

# MAYORS' EXECUTIVE DECISION MAKING

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Thursday, 9 February 2012

(Re-consideration of decision called-in and referred back)

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Mayor's Decision Log No. 013 (R)

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1. **HOUSING STOCK OPTIONS APPRAISAL FINAL REPORT  
(RECONSIDERATION) (Pages 1 - 16)**

The Mayor's Decision Log No. 013 (Housing Stock Options Appraisal Final Report), taken on 20<sup>th</sup> December 2011, was 'called-in' in accordance with the Overview and Scrutiny Procedure Rules.

The 'call-in' was considered by the Overview and Scrutiny Committee on 10<sup>th</sup> January 2012. The Committee agreed to refer the matter back to the Mayor for further consideration and proposed an alternative course of action.

The Mayor has subsequently given further consideration to this matter in the light of the comments and recommendations of the Overview and Scrutiny Committee as set out in the attached document.

Following this further consideration the Mayor has decided to **confirm** his decision of 20<sup>th</sup> December 2011 (Mayor's decision Log No. 013 – copy attached).

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: John S. Williams, Service Head, Democratic Services

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**LONDON BOROUGH OF TOWER HAMLETS**

**PROFORMA:**

**MAYORAL DECISION SUBJECT TO CALL-IN AND REFERENCE BACK**

**Mayoral Decision Log No:** 013 (R)

**Title:** HOUSING STOCK OPTIONS APPRAISAL FINAL REPORT

**Is this a Key Decision:** No

**UNRESTRICTED / RESTRICTED:** *Unrestricted*

**DATE OF OVERVIEW AND SCRUTINY COMMITTEE:** 10<sup>th</sup> January 2012

**DECISION OF THE OVERVIEW AND SCRUTINY COMMITTEE:**

*To refer the above decision back to the Mayor for further consideration.*

**REASONS FOR THE REFERENCE BACK**

*The Call-in requisition in relation to the above decision set out the following reasons for the call-in:-*

*This report sets out the Mayor's response to the Options Appraisal he commissioned with regard to the future structure and governance of Tower Hamlets Homes – the Arm's Length Management Organisation set up to deliver housing management for the homes remaining in the Council's ownership following the Housing Choice process of stock transfer. We note*

*that he has agreed that the ALMO should continue operating and delivering the excellent landlord service it has provided to tenants and leaseholders over the last three and be supported in ensuring that the Decent Homes Programme is delivered to a high standard within timescale and budget.*

*We are disturbed however by his unilateral decision, based, we are informed, on legal advice – the details of which have not been made public or shared with Board members of Tower Hamlets Homes – to terminate the appointments – made in good faith and on the basis of constitutional and legal advice provided to full Council by the Chief Executive, the Chief Legal officer and the Head of Democratic Services – of all but one of the Councillor representatives agreed by Full Council and General Purposes Committee and to replace them with his own nominees with no consultation with any of the Political parties on Council. We are equally disturbed by his decision to terminate the appointments of all the Independent members of the Board, who brought considerable and welcome expertise and rigour to the governance structures of Tower Hamlets Homes, and by his decision to reappoint the resident representatives on a purely interim basis.*

*It is claimed that these changes are necessary to ensure a better fit with the Mayors priorities and to ensure closer accountability to the Mayor but the report provides no justification for this view and any such concerns have not been shared or discussed with the Board at any of its meetings or subject to any form of external scrutiny or notification and discussion with residents. The Board changes were, with great discourtesy, only communicated to Board members by letter on the day of the AGM, which at the Mayor's instruction had been repeatedly postponed and finally changed to a date in the last week before the Christmas recess. Those Board members who had been forcibly retired were first advised that they did not need to attend the meeting, and, when they nevertheless did so, were only allowed to remain on the basis that they did not have the right to speak. No members of the Public were allowed or invited to attend, as is common in all other RSL AGM's, and the remaining Board members who were allowed to attend and speak were advised that the decision could not be discussed but only noted.*

*It is our view that the need for such sweeping changes has not been demonstrated, and without sight of the legal advice on which he has relied, are not convinced that they are within the Mayor's power to make. Even if they are, we would argue that given their significance for residents across the Borough and the legal and financial responsibilities Board members hold, that such changes would certainly constitute a Key Decision that should have been published on the Council's Forward Plan or, if not, justified with reference to the usual urgency provisions.*

*Those arguments notwithstanding, we are concerned that such destabilization of the Board structure of THH will be counterproductive to the Mayor's stated aims to "strengthen our ability to ensure continued performance improvement and fast delivery of the Decent Homes programme", leading to a loss of morale and confidence amongst staff and residents alike and to a lack of proper accountability and rigorous scrutiny at this crucial point in the ALMO's development, putting in jeopardy the probity and effectiveness of the*

*business, the existing quality of which was commented on favourably in the most recent Audit Commission Inspection which awarded THH two stars and was notably complimentary about the existing Board members involvement and commitment . Strengthening the relationship between the Board and the Mayor, could in our view have been achieved in a variety of other ways, and on our observation, has not notably been a priority of either the Mayor or his Lead Member for Housing, neither of whom have had the courtesy to discuss their proposals face to face with the Board in the several months since the Appraisal report, which again has not been published, was completed.*

*The Report makes reference to the need to make improvements to the recruitment process to the ALMO Board and ominously refers to resident involvement, which has improved markedly since the creation of the ALMO, saying it will need to be reviewed, but gives no indication of what these improvements or reviews might involve or how and by whom they will be agreed, or what costs would be involved. We would thus have considerable concerns and believe that any such changes and any new appointments should be made with the utmost transparency and with full consultation with all parties involved.*

#### **ALTERNATIVE ACTION RECOMMENDED BY THE OVERVIEW AND SCRUTINY COMMITTEE (IF ANY)**

*The Call-in requisition proposed the following alternative action in relation to the Mayor's decision:-*

*We call upon the Mayor:*

- 1. To rescind his decisions with regard to reconstituting the THH Board and work with officers of the Council and THH to reconvene an AGM, open to the Public, on the agenda as originally published to members of the Board and the Public thus ensuring that the Council, Independent and Resident Representatives appointed prior to December 20<sup>th</sup> 2011 are reappointed to serve for the coming year but with notice given that, as changes to the governance structure are being considered, no guarantee of reappointment can be made.*
- 2. To ensure that, in the meantime, the full report of the Options Appraisal, and the Legal Advice, Full Report and any other advice presented by officers to the Mayor to justify these decisions are published and provided to each of the Groups on Council and a Member Briefing is convened to consult on, and present the rationale for and budget costs of, any proposals for change. Any such proposals should then be published on the Forward Plan and presented by way of report for discussion to Full Council and General Purposes Committee in the usual way with a view to agreeing any changes to Council appointments, which could include consideration of proportionality issues, at the Council AGM in May 2012 and implementing any new process for appointment of resident and independent reps ahead of a THH AGM in December 2012 or January 2013. This would allow time for proper dialogue and consultation to be*

*had with THH Board and relevant Tenant's and Resident's Groups and preparations made for an orderly appointment, handover and induction process.*

- 3. That written apologies are sent to all the Board members appointed prior to December 2011 for the discourteous manner in which they were treated.*

### **CONSIDERATION OF THE CALL-IN BY THE OVERVIEW AND SCRUTINY COMMITTEE**

*The Overview and Scrutiny Committee on 10<sup>th</sup> January 2012 considered the call-in which was presented by Councillor Judith Gardiner on behalf of Councillors Joshua Peck, Bill Turner, Shiria Khatun, Khales Uddin Ahmed, Rajib Ahmed and Carlo Gibbs, outlining the reasons for the call-in and the concerns that were raised. Councillor Gardiner then responded to questions from the Committee. The concerns highlighted together with Councillor Gardiner's answers are summarised below:*

- The Mayor's decision that the ALMO should continue was supported.*
- However the decision to reform the Board of Tower Hamlets Homes (THH) and the methods undertaken to do this caused concern.*
- The source of legal advice that had been sought which then led to the disbandment of the previous THH Board was not clearly presented in the report and not consistently identified across documents and correspondence to Board Members.*
- Many of the key decision criteria were clearly fulfilled but the decision was not dealt with in this category. It was the Call-in Members' view that this had therefore been dealt with incorrectly.*
- Interim arrangements had not been put in place while the reform of the Board was undertaken.*
- The method for handling the old Board was inconsistent. The Independent Members had been dismissed whilst Resident Representatives had been given interim appointments on the Board which, in Call-in Members' view, risked its stability.*
- It was argued that rather than dismiss the Board, interim arrangements should have been put in place until new Board members were recruited to prevent any risk to THH services.*
- It was noted that THH had received positive comments about the involvement and commitment of Board members during a recent Audit Commission inspection that has resulted in a two-star rating.*

*Councillor Rabina Khan, Cabinet Member for Housing, Isabella Freeman, Assistant Chief Executive – Legal Services and Jackie Odunoye, Interim Corporate Director for Development and Renewal responded to the concerns raised, informing the Committee that:*

- Appointments to the THH Board were an Executive not a Council matter.*



- *Reform of the Board would ensure monies received through Decent Homes Scheme will be utilised effectively.*
- *THH performance had improved but had yet to attain excellent standards.*
- *Ensuring there were Resident Representatives on the Board was most important to the Executive.*
- *THH Memorandum and Articles state that all Board Members will stand down at the third AGM and a new Board be established.*
- *It is intended that the process for appointment of independent Members be changed from previous interview based arrangements.*
- *Advice from Counsel confirmed that Memorandum and Articles of THH confers powers on the Council's Executive. It was then concluded that appointments formerly made through General Purposes Committee were incorrect. This had to be rectified.*

*Overview and Scrutiny Committee considered the views and comments made by Councillor Judith Gardiner in presenting the call-in, the information and answers provided by Jackie Odunoye, Interim Corporate Director for Development and Renewal, Isabella Freeman, Assistant Chief Executive, Legal Services, and Councillor Rabina Khan, Cabinet Member for Housing, in response to Councillor Gardiner's issues.*

*The Committee's discussion of the call-in brought forward the following views:*

- *The timescales for the decision were short, falling just before a national holiday, with no real working days being available for adhering to regulation timescales.*
- *A key decision had been incorrectly processed through the decision making procedures. The Chair expressed her concern that this contravened the Council's constitution.*
- *The Committee noted the Monitoring Officer's statement that the General Purposes Committee guidance (electing board) about Members was incorrect, and was only discovered after consulting Counsel about the Executive process. The Committee was very concerned about this and requested that the Monitoring Officer now check whether other appointments by General Purposes Committee might be affected. The Chair also requested that the Monitoring Officer report back that this had been done.*
- *That the process that had been undertaken to amend the Memorandum and Articles should be clarified.*
- *Decisions were taken without adequately advising Board Members and that this would have a destabilising effect on THH. Board Members had asked the week before what was happening but had not received any information.*
- *The process undertaken to renew the Board had not been transparent. The Committee agreed that rules for new members must be seen to be robust in future and that Independent Members brought expertise and commitment, and had performed a key role in the ALMO's success thus far. The decision to exclude them was not explained.*

- Given the above, the Committee agreed that the decision be referred back to the Mayor with a request that a proper transition process for the Board be put in place establishing formal interim arrangements.
- It was noted that Resident Representatives had been kept on during the interim. As the Committee felt that this had been fair and open this should also be the case for Independent Members of the Board.

Following discussion, the Overview and Scrutiny Committee endorsed the reasons for the call-in and alternative action proposed as submitted by the call-in Members as set out above. Accordingly the decision was referred back to the Mayor for further consideration and it was:-

**RESOLVED**

1. That the Call-in be endorsed by Overview and Scrutiny Committee
2. That the Mayor's Executive Decision called-in "Housing Stock Options Appraisal" (Mayor's Decision Log No. 013), be referred back to the Mayor for further consideration in the context of the views brought forward by the Committee.

**DECISION OF THE MAYOR**

I have reconsidered my decision Log No. 013 in the light of the information provided by the Overview and Scrutiny Committee at its meeting on 10<sup>th</sup> January 2012 as set out above.

Having taken into account all of the relevant information I have decided to:-

(a) Confirm my decision of 20<sup>th</sup> December 2011 on the matter\*, ~~or~~

~~(b) Amend my decision of 20<sup>th</sup> December 2011 on the matter as follows\*:-~~

.....  
 .....  
 .....

(\* Delete as applicable)

Signed .....	Date .....
Mayor Lutfur Rahman	7/2/12



**LONDON BOROUGH OF TOWER HAMLETS**

**MAYORAL DECISION PROFORMA**

**Mayoral Decision Log No: 13**

**Title: Housing Stock Options Appraisal Final Report**

**Is this a Key Decision: No**

**UNRESTRICTED**

**1. SUMMARY**

- 1.1 This paper brings together several issues relating to the governance of Tower Hamlets Homes and recommends retaining Tower Hamlets Homes to manage the Housing stock following the Review.
- 1.2 The Mayor's priority is to ensure that the decent homes programme is delivered effectively and the Housing Management service is improved while driving down cost. The Council is the sole Member (shareholder) of the Company Tower Hamlets Homes.
- 1.3 The Option Review outcomes following a comprehensive appraisal to establish the best option for future management of the housing stock are set out in summary in the report attached.

**2 RECOMMENDATIONS**

- 2.1 The Mayor is recommended to:
  - A. Agree to retain Tower Hamlets Homes to provide Housing Management for the Council in accordance with the existing management agreement.

- B. Approve the changes to Tower Hamlets Homes Memorandum and Articles as set out in the report at Appendix I
- C. Appoint the following persons to the THH Board:
- Councillor Alibor Choudhury as a Council Board Member
  - Councillor Kabir Ahmed as a Council Board Member
  - Councillor Rania Khan as a Council Board Member
  - Councillor Marc Francis as a Council Board Member
- D. To reappoint the resident Board Members Ian Lawson, Ian Fincher, Shamsul Hocque and Sheila Beeton to the board pending the appointment of new Resident Board Members

### **3 BODY OF REPORT:**

#### **3.1 Methodology**

- 3.1.1 A long list of 37 options was evaluated against 34 criteria to produce a shortlist of 2 options: Retaining an optimised ALMO or bringing the service back in house.
- 3.1.2 The shortlisted options were subjected to a detailed evaluation including a 30 year financial model and risk analysis.
- 3.1.3 The views of stakeholders were canvassed and residents were involved in a sounding board, focus groups and a full census resident satisfaction survey.

#### **3.2 The Findings**

- 3.2.1 **National Policy Context:** HRA Self Financing and Decent Homes funding are both favourable towards LBTH. The national policy context effects both options equally
- 3.2.2 **Local context:** The council provided a poor quality housing service for a number of years. Tower Hamlets Homes made sufficient improvements to attain two stars in the Audit Commission inspection, however, there is considerable room for further improvement. The funding for Decent Homes allocated to the council has been increased by the Mayor to ensure all homes will achieve decent homes status over the next few years. The government

announced that councils could get Decent Homes funding even if there was no ALMO in place.

- 3.2.3 **Savings:** The Optimising the ALMO option produces savings of £8.7m over the next 5 years whilst the In-House option makes a small additional saving of £180k over the same period but brings with it a high risk profile. The Optimising the ALMO Option starts to generate savings in the current financial year. It is not until year 5 that the In-House Option saves more than the Optimising the ALMO option.

	2011.12	2012.13	2013.14	2014.15	2015.16	2016.17
	£000	£000	£000	£000	£000	£000
<b>Annual Savings</b>						
Optimised As is	285	1,335	1,791	1,791	1,791	1,791
In House	0	565	2,100	2,100	2,100	2,100
Difference	285	769	(309)	(309)	(309)	(309)
<b>Cumulative Savings</b>						
Optimised As is	285	1,620	3,411	5,202	6,993	8,784
In House	0	565	2,665	4,765	6,865	8,964
Difference	285	1,055	746	437	129	(180)

- 3.2.4 **30 Year Financial Model:** Both options produce sustainable 30 year HRA forecasts. Both options forecast room for some limited additional borrowing or debt repayment in the later years. Due to controls on the HRA neither option can contribute significantly to increasing new supply.
- 3.2.5 **Resident involvement:** Direct resident involvement in governance is stronger in the ALMO model. Under either option resident involvement would need to be reviewed.
- 3.2.6 **Risk:** The difference between the 2 options is most marked in their differing risk profiles.
- 3.2.7 **Stakeholder views:** Stakeholders recognise the progress made by the ALMO Resident satisfaction continues to improve in a tough operating environment: tenant satisfaction up 1% to 73% and leaseholder satisfaction up 3% to 47% (Resident satisfaction survey September 2011). However, there are still areas where they express concern and satisfaction is not consistent across all ethnic and age groups.

3.2.8 **Basis for the recommendation:** THH is a young organisation, only 3 years old. Since formation it has made improvements to services, the cost base and resident satisfaction. There is risk; of a performance dip if the service is brought in-house; further that the £71m of decent homes works due in years 3 and 4 of the programme could be put at risk because of a restructuring of staff and the uncertainty that this would cause and that the savings for the in-house option might be undermined. Retaining an optimised ALMO represents the continuation of a model that has been improving. The savings figure for a retained ALMO is supported as deliverable by the ALMO.

3.2.9 Once approved the key changes that will take place are:

- Delivery of the savings package described in 3.2.3
- Review of clienting focusing on reducing costs of financial and performance management
- Regular meetings between the Mayor and the Chair of Tower Hamlets Homes
- An annual summit at the anniversary of the management agreement
- A Mayor's dashboard reporting on key measures of performance

3.3 The Monitoring Officer has advised that the appointment of Councillors under the Memorandum and Articles of THH is an Executive matter as it relates to executive functions. Housing Management is an executive function. It would appear that General Purposes Committee should not have made the appointment recommendations as it made last May. Accordingly the Mayor is requested to make the Councillor appointments set out in recommendation 2.1 (c).

3.4 The Mayor asked officers to review the governance structure of the ALMO to ensure it is best equipped to face the challenges of delivering the decent homes programme and continuing to improve services while driving down cost. The Council is the sole shareholder in the ALMO and as such is empowered by its Executive Mayor to make changes to the Memorandum and Articles of the ALMO. The changes to the articles set out in the schedule are proposed with the aim of:

- ❖ Strengthening the relationship between the ALMO Board and the Executive Mayor

- ❖ Making improvements to the recruitment process to the ALMO Board
- ❖ Improving accountability of the Board

3.5 In order to ensure continuity of input from residents, whose input at board level he considers a vital part of the ALMO's governance, we recommend that the Mayor, exercising the rights of the council as sole shareholder, re-appoints the existing Tenant Resident Board members to continue to sit on the Board pending the outcome of a process to appoint new Tenant Resident Board Members.

#### **4 COMMENTS OF THE CHIEF FINANCIAL OFFICER**

4.1.1 The ALMO is a business of significant size. The Board has an important role in ensuring that the business operates with probity and effectively. There are no direct financial implications for the changes to the Board set out in this report. However the risks associated with the planned changes (see 7. below) will need careful management to ensure that the organisation continues to perform effectively and efficiently while the changes are implemented.

#### **5 CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE(LEGAL SERVICES)**

5.1 The legal advice is set out in the report.

#### **6 ONE TOWER HAMLETS CONSIDERATIONS**

6.1 There are no implications for the One Tower Hamlets agenda stemming from the content of this report.

#### **7 RISK MANAGEMENT IMPLICATIONS**

7.1 It is important to note that the new Board will continue to be supported by a stable senior management team within the ALMO.

7.2 It is important that the training and/or support needs of new Board members are identified at the earliest possible point and that appropriate training and support is delivered quickly thereafter.

7.3 It is also important for the Council in its client role to monitor the management contract closely to ensure that the transition to the new board is handled



effectively so that THH can continue to prioritise improvements to the services it provides to tenants.

- 7.4 It is the view of officers that if these mitigations are implemented the risks arising from these changes to the Board can be managed to an appropriate degree.

## **Appendices**

### **Appendix 1: Changes to the Memorandum and Articles of Tower Hamlets Homes**

**APPROVALS**

**1. Corporate Director**

I approve the attached report and recommendations above for submission to the Mayor.

Signed ..... *J. Rodway* ..... Date 20/12/2011

**2. Chief Finance Officer**

I have been consulted on the above recommendations and my comments are included in the attached report.

Signed ..... *C. Taylor* ..... Date 20/12/11

**3. Assistant Chief Executive (Legal Services)**

I have been consulted on the above recommendations and my comments are included in the attached report.

(For Key Decision only – delete as applicable)

I confirm that this decision:-

- (a) has been published in advance on the Council's Forward Plan OR
- (b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed ..... *S. Bell* ..... Date 20/12/11

**4. Chief Executive**

The recommendations above are consistent with the Council's agreed Budget and Policy Framework and will contribute to the achievement of the authority's Strategic Plan.

Signed ..... *M. Hals* ..... Date 20/12/2011

**5. Mayor**

I agree the recommendations above for the reasons set out in the attached report

Signed ..... *H. Hals* ..... Date 20/12/2011

**THE COMPANIES ACT 2006**  
**A PRIVATE COMPANY LIMITED BY GUARANTEE**  
**RESOLUTIONS OF**  
**TOWER HAMLETS HOMES**  
**(the Company)**

Passed by way of Decision of the sole member of the Company

Pursuant to Article 11 of the Articles of Association of the Company and section 357 of the Companies Act 2006, the sole member of the Company named below hereby decides as follows with the intent that these decisions will take effect in the case of the resolution numbered 1 and 3 as a Special Resolutions and in the case of the resolution numbered 2 as an Ordinary Resolution:

**RESOLUTIONS**

1 THAT the Articles of Association of the Company be amended

1.1 by deleting articles 15(4) and 15(5) and substituting the following:

“(4) The Council will determine a procedure under which Tenants may apply to be appointed as Tenant Board Members and may be so appointed. The Council may from time to time appoint Tenant Board Members in accordance with that procedure, to fill a vacancy arising either on retirement of Tenant Board Members at an annual general meeting or at any other time. Where no such procedure is in place the Council may appoint one or more Tenant Board Members to hold office on an interim basis until such time as such procedure is put in place and until appointments of Tenant Board Members are made in accordance with it.”

1.2 by deleting all of article 16 and substituting the following:

“16(1) At the third annual general meeting all of the Independent Board Members shall retire from office

16(2) Following the third Annual General Meeting the Council will determine a procedure to appoint Independent Board Members and may from time to time appoint Independent Board Members in accordance with that procedure to fill a vacancy arising either on retirement of Independent Board Members or at any other time”.

2 THAT in accordance with Article 15(4) of the Articles of Association of the Company (as amended by resolution 1 comprised in this Decision) Iain Lawson, Ian Fincher, Sheila Beeton and Shamsul Hoque be and are appointed as additional Tenant Board Members on an interim basis on the basis that they will hold office until such time as a procedure is put in place for the appointment of Tenant Board Members and until appointments of Tenant Board Members are made in accordance with it.

3 That the Articles of Association of the company be further amended as follows:-

3.1 By deleting articles 27(1) and 27(4) and substituting the following:

“27(1) Subject to any regulations established from time to time by the Organisation in general meeting in compliance with section 10(1) of the Local Authorities (Companies Order) 1995 the Board may regulate their proceedings as they think fit and the quorum for the transaction of business shall be three comprising no fewer than one Tenant Board Member and two Council Board Members”.

Signed by .....

Mayor Lutfur Rahman

London Borough of Tower Hamlets .....

Date: .....

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