

REPORT FOR: **CABINET**

Date of Meeting:	8 March 2012
Subject:	Locata (Housing Services) Ltd [LHS] – Amendment to Articles of Association
Key Decision:	No
Responsible Officer:	Lynne Pennington, Divisional Director Housing Services
Portfolio Holder:	Councillor Bob Currie, Portfolio Holder for Housing
Exempt:	No
Decision subject to Call-in:	Yes
Enclosures:	1) Cabinet Minute of 17/07/01 authorising the setting up of the company 2) Existing Memorandum of Association 3) Existing Articles of Association

Section 1 – Summary and Recommendations

This report seeks approval for the council, as a member of LHS, to vote to amend the existing company memorandum and articles.

Recommendation:

That Cabinet approve a “yes” vote for changing the LHS company memorandum and articles.

Reason: because the change will allow for distribution of profits amongst the members, appointment of specialist directors to add relevant skills to the company’s board and simplify director voting rights.

Section 2 – Report

Introductory paragraph

LHS is the central lettings agency set up by Brent, Ealing, Harrow, Hillingdon and Hounslow councils and three partner housing associations, to manage social housing lettings through an IT solution that matches housing applicants to available vacant homes. LHS has sold its services far and wide around the UK and has become very successful. The cost of managing the lettings process has been substantially reduced for founding members like Harrow. It has also given us access to cutting edge technology which gives customers with housing needs online access to comprehensive advice. The council is required by the Housing legislation to provide housing advice to eligible citizens, and the use of LHS's system is proving a very cost effective alternative to much of the face-to-face and telephone advice that have traditionally been the primary methods available to the council to meet this statutory obligation.

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 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.

Options considered

The option of changing the company from one limited by guarantee to a company limited by shares was considered, but would have required a separate company to be set up and all staff and assets transferred to the new company. The proposal had tax implications, which could have proved costly. The main benefit of a shareholder company, compared to a company 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. The present proposal is a less radical alternative option which would achieve current goals, but does not preclude further changes in the future.

Background

Harrow is a joint member of LHS. Cabinet approved the setting up of LHS as a company limited by guarantee back in 2002 (see Appendix 1). The memorandum of association is attached at Appendix 2. The business has gone from strength to strength. It began by serving the 5 founder local authorities and 3 housing associations in West London and now provides the software for no fewer than 285 organisations (70 local authorities and 215 housing associations) nationwide.

The Locata Board (on which Rosy Leigh, Housing Assessment Manager, sits for Harrow) 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 Harrow 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 additional independent directors so as to ensure that collectively the board has the necessary expertise and experience to manage an organization 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 will continue to be unpaid.
- To simplify director voting rights set out in section 6 of the current articles of association attached at Appendix 3.

Amendments recommended to the existing Memorandum and Articles of Association

The key clauses in the Memorandum and Articles which are proposed for amendment are:

- **Memorandum: Para 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.

- **Memorandum: Para 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."

- **Articles: Paras 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 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.

- **Articles: Para 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”

- **Articles: Para 13 Remuneration of Directors**

If the Board wishes to capture additional skills by appointing 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 para 11.4 shall be entitled to a remuneration which will be fixed by the Board from time to time.”

- **Articles: Para 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.

- **Articles: Paras 16.2 to 16.4 Proceedings of Directors**

In order to remove the complicated provisions for poll voting both Paras 16.3 and 16.4 need to be deleted and, in Para 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.

Implications of the Recommendation

There is no cost to the council of making these changes. However there are likely to be small financial benefits over the medium to longer term.

There are no staffing implications, but the projects that Harrow participates in as a member of LHS have already facilitated the deletion of one post in the housing assessment team, with another expected in the summer, and possible further efficiencies and staffing reductions over the medium to longer term.

Legal comments

LHS is a controlled local authority company because a majority of its members are local authorities. There are rules and restrictions relating to controlled companies; however, none of the proposed changes affect these restrictions. The objects of LHS will remain the same and the proposed changes are all in accordance with these objects.

Financial Implications

There are no immediate financial implications for the local authority 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 (excluding £350k for working capital), the amount payable to the London Borough of Harrow would be approximately £14K.

As a controlled company, Harrow is required to disclose its investment in Locata in its accounts by way of a note in its accounts.

The MTFs already includes staffing efficiencies in its housing needs services as a result of its partnership arrangements with Locata.

Performance Issues

The council's performance is not directly impacted by the changes, except that the continued success of the company enables the council to perform better, over the medium to longer term, on homelessness, homelessness prevention and housing advice indicators, as well as in reducing the volume of complaints about housing in the borough.

If the proposal does not go ahead the likely impact will not be immediate, but it could mean higher costs of making housing allocations and providing housing advice than would otherwise apply, and the council missing the opportunity for potential profit distribution. If the company articles are not changed to enable it to manage itself more efficiently and with access to more expertise, this could result in a poorer growth potential than currently forecast.

Environmental Impact

None.

Risk Management Implications

None.

Equalities implications

While this proposal does not directly affect customers or staff, bringing additional skills on to the Board will allow LHS to develop and improve. Its objects remain related to social housing functions. The company provides, and will continue to provide, a cost effective method of delivering housing advice and assistance to citizens and permitting any profits to be distributed to members will allow this funding to be put into supporting the most vulnerable people in housing need. The majority of housing customers have protected characteristics (as defined by the Equality Act) especially people with disabilities, older people, minority ethnic groups, pregnant women and families with young children.

Corporate Priorities

Membership of LHS enables Harrow to more efficiently make allocations and nominations to public rented housing and provide better housing advice and information to citizens with housing problems, thus better meeting its statutory obligations. Use of the LHS technology frees up staff to provide a better face to face service to the most vulnerable customers, thus fulfilling the council's corporate priority of supporting and protecting people who are most in need.

Section 3 - Statutory Officer Clearance

Name: Roger Hampson	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 23/01/12		
Name: Sarah Wilson	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 16/01/12		

Section 4 – Performance Officer Clearance

Name: David Harrington	<input checked="" type="checkbox"/>	on behalf of the Divisional Director Partnership, Development and Performance
Date: 06/02/12		

Section 5 – Environmental Impact Officer Clearance

Name: Andrew Baker



on behalf of the
Divisional Director
(Environmental
Services)

Date: 02/02/12

Section 6 - Contact Details and Background Papers

Contact: Rosy Leigh, Housing Assessment Manager, 020 8420 9209

Background Papers: None

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]