

	<p align="center"><b>Policy and Resources Committee</b> <b>14<sup>th</sup> October 2015</b></p>
<p align="center"><b>Title</b></p>	<p><b>The Barnet Group – Creation of new legal entities</b></p>
<p align="center"><b>Report of</b></p>	<p>Chief Operating Officer, London Borough of Barnet Interim Chief Executive Officer, The Barnet Group</p>
<p align="center"><b>Wards</b></p>	<p>All</p>
<p align="center"><b>Status</b></p>	<p>Public with accompanying exempt report and appendix</p>
<p align="center"><b>Urgent</b></p>	<p>No</p>
<p align="center"><b>Key</b></p>	<p>Yes</p>
<p align="center"><b>Enclosures</b></p>	<p>None</p>
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Summary
<p>At its meeting of 29<sup>th</sup> June 2015 Housing Committee agreed the draft Heads of Terms for a new 10 year Management Agreement with The Barnet Group (TBG).</p> <p>To support the delivery of the Agreement TBG proposes to create a new legal entity as a Trading Company and a new subsidiary of Barnet Homes. This report sets out the details of these two new organisations and seeks council approval for their establishment.</p> <p>Proposals for both the Trading Company and the Barnet Homes subsidiary have been approved by TBG Board and its appropriate Committee.</p> <p>The Council will retain control over the strategic direction and key decisions of The Barnet Group (TBG) through a shareholder agreement, an outline of which is summarised in this report.</p>

<b>Recommendations</b>
<b>That the committee</b>
<b>1. Authorises the Commissioning Director, Growth and Development to finalise, agree and seal (in consultation with HB Public Law) the Shareholder Agreement with TBG.</b>
<b>2. Approves the creation of a Registered Provider subsidiary of Barnet Homes</b>
<b>3. Approves the creation of a new TBG Terms and Conditions Trading Company</b>

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 In 2012 The Barnet Group (TBG) was created as a Local Authority Trading Company; an umbrella company to deliver services for Barnet Council (LBB), who are the sole shareholder.
- 1.2 Housing Committee at its meeting of 29<sup>th</sup> June 2015 approved draft Heads of Terms for the development of a new 10 years Management Agreement with TBG for the delivery of housing services, along with a financial savings plan of £2.85m to support the delivery of new affordable housing within Barnet.
- 1.3 The creation of the new legal entity and Registered Provider (RP) subsidiary within TBG will support the delivery of the new Management Agreement and associated savings.

## **2. REASONS FOR RECOMMENDATIONS**

### **2.1 Shareholder Agreement**

- 2.1.1 The creation of a shareholder agreement between the Council and TBG will ensure that LBB retains control over the strategic direction and key decisions of TBG and any other 'Teckal Company' which becomes party to the shareholder agreement. It also regulates the business and affairs of any Trade Company which becomes party to the Agreement.
- 2.1.2 Teckal refers to the now codified rule of EU procurement law, set out in Regulation 12 of the Public Contracts Regulations 2015, under which the requirement for open advertisement and tendering for public contracts does not apply as between the controlling body and the controlled company. The council must be able to evidence that it exercises overall control of the company for it to be Teckal compliant, that more than 80% of the activities of the controlled company are carried out in the performance of tasks entrusted to it by the Council, and that there is no direct private capital participation in the controlled company. The formal Shareholder Agreement assists in defining and proving this relationship.

2.1.3 The shareholder agreement sets out how each company will operate and be regulated, including the matters which are reserved to the Council and the scheme of delegation. For example, the Council must approve:

- Variations to the constitution and articles of the company
- Creation of new subsidiaries; amalgamations and mergers and selling or disposing of any part of the company
- Management of the business of the company, such as changing the name or nature of the business
- All business and financial plans and variances to these
- The appointment of Directors and CEO

2.1.4 Trading companies and subsidiaries can be added to or removed from the Shareholder Agreement by completing a 'Deed of Adherence', which forms part of the Agreement.

## **2.2 Creation of Registered Provider subsidiary of Barnet Homes**

2.2.1 TBG propose to create a new subsidiary company of Barnet Homes to operate as a Registered (Housing) Provider. As an RP Barnet Homes will be able to become an asset owner.

2.2.2 Through the new Management Agreement, LBB will be seeking Barnet Homes to develop new social housing for rent. If Barnet Homes were to own the new homes that it builds, it has pledged to contribute £2000 per property, on practical completion, to the Council's General Fund costs of providing the Homelessness Options Service. This means if Barnet Homes were to build and subsequently own, say 500 homes during the next 10 year period, a saving against the General Fund budget in excess of £6m would be generated, once the homes were completed. This would also result in a decrease in expenditure, through a reduction in the use and costs of temporary accommodation of around a further £6m.

2.2.3 Some further work is required to complete the modelling based on the above: Barnet Homes will need additional capital to build the homes as there is insufficient headroom within the Housing Revenue Account (HRA). One possibility is a loan from LBB to TBG utilising PWLB funds. This is an attractive option as it would also generate further income for the Council through an arms length commercial loan charge, in keeping with State Aid Rules. The option is subject to further analysis and due diligence with a potential report to Policy and Resources Committee in December. Nevertheless, it is key requirement in the first instance that a new RP subsidiary is created.

2.2.4 Creating a new RP subsidiary will require an application to the Homes and Communities Agency (HCA) as Barnet Homes must be assessed to ensure it meets the regulatory criteria for an RP. Assuming that Barnet Homes are successful in their application - which it is anticipated they will be, RP status should be awarded around March 2016.

### 2.2.5 Achieving RP status conveys a number of other benefits for LBB and Barnet Homes too:

- RP status provides comfort to lenders and partners that an organisation is bona fide and regulated
- Barnet Homes RP will be eligible to receive financial assistance from the HCA and / or Greater London Authority (GLA) towards new build costs.
- Barnet Homes have a time limited offer of some £2,465,000 in funding from the GLA which is at risk of loss if RP status is not forthcoming. BH has already delayed release of these funds pending RP status and subsequent registration with the HCA.
- BH RP will be able to claim relief from Stamp Duty Land Tax on the acquisition of property where the transaction is funded with the assistance of public subsidy.
- BH RP will be able to procure other social housing and take up new development opportunities if there is an advantageous business case in doing so
- It will provide greater financial flexibilities for the future. For example, if Government decide to introduce a policy of selling the top 10% value council owned homes as they become void (empty), it may be possible that BH RP could acquire them for continued use as social housing, if the Council so desired, to ensure they remain with the 'Barnet family'.

2.2.6 There are no significant risks or disadvantages to the Council in TBG creating a new RP subsidiary, although it is worth noting that the Council cannot utilise its accumulated Right to Buy Receipts on developing new homes through Barnet Homes RP. The main change will be for Barnet Homes and TBG in that there will be new regulatory requirements that they will need to meet on an on-going basis. However, these requirements are minimal for RPs owning less than 1000 units.

### 2.3 **Creation of new Trading Company to enable TBG to offer different terms and conditions of employment**

2.3.1 TBG is currently obliged to offer all staff, both new and existing, the same terms and conditions of employment that are provided by the Council. This means that TBG's employment costs are higher than many other housing and care providers, as the private sector invariably provides a less generous remuneration and pension package for its staff.

2.3.2 TBG have a changing workforce cohort: The average age of an employee is now younger, owing in part to a commitment to graduate and apprentice schemes. Being restrained by offering the same benefits as the Council is considerably more expensive for the business, especially the cost of the LGPS.

2.3.3 TBG propose to establish a trading company that will recruit and employ all new staff with a different range of employment benefits. Significant savings can be achieved, particularly, by replacing the LGPS scheme with an off-the-shelf Master Trust solution. A new flexible benefits package will help to

mitigate the loss of membership of the LGPS and will support the organisation in being more competitive.

- 2.3.4 The start-up and running costs for the first five years of the new Trading Company will be in the region of £187,000 (£72,000 as one off costs in year one and c£22,000 per annum thereafter), with projected net savings after these costs of c£340,000. This saving will enable TBG to reduce its overheads and costs and provide financial savings to support the achievement of the budgetary savings target it has been set.
- 2.3.5 TBG propose to recruit the new CEO as the first employee within the Trading Company, demonstrating their commitment and giving credibility to the new entity. If approval is not granted or delayed for the creation of the new Trading Company, TBG will need to recruit to this role on existing terms and conditions at an additional cost of around £13,000 per year.
- 2.3.6 Furthermore, it will jeopardise the efficiency targets TBG have committed to delivering and increase the risk of escalating costs.
- 2.3.7 A further benefit in establishing a separate Trading Company is that it will limit the risk of the pension deficit. This means there will be no risk of it increasing further and therefore the liability to the Council will not increase over time.
- 2.3.8 It is envisaged over time that the new Trading Company would employ the majority of all staff across TBG and charge costs back to each individual organisation within the Group.
- 2.3.9 TBG propose to use the 'Hays' salary pay scale within the new Terms and Conditions Trading Company which is nationally recognised and widely used throughout the sector. TBG will continue to deliver their commitment to paying the London Living Wage (LLW). The Hay model is to align pay scales to market comparable sectors and employers and deliver benefits over the longer term.
- 2.3.10 TBG will be responsible, through the new Trading Company, for setting up the new pension arrangements and there are no financial implications for LBB.
- 2.3.11 TBG do not propose to make any changes to the terms and conditions of employment of existing staff, who transferred from LBB to TBG under TUPE, unless their situation changes. For example, through an individual's application for a different role or promotion to management grade. In these circumstances there would be a change to some of their benefits package, but not to their holiday entitlement or LGPS pension membership if applicable, under their current terms and conditions of employment.
- 2.3.12 A summary of the main changes to the terms and conditions of the new Trading Company are summarised in appendix 3 of part 2 of this report, exempt under Schedule 12A of the Local Government Act 1982. These relate to:

- Pension
- Laptops
- Mobile Phones
- Dental Insurance
- Dining Cards
- Holiday trading
- Medical Cash plan
- Childcare Vouchers

2.3.13 In addition to these choices, discount vouchers would be available at 'Go Live' offering online cash back, voucher codes, shopping vouchers, reloadable cards, discounted cinema tickets and discounted holidays. New additional benefits can be added each year as part of an annual benefit election.

2.3.14 Whilst there is no statutory requirement to consult the unions, as existing staff will not be affected, TBG believes it is good practice to do so and have actively engaged in communications with both Unison and GMB. Employees have also been consulted directly.

2.3.15 Independent legal advice has been sought by TBG on this proposal which is provided at appendix 1 in the separate Part 2 report, along with the risks associated with establishing the new Trading Company.

## 2.4 TBG structural change

2.4.1 To visually represent the changes in organisation structure proposed within this report, figure 1 illustrates the current TBG structure and figure 2 the new proposed structure.

**Figure 1**



**Figure 2**



### **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

#### **3.1 Shareholder Agreement**

3.1.1 The Council could choose to not put in place a Shareholder Agreement, however, this would mean that the Council would risk not being able to demonstrate that Teckal requirements are met, which has financial and legal implications. It would also mean that the Council would not have formal control over the strategic direction and key decisions of TBG.

#### **3.2 Registered Provider subsidiary**

3.2.1 The Council could continue to commission new build homes for social rent and retain ownership of them itself. However this would mean a missed opportunity to generate a substantial amount of additional income to offset the Council's General Fund pressures and would mean the benefits set out in 2.2.5 would not be realised.

3.2.2 The HRA headroom limitations are also likely to mean that the Council would be able to commission fewer homes to be built.

#### **3.3 New Trading Company - Terms and Conditions of Employment**

3.3.1 TBG could opt not to proceed with setting up a new legal entity for the recruitment of staff on new terms and conditions of employment. However this means TBG would continue to increase its operating costs and would not be able to deliver £143,000 of the £2.8m budget saving it has pledged. The budget saving to the Housing Revenue Account (HRA) is important in maximising the number of new homes the Council can build in the coming years, particularly in light of recent Government policy to reduce rents by 1%

per annum for the next four years: This has the direct impact of reducing the amount of headroom available within the HRA.

- 3.3.2 New terms and conditions of employment could be phased in over time for existing staff as well as new. However, there are significant reputational risks to both TBG, and the Council as shareholder, and this is not recommended. It would also be time consuming and have a negative impact on staff morale and retention. There would also be a risk of industrial action which would be likely to impact on service quality and provision.

#### **4. POST DECISION IMPLEMENTATION**

##### **4.1 Barnet Homes RP subsidiary**

- 4.1.1 Barnet Homes will apply for registration with the HCA. Professional expertise has been retained to support them with this process and ensure compliance with the new regulatory standards that will apply.
- 4.1.2 A shadow board will be put in place that represents the 'independent' requirements of the HCA in terms of governance. As part of the implementation process this will be replaced by a permanent Board structure in due course.
- 4.1.3 It is anticipated that Barnet Homes will achieve RP status for the subsidiary in March 2016 to enable it to start development from the commencement of the new Management Agreement in April 2016.
- 4.1.4 Detailed business planning for the RP subsidiary will be undertaken once it has been determined how the initial tranche of new homes it will build in partnership with LBB will be funded. This decision is likely to be made at Policy and Resources Committee December meeting.
- 4.1.5 Business and financial plans will be formally approved by the Council through the presentation of TBG's consolidated business plan, which is submitted annually for approval at Policy and Resources Committee early in each new calendar year.

##### **4.2 The Terms and Conditions Entity**

- 4.2.1 TBG will be responsible for managing the setup of the new Terms and Conditions Trading Company and for providing the start-up funding. This will include creating Articles of Association, detailed governance arrangements and incorporating the new Company with Companies House. There is no liability for LBB in the process.
- 4.2.2 Business and financial plans will be formally approved by the Council through the presentation of TBG's consolidated business plan which is submitted annually for approval at Policy and Resources Committee early in each new calendar year.



## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

- 5.1.1 As a not-for-profit company, fully owned by the Council, TBG provides a commitment to resident involvement; strong links with the local area; a fixed geographical focus, and close partnership working with the Council and other stakeholders.
- 5.1.2 TBG have a strong track record of delivering improvement, increasing performance outcomes and customer satisfaction: They are in a pivotal position to continue to deliver high quality services to contribute to the Council's strategic objectives.
- 5.1.3 The proposals in this report will further strengthen TBG's ability to continue to support the Council's need to deliver efficiencies and value for money and achieve savings, with a direct link to their £2.8m budgetary target.
- 5.1.4 TBG can directly contribute to the Council's priority to build more housing – and at a lower cost to the Council than could be expected through the open market.
- 5.1.5 This opportunity is maximised within the Management Agreement, in line with the Housing Strategy, which provides Barnet Homes with the opportunity to deliver new homes for affordable rent on HRA land.
- 5.1.6 The development of additional new homes for social rent through Barnet Homes maximises the use of HRA land and directly contributes to a reduction in the use and costs of temporary accommodation.
- 5.1.7 TBG have committed to re-investing surpluses generated through the development of new homes for affordable rent to offset overspends on the General Fund.

### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.2.1 The establishment of the new legal entity and subsidiary described in this report is unlikely to result in any additional costs, responsibility or liability to the Council.
- 5.2.2 Savings generated will create both financial efficiencies and generate income for the Council without impacting on the quality or provision of services
- 5.2.3 Professional services and fees will be procured and paid for by TBG.
- 5.2.4 TBG's existing IT infrastructure can be developed to support the new businesses at minimal costs, which again will be borne by TBG.

### **5.3 Social Value**

5.3.1 The proposals contained within this report directly contribute to the wider social benefit of the residents of the borough.

### **5.4 Legal and Constitutional References**

5.4.1 TBG has sought legal advice and this advice is incorporated as the Part 2 (exempt) of this report.

5.4.2 LBB has been separately advised throughout by Bevan Brittan and relevant advice is set out in the Part 2 exempt report

5.4.3 The Council's Constitution - Appendix A - Responsibilities for Functions, details the responsibilities for the Policy and Resources Committee including to:

- Approve budget and business plan of the Barnet Group Ltd.
- Be responsible for those matters not specifically allocated to any other committee affecting the affairs of the Council.

### **5.5 Risk Management and Consideration**

5.5.1 There is a minor risk that TBG are unsuccessful in their application for RP status. However, they have appointed professionals with considerable experience in guiding organisations through this process and there is no reason to believe that an application will be unsuccessful. In this event the only risk to the Council is that the benefits as set out in section 2.2 of the report will not be realised.

5.5.2 The risks associated with the creation of the new Terms and Conditions Trading Company are included in the part 2 report and incorporated within the legal advice received

### **5.6 Equalities and Diversity**

5.6.1 Other than those incorporated in this (and the part 2) report, there are no other implications arising from the recommendations.

### **5.7 Consultation and Engagement**

5.7.1 Consultation has been undertaken and continues with Unison, GMB and directly with staff.

### **5.8 Insight**

5.8.1 The Group have utilised benchmarking data as well as research conducted by external groups to form the views in proposing these entities and as set out in this report.

## 6. BACKGROUND PAPERS

- 6.1 (HRA) Efficiency Savings, Cabinet Resources Committee, January 2012, Future of Housing Services in Barnet -  
<http://barnet.moderngov.co.uk/Data/Cabinet%20Resources%20Committee/201201161900/Agenda/Document%204.pdf>
- 6.2 Housing Committee June 2015, Commissioning and Delivery of Housing Services and the Management of the Barnet Housing Stock - Item 9 at:  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=699&MId=8264&Ver=4>
- 6.2.1 Housing Committee June 2015, Barnet Homes Housing Revenue Account Item 10 at:  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=699&MId=8264&Ver=4>