

APPROVAL FOR THE COUNCIL AS A MEMBER OF LOCATA (HOUSING SERVICES) LIMITED TO VOTE TO AMEND THE EXISTING COMPANY MEMORANDUM AND ARTICLES OF ASSOCIATION

Cabinet Member	Councillor Philip Corthorne
Cabinet Portfolio	Social Services, Health and Housing
Officer Contact	Beatrice Cingtho, Head of Housing
Papers with report	1) Existing Memorandum of Association 2) Existing Articles of Association 3) Housing Committee Minute of 21 June 2001 authorising the setting up of the company

HEADLINE INFORMATION

Purpose of report	This report seeks Cabinet's approval for the Council, as a member of Locata Housing Services, to vote to amend the existing company memorandum and articles of association.
Contribution to our plans and strategies	Putting residents first
Financial Cost	There are no financial costs for the Council arising from the proposal to amend Locata Housing Services Ltd's company articles. However, if the company's directors were to resolve to distribute the accumulated surplus, the amount payable to London Borough of Hillingdon would be approximately £15k.
Relevant Policy Overview Committee	Social Care, Health and Housing
Ward(s) affected	All

RECOMMENDATION

That Cabinet approve for the Council, as a member of Locata Housing Services (LHS), to vote to amend the existing company memorandum and articles

INFORMATION

Reasons for recommendation

1. The Company Board believe that the company has reached a point where it needs to change to further benefit its founding members. The purpose of this report is to seek approval for the Council, as a member of LHS, to vote to amend the existing company memorandum and articles which will enable:
 - distribution of profits amongst the members
 - appointment of specialist directors to add relevant skills to the company's board and
 - simplification of director voting rights.
2. Enabling the distribution of profits will allow surplus funds to be paid to the Council and other members, where these funds are not required for further investment in LHS. The other changes to the LHS's articles will enable LHS to ensure that it is managed in the best possible way as it grows and moves forward. This will allow the Council, with the other members, to continue to lead innovation in the housing field.

Alternative options considered / risk management

3. Not to approve for the Council to vote to amend the memorandum and articles of association. This option is not recommended because the cash surplus generated by the company would continue to grow and remain 'locked up' within the company and the Board will not necessarily have the mixed skill base required to manage and lead the company.
4. Another option considered by the Board was to change the company from the current status of one limited by guarantee to a company limited by shares. This option was rejected as it would require a separate company to be set up and all staff and assets transferred to the new company. This option would also have tax implications, which could prove costly. The main benefit of a share holder company, compared to the current one limited by guarantee is the ability to raise money by selling shares. This is not something that the existing board of directors considers is necessary to take the company forward at this stage.
5. The proposed option is a less radical alternative which would achieve current member goals but does not preclude further changes in the future of the company if required.

Comments of Policy Overview Committee(s)

6. None at this stage

Supporting Information

7. On 7th December 1999, Housing Committee was advised of the need to review Allocation policy in light of a changing local and national housing agenda as choice based lettings schemes were being developed nationwide to meet the Governments policy objectives of offering choice to housing applicants. Local authorities were required in their allocation scheme to include a statement on their policy on offering people ...'a choice of accommodation or opportunity to express preferences about the housing accommodation to be allocated to them'. The Government also set a performance target for all local authorities to offer choice by 2010.

8. In December 2000, the Housing Committee resolved that a bid should be made to the then Department for the Environment, Transport and the Regions for pilot status and related funding to examine the potential for a West London choice based lettings system.
9. The bid for £1.1m of Government funding was successful and in partnership with 4 other West London Local Authorities (Brent, Ealing, Harrow, and Hounslow) and 3 Housing Associations (Ealing Family HA (now Catalyst), Paddington Churches HA (now Genesis) and the Paradigm Group, Housing Committee on 21 June 2001 approved Hillingdon joining with its partners to form the Central Lettings Agency joint venture company which was called Locata Housing Service. It was a company limited by guarantee to provide IT solution and support services to its founding members in relation to a Choice Based Lettings Scheme.
10. As part of the development of choice based lettings, a common allocations policy was agreed between the partners that allowed discretion to meet local requirements. This policy was agreed by Housing Committee in December 2001. The choice based lettings system was implemented as a pilot and on a phased basis initially for applicants requiring one bedroom properties in April 2002. This was extended by the Committee to include lettings to all properties in November 2002. Locata was one of the 27 pilot projects funded by the Government.
11. In the 10 years since its incorporation, LHS has sold its services far and wide around the UK and has become very successful by providing a range of services to no fewer than 285 organisations (70 Local Authorities and 215 Registered Providers). The cost of managing the lettings process has been substantially reduced for founding members like Hillingdon. It has also given us access to leading edge technology which gives customers with housing needs online access to comprehensive advice.
12. The Locata Board (on which Beatrice Cingtho, Head of Housing, sits for Hillingdon) now proposes that the Memorandum of Association and Articles of Association be amended to allow the following objectives to be achieved. Amendment of these documents is a decision for the members of LHS, including Hillingdon Council. The objectives are:
 - to enable the company to distribute to its members surpluses currently 'locked up' in the business.
 - To enable the Board to appoint independent directors so as to ensure that collectively the board has the necessary expertise and experience to manage an organisation that has grown considerably since its foundation 10 years ago.
 - To enable independent directors to be paid for their services. For the avoidance of doubt, directors appointed by each member (LA & RSLs) will continue to be unpaid.
 - To simplify director voting rights set out in section 6 of the current articles of association.
- 13. Amendments recommended to the existing Memorandum and Articles of Association**

The key clauses in the Memorandum and Articles which are proposed for amendment are:
- 14. Memorandum: Paragraph 5 Application of Income and Property**

This section is proposed to be deleted in order to remove restrictions on use or application of property and income. Without such restriction, the company can decide how to apply its income and property, including distributing surpluses to members

15. Memorandum: Paragraph 8 Winding Up

Following the principle of any surpluses being distributed to members, the current wording is proposed to be deleted and replaced with the following:

“if upon winding up or dissolution of the Company there remains, after satisfaction of all debts and liabilities, any property whatsoever, the same shall be distributed among the Members of the Company.”

16. Articles: Paragraphs 11.3 & 11.4 – Appointment & Retirement of Directors

The current Articles allow for independent directors to be appointed by independent members; however, since there are no independent members, there is no provision for the appointment of independent directors. There is a need to bring on additional skills at the Board level, but not necessarily new members, so a new article needs to be inserted between 11.3 and 11.4 as follows:

“The directors shall be entitled to appoint directors of the Company subject to there being no more than 3 such persons appointed pursuant to this Article 11.4 at any one time.”

The current wording of 11.3 is proposed to be amended by including after the words “Each director” and before “shall upon appointment” the words “other than those appointed pursuant to Article 11.4”. Current 11.4 to be renumbered 11.5.

17. Articles: Paragraph 12 – Disqualification & Removal of Directors

The converse of the new plan to appoint independent directors is provision for their removal. Insert a new article 12b as follows:

“A Director appointed by the Board under clause 11.4 shall and can be removed by a vote of a simple majority of the Board”

18. Articles: Paragraph 13 – Remuneration of Directors

If the Board wishes to capture additional skills by appointing the independent directors, then it will be necessary for those directors to be remunerated in some way. It is now common practice for public sector owned companies to appoint and remunerate independent directors and it is proposed that LHS does so too. For the purposes of clarification, the existing clause (numbered 13.1) ensures that directors appointed by the RSL and LA members will continue to be unpaid and only receive expenses. The existing clause should be re-numbered as 13.1 and a new clause 13.2 added as follows:

“Any Director appointed under paragraph 11.4 shall be entitled to a remuneration which will be fixed by the Board from time to time.”

19. Articles: Paragraph 15.1

The words “and Schedule 1 of the Housing Act 1996” is proposed to be deleted since this provision ceased to apply in England.

20. Articles: Paragraph 16.2 to 16.4 – Proceeding of Directors

In order to remove the complicated provisions for poll voting both paragraphs 16.3 and 16.4 need to be deleted and, in paragraph 16.2, delete the words “in the first place”. Voting on the Board will then be by show of hands. (The rules on quorum, requiring a percentage of local authority directors and RSL directors shall continue). Clauses 16.5 et seq to be renumbered accordingly.

Financial Implications

21. There are no immediate financial implications for Hillingdon from the proposal to amend Locata Housing Services Ltd's company articles. However, if the company's directors were to resolve to distribute the current accumulated surplus of £470k (excluding £350k for working capital), there would be a small amount payable to the London Borough of Hillingdon. This would amount to just under £15k being 1/8 of the current distributable amount. The appointment of specialist Directors would however, result in additional costs and this would reduce the distributable amount unless they are able to make a contribution to the business which would result in increased profits.
22. The company structure along with professional indemnity insurance for officers was designed from the inception of the company to minimise financial risk for the individual members. Consequently, the company currently remains as limited by guarantee. This restricts the liability of individual members of company to the minimal (guaranteed) sum of £10.00. Even if in the future Locata were to change the company structure and become a company limited by share, future liability would be restricted to the amount paid in for shares.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

23. Whilst this proposal does not directly affect resident, bringing additional skills on to the Board will enable LHS to develop and improve social housing functions. The company provides, and will continue to provide, a cost effective method of delivering housing advice and assistance to residents. Permitting any surplus to be distributed to members will allow this funding to be targeted at supporting the most vulnerable residents in housing need who tend to be vulnerable or socially excluded

Consultation Carried Out or Required

24. None

CORPORATE IMPLICATIONS

Corporate Finance

25. Corporate Finance has reviewed this report and notes that there are no direct financial implications arising from the recommendations contained within this report.

Legal

26. The Council's power to participate in Locata is now contained in section 1 of the Localism Act 2011. Further, section 3 of the Act requires the Council to only engage in commercial activity via a Limited Company.

27. The report explains why changes to Locata's Articles of Association are required and the Borough Solicitor confirms that there are no legal impediments to the Council as a Member of Locata from authorising its Director to support the amendments.
28. However, a change in the Company's Articles of Association requires a special resolution of the Company Members - i.e. 75% of the Members of the company support the change.
29. Once a special resolution is passed the Company must file the Amended Articles of Association with the Registrar of Companies together with a copy of the special resolution. Failure to do so constitutes a criminal offence under sections 26 and 30 of the Companies Act 2006.

BACKGROUND PAPERS

Housing Committee report dated 21st June 2001