

BARNSELY METROPOLITAN BOROUGH COUNCIL

REPORT OF: EXECUTIVE DIRECTOR OF GROWTH & SUSTAINABILITY

TITLE: MINOR AMENDMENTS TO THE MEMORANDUM AND ARTICLES OF ASSOCIATION FOR BERNESLAI HOMES LTD

REPORT TO:	CABINET
Date of Meeting	17 April 2024
Cabinet Member Portfolio	Regeneration and Culture
Key Decision	Yes
Public or Private	Public

Purpose of report

This report seeks approval to make minor amendments to the Memorandum and Articles of Association for Berneslai Homes Ltd. The amendments link to the appointment of councillor representatives to the Board.

Council Plan priority

Healthy, Growing, Sustainable and Learning Barnsley

Recommendations

That:

1. Cabinet approves the minor amendments to the Memorandum and Articles of Association for Berneslai Homes Ltd linked to the timescales and process for appointing councillor representation to the Board.
2. Cabinet authorises representatives of the Director of Core Services to enter all necessary legal documentation in connection with the amendments to the Memorandum.

1. INTRODUCTION

- 1.1 In October 2020, Cabinet approved the renewal of the Services Agreement with Berneslai Homes for a period of 10 years up to the end of March 2031 (Cab.23.9.2020/8). Within this same report, Cabinet authorised amendments to the Memorandum and Articles of Association following an independent Governance Review undertaken by David Tolson Partnership Ltd (DTP). The amendments included a change to the composition of the Berneslai Homes Board which included:

- Reducing the number of Council and Tenant representatives from three to two board members (Article 13).
- Increasing the number of independent board members from three to four (Article 13).
- Reducing the number of consecutive terms for Board Members from three to two consecutive three-year terms, with further one-year terms up to a maximum of nine years by exception (Article 13).
- Removal of the prescriptive process of appointment of Chair (Article 17).
- The addition of two co-optees to board and committees (Article 18).

1.2 The amendments were made to the Memorandum and Articles of Association (from here referred to as the 'Memorandum'), and this was adopted on 10th December 2020. This is the most recent version of the Memorandum.

2024 Proposed Amendments

- 1.3 Further to consultation between the Berneslai Homes Board and the Council's clienting team and Portfolio Holder, it is proposed that two minor amendments are made to the Memorandum. Firstly, wherever possible, it is proposed that the recruitment process for a new councillor board member commences 9 months before an existing councillor board member is due to step down. This would mean that there could be a six-month shadow period with the retiring board member, allowing for a seamless transfer into position. The new board member would be required to adhere to the Board Members Code of Conduct but would not be a voting member of the Board until formally taking over the position. Appendix 1 details the proposed amendment to the Memorandum (article 14).
- 1.4 Secondly, it is proposed that a formalised recruitment process is agreed for the appointment of a councillor board member to ensure that there is a clear and transparent process for prospective applicants and that this is documented within the Memorandum. The proposed recruitment process is detailed below.

Recruitment Process

- 1) The BH Governance Team will produce the vacancy advert and all associated documentation.
- 2) The advert will be agreed with the Council's Shareholder Representative and passed to the BMBC Governance Team to distribute to all BMBC Councillors.
- 3) The applications are received by the BH Governance Team.
- 4) Shortlisting takes place (if required) by the panel members, and a maximum of 6 candidates will be interviewed. Shortlisting will be based on an assessment of experience and competencies aligned to the role.
- 5) All shortlisted applicants will be interviewed by a panel consisting of the Chair of the Board, the council's Shareholder Representative and a representative of the Berneslai Homes Executive Management Team.
- 6) Following interview, a report will be presented to Council recommending appointment of the preferred candidate.

2. PROPOSAL

- 2.1 It is proposed that Cabinet approves the minor amendments to the Memorandum and Articles of Association as tracked in Appendix 1. The Board recruitment policy will be updated to reflect agreed changes.

3. IMPLICATIONS OF THE DECISION

3.1 Financial and Risk

Financial:

- 3.1.1 Consultation on the financial implications of this report have taken place with representatives of the Director of Finance (Section 151 officer).
- 3.1.2 There are no direct financial implications relating to the appointment of board members for the Council. The remuneration arrangements for board members are documented in section 27 of the Articles of Association of Berneslai Homes Ltd. Remunerations are delegated to the remuneration committee and funded from the Management Fee paid to Berneslai Homes annually.
- 3.1.3 The management fee is agreed as part of the annual HRA Business plan in a separate report to cabinet.

Risk:

- 3.1.4 The proposed amendments to the Articles will ensure that the Council has a robust recruitment process for councillor board members and that new members have the benefit of shadowing exiting members for a 6-month period before formal appointment. This will ensure that new members can gain a detailed background and understanding of the Board, its decision making and key issues, and enable a seamless handover of member experience and expertise. It should be noted that it would not be possible to adhere to the proposed recruitment timescales should a serving member not retain their position as councillor in a local election, steps down or is removed from the board without due notice being served.

3.2 Legal

- 3.2.1 The Memorandum and Articles of Associations for Berneslai Homes sets out the role, remit, and powers of Berneslai Homes Ltd, the Membership of the organisation and governance arrangements for the Board. Berneslai Homes was established as an ALMO in 2002. It is a Company Limited by Guarantee, overseen by a Board of Directors and is ultimately wholly owned by the Council (i.e., the Council is the only Shareholder).

3.3 Equality

- 3.3.1 The board recruitment process will be conducted with due care and consideration to equality and diversity in line with the BH Equality, Diversity, and Inclusion strategy.

3.4 Sustainability

- 3.4.1 There are no direct sustainability implications linked to the appointment of board members. Zero carbon is one of the objectives of the Berneslai Homes Strategic Plan and includes the actions that Berneslai Homes will take to assist in achieving the zero carbon targets as a company in line with their Sustainability Strategy. The Strategic Plan and Action Plan are aligned to Barnsley 2030 with a key emphasis on providing quality, affordable homes, neighbourhoods and supporting people to achieve their potential.

3.5 Employee

- 3.5.1 There are no direct employee implications.

3.6 Communications

- 3.6.1 There are no direct communications implications arising from this report. There will be a robust communications plan to advertise board member opportunities as they arise.

4. CONSULTATION

- 4.1 Consultation with officers within the Council and Berneslai Homes, the Board (including the Council's shareholder representative) and the Portfolio Holder for Regeneration and Culture has been undertaken.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 The current Memorandum and Articles of Association remain fit for purpose and could be retained should this proposal not be supported.

6. REASONS FOR RECOMMENDATIONS

- 6.1 The proposed changes will serve to improve the recruitment process for councillor representatives and ensure a streamlined handover between exiting and new board members.

7. LIST OF APPENDICES

- 7.1 Appendix 1 – Tracked Memorandum and Articles of Association.

8. BACKGROUND PAPERS

- 8.1 Not applicable

9. REPORT SIGN OFF

Financial consultation & sign off	Senior Financial Services officer consulted and date: Ashley Gray – Strategic Finance Business Partner
Legal consultation & sign off	Legal Services officer consulted and date: <i>Pamela Nsofor</i> <i>05/03/2024</i>

Report Author: Sarah Clyde
Post: Head of Strategic Housing
Date: 09/02/2024