

**AGENDA ITEM: 6**

Pages nos: 1 - 7

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Meeting	Pensions Fund Committee
Date	21 March 2011
<b>Subject</b>	<b>One Barnet Programme – Establishing a Local Authority Trading Company for Adult Social Care and Barnet Homes</b>
Report of	Deputy Chief Executive
Summary	This report informs the Committee on the business case for the creation of a Local Authority Trading Company (LATC) and the pension implications associated with this. It seeks to inform PFC of the proposed Designated Body status for the LATC to support the finalisation of the business case for consideration by Cabinet Resources Committee on the 21 <sup>st</sup> of April 2011.
Officer Contributors	Kate Kennally, Director of Adult Social Services and Health Richard Harrison, Project Manager
Status (public or exempt)	Public
Wards affected	All
Enclosures	Appendix A – LATC Corporate Structure Considerations
For decision by	Pension Fund Committee
Function of	Council
Reason for urgency / exemption from call-in	Not applicable

Contact for further information: Kate Kennally, Director of Adult Social Services and Health, 020 8359 4808.

## **1. RECOMMENDATIONS**

- 1.1 That the Pensions Fund Committee note the proposal to establish a Local Authority Trading Company (LATC) incorporating Barnet Homes for the transfer of Adult Social Services in house provision and staff.**
- 1.2 That the Pensions Fund Committee note that it is proposed the LATC is 100% owned by the council and further agreement will be sought from CRC that should the LATC enter financial difficulty, staff will transfer back to the council.**
- 1.3 That the Pension Fund Committee note the Designated Body Status proposed for the LATC.**
- 1.4 That the Pension Fund Committee approve in principle Admission Body Status in the event the LATC does not meet the Designated Body Status criteria.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 The Council views Barnet Homes as a potential vehicle for providing additional services on its' behalf, as well as extending its role as a provider of housing related services. The Housing Strategy was agreed by Cabinet on 12 April 2010 (decision item 8), and we will explore options for progressing this through the One Barnet programme.
- 2.2 The One Barnet Scrutiny panel considered a presentation outlining the key points of the options appraisal on 11 August 2010 (decision item 10). The Panel supported the option for Adult Social Services to be transferred to a Local Authority Trading Company however they were wanted the long-term future of Barnet Homes be carefully assessed when exploring options for establishing a Local Authority Trading Company which incorporated Barnet Homes.
- 2.3 On 29 November 2010, Cabinet approved the initiation of the development of a full business case (decision item 8), to support the findings of the high level options appraisal, which recommended the transfer of Adult Social Services in house provision and staff to a newly established Local Authority Trading Company (LATC) and, subject to legal constraint, incorporating Barnet Homes. Cabinet requested that the report be brought to Cabinet on the viability of the recommendation upon completion of the full business case.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The proposals to establish a Local Authority Trading Company form part of the One Barnet programme and supports the achievement of the Corporate Plan objective of 'Better Services with Less Money' through establishing alternative service delivery bodies who are better placed to respond to changing market conditions. As the workforce of the Council changes it is necessary to ensure that the integrity of the Pension Fund is maintained and that that staff transferring out of the Council are offered the opportunity to remain within the Local Government Pension Scheme (LGPS) or join a pension scheme that provides benefits certified by the Government Actuary's Department (GAD) as being broadly comparable to those benefits provided by the public sector scheme in which the transferring employees formerly participated.
- 3.2 The proposal to establish a Local Authority Trading Company to manage in-house adult social care services supports the One Barnet objective of "a new relationship with

citizens” and the corporate plan priority of ‘Sharing Opportunities and Sharing Responsibilities.’ This change will promote choice and independence for residents as service users will be able to purchase services currently managed by the Council with a Direct Payment.

- 3.3 In turn this will leave the council free to focus on becoming a commissioner of Adult Social Services as the core business of the authority in order to ensure a relentless drive for efficiency with the services through commissioning arrangements.

#### **4. RISK MANAGEMENT ISSUES**

- 4.1 The ongoing viability of the pension fund is dependent on maximising pension fund membership. All scheduled/designated or admission bodies are subject to reviews and actuarial assessments to ensure compliance with Regulations and the maintenance of appropriate employer contribution levels in order to mitigate against any risk to the financial viability of the pension fund.
- 4.2 Should there be a need for the LATC staff to return in-house, as a designated body any pension fund deficit that may be incurred will rest with the Pension Fund. If transferee admission body status is awarded to the LATC any pension fund deficit will remain with the LATC. Any additional early retirement costs on the pension fund arising from the LATC's insolvency will be offset against the indemnity bond, if a bond is in place.
- 4.3 The LGPS provides for enhanced benefits on compulsory early retirement or redundancy. Early retirements (especially on enhanced terms) require the employer to pay additional contributions, to avoid putting an actuarial strain on the fund. An insolvent organisation is unlikely to be able to pay such additional contributions. In recognition of this, for a transferee admission body, the LGPS Administration Regulations requires the Council to assess, on actuarial advice, whether it is necessary for a LATC seeking admission body status to put in place a third-party bond or indemnity with a bank or insurance company to protect against the risk of insolvency during the life of the admission agreement. Under this arrangement, the issuer of the bond guarantees the payment of all or part of the admission body's liabilities to the relevant LGPS fund should it become insolvent and unable to meet the liabilities itself. Although the Council must assess whether a bond or indemnity is needed, there is no requirement for a bond to be in place as a condition for LGPS admission, unless the level of risk identified is such as to require it.
- 4.4 As part of the development of the business case for consideration by CRC on the 21<sup>st</sup> of April 2011, questions have been raised by both Barnet Homes staff and Adult Social Care staff and the Trade Unions about whether the establishment of an LATC will affect Barnet Homes scheduled body status and whether adult social care staff will be able to remain in LGPS. This paper seeks comments and views from the Pension Fund Committee in order to be able to complete the development of the business case which will set out a proposed governance structure for the LATC.

#### **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 An equalities impact assessment has been conducted for the project. The impact was ‘neutral’. By protecting the pension fund for all staff TUPE transferred to the LATC this will contribute to providing best value services for all of Barnet’s communities.

#### **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 To be able to join the LGPS, an employee must be employed by an employer who participates in the LGPS. There are four types of Employer who are able to participate.
- Scheduled Body  
This is a statutorily defined body within Part 1 of Schedule 2 of the LGPS Administration Regulations and has a statutory obligation to participate in the LGPS. A London Borough Council is one such employer.
  - Designated Body  
This is a statutorily defined body within Part 2 of schedule 2 of the LGPS Administration Regulations and it has the power to designate which of its employees may join the LGPS. A company under the control of a body listed in Part 1 of Schedule 2 is one such employer (The LATC under the control of Barnet Council)
  - Transferee Admission Body  
This is a body that provides a service of a Scheme Employer by means of a contract and satisfies the requirement of Regulations 6 of the of the LGPS Admissions Agreement. This body can be admitted to the Barnet Pension fund by an admissions agreement approved by the Committee. The Admitted Body may be required to provide an Indemnity Bond as determined by the pension scheme actuary.
  - Community Admission Body  
This is a body that can be a company under the control of a body listed in Part 1 of Schedule 2 (other than a local authority). The LATC under the control of a housing arms length management organisation would meet this test.
- 6.2 The designated or admission body status will ensure the continuing local authority membership for the transferring staff and the continuing viability of the Pension Fund.
- 6.3 As the employees are due to be transferred from the London Borough of Barnet to a LATC, the Pension Fund will be in receipt of appropriate employer and employee contributions to cover the liability associated with the transferring staff.

## **7. LEGAL ISSUES**

- 7.1 The pension scheme regulations govern whether the LATC can become a schedule body, a designated body or an admission body. The LATC would need to satisfy a "control" test set out under legislation. The "control" test for designated body status is met in any of the following four ways. These are where the LATC is a subsidiary of the council, or where the council can control the majority of votes at LATC meetings, or where the council can appoint or remove the majority of directors of the LATC. Where the LATC is a subsidiary of another company that the council controls the test is also met. The proposed 100% ownership of the LATC by the council would satisfy the "control" test for designated body status.
- 7.2 Should the proposed ownership position of the council change so that the "control" test under paragraph 7.1 cannot be met then the LATC can seek admission to the Pension Fund as an admission body. Once the level of control that Barnet Council will have over the LATC has been established, the pension fund status of the LATC fund will be determined as either a designated body or an admitted body. This will be reported to the next Pension Fund Committee.

## **8. CONSTITUTIONAL POWERS**

- 8.1 Constitution – Part 3 Responsibility for Functions – Section 2 – Responsibility for Council Functions delegated to the Pension Fund Committee, as set out in the Pension Fund Governance Compliance Statement.

## **9. BACKGROUND INFORMATION**

- 9.1 Since 2007 work has been undertaken to prepare the Adult Social Care in house provider services for transfer to an arms length organisation. To build on the work conducted, a High Level Options Appraisal was commissioned by the council in April 2010 to consider the future options for the Adults In-House Service provision as a part of the One Barnet Programme. Care and Health Solutions were appointed to undertake the options appraisal because of their track record and experience of transferring social care provider services into new delivery vehicles in response to the personalisation agenda, most notably in Essex with the creation of Essex Cares. The options identified were:

- Closure and the non provision or reprovision of service
- Remain In-House
- Tender (or trade sale)
- Social Enterprise
- Local Authority Trading Company (LATC)
- Local Authority Trading Company incorporating the LBB Arms Length Management Organisation (Barnet Homes)
- Joint venture Company (with other independent organisations or other partners)

- 9.2 The recommended option was a Local Authority Trading Company incorporating the LBB Arms Length Management Organisation (Barnet Homes). The proposed entity will be 100% council owned to ensure the council remained in control of the service. This option also creates an opportunity to generate savings in line with the MTFs relating to reduced back office costs building on the existing Barnet Homes infrastructure. Cabinet agreed to the initiation of a full business case on 29 November 2011 to further build the case for change.

- 9.3 The aim of the proposal to implement a Local Authority Trading Company (LATC) is a strategic fit with the personalisation agenda to roll out personal budgets and direct payments as identified as an objective in the Corporate Plan.

- 9.4 A number of structures for the LATC have been explored. These are set out in appendix A. The proposed structure will be presented as part of the full business case to CRC on 21 April 2011 for approval to proceed to implementation. CRC approval will confirm the proposed structure. Further analysis will be undertaken to confirm the level of control to report back to the Pensions Fund Committee in June 2011.

## **10. LIST OF BACKGROUND PAPERS**

- 10.1 None.

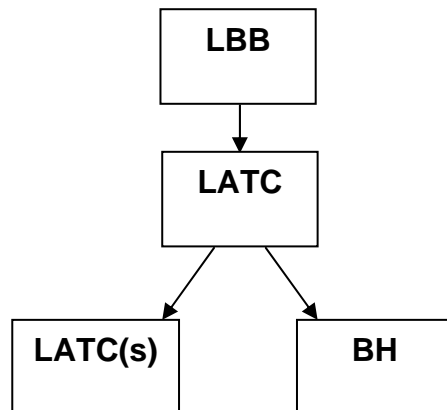
Legal – PJ  
CFO – MC

# Appendix A – LATC CORPORATE STRUCTURE CONSIDERATIONS

## 1. Proposed Corporate Structure

Drawing on legal advice commissioned by LBB and provided by Trowers and Hamblins LLP (Situation Report, December 2010), subject to further tax advice it will be recommended to CRC that the company is structured as follows:

### 1.1 Structure 1 (Proposed Option)



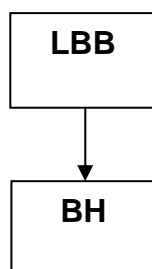
1.1.1 The structure illustrated places a new company at the head of a wider corporate structure. This company will be the trading company. This changes Barnet Homes from a wholly owned company to an operating subsidiary.

A new Board for the LATC holding company will need to be formed, comprising membership of both Barnet Homes and the Adults Social Care LATC. This is to ensure both Housing Management and Adult Social Care representation at parent company level. This Board will be focused on the commercial aspects of the LATC, recommended to meet quarterly, and will hold the subsidiary companies account for delivery of the business plan.

There will be further work to determine the exact membership of the above mentioned boards. This work will be conducted during the Transition phase of the project.

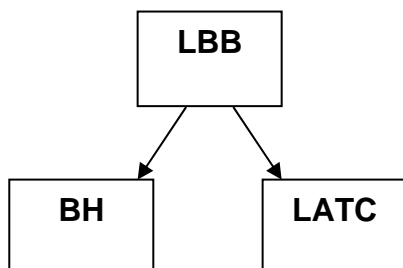
## Alternative Structures Considered

### 2.1 Structure 2



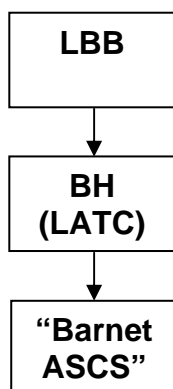
2.1.1 Structure 2 uses Barnet Homes as the trading vehicle which incorporates the Adults Social Services in scope.

### Structure 3



2.1.2 This structure involves a separate LATC being formed. Barnet Homes continues unaffected.

### 2.2 Structure 4



2.2.1 This structure meets the Council objectives to integrate the Adult Social Care Service (ASCS) with Barnet Homes, but unlike structure 2, it provides for a specific subsidiary to be set up for delivery of those services.

3 All the above structural options assume 100% ownership by the council.