such a power under section 24 of the LGA 1988 (subject to exceptions) if it has the consent of the Secretary of State to do so pursuant to section 25 of the LGA 1988.
- 5.4 Reference has been made to the council using its prudential borrowing powers as these powers will need to be exercised if the council decides to support BHP's loan application. The power that the council would use if it follows this option is section 1 of the Local Government Act 2003. The 2003 Act provides that a local authority may borrow money for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its financial affairs subject to the borrowing limit determined by the authority and the Secretary of

State. The decision as to whether to go forward with prudential borrowing will need to take this into account, as well as ensuring that the HRA or the General Fund is able to repay the loan. If BHP is unable to service and pay off any loan granted by the council, this would have a significant impact on the council and could affect not only the council's finances but BHP's ability to perform the council's housing management functions in respect of the council's housing stock.

- 5.5 It should be noted that the Council has a fiduciary duty to its council tax payers and Members must consider whether this loan complies with normal and prudent commercial practices.
- 5.6 The council must ensure that the reasons for undertaking the Prudential Borrowing fall within the council's community strategy.
- 5.7 The principle of BHP being able to grant tenancies as a landlord, instead of the Council, has been confirmed by the department of Communities and Local Government in relation to the Settled Homes Initiative and the Homes and Communities Agency in respect of their National Affordable Housing Programme. BHP will grant assured shorthold tenancies which are governed under the Housing Act 1988. Once conversation from temporary to permanent accommodation takes place, BHP will grant assured tenancies which are also governed under the Housing Act 1988. The format of the tenancy agreements which BHP grants to homeless applicants under the Settled Homes Initiative have to be approved by the HCA.
- 5.8 Local authorities have a duty under Part VII of the Housing Act 1996 to house homelessness persons in temporary accommodation who satisfy the qualifying criteria (i.e. eligibility, homeless, priority need, not intentionally homeless and local connection).
- 5.9 The council can only discharge its duty to house qualifying homeless persons in temporary accommodation under the circumstances set out in section 193 of the Housing Act 1996 and the circumstances in which this duty can be discharged are as follows:
  - (i) if the homeless person accepts an offer of permanent accommodation from the council in the form of a secure tenancy under Part VI of the Housing Act 1996;
  - (ii) if the homeless person accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord; or
  - (iii) if the homeless person accepts a qualifying offer of an assured shorthold tenancy with the council's approval and is advised in writing in advance that he is under no obligation to accept the offer of accommodation.
- 5.10 The duty under section 193 of the Housing Act 1996 will cease to exist if:
  - (i) the applicant ceases to be eligible for assistance;

- (ii) the applicant ceases to occupy the accommodation as his/her only or principal home, or
  - (iii) the applicant becomes homeless intentionally from the temporary accommodation provided.
- 5.11 The HCA require BHP and the Council to enter into a nomination agreement in respect of the scheme. The content of the nominations agreement will need to be approved by the HCA. There are no nomination fees or payments for failure to nominate. Legal advice is being sought on whether stamp duty land tax is payable in respect of the nomination rights. It is a requirement of the HCA that BHP enters into a nominations agreement with the Council to enable the Council to nominate individuals and their household to the properties comprised in the Settled Homes Initiative as they become available in order to discharge the Council's homelessness functions to provide temporary accommodation under section 193 of the Housing Act 1996 and interim temporary accommodation (pending a decision on acceptance of homelessness duty) under section 188 of the Housing Act 1996. There is a strong argument that the nomination rights will not be liable to stamp duty land tax as the requirement to have a nominations agreement is stipulated by the HCA rather than the Council. Before entering into a nomination agreement with BHP, officers will seek further advice from Her Majesty's Revenue and Customs to clarify as to whether there is a Stamp Duty Liability in respect of the nominations rights that are offered to the Council. If Stamp Duty Land Tax is liable on the nomination rights, this project may not be so beneficial to the Council from a financial perspective.
- 5.12 BHP will be liable to pay Stamp Duty Land Tax at 4% of the purchase price of the properties.
- 5.13 Homeless applicants who are granted Assured Shorthold Tenancy Agreements will not have the statutory Right to Buy or the Right to Acquire the properties provided to them to occupy as temporary accommodation. Section 180 of the Housing and Regeneration Act 2008 ("the 2008 Act"), which is not yet in force, will allow tenants of the assured tenancy properties, which will be provided as permanent accommodation with the benefit of public subsidy/grant funding by the HCA under section 27A of the Housing Act 1996, the Right to Acquire. It is not yet known when section 180 of the 2008 Act will come into force though it will be a number of years before the Assured Shorthold Tenancies will be converted to Assured Tenancies as permanent accommodation.
- 5.14 The form of the Assured Shorthold Tenancy Agreement as temporary accommodation and the Assured Tenancy Agreement as permanent accommodation, which will be provided by BHP to the homeless applicants, will need to be approved by the HCA.
- 5.15 For the Assured Shorthold Tenancy properties (temporary accommodation), BHP will be required by the HCA to charge rent at a level which is not higher than the level of the Local Housing Allowance.

For the Assured Tenancy properties (permanent accommodation), BHP will be required by the HCA to set the rent at a level in line with the Government's rent restructuring policy or any successor policy.

- 5.16 BHP will be prohibited by the HCA from increasing the rent more than once in any 12 month consecutive period, except for the first 12 months of the tenancy. For the Assured Tenancies as permanent accommodation, BHP must not increase the rent by more than RPI plus 0.5% per annum, subject to any changes in Government policy relating to affordable housing for rent. In relation to service charges, BHP must not increase the service charges more than once in any 12 month consecutive period (save for the first 12 months of the tenancy) and must not increase the service charge more than RPI plus 0.5% per annum.
- 5.17 As part of the grant arrangements, the HCA will have an estate rentcharge over the properties, for which BHP receives grant funding from the HCA, under section 2(4) of the Rentcharges Act 1977. The Rentcharge Deed is set out in Schedule 2 of the draft Settled Homes Grant Agreement. BHP will confirm that no financial charges secured on the properties will have priority over the Rentcharge in favour of the HCA. Further details about the Rentcharge are set earlier in this report in paragraph 3.40 above.
- 5.18 As the Council is involved in granting a loan to BHP, the HCA will enter into a direct agreement with the Council as set out in paragraph 3.41 above. The HCA will acknowledge and consent to the Council obtaining a charge over the properties as security for the Council's loan. However, where there is a default in respect of the Rentcharge deed, although the HCA will agree to keep the Council and BHP informed of what actions it proposes to take, BHP and the Council will not have any right to consent or consultation by the HCA in relation to the HCA's actions for breach of the Rentcharge Deed.
- 5.19 Where there is any proposed change in control of BHP, the draft Settled Homes Grant Agreement requires that the HCA's consent needs to be obtained for any change of control of BHP and the HCA will confirm that it will not unreasonably withhold such consent. Similar requirements for consent from the HCA apply regarding any plans to dispose of the properties which have been the subject of grant funding from the HCA.
- 5.20 If BHP as an ALMO ceased to exist or were to wound up, consideration needs to be given as to what would happen with the properties which are the subject to grant from the HCA under the Settled Homes Initiative. As set out in the Risk Map in Appendix 3 to this report, one option is for the properties to be transferred to the Council as the parent organisation of BHP. If the properties were to be transferred from BHP to the Council at nil value, there would be no stamp duty land tax liability. However, it might be a more attractive proposition for the properties to be disposed to a registered provider/registered social landlord as this would assist in paying off the loan and also, it would

avoid the problem of the assured shorthold tenants and assured tenants becoming secure tenants of the Council.

- 5.21 As BHP will own these properties, it will not need the Secretary of State's consent under section 27 of the Housing Act 1985 in relation to housing management. However, if it is intended that BHP will continue to manage the council's housing stock, the council will need to be satisfied that BHP's purchase of other properties and managing them as the landlord will not affect the service which BHP provides to the council as the managing agent of the council's housing stock. It may be necessary to review and revisit the content of the Management Agreement between the council and BHP, when it expires on 30 September 2012. BHP has been gradually developing its role as a provider of housing in addition to being a housing management organisation and it is effectively becoming a social landlord in its own right on a piecemeal basis. This has been developing gradually without the Executive yet making any strategic decisions regarding the future direction of BHP and whether BHP should continue its development role as a social landlord in its own right and/or whether BHP should just continue to be the Council's ALMO and managing the Council's housing stock. These issues will need to be addressed when the Executive makes a decision regarding the future of BHP before the BHP Management Agreement expires on 30 September 2012.

## **6. Diversity Implications**

- 6.1 An Impact Needs Requirement Assessment (INRA) was carried out on the scheme which concluded that the Temporary to Permanent Scheme element of the project did not have an adverse impact on a particular group as the focus was increasing the supply of longer term affordable housing.

## **7. Staffing/Accommodation Implications**

- 7.1 There are no staffing or accommodation implications.

### **Background papers**

ALMO Scheme File

GLA SHI Scheme Bid File & Guidance Notes

ALMO SHI Scheme Reports (June 2007 and February 2008)

Reports to Executive

### **Contact Officers**

Manjul Shah, Head of Affordable Housing Development,  
7<sup>th</sup> floor, Mahatma Gandhi 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**