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| <b>Item No.</b><br>11.             | <b>Classification:</b><br>Open | <b>Date:</b><br>15 May 2012  | <b>Meeting Name:</b><br>Cabinet |
| <b>Report title:</b>               |                                | Leathermarket JMB – Partial self-financing of the Housing Revenue Account                        |                                 |
| <b>Ward(s) or groups affected:</b> |                                | All wards  |                                 |
| <b>Cabinet Member:</b>             |                                | Councillor Ian Wingfield, Deputy Leader of the Council and Cabinet Member for Housing Management |                                 |

## **FOREWORD – COUNCILLOR IAN WINGFIELD, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING MANAGEMENT**

The Leathermarket TMO was established on 19 August 1996. It is the largest TMO in Southwark, one of the largest in the country and has been an exemplar in terms of both resident satisfaction and high standards of governance. The proposal to reverse the methodology used to calculate their management allowance is innovative: in place of the council calculating an allowance to reflect the services they provide; the TMO will keep the rent it collects and pay the council for servicing housing debt and the central services it provides. The scheme is in line with the government's localism agenda but more importantly it shows the commitment this council has to ensuring resident control over services and that high quality management of our housing estates is rewarded. These proposals will need the specific consent of the Secretary of State and whilst we are confident that such consent will be forthcoming, we are using the 2012/13 financial year to 'shadow' what will happen from next April. Current indications are that, at least in the first few years, the TMO will be a little worse off than under the current methodology for calculating allowances. However these proposals will give them the ability to deliver their 30 year plan, to meet the Decent Homes target and invest in the estates under their control.

## **RECOMMENDATIONS**

That Cabinet

1. Note the progress made towards the proposal for 'self financing' of the Leathermarket JMB.
2. Agree to the development of this proposal through shadowing the financial impact of this initiative during 2012/13 as outlined in paragraphs 55 of this report and to agree the future work to be undertaken as outlined in paragraph 43.
3. Agree to officers developing a variation of the current Modular Management Agreement (MMA). Specifically to draw up terms to enable the delegation of control of part of the HRA to the JMB and to agree robust monitoring mechanisms to ensure that public funds are protected. Such agreement to be approved by Cabinet, the JMB Board of Directors and the Secretary of State.

## BACKGROUND INFORMATION

4. The Leathermarket Joint Management Board (JMB) is a tenant managed organisation which currently provides a housing management service to 1451 tenanted, leasehold and freehold properties on behalf of the Council. They do so under the Right to Manage regulations 1994 and a management agreement dated 9<sup>th</sup> October 1996 (varied in May 2008 to allow direct employment of staff). The JMB is a company limited by guarantee controlled through a Board of Directors. The Directors are nominated by the five Tenant & Residents' Associations within the area covered by the management agreement, and are endorsed at the Company's Annual General Meeting.
5. In September 2010 the JMB approached the Council with a proposal to 'ring-fence' the rental income generated from the area managed by the JMB in order that they may better manage and maintain the stock designated to them under the terms of the management agreement and to allow the full implementation of a 30 year asset management strategy. Such a development will enhance the co-operative principles under which the JMB were founded, by allowing residents to take greater control over their future.
6. An interim report was made in February 2011 and the following recommendation was agreed – *"That a detailed financial appraisal be undertaken of the implications (both to the council and the JMB) of ring fencing Leathermarket's income stream to the TMO. This appraisal to be completed within the next six months so that, if agreed, the ring fencing would be implemented in 2011/12."*
7. The JMB undertook a continuation ballot in October 2011, as required under the terms of their management agreement, whereby all residents are given the opportunity to state whether or not they wish for the JMB to continue managing their homes. The results of the ballot were extremely positive with the JMB achieving an overall vote in favour from 90.9% of residents on a 67.8% turnout. All recommendations within this report were subject to a successful vote in favour of the JMBs continued management. The level of support shown for the JMB gives them a very strong mandate to continue delivering housing services.

## Current Environment

8. This proposal should be viewed as part of the current political context both within Southwark and nationally. The current coalition government has introduced a range of new rights for communities and groups of residents in its legislative programme, including the Localism Act 2011, Health and Social Care Bill 2011 and Academies Act 2010. The overall aim is to reduce the role of the public sector as direct service providers and to increase the diversity of provision through the increased use of private, voluntary and community sectors.
9. Specifically, within the Localism Act there are a range of 'rights' intended to enable local resident organisations to;
  - Take over delivery of public services they think they could run better (Community right to Challenge)
  - Take on responsibility for assets (through existing arrangements for asset transfer, and the Community Right to Bid for assets of community value)

- Form Neighbourhood Forums with some rights to say what is built in their area (Neighbourhood Planning and Community Right to Build)
10. At the same time the Open Services White Paper states the desire to see more public services run by autonomous and semi-autonomous public bodies (e.g. ALMOs).
  11. Specifically within the social housing sector proposals for new regulations on 'community led' stock transfer were published for consultation on 15<sup>th</sup> March 2012 with the aim of reducing the ability of local authorities to prevent transfer of its housing stock to community owned companies. Leathermarket JMB have stated that they do not feel that there is currently the appetite for a stock transfer within the stock they manage but there is no doubt that they have sufficient resources and are of sufficient size to undertake such a transfer should this view change. A ballot of three TMO managed estates<sup>1</sup> within the neighbouring borough of Lambeth resulted in a positive result last year and the resulting community owned organisation may prove to be an attractive vehicle to deliver the aims and objectives of the JMB in the future. As is expanded upon later in this report, the JMB feel that they are not able to manage the stock adequately without the ability to take a longer term approach to the investment needs of the housing stock.
  12. Additionally, from April 2012 a specific regulation committee within the Homes and Communities Agency (HCA) will assume the regulatory powers of the Tenants Services Authority (TSA). The TSA was established under the Housing and Regeneration Act 2008 and has operated under the basis of co-regulation whereby tenants are empowered to help shape the housing service. With the transfer of the function to the HCA it is intended that greater empowerment is given to residents to scrutinise the performance of social housing providers against nationally agreed standards. The Chartered Institute of Housing (CIH) has stated that the changes will mean *"landlords will need to develop an approach to service delivery which positively engages with tenants, formally incorporates tenants views, and is transparently accountable to tenants."*<sup>2</sup>
  13. The Department of Communities and Local Government (DCLG) have become aware of the work being undertaken in Southwark and have stated that they are keen to monitor the progress of this project as it meets the stated aims of Localism being promoted by government.
  14. At a local level a Standardised Tenant satisfaction Survey (STATUS) conducted for TMO residents in 2010<sup>3</sup> showed that TMOs deliver satisfaction levels far in excess of those being achieved by Southwark managed stock. This survey showed that satisfaction with the TMOs as a manager satisfaction levels were 23% (14 percentage points) higher than the comparable Southwark performance in 2008 (76% compared to 62%). This has been achieved at no additional expense to the council as a review of TMO allowances completed in late 2011 showed that TMO allowances were approximately 2% less than that being spent by area teams in providing a similar range of services.

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<sup>1</sup> Lambeth Alliance of Tenant Management Organisations (LATMOS)

<sup>2</sup> How to.... Prepare for Regulatory reform: Tenant Engagement and Scrutiny (CIH) February 2012

<sup>3</sup> STATUS TMO Tenant Satisfaction Survey Report 2010 (Ipsos MORI)

15. A TMO delegation to the full council assembly in November 2011 generated cross party support for the work of TMOs in Southwark. There is therefore a shared approach at local and national level in increasing the role of local communities in delivering services to meet their needs.
16. One of the concerns expressed by the JMB has been the failure of the council to deliver the decent homes programme within the stock it manages. Overall the JMB managed stock in recent years had a lower level of 'decency' than that managed by the council. In order to address this deficiency the JMB committed additional resources from the surpluses generated through efficient management of the stock and have increased the level of 'decency' to approximately 72%. Whilst the recently approved five year investment programme guarantees an average annual investment in the JMB stock of £1.1m, this remains a contentious point locally and the JMB see moving towards a greater control of the revenues raised from the stock they manage as enabling them to ensuring levels of decency on a par with the council's target of warm, safe and dry.
17. The re-financing of the Housing Revenue Account (HRA) comes at an opportune time and allows the council additional freedoms to explore the possibilities of achieving the delivery of a housing service in a different way.

#### **KEYS ISSUES FOR CONSIDERATION**

18. The current proposal is to increase the allowances paid to the JMB to equate to the income generated through rent and service charge within its area less the cost of retained services and the debt apportioned to these properties. As is highlighted in paragraph 44 of this report, the original proposal, to create a ring fenced element of the HRA relating to the income stream generated within the stock managed by the JMB, could impact adversely on the Council. This current proposal will still have the effect of making the JMB financially self-contained and not wholly reliant on allowances paid to it under the terms of the current management agreement. Similar to the council the JMB will need to fund its management, major repair costs and debt repayment from the income generated.
19. There are potentially significant advantages to the Council in agreeing to this proposal.
  - It will give a major boost to the cause of resident control and enable the JMB to implement its Asset Management Strategy, the objective of which is to maintain and improve the stock in the JMB area over a 30-year period. The strands of the strategy are:
    - i. Deliver the decent homes programme
    - ii. The JMB estimates the level of decency on its estates at between 72%: with the Lawson Estate (some 450 properties) having had no works carried out and the Kipling (270) and Lockyer (180) estates having benefited only from electrical rewiring.
    - iii. Address health and safety issues, especially with regard to the risk of fire
    - iv. Progress from reactive to planned replacement of building components

- v. Address residents' aspirations for a modern and secure home and environment.
    - Responsibility for the achievement of the Decent homes standard (and the maintenance thereof for 30 years) will be passed to the JMB
    - Current debts on the property will be paid by the JMB. These are estimated to be £15.68m from April 2012.
    - Retention of the housing stock by the Council. There are no proposals for any transfer of assets to the JMB at present.
- 20. The JMB currently estimates that approximately £16m needs to be invested in the housing stock under its control in order bring it up to an acceptable standard. This figure does not include any future investment needs arising as components require replacement over the life of the business plan and work is being undertaken to profile these investment needs.
- 21. The JMB has worked effectively with the Council over a number of years to strengthen its management of finances, and the delivery of major and responsive repairs. Officers are satisfied that the JMB now has the directors, management and staff capability to take on greater financial responsibility. The proposed JMB self financing will have the added bonus of simplifying the financial interface between the Council and JMB, which has proved contentious in the past. As part of the agreement the JMB and Council a rigorous audit process will be specified.
- 22. This is an innovative model which gives residents greater control and has already attracted interest on a national level in its potential to deliver a far greater level of tenant empowerment without the contentious issue of stock transfer. It should be noted that;
  - Tenants remain secure tenants of the Council.
  - Tenancy conditions and rent levels will be the same as other Council tenants.
  - No money has to be diverted from asset management to pay for tenant advisors, financiers, lawyers and consultants.
  - As tenants are not losing their security of tenure or legal relationship with the Council there is no requirement for a ballot.
  - The Council retains its nomination rights to new tenancies.
- 23. Officers of the JMB, Tenant Management Initiative team and the Finance & Resources Department have worked closely with officers of the JMB over the period April – September 2011 to ascertain the potential impact on the Housing Revenue Account (HRA) should the proposals proceed. This work has incorporated the following elements;
  - Detailed calculations into the separation of the JMB account from the Council's HRA
  - The JMB to put additional financial structures and contractual arrangements in place to manage this level of financial independence
  - A planned change to the HRA to take place
  - Parallel work with the Council regarding the HRA review proposed by government.

## **JMB Income Under Self-Financing**

### **Rent income**

24. In terms of the annual income to the JMB this assumes a rent collection rate of 98% of rent due in the current year and allowing a loss due to voids/bad debts of only 2%. This may be an ambitious target given the forthcoming (2013/14) introduction of direct payment to housing benefit recipients. Similarly, the 100% collection targets for garage rents and store sheds may also not be achieved. This represents a risk for the JMB to consider in their financial planning.

### **Service charge income**

25. The leasehold service charge collection element is included as this currently contributes towards the services provided in the JMB area for both JMB and retained service provision.

### **Water rates commission**

26. At present, a 10% collection incentive is paid to TMOs for the collection of the weekly water rate charge included in the tenanted rent. This is currently deducted from the quarterly rent invoice sent to the JMB for rent collected.

### **Additional revenue income**

27. The Council receives revenue income from various advertising and communications sites across the borough and has previously operated an agreement whereby such income is targeted at the estates which generate the income for the benefit of local residents. The JMB currently benefits from this agreement due to various communication installations. There will need to be a side agreement identifying how such income is treated in the future.
28. In predicting the future income of the JMB over 30 years an inflation rate of 2.7% has been used being the anticipated rate determined by HM Treasury for 2012 and 2013. A methodology of the current rent plus inflation (Retail Price Index) plus half of one percent plus two pounds per week has been assumed for the first ten years. For the remaining period the same calculation less the additional two pounds per week was used. This calculation was used on the basis of the rent convergence methodology currently in place. It is not possible to say at this point how the restructuring of the Housing Revenue Account (HRA), and any ensuing freedoms in rent setting, will impact on this assumption.
29. A consistent stock profile in regard to tenanted numbers has also been used. Given the decline in Right to Buy applications over recent years this was felt to be appropriate but will now need to be reconsidered in light of government announcements regarding the reinstatement of a discount level of up to £75,000.
30. The leasehold service charge element also uses a straight line inflationary increase but the JMB would be looking to reduce this income element through efficiency savings and better project management. With regard to the retained service provision, savings in a number of these areas would also see a reduction in the service charge element.

## **EXPENDITURE**

### **Office rental**

31. No charge is currently levied against the JMB for the rental cost of their offices. Under the formula used to calculate the allowances paid to TMOs such costs are met in full and therefore the net benefit to the Council is nil. Under the proposed change office costs would form part of the re-chargeable services to be met from the JMB income and the office has therefore been assessed as to the likely sum the Council could expect to receive if it were let commercially.

### **Water rates**

32. Water rate charges are included in the weekly rent sum to tenanted properties and are payable to the water authority. Under the proposal the JMB would become liable for these charges.

### **Retained Council services**

33. It is this cost which has proved to be the most problematic to calculate during this project. Officers have considered the range of services provided by the Council to the JMB both directly and indirectly. The apportionment is broken down into three main areas;
- Compulsory (e.g. rent setting, housing options etc)
  - Discretionary (e.g. tenants fund, etc.)
  - Overheads (e.g. SLAs, complaints service etc)

### **Debt repayment**

34. The impact of reforms of the HRA with regard to housing debt levels from April 2012 will see the debt per tenanted property in Southwark fall to an estimated £14,901. This will result in a total debt for the JMB managed area of approximately £15.68m. An annual repayment figure has been calculated using a consolidated interest rate of 6.9% per annum and assuming a 30 year capital repayment period. No provision has been made within the figures for the JMB to access future council borrowing for investment purposes. Given the level of debt to be serviced by the HRA it is currently estimated that the Council will not be able to take on any significant level of additional debt for the first few years following the reform.

### **Community impact statement**

35. The introduction of this initiative will impact on all residents within the area of benefit of the Leathermarket JMB. Through the reversal of the way in which the financing of the JMB is undertaken much greater control and accountability will be devolved to a local level.
36. The JMB is a not for profit company which was established explicitly to promote the involvement of local people in the delivery of services. Through their governance structure they actively involve local people in the decision making process. They engage widely within the local community and bring together residents of Southwark's housing stock on housing and other issues of shared or mutual interest.

## Financial implications

37. The current allowance, paid quarterly by the Council, is calculated to fund the cost of revenue services provided by the JMB, who submit rent income back to the Council, also quarterly.
38. The current allowance would be replaced by an elemental allowance, comprising the value of JMB rent and service charge proceeds
- less b) the cost of central services provided by LBS for JMB residents
  - less c) notional loan repayment and interest on share of self-financing debt
  - less d) depreciation charge on JMB dwellings.
39. The settlement of the elemental allowance would be
- i. rent and service charges fully retained by JMB
  - ii. LBS bills the JMB to cover central services costs
  - iii. LBS bills the JMB to recover loan contribution
  - iv. JMB pays for capital expenditure
  - v. Depreciation less capital expenditure is owed to LBS
40. In terms of budgeting changes, comparing future years to the current year, 2011/12, the following are expected (provisional sums only at this stage).

|                                  | 2012/13<br>£m | 2013/14<br>£m @ 2.5% RPI | 2014/15      |
|----------------------------------|---------------|--------------------------|--------------|
| <u>Deletion</u>                  |               |                          |              |
| JMB allowance budget             | (2.3)         | (2.4)                    | (2.5)        |
| <u>New</u>                       |               |                          |              |
| a) Rent and leasehold element    | 6.3           | 6.6                      | 6.9          |
| Less b) Central services element | (1.8)         | (1.8)                    | (1.9)        |
| Less c) Loan element             | (1.2)         | (1.2)                    | (1.2)        |
| Less d) Depreciation element     | <u>(1.2)</u>  | <u>(1.2)</u>             | <u>(1.2)</u> |
| New basis elemental allowance    | 2.1           | 2.4                      | 2.6          |
| Net possible LBS (gain)/loss     | (0.2)         | -                        | 0.1          |

41. Thus, because rent income rises faster than costs, the comparative position gradually worsens for Southwark and improves for the JMB each year. This should be affordable as Southwark's remaining HRA income will be increasing.
42. Additional financial arrangements would be needed, including the accounting entries in a)-d) below plus annual loan element calculation.
- a) The Council remains the landlord and needs to account for rent income. This can be accomplished by adapting the current quarterly arrangements, to replace billing of the JMB by an accounting charge to the TMO allowance budget.
  - b) The Council would need to bill the JMB for the central services element, crediting the income from this to the TMO allowance budget.
  - c) The Council would need to bill the JMB for the loan contribution element, crediting the income from this to the TMO allowance budget.



- d) The Council continues to make a depreciation charge on its stock managed by the JMB, transferring a credit to Major Repairs Reserve. The JMB would need to notify of capital expenditure each year, to be reflected in the Council's accounts and with a corresponding credit to the allowance budget. Financing of this would be by transfer from Major Repairs Reserve. Provisionally any unspent Major Repairs Reserve balance (cumulative depreciation related to JMB stock less capital spend) would be earmarked and would also require the JMB to hold an equal reserve.

### **Next steps**

43. In order to progress this proposals, and to ensure that there are adequate safeguards in place for the Council, it is proposed that the following steps be taken;
- Discussions are held with Department of Communities and Local Government (DCLG) to obtain their views regarding this innovative approach
  - Work is undertaken to develop a draft agreement based on the structure of the modular management agreement (MMA) used under the Right to manage regulations
  - Agreement is reached with the JMB around the use of any surpluses arising from this regime.
  - Agree procedures with the JMB over the allocation of any income generated from advertising, communication/telecomm equipment installations etc.
  - Undertake consultation with the wider resident's body through Tenants Council and Home Owners Council. The JMB need to ensure full consultation with their residents.
  - Undertake a full risk assessment and draft a Community Impact Assessment
  - Establish a shadow accounting system in consultation with the JMB from 1 April 2012
  - Provide a 6 month review to Scrutiny to coincide with Housing Commission's report October 2012
  - Report to Cabinet to approve the agreed model in February 2013 for implementation from April 2013

### **Conclusion**

44. The proposal to allow a TMO to have an income equating to the rent and service charges generated from the stock and, in return, to undertake debt repayment as well as all stock maintenance and investment is without precedent. Initial discussions with CLG have been encouraging and it is envisaged that government will be supportive of this project.
45. The development of this proposal is in accordance with the Housing Department Business Plan (objective 7 - Involve tenants and leaseholders in the improvement of service delivery) and the Six Corporate Strategic Principles (Transforming public services through the sharing of service delivery with local organisations).

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Finance Director**

46. Ring-fencing to its greatest extent might involve the Council losing ownership of rent and service charge proceeds to the JMB, reducing headline income. In the medium term the Council has a need to refinance expiring loans as well as it being possible that additional borrowing could be undertaken for capital expenditure. Loans can be provided by the Public Works Loan Board or from the bonds market. For the latter the Council would need a credit rating and the security of the HRA's rent income stream will be an important influence in that.
47. In order to avoid the Council seeming to lose some of its rent proceeds, it is proposed that the JMB in future receive an allowance according to a calculation starting with a rent element, with deductions relating to central services and loan contribution elements. The JMB would also be responsible for financing capital expenditure at the level of the depreciation charge to revenue – a notification arrangement would be required to record expenditure as authority capital in order to access the depreciation financing from its interim resting place in Major Repairs Reserve. We await final regulations from CIPFA on calculation and accounting for depreciation from 2012/13.
48. Any agreement would probably need to be for a time-limited period, e.g. three years, with either side also able to give notice each year. There may need to be a separate section of the agreement to cover other sources of capital funding, e.g. access to Decent Homes backlog grant and responsibility to raise capital receipts.
49. The timing of the request coincides with the start of whole HRA self-financing in April 2012. Authorities will no longer receive subsidy and will be settled with a debt level considered to be affordable over 30 years, taking into account the annual surplus of income over expenditure for the dwelling stock. The debt level for Southwark has been calculated at £14,901 per property. However, debt charges on this may be difficult to afford in early years as rents are well below target and hence below the level they will be towards the middle and end of the 30 year calculation period.
50. The overall HRA position settled on the authority at the start of self-financing is a loss before savings measures, turning round to a gain in subsequent years due to increasing rent income. As the proposal ring-fences part of the HRA, the situation for the JMB would be similar to that of Southwark's HRA overall, i.e. effectively part of the HRA's initial loss and eventual gain transfers to the JMB, who would find difficulty in breaking even without cost reductions in early years. This might limit initially the amount of investment funding able to be provided via depreciation charges to revenue. Subsequently, as the position improves the wider HRA would not benefit from future rent surpluses on the Leathermarket stock.
51. Before deciding on the changes proposed, the following effects need consideration;
  - a) transfer of control over rent proceeds and likely long-term annual surpluses relating to the Leathermarket stock to the JMB and effect on control over these as investment resources;

- the council needs to be satisfied that it is extending financial arrangements and responsibilities to a viable body that will act responsibly.
  - the Council needs to be satisfied that JMB control of their part of the HRA and any future surpluses does not disadvantage the remaining HRA.
- b) Transfer of long –term investment responsibilities
- the Council needs to be satisfied that the JMB is able to plan and manage large-scale contracts.
- c) Complex arrangements involved in a new management agreement, including loan repayment and capital financing conditions and the need for the Council to continue to account for Leathermarket rent and capital expenditure.
- the Council needs to be satisfied that any complexities arising from the new arrangements are able to be managed and are justified by other benefits.
52. In terms of viability, the JMB has few assets and is largely dependent on allowance income. However, the proposed allowance arrangements should provide adequate cash flow and enable it to keep costs within its income.
53. In terms of acting responsibly, the JMB operates with full-time staff overseen by a Board dependent on local voluntary input. There is a risk of the Board becoming inquorate and of misappropriation, mitigated by the Council's Tenant Management Initiatives Team undertaking monitoring and the JMB being subject to external annual accounts audit and the Council's internal audit. It still remains that there is little financial sanction that could be applied by the Council in the short-term if the JMB delayed settling billing transactions.
54. The partial self-financing proposal is expected to result in increasing surpluses being generated for the JMB as rents rise and in initial years there should be enough investment need in the JMB stock to take up the surpluses. Subsequently surpluses which would otherwise be available to the HRA for borough-wide use would be under the control of the JMB. The JMB might have a number of options for using surpluses, e.g. replacing or improving stock, new build or additional debt repayment. However, options for the JMB might be narrower than if the Council had control, e.g. it has far fewer housing powers and local land for new build might be limited or expensive, and may follow different priorities. The JMB might wish to further add to surpluses by reducing payments to the Council for central services, creating difficulties for the Council as it may have fixed costs or staffing responsibilities.
55. These arrangements require additional work for final accounts, with additional risk of delay or error, and subsequent audit. The loan and central services elements also potentially create workload in future years if change is requested. It is therefore proposed that a 'shadow' financial system be established for the 2012/13 year in order to ascertain how best this arrangement might work before any decision is made to go live in 2013/14. This will involve, provisionally exchange of quarterly financial information to compare the old and new bases for the JMB's allowance.

## **Strategic Director of Communities, Law & Governance**

56. Section 21 of the Housing Act 1985 provides that the general management, regulation and control of a local authority's houses is vested in and shall be exercised by the local housing authority. However, Section 27 of the 1985 Act enables a local housing authority, with the approval of the Secretary of State to enter into a management agreement delegating its management responsibilities and regulations made under Section 27A require local housing authorities to co-operate and enter into management agreements with tenant management organisations.
57. As indicated in the report, the council's housing management responsibilities in respect of 1451 tenanted, leasehold and freehold properties have been delegated to the Leathermarket Joint Management Board under a management agreement dated 9th October 1996. The agreement currently in place follows the Modular Management Agreement for Tenant Management Organisations that received general approval from the Secretary of State. Where a management agreement is entered into with a TMO, the council remains the landlord of the tenants of the dwellings concerned and the councils legal obligations as a local housing authority and as landlord are unaffected.
58. The report seeks cabinet agreement to officers developing a variation of the management agreement with Leathermarket JMB. Any variation of the council's management agreement with Leathermarket that departs from Modular Management Agreement options will require the specific approval of the Secretary of State.
59. The proposal to move towards self financing of the JMB that is the driver for the development of a variation of the management agreement may have an affect on the councils secure tenants as whole or as a group that, if considered substantial, will engage the statutory consultation requirement in Section 105 of the Housing Act 1985. Section 105 of the Housing Act 1985 requires local housing authorities to consult with their secure tenants on matters of housing management that are likely to substantially affect them. The report confirms that consultation is planned with residents of the JMB and wider residents through the councils resident consultation structure. The council must ensure that proper consultation is carried with all those likely to be affected. To meet legal requirements consultation must be undertaken when proposals are still at a formative stage; it must include sufficient reasons for the proposals to allow interested parties the opportunity to consider the proposal and formulate a response; it must allow adequate time for interested parties to consider proposals and formulate their response and the outcome of consultation must be conscientiously taken into account when the ultimate decision is taken.
60. In developing the proposal officers will need to keep in mind the public sector Equality Duty in section 149 of the Equality Act 2010 that requires the council to consider all individuals when carrying out any of their functions. The duty requires public bodies to have due regard to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct; advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also applies to marriage and civil partnership but only in relation to the elimination of

discrimination strand. Officers will need to keep the duty in mind throughout the consultation process and when formulating recommendations to cabinet for final decision making; members must have due regard to the duty when the matter is referred back to cabinet for decision.

## BACKGROUND DOCUMENT

| Background Papers                 | Held At  | Contact                       |
|-----------------------------------|--|-------------------------------|
| Report to Cabinet 2 February 2011 | Home Ownership Team<br>160 Tooley Street<br>London SE1 2QH | Martin Green<br>020 7525 1418 |

## APPENDICES

| Appendix | Title: |
|----------|--------|
| None     |        |

## AUDIT TRAIL

|  |   |                   |  |
|--|---|-------------------|--|
| Cabinet Member   | Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management |                   |  |
| Lead Officer   | Gerri Scott, Strategic Director of Housing Services                               |                   |  |
| Report Authors   | Martin Green, Head of Home Ownership  |                   |  |
| Version  | Final   |                   |  |
| Dated  | 3 May 2012  |                   |  |
| Key Decision?  | Yes   |                   |  |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER |   |                   |  |
| Officer Title  | Comments Sought   | Comments included |  |
| Strategic Director of Communities, Law & Governance              | Yes   | Yes               |  |
| Finance Director   | Yes   | Yes               |  |
| Departmental Contracts Review Board                              | Yes   | Yes               |  |
| Corporate Contracts Review Board                                 | Yes   | Yes               |  |
| Cabinet Member   | Yes   | Yes               |  |
| Date final report sent to Constitutional Team                    |   | 3 May 2012        |  |