

BRENT HOUSING PARTNERSHIP BOARD

Meeting: BHP Board	Date: 24 th February 2011
Report Author: Sue DeSouza New Homes Projects Manager	Title: BHP New Homes -Registered Provider Application and Amendment to BHP's Memorandum of Association
Contact Officer: Linda Footer Head of Corporate Services	Classification: For Decision
Contains Private and Confidential Information	No

1. Matters for Consideration

- 1.1 In order to meet regulatory requirements for access to grant funding to progress existing and future new build housing development, and to secure financial benefits to support the delivery of the Settled Homes Initiative (SHI), BHP needs to become a Registered Provider with the Tenant Services Authority¹ (TSA).
- 1.2 The Tenant Services Authority was established under the provisions of the Housing and Regeneration Act 2008 to assume responsibility for the regulation of social housing providers from the Housing Corporation². This included maintaining a list of all Registered Providers. All existing Registered Social Landlords and local authority providers automatically became Registered Providers with effect from 1st April 2010. Other organisations, including ALMOs, are required to follow an application process for registration.
- 1.3 The TSA has issued regulatory guidance for organisations wishing to become Registered Providers, requiring specific wording to be included within their objectives, and to confirm their not-for-profit status. Informal discussion has taken place with the TSA to clarify their expectations, and with BHP's corporate legal advisors. The proposed revised wording to paragraphs 3 (5), 3 (7), 3 (11), and 7 of BHP's Memorandum of Association (see **Appendix A**) does not fundamentally alter the status of BHP or its overall objectives, but provides the clarification which meets the TSA's requirements for registration.
- 1.4 The formal application process for registration with the TSA firstly requires meeting their eligibility criteria in terms of the organisation's objectives and status, which must include the provision of social housing. The TSA then

¹ The Tenant Services Authority's regulatory functions are due to transfer to the Homes and Communities Agency.

² The Housing Corporation was replaced by the establishment of the Homes and Communities Agency from 1st December 2008.

completes an assessment against their viability standard, and the organisation's ability to meet the six strands of the regulatory standards:

- Governance and Financial Viability
- Tenant Involvement and Empowerment
- Home standard
- Tenancy standard
- Neighbourhood and Community standard
- Value for Money standard

Informal discussions have taken place with the TSA on the provision of information required for the application.

- 1.5 The formal application is planned for submission for approval by the TSA at their assessment committee on 3rd March, subject to decisions being taken on the amendments to the objectives, and formal Board approval to move forward with the application. Any approval by the TSA will be made subject to receipt of a certified copy of the changes made to the objectives, which also need to be approved by the Council's Executive.
- 1.6 The Registered Provider status and related regulatory compliance will only apply to BHP's directly owned social rented homes which fall within the definition of low cost rental accommodation as defined in section 69 of the Housing and Regeneration Act 2008:
- It is made available for rent
 - The rent is below the market rate, and
 - The accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

The scope of this definition may be amended by regulations issued by the Secretary of State (s 72 (i)). Market rent, intermediate rent, and temporary to permanent housing during the temporary phase are currently non-regulated functions.

2. Financial and/or Legal Implications

Financial

- 2.1 BHP has been allocated grant funding for a new social housing development which is subject to grant conditions in the HCA's Grant Agreement requiring Registered Provider status. Failure to achieve this status will lead to loss of this grant allocation, and prevent BHP from accessing future grant funding.
- 2.2 As a Registered Provider, BHP would be able to apply the revised housing subsidy formula for rents relating to temporary housing schemes for the settled homes initiative, which was published on 31st January 2011 (circular HB/CTB S1-2011). Rents are to be fixed from 1st April 2011 to 31st March 2013 at the January 2011 Local Housing Allowance rate minus 10% plus £40, which is above the LHA rent caps which apply currently to BHP's status for housing benefit purposes as a private landlord, and which will also come into effect from 1st April 2011.

Table of temporary accommodation rents (LHA -10%+ £40) based on the January LHA rates from 1st April 2011 compared with the rent caps:

Area	1 bed	2 bed	3 bed
Inner North London	£274	£346	£445
Inner West London	£256	£323.50	£395.50
North West London	£195.77	£237.31	£299.61
LHA Caps	£250	£290	£350

- 2.3 A non-profit Registered Provider (s115 Housing and Regeneration Act 2008) is exempt from paying SDLT on acquisitions from another RP, local authority or certain other bodies, and on purchases funded by social housing grant. As a Registered Provider, BHP will not be required to pay Stamp Duty Land Tax (SDLT) on the properties it is buying for the settled homes initiative, realising a saving of around £500k on the programme of acquisitions.
- 2.4 Section 121 of the Housing and Regeneration Act 2008 enables the TSA to charge fees for initial and ongoing registration. No fees are charged currently, and they have stated that consultation will be arranged prior to the introduction of any fees (see footnote 1 on page 1).

Legal

- 2.5 BHP is a limited company, without share capital, which operates on a not-for-profit basis. Brent Council is the sole guarantor member. The governance arrangements are set out in the Articles of Association. The Memorandum of Association details the business objectives of the company, which includes constructing new homes, and other activities approved by the Council. The Council's Executive has previously given approval to BHP developing, and owning homes, and to loan funding to deliver the SHI.
- 2.6 In order to meet the requirements for registration BHP must comply with the regulatory guidance set out in the TSA's procedural guidance note dated 25th August 2010. This expects the following requirements to be met:
 'The objects clause must:
- refer to "social housing" explicitly
 - satisfy the requirement that any other purposes of the body are connected with and incidental to provision of housing (Condition 3 in section 115 of the Housing and Regeneration Act). The exact wording does not have to be used; that has to be the meaning of other words.
 - refer to not-for-profit status, whether using those exact words or other words which have the same effect

Whether in the objects clause or elsewhere, the articles must:

- refer to non-distribution of assets to members. Note that TSA consent to future changes to that element of the rules is required whether this appears in the objects clause or not, because of s212 of the Housing and Regeneration Act 2008.

2.7 Any amendment to BHP's Articles or Memorandum requires the approval of the BHP Board and the Council. BHP is also required to meet the Companies Act provisions for any changes to its Articles (sections 21 and 30) and must notify changes to the registrar of companies.

3. Recommendations

3.1 Board members

1. Note progress made to date with the application for Registered Provider status
2. Approve the proposed amendments to the Memorandum of Association set out in Appendix A, and agree referral to the Council's Executive to endorse the changes
3. (i) Approve the submission of the formal application for Registered Provider status to the TSA, and
(ii) Delegate authority to the Director of Finance to finalise the application

For decision

4. Access to Information

4.1 No restrictions apply