

Meeting:	BNG Board
Date:	14 March 2008
Contact:	Anne Mulroy
Board Action:	For Discussion
Sensitivity:	Public

**Subject: Item 11 – Review of the BNG Structure**

**Link to BNG Vision and Objectives:**

Adequate and appropriate Governance structures are essential to deliver the Vision and Objectives.

**Recommendation:**

Board are asked to note the results of the Review and agree that this matter be further reviewed in 12 months.

**Executive Summary:**

The report summarises the views of Eversheds on the BNG current Legal and Governance structure at this point in time.

<b>Implications</b>	
Financial:	
Equality:	
Sustainability:	
Freedom of Information:	
Report Status:	Public

<b>Risk:</b>	
Risk Map Element	Brief description of any material risks, including of not proceeding.
Strategic:	BNG must maintain adequate Legal and Governance structures to respond to challenge and opportunity. Risk of not being able to perform effectively if Governance arrangements not appropriate.
Financial:	
Development:	
Operational:	
Reputational:	

**Report to: BNG Board – Item 11**

**Subject: Review of the BNG Structure**

## 1. **Background**

BNG is currently constituted as a strategic alliance comprising representatives of key stakeholders and housing and financial specialists.

On 1 November 2004, Eversheds LLP produced a Briefing Note for the purpose of informing BNG's Steering Group as to the choice of structure for the governance of Pathfinder. The Briefing Note compared the governance arrangements of a company limited by guarantee ("CLG") and a contractual collaboration (more commonly referred to as a "Strategic Alliance").

Eversheds LLP have been asked to consider whether or not a strategic alliance remains the most appropriate structure for BNG. This request has been made against the backdrop of potential drivers for change which have been identified as:-

- the advent of the new Homes and Communities Agency and the uncertainty of the future funding of the Pathfinder area after 2011;
- the bid for growth area status;
- the potential benefits to be derived from the use of local asset backed vehicles; and /or
- the introduction of local housing companies.

Against this backdrop of the potential drivers for change, Eversheds have been requested to:-

- Undertake a high level review of the Briefing Note; and
- Comment upon BNG's current scheme of governance.

## 2. **Current Advice**

At this stage it is not considered that there is a clear legal justification for BNG to be converted into a CLG. This current advice is based on the following factors:-

- BNG's current strategic function in relation to the current "Pathfinder area" and any future strategic function in a "city-region" context can continue to be achieved through a strategic alliance;

- Conversion to a CLG will bring additional administration. For example, the CLG will be subject to reporting and regulatory requirements of companies legislation. In particular, the new Companies Act 2006 introduces a new statutory statement of directors' duties to which the directors of the CLG will be subject to. The Companies Act 2006 also introduces a new mechanism by which the members of the CLG may pursue individual directors (on behalf of the CLG) for any breaches of their duties. Directors' and officers' liabilities insurance may be obtained to mitigate against potential liabilities, however, putting such policies in place will be an additional cost on the CLG;
- The incorporation of a CLG could create the perception of separatism, but the success of the partnership to date would suggest that the notion of independence has already been achieved through the branding of BNG as well as the clear duties of the Board stated in the Governance Scheme. Whilst not currently an independent legal entity, the branding of BNG gives the feel of an independent organisation separate from but inclusive of its stakeholders;
- The current governance arrangements of BNG work effectively in relation to BNG's objectives. The creation of a Company Limited by Guarantee and the increased administration costs need to be balanced against any policy or commercial rationale for change.

It is right and proper that BNG should consider its corporate governance arrangements on a regular basis in order to ensure that the most effective arrangement is maintained. Future consideration of a move to a CLG may be advisable if:

- there is a requirement and benefit for BNG to hold assets on its own behalf separate from its stakeholders securing better use of resources;
- there is a desire for BNG to invest in specific projects with investment returns being made to BNG (as a separate legal entity) directly. Consideration should also be given to BNG stakeholders participating in specific projects through the use of individual special purpose vehicles ("SPV's").

## 2.1 **The Current Scheme of Governance**

BNG's current Scheme of Governance is adequate for BNG's current activities in that it clearly provides for the following:-

- the composition of Board Members ensuring representation from stakeholders and other independent organisations;
- the duties and responsibilities of BNG's Board Members;
- suitable regulation of the proceedings of the BNG Board;
- the appointment and role of the Director; and
- provides a system of delegation to the Director.

## 3. **Conclusion**

This Review carried out by Eversheds on the current Governance and Legal status of BNG suggests that at this stage and in our current operating environment the processes to transfer to a Company Limited by Guarantee would not, on balance, be beneficial.

It is recommended that the issue is revisited in twelve months time when the changes to our operating environment become clearer within the Gateshead and Newcastle Partnership. The Housing Market Renewal and Growth within the Homes and Communities Agency will also be clarified during this period.

Further legal advice on behalf of BNG will be obtained as appropriate during any development of LABVs and other delivery vehicles during this period.