



Haringey Council

Agenda item:

[No.]

[Name of Meeting]

On [Date]

Report Title: **Changes to the Management agreement with Homes for Haringey**

Forward Plan reference number (if applicable): **[add reference]**

Report of: **Niall Bolger, Director of Urban Environment**

Wards(s) affected: **All**

Report for: **Key**

1. Purpose (That is, the decision required)

- 1.1 To set out changes to the management Agreement between the Council and Homes for Haringey (HfH).
- 1.2 To propose a protocol for agreeing future changes to the Management Agreement

2. Introduction by Cabinet Member (if necessary)

- 2.1 The Management Agreement necessary for the establishment of the Homes for Haringey was drawn up to identify those activities which were delegated to Homes for Haringey to manage directly, as distinct from those undertaken by the Council, whether directly or indirectly. The Management Fee covers the cost of Homes for Haringey managing those delegated functions. The Management Agreement was agreed by the Council and Homes for Haringey on 31st March 2006.
- 2.2 The proposed amendment to the Management Agreement has been identified to correct an error in the wording of the agreement and to allow Homes for Haringey to award the responsive repairs contract.

3. Recommendations

- 3.1 Recommendation 1:** That the Management Agreement be amended to reflect that all future responsive repairs contracts will be Homes for Haringey contracts and authority for procurement and management of the contracts will be fully delegated to Homes for Haringey including specifically authority for all action taken from the outset of the current procurement relating to the repairs and voids contract and to note that a

further report on contractual matters in relation to Homes for Haringey will be brought forward by officers in due course.

3.2 Recommendation 2: That any future amendments to the Management Agreement will need to be agreed by Cabinet.

Report Authorised by: **Niall Bolger, Director of Urban Environment,**

Contact Officer: **Peter Nourse,**
Interim Assistant Director of Strategic and Community Housing

4. Director of Finance Comments

4.1 The proposed amendment to the currently approved Management Agreement is generally supported as it will remove some inconsistencies and duplicated effort resulting in more efficient service delivery arrangements. The suggestion at para 9.1 under legal implications to ring fence the repairs budget within the management fee will need to be considered further and actioned if appropriate. Otherwise there are minimal financial implications arising from the change which should be contained within the currently approved management fee.

5. Head of Legal Services Comments

5.1 The Head of Legal Services has been consulted in the preparation of this report, and whilst confirming that there is no legal bar to prevent Cabinet from adopting recommendation 1 makes the following comments.

5.2 The Management Agreement contains an express provision allowing for changes to be made to the Agreement. Any changes has to be both agreed and recorded in writing signed by, effectively, the Director of Urban Environment for an on behalf of the Council, and the Chief Executive Officer for and on behalf of Homes for Haringey (HfH). Head of Legal Services notes recommendation 2 of this report that any future amendments to the Management Agreement will need to be agreed by Cabinet.

5.3 With regard to recommendation 1, the opinion of Queen's Counsel has been sought on the legal implications which this amendment could bring in terms of the ability for HfH to procure contracts in it's own name, and, if permissible, the ability of the Council to recover service charges from leaseholders. The implications are referred to in section 9 below.

5.4 Annex 3 to the Management Agreement contains the Delegation Agreement setting out the functions delegated by the Council to Homes for Haringey. Paragraph 11.2 of

Annex 3 which deals specifically with response repairs commissioning, currently states that future repairs contracts will be Council contracts but management of the contracts will be fully delegated to the ALMO. Paragraph 19.1 of the Annex, which deals with procurement states that major repairs contracts will be with the Council but management fully delegated to the ALMO.

- 5.5 At the same time, Schedule 1 of the Management Agreement lists the existing general repairs and maintenance contract as one to be novated to or relet by Homes for Haringey.
- 5.6 In respect of legal implications, the Council's insurance and risk division should confirm that, if Homes for Haringey is the contracting authority, there will be no practical insurance obstacles to satisfactory insurance arrangements being put in place to protect the Council against liability to loss under the contracts awarded.
- 5.7 At the same time, the standard industry forms of contract will need to be customised to ensure that the Council does not enjoy a lesser level of protection in respect of the indemnity and insurance contract terms by reason of Homes for Haringey being named as the contracting party and therefore the beneficiary of these clauses, instead of the Council itself. This will involve departing from the greater certainty of the standard industry terms but, subject to that caution, should be feasible.
- 5.8 Once Members having considered the relevant implications is willing to delegate the authority to carry out the procurements identified above and Homes for Haringey is also willing to accept the delegations, there is no legal obstacle to the variations to the above identified provisions of Annex 3 being effected.

6. Local Government (Access to Information) Act 1985

- 6.1 Management Agreement
- 6.2 Homes for Haringey Quarterly Performance Monitoring Meeting Reports
- 6.3 Housing Revenue Account Statement
- 6.4 Capital Account Statement
- 6.5 Homes for Haringey Business Plan
- 6.6 Service Level Agreements
- 6.7 [Also list reasons for exemption or confidentiality (if applicable)]

7. Strategic Implications

- 7.1 A key element of the Management Agreement is that the Council and Homes for Haringey will work together within a spirit of mutual co-operation and partnership in order continuously to improve the services and the way in which they are delivered. The proposed amendments to the management agreement will help reduce duplication of effort.

8. Financial Implications

- 8.1 The report recommends amending the wording of the management agreement in relation to the repairs contract and has no financial implication on the management fee paid to HfH

9. Legal Implications

- 9.1 In terms of recovering service charges from leaseholders the Council needs to clearly demonstrate that all costs incurred by HfH on responsive repairs are in fact costs incurred by the Council. Queen's Counsel advice is that the Council should make explicitly clear in the management agreement that the management fee it pays HfH is to include the full provision for all the monies the latter spends on responsive repairs. It is also advised that those monies be ring fenced in the management fee. By ring fencing the money for repairs in the management fee to HfH it can be argued that the costs of responsive repairs are incurred by the Council under the right to buy lease.
- 9.2 In terms of awarding the contract as per recommendation 2, Queens Counsel's opinion is that Homes for Haringey can award the contracts as there is no material changes in the following elements – contract price, the scope and content of the provider' obligations under the contract and the risk borne by the provider under the contract

10. Equalities Implications

- 10.1 None

11. Consultation

- 11.1 Not relevant

12 Background

12.1 Responsive Repairs and Void Maintenance contract

When setting up Homes for Haringey it was agreed that the repairs budget should be delegated to Homes for Haringey with repairs operations paid for from the management fee and the management agreement reflects this arrangement.

There is an inconsistency in so far as Section 11.2, Annexe 3 of the management agreement states that with regard to responsive repairs commissioning the contract should be between the Council and the repairs contractor. As the current repairs procurement process has been completed by Homes for Haringey, with the intention of the contract being signed and managed by them, this also requires an amendment to Management Agreement reflect this. Schedule 1 of the management agreement also specifies contracts which will be novated to Homes for Haringey or renewed by them on expiration. General repairs and maintenance is one of the contracts listed in Table 2 of Schedule 1 of the Management Agreement.

12.2 Future changes to the Management Agreement

The management agreement already defines the mechanism for the enabling of amendments as an agreement between the Chief Executive of the Company and the Council Representative (currently Niall Bolger). Cabinet will need to formally approve any changes

13.0 Conclusion

As mentioned in paragraph 7.1 above the Council and HfH aim to work in a spirit of partnership and mutual cooperation to continuously improve services and the way in which they are delivered. The proposed amendment will reduce duplication of effort and ensure improved service delivery.

14. Use of Appendices / Tables / Photographs

14.1 [List any Appendices and their titles]