

Proposal for new West of England Housing Delivery Panel

Purpose

1. To seek approval for the approach to establish a new West of England Housing Delivery Panel (HDP).

Background

2. A report by Housing Vision¹ recommended that the four West of England local authorities reselected a new and enlarged procurement panel (largely based on the existing Homes West partnership) to act as the main vehicle for National Affordable Housing Programme (NAHP) funded and s106 secured affordable housing. (It should be recognised that although Homes West was called a 'partnership' it was never constituted as a separate legal entity so it should be more correctly described in legal terms as a Panel where its members agreed to work collaboratively).
3. Homes West, the existing affordable housing delivery vehicle operating in the West of England, is time limited and will cease to exist on 31st March 2011. The proposal to select a new enlarged procurement panel has the support of all the four WOE local authorities and the Homes and Communities Agency (HCA).
4. The 'procurement panel' of developers and Registered Providers will not have exclusive rights over the delivery of housing and this will be made clear in tender and contract documentation. In some cases the local authorities and their partners will use open tendering to meet their needs. Such options would normally be discussed at the Infrastructure Investment Plan Programme Board.
5. The operation of the 'procurement panel' would be reviewed as the local authorities further progress the proposal for a Delivery Vehicle for commissioning capital projects; the commissioning work through the procurement panel may become part of the Delivery Vehicle's responsibility.
6. The four local authorities wish to establish the HDP to be operational from 1st April 2011. It is important that the new HDP fits with the new commissioning approach adopted by the HCA, including the newly appointed Delivery Partner Panel (DPP). The four local authorities wish to continue being pro active in commissioning housing and infrastructure providers that are able to increase the supply of high quality housing and affordable housing whilst ensuring the delivery of related infrastructure and neighbourhood management projects.

¹ The Strategic Review of Affordable Housing Delivery – Housing Vision - November 2008: Housing Vision Consultancy commissioned by the four WOE Las found that: “Homes West is at a more advanced stage of development than other delivery vehicles and although lessons can be learnt in terms of governance structures its output is unmatched. It recommended that the Board should through its strategic policy and decision making ensure that a new AHDV delivered new sustainable neighbourhoods”.

7. The four WOE local authorities and the HCA aim to select the most efficient and effective HDP that adds value through maximising their contribution to Sustainable Community Strategies and increasing the overall development capacity in the sub region by delivering:
 - Lower costs and competitive pricing
 - Increased pace of delivery and innovation
 - Pooling of resources to reduce unit costs
 - Strengthening collaborative working with the Development Industry
 - Speedier and more streamlined commissioning
 - Consistent standards of development
 - Greater investor confidence
 - Capacity building with private and public sector organisations
8. Following a meeting with the Homes and Communities Agency and the West of England Partnership Office in May the four local authorities have reviewed the different options and agreed a single proposal that is now being recommended for approval. For the new HDP to be operational by the target date it is important that the selection process starts as soon as possible.

Background

9. The HCA, the four WOE local authorities and other key agencies as part of the 'Single Conversation' process agreed the WOE Delivery of Investment & Infrastructure Plan (DIIP) earlier this year. The DIIP, which has been endorsed by Council Cabinets, identifies place based and thematic priorities for public investment, based on emerging core strategies, for the next 3 to 5 years. It will be important that the HCA and the four local authorities work together with the newly formed HDP to deliver the appropriate elements of the DIIP which covers:
 - Affordable Housing Supply
 - Rural Affordable Housing providers
 - Very Sheltered/Extra Care Housing providers
 - Regeneration through Regeneration Companies /Local Housing Companies
 - Delivery through a partnership approach that complements and contributes to the objectives of Sustainable Community Strategies.
 - Infrastructure provision
 - Site planning, preparation and master planning work
10. It is envisaged that the new HDP will be responsible for delivering a significant proportion of affordable housing priorities in the sub region.
11. The HCA and the local authorities have reserve their right to commission directly independent of the HDP. Among other things this includes where land is exclusively in the ownership of the HCA and where this will lead to lower costs due to greater economies of scale. The HCA has appointed 17 organisations, listed at Appendix A, to a Delivery Partners' Panel South through an OJEU process.
12. The DPP is wholly made up of housing/development contractors that will be principally providing the development services who will be seeking Registered Social Landlords (RSLs) and other housing management organisations to undertake the management of any new schemes. It will be important that on HCA and privately owned sites that the WOE Programme Board enters into an early dialogue with the HCA to ensure that the future management is undertaken by accredited quality housing managers. A number of DPP organisations listed at Appendix A already have connections with existing Homes West Partner RSLs.

13. With the establishment of the HCA's DPP it is recognised that any sub regional HDP established by the four local authorities will need to be flexible enough to enable DPP partners to be included in any commissioning arrangements.
14. Any new HDP will need to recognise the new commissioning arrangements envisaged by the HCA or other methods of commissioning preferred by local authorities. For the local authorities this will mean that new development sites and opportunities in future may need to be 'competitively commissioned' rather than allocated to individual RSLs as in the past. The competitive commissioning process will seek to give appropriate weighting to bids that demonstrate added value through strong community leadership and effective neighbourhood management.
15. By competitive commissioning the local authorities will be able to address issues about state aid and ensure that any subsidy made available through LA enabling grant, use of commuted sums or discounted land sales are underpinned by robust contracts. This will address the fact the DIIP proposes that a significant proportion of public assets identified in the DIIP will be sold for £1 or for less than full market consideration; as required by the HCA.

Proposal for HDP to deliver the DIIP

16. It is proposed that all the HCA's Delivery Partner Panel 'Developer' members, Homes West RSL partners and each of the local authority's selected RSL development, Black Minority Ethnic RSL partners and landlord organisations operating at local level be invited to submit expressions of interest to be considered for competitive selection to deliver housing and affordable housing schemes through the new HDP. These invitations will be in addition to advertisements in national housing journals.
17. The proposal is to replace Homes West and each of the four existing local authorities development partnerships by creating a new WOE HDP to deliver housing and affordable housing comprising of at least 20 members (by selecting four different levels of membership depending on individual experience and preference, as detailed in Appendix B
18. The four local authorities have tested the proposed HDP against a range of different development/land ownership scenarios to identify which authority should take the lead in determining the different procurement approaches and these are shown in Appendix C

Extent of the work of the HDP

19. It is envisaged that the four local authorities, either individually or jointly through the WOE Programme Board will be responsible for commissioning the new HDP to deliver the major proportion of affordable housing priorities in the sub region. Exceptions sites will need to be agreed by the Programme Board.
20. The commissioning process will in most instances be through the HDP, but there are alternative scenarios dependent upon land ownership listed at Appendix C.

Indicative Timetable for selection process of the HDP

21. It is proposed that the Bristol Procurement Service be commissioned to commence the procurement process for the WOE HDP during August 2010. It is proposed to advertise in OJEU, Estates Gazette, Inside Housing and the local press seeking expressions of interest to become a Panel member for the period 1/4/11 – 31/3/15.

22. Interested parties would be asked to submit expressions of interest and complete the Pre Qualification Questionnaire (PQQ) by the end of September 2010.
23. An initial sift of PQQs will be undertaken during October to ensure that all the information required is in place and that where relevant the organisation complies with the WOE Management Standards to enable the Selection Panel to shortlist the agreed number of potential Panel Members for each level who will be invited to Stage 1 of the selection process.
24. Stage 1: Shortlisted Development and Management Partner applicants will be invited in November to tender and asked to respond to a project scenario that identifies which potential partner can offer the most grant effective affordable housing delivery given agreed quality, affordability and timing parameters. Shortlisted Development Only partners will be asked to respond to a relevant development scenario. Shortlisted Management Only partners will be asked to respond to a relevant management scenario
25. Stage 2 The Selection Panel to shortlist up to sixteen Development and Management Partners for an interview process starting in December and concluding in January with the intention of identifying no more than ten partners. However there will be greater flexibility to include a larger number of Development partners and subject to housing management performance and compliance with WOE Management Standards include the majority of the existing Community based and BME housing associations working in the four local authorities as Management Only Partners. The overall WOE Panel could be made up of at least twenty organisations.
26. Stage 3 As soon as the HDP has been approved by the WOE Planning, Housing and Communities Board and the four Local Authority Executive Members the individual partners selected will be able to make competitive submissions post April 2011 through mini tender exercises for development opportunities on eligible sites as identified in the attached schedule in Appendix B

Discussions with stakeholders

27. The HCA supports the principle of the establishment of a HIDP and their comments have been incorporated in the body of this report specifically in Section 1 and 5.
28. It is recognised that it would be helpful if HCA and BCC lawyers worked together on ensuring the new WOE Panel was selected in the most effective manner.
29. This paper has been distributed to all the existing Homes West RSL partners whose comments have either been incorporated in the report or have been summarised in Appendix D. Any further comments received will be reported verbally to the Board.

Legal and Financial Implications

30. The local authorities were originally advised in December 2009 that as the contract between the authority and the developer would not be a 'public works contract' as defined by the Public Contracts Regulations 2006, there will be no procurement obligations under the regulations on the authorities in respect of the award of this contract. An OJEU-type full EU procurement may not therefore be necessary. Recent OGC Guidance on Development Agreements supported this position.

31. However since this advice was received the scope of the proposed procurement panel has changed to broaden the range of partnerships to cover all aspects of market development impacting on the delivery of affordable housing. Recent case law demonstrates that the courts take a very literal view of what can fall within the definition of public works and even an overarching aspiration such a regeneration appears sufficient to make works public and for the regulations to apply. The local authorities wish to avoid the situation where each project subject to these arrangements is considered on a case by case basis prior to reaching a conclusion as to whether or not the regulations will apply.
32. Further advice will therefore be sought to inform the arrangements for the procurement panel.
33. The four Councils have agreed to share on an equal basis the costs of the procurement process.

Recommendation

34. That the Board approve the proposal, as set out in the report to enable the HDP to be selected through a robust procurement process that will be operational by 1st April 2011.

Appendices

Appendix A: HCA Delivery Partner Panel

Appendix B: Proposals for different levels of Membership of HDP and detailed procurement arrangements

Appendix C: Scenario Matrix – identifying procurement approaches

Appendix D: Comments received from Homes West RSL and Local Tier RSL partners

Local Government (Access to Information) Act 1985

Background Papers:

The Strategic Review of Affordable Housing Delivery – Housing Vision - November 2008

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Appendix A: HCA Delivery Partner Panel

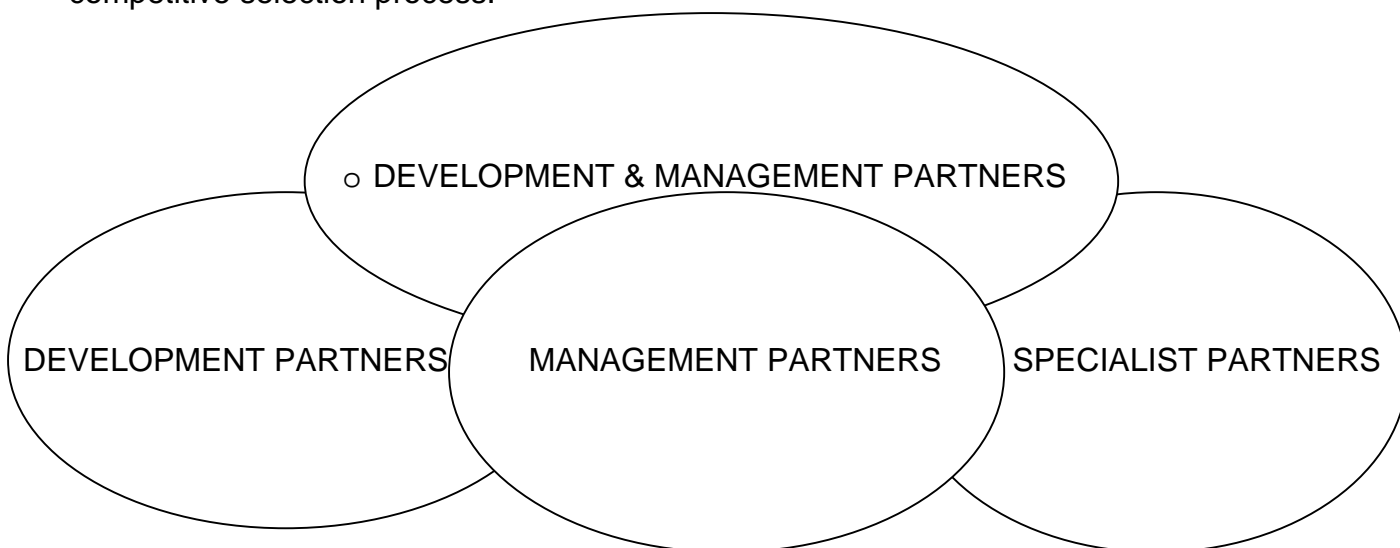
Southern Cluster

Aardmore First Base Partnership
Barratt Developments plc
Bouygues UK Ltd
Carillion Igloo Consortium
Countryside Properties (UK) Ltd
Crest Nicholson Operations Ltd
Family Mosaic Home Ownership Ltd
Galliford Try Plc
Hadley Mace Ltd
Leadbitter Consortium
Kier Group plc
Laing O'Rourke Construction Ltd
Lovell Partnerships Ltd
Mi-Space (UK) Ltd
Skanska Construction UK Ltd
Taylor Wimpey UK Ltd
Wates Construction Ltd

Appendix B: Different levels of Membership and procurement arrangements for the HDP

Types of Membership

- *Development and Management Partner* – retain ownership of 100% of developed general needs and specialist housing units on sites for its own organisations management, except where HCA/LA commission requires involvement of other partners or where the Partner proposes transfer of a percentage to a Management Partner.
- *Development Only Partner* – transfer ownership of 100% of all newly developed general and specialist housing units on sites
- *Management Partner Only* – buy completed units or enter into management agreements of up to 100% of all newly developed units on sites
- *Specialist Rural Partner* – retain ownership of 100% of all newly developed units on sites for its own organisations management.
- *Specialist Extra Care Partner* – existing Extra Care/Very Sheltered Housing Partners will not be required to make further bid submissions to the HDP as they have already been through a competitive selection process.



○ Fig 1 Composition of proposed HDP

Procurement Arrangements

1. Each partner will be required to state which of the different levels they wish to apply and specify in which Local Authorities they wished to operate and in the case of Bristol smaller identified neighbourhoods of the city where they would be seeking to develop and/or receive homes into management.
2. In addition and distinct from the HDP there would be a further level of membership at a local authority level namely:
 - *Local Management Partner* – where no further transfers required – effectively these are those RSLs and other housing organisations that are managing homes in each local authority however are not seeking to expand their overall numbers.
3. It is proposed that the HDP would be selected through a rigorous selection process that would seek to accredit the applicants dependant on the level at which they were seeking membership.

4. It is proposed that the HDP selects no more than 10 *Development and Management Partners* who would be expected through the application and interview process to demonstrate in addition to high quality performance in housing management and compliance with the WOE management standards their strategic, financial and development capacity to act as a major affordable housing provider.
5. A similar approach will be taken in terms of seeking proposals from prospective partners to contributing to Sustainable Community Strategies. For instance it is anticipated that an organisation seeking *Development Only Partner* status would set out how they would offer construction apprenticeships related to the new build work and engage with local schools and communities during the development process.
6. *Management Only Partners* would need to demonstrate that they have sufficient financial capacity to buy completed units and can offer high quality performance in housing management, compliance with the WOE Management standards. *Management Only partners* may similarly offer training opportunities or demonstrate experience in other areas of community engagement.
7. It is proposed that the HDP selects no more than 10 *Development and Management Partners*. It is hoped that the Panel will be able to accommodate community based and BME housing associations working in the four authorities as *Management Only partners*. The selection of these organisations will be subject to demonstration of their ability to receive affordable homes and being accredited as high quality housing managers and demonstrating compliance with meeting the WOE management standards.
8. It is hoped that this enlarged Panel would enable Developers and RSLs to form collaborative partnerships that would be more effective and efficient than the current arrangements. Further it is hoped that the Community based and BME housing associations by being part of the overall Panel will be able through use of their knowledge, expertise and resources to encourage one of the larger *Development and Management partners* to make a submission on their behalf as 'development agents' on DIIP priority schemes being commissioned by one of the local authorities.

Legal Advice (received from Bristol City Council December 2009)

In situations where the authorities (or any one of them) contributes over half of the value of a development, the authority must make it a condition of the grant to the developer that it awards any works or services contracts in relation to the development in accordance with the EU procurement rules. (This obligation is set out at Regulation 34 of the Public Contracts Regulations).

HDP arrangements (let on non OJEU basis) in order to avoid the application of the Regulations must meet the following requirements:

- The project is for affordable housing.
- The affordable housing is being developed for and/or by the developer rather than for and/or by the authority (i.e. the project is not for the provision of council-housing).
- The authority has not been involved in the detailed specification for the project (NB - it would be acceptable for the authority to issue very broad parameters for the project, e.g. the land/subsidy must be used for social housing or the housing must comply with particular national policies and standards. However, any involvement in the detailed layout of the housing would not be acceptable.)

- The project does not involve the development of any facility for the authority (e.g. a project that combines a public library or council-housing with the developer's social housing would not be acceptable).
- The grant is not tied to any nomination rights. An authority decision to replace nomination rights with choice based lettings, means that the relationship between the authority and the RSL is so remote that *OJEU is not required*. Otherwise, there is the chance that the contract could be deemed as a services contract, which could trigger more onerous procurement obligations.

Appendix C: Scenario Matrix - identifying procurement approaches				
Category	Ownership	Site complexity	Investment route	Procurement Approach
1A	PRIVATE SITE -In DIIP -eligible for s106 (above threshold)	COMPLEX MIXED USE SITE	Developer provides AH units through s106 with nil subsidy. HCA investment <i>identified</i> to support additional AH units and Non Housing elements	LA encourages developer to work with WOE HDP member.
1B	PRIVATE SITE -In DIIP -eligible for s106 (above threshold) <i>including RSL land</i>	RESIDENTIAL - ALL OTHER NON HOUSING USES COVERED THROUGH s106	Developer provides AH units through s106 with nil subsidy. HCA investment <i>identified</i> to support additional AH units	LA encourages developer to work with WOE HDP member
1C	PRIVATE SITE -Not in DIIP eligible for s106 (above threshold) <i>including RSL land</i>	COMPLEX MIXED USE SITE	Developer provides AH units through s106 with nil subsidy. HCA investment <i>required</i> to support additional AH units. and Non Housing elements	WOE Programme Board agree inclusion in DIIP and commissioning approach. LA encourages developer to work with WOE HDP member.
1D	PRIVATE SITE - In DIIP -not eligible for s106 (below threshold)	RESIDENTIAL - ALL OTHER NON HOUSING USES COVERED THROUGH s106	No HCA investment required	LA encourages developer to work with WOE Panel member
2A	LA OWNED SITE - In DIIP eligible for s106 (above threshold)	COMPLEX MIXED USE SITE - <i>Including: LIIP Priority Place schemes, Joint schemes where limited market interest and Theme sites</i>	Developer provides AH units through s106 with nil subsidy. HCA investment <i>identified</i> to support additional AH units (up to 100% AH) and Non Housing	LA commissions WOE HDP member
2B	LA OWNED SITE - Not in DIIP -eligible for s106 (above threshold)	COMPLEX MIXED USE SITE	Developer provides AH units through s106 with nil subsidy. HCA investment <i>required</i> to support additional AH units. and Non Housing elements	WOE Programme Board agree inclusion in DIIP and commissioning approach
2C	LA OWNED SITE - In DIIP not eligible for s106 (below threshold)	RESIDENTIAL - not complex mixed use sites	HCA funding <i>required</i> for 100% AH scheme	LA commissions WOE Panel member
2D	LA OWNED SITE - Not in DIIP - not eligible for s106 (below threshold)	RESIDENTIAL - not complex mixed use sites	HCA funding <i>required</i> for 100% AH scheme	WOE Programme Board agree to the inclusion of scheme in DIIP and commissioning approach

3A	HCA & LA JOINT OWNED SITE - In DIIP eligible for s106 (above threshold)	COMPLEX MIXED USE SITE	Developer provides AH units through s106 with nil subsidy. HCA investment <i>identified</i> to support additional AH units (up to 100% AH) and Non Housing	WOE Programme Board agree commissioning approach.
3B	HCA & LA JOINT OWNED SITE - In DIIP - eligible for s106 (above threshold)	RESIDENTIAL - ALL OTHER NON HOUSING USES COVERED THROUGH s106	AH units secured through s106 with nil subsidy. HCA funding <i>identified</i> to support additional AH units (up to 100% AH).	WOE Programme Board agree commissioning approach. Non housing elements funded by HCA as detailed in DIIP
4A	HCA OWNED SITE - Not in DIIP eligible for s106 (above threshold)	COMPLEX MIXED USE SITE	AH units secured through s106 with nil subsidy. No HCA investment required	HCA determine in consultation with WOE Programme Board whether to commission WOE HDP, DPP or dispose on open market
4B	HCA OWNED SITE - Not in DIIP eligible for s106 (above threshold)	RESIDENTIAL - ALL OTHER NON HOUSING USES COVERED THROUGH s106	AH units secured through s106 with nil subsidy. No HCA investment required	HCA determine in consultation with WOE Programme Board whether to commission WOE HDP, DPP or dispose on open market
4C	HCA OWNED SITE - In DIIP not eligible for s106 (below threshold)	RESIDENTIAL - not complex mixed use sites	No HCA investment required	HCA determine whether to commission WOE HDP, DPP or dispose on open market
4D	HCA OWNED SITE - Not in DIIP -not eligible for s106 (below threshold)	RESIDENTIAL - not complex mixed use sites	No HCA investment required	HCA determine whether to commission WOE HDP, DPP or dispose on open market
	WOE Programme Board led			
	HCA led			
	LA led			

Comments received from Homes West RSL and Local Tier RSL partners

Name of respondent	Comments	LA Responses
Knightstone (Arcadia Housing Group)	<ul style="list-style-type: none"> • welcome approach put forward, however concerned whether WOE LAs can justify such a large Panel with only a limited level of resources; prefer extended partnership model • wish to see competitive commissioning process give adequate weight to place shaping and neighbourhood management • seek clarification at what levels HA can become members of the Panel • Management only partner need to be able to take ownership 	<ul style="list-style-type: none"> • Requirement of HCA to include DPP means that WOE HDP will be larger than originally envisaged • Weighting will include place shaping criteria • Development and Management could also apply to be a specialist partner • Text changed in report
Sovereign Housing Group	<ul style="list-style-type: none"> • Seek clarity on zones or LA areas where Panel members can work • Concern that competitive commissioning of Development partners will need very careful preparation of specifications to ensure that the quality of housing is adequately accounted for 	<ul style="list-style-type: none"> • Can apply whichever LA area or Zone that is appropriate for your organisation • Noted
BCHF on behalf of small community based HAs in Bristol	<ul style="list-style-type: none"> • welcome proposal that there will be no distinction made within the new partnership, between local and strategic partners and that new partners will be judged primarily on their track record of delivering a high standard of customer service; however suggest that the evaluation includes criteria on partners' track record in contributing to the wider community and neighbourhood priorities of local authorities e.g. promoting community cohesion, providing innovative housing solutions and empowering resident involvement. • wish to see clear role for local community based housing associations in developing new affordable homes to ensure that we capture the financial, governance and management capacity of the organisations. • wish to continue receiving 50% of all S.106 transfers from larger associations or that the local authority facilitates direct arrangements between the S.106 developer on specific sites • support proposal that zones are agreed for community housing associations to determine where each HA develop within Bristol and local authority areas within the rest of the West of England 	<ul style="list-style-type: none"> • Weighting will include track record on contribution to sustainable communities and delivery of neighbourhood priorities • role for local community based HAs will be included in Tender • all Panel members will be encouraged to work collaboratively on specific sites that LA may seek for community based or BME HA to be involved

Solon	<ul style="list-style-type: none"> • support proposal in principle, however concern whether smaller community based HAs would be guaranteed a reasonable proportion of development opportunities to give certainty to private funders; particularly if LAs commissioning all future sites • concern if small partners fail to be selected as Management partners how WOE would take advantages of individual RSLs responsiveness to LA initiatives, their borrowing capacity, RCGF and reserves. • concern about criteria to be used for selection of Management only partners – will this include performance of external maintenance contractors 	<ul style="list-style-type: none"> • no guarantee of development opportunities will be possible • issue recognised which is why LA are encouraging collaborative working • Criteria for evaluation will be made clear in tender documentation
English Rural Housing Association	<ul style="list-style-type: none"> • Welcome recognition of the distinct role of specialist rural partners and consider the Panel will assist with coordination of activities – however will be need for specialist meeting • Seek clarification on rural enabler role in future • selection process should incorporate use of ‘exception sites’ and possible cross subsidy models • Seek clarification of whether Development and Management Members can also be Rural partners 	