

Mayor and Cabinet			
Title	Amendment to Governance Arrangements for Capital Letters (London) Ltd		
Key decision	Yes	Item no	XX
Wards	All		
Contributors	Executive Director of Customer Services Head of Law		
Class	Part 1	27 th March 2019	

1. Purpose of report

1.1 The purpose of this report is :

- to set out proposed changes to the Members Agreement and Articles of Association for Capital Letters (London) Ltd, the governance of the company and appointment of Capital Letters Company Directors which had been agreed at the 21st November 2018 Mayor & Cabinet.
- Mayor & Cabinet are asked to consider this report and agree the recommendations in section 3

2. Summary

- 2.1 Attached at **Appendix A** is the original report dated 21st November 2018 which outlines the original agreed proposal which was approved.
- 2.2 Further to the decision at Mayor & Cabinet on the 21st November 2018 essential changes have been made to the governance and structure of Capital Letters (London) Ltd.
- 2.3 The changes are outlined in detail below in section 4.
- 2.4 Capital Letters (London) Ltd has now been formed and limited by guarantee, with Members (owners) drawn from participating London Boroughs.
- 2.5 At the time of the Special General Meeting of the company held on 6 March 2019, 13 London Boroughs have formally agreed to become Members of the company and participate in its future development.

3. Recommendations

Mayor & Cabinet are asked to:

- 3.1 Approve the amended Articles of Association for Capital Letters (London) Ltd attached at **Appendix B**;
- 3.2 Approve the amended Members Agreement for Capital Letters (London) Ltd attached at **Appendix C**;

- 3.3 Agree to appoint Cllr Paul Bell to be the Council's Representative on the Borough's Representative Body for Capital Letters (London) Ltd;
- 3.4 Approve the policy for the appointment of Company Directors set out at paragraphs 4.12-4.26 of this report and delegate authority to the Executive Director for Customer Services to agree the identity of the sub-regional Director for the South East sub-region with the London Borough of Southwark; and
- 3.5 Approve the amended Officers' Mandate and Governance Guide attached to this report as **Appendix D** and note and agree the proposed arrangements for reporting back to Mayor & Cabinet and Housing Select Committee.

4. Updates and Changes

4.1 Governance

- 4.2 Capital Letters has been designed with two tiers of Governance. The senior body for all Governance decisions is the **Borough's Representative Body**. This body is comprised of a representative member from each of the Councils who share the ownership of the company. Each council that joins the company, can nominate a member to the representative body. The council can change its representative member at any time. London Borough of Lewisham is proposing to nominate Cllr Paul Bell to the Borough Representative Body.
- 4.4 The second tier of Governance, as required by English company law, is the **Board of Directors**. Each director of the company shall be registered with Companies House and will carry the formal responsibility and liability for the company's actions. It is recommended that the Board should have no more than 12 members and 3 of these should be independent members. (In fact, the independent members are a condition of MHCLG funding and are non-negotiable with the funder). In addition, the MHCLG has required a non-voting place (observer) on the Board. And the articles enable the inclusion of up to 3 non-voting places. (These non-voting places do not count as Directors of the company)
- 4.5 At a Special General Meeting of the company held on 6th March 2019, a decision was taken to ratify directors from Tower Hamlets and Bexley to the positions of chair and vice chair of the Board of Directors respectively. The remaining Directors will be nominated from each London sub region. In the south east sub region the Director representative will be decided between Southwark and Lewisham and ratified at the next Boroughs' Representative Body meeting to be held in April 2019 (date to be confirmed). Currently Lewisham have been nominated to represent the South East sub region.

4.6 Role of the Boroughs' Representative Body

- 4.7 The matters reserved for this tier of Governance are those required of all members of companies such as the appointment of auditors, receiving the companies accounts, amending the articles, appointing directors and in addition there are a set of reserved matters contained in the Members' Agreement which require a 75% majority agreement and these include major decisions in relation to the company e.g. Adoption of the business plan; permitting admission of additional members; entering into contracts with a value higher than £500k.

4.8 Role of the Board of Directors

- 4.9 The Board of Directors is not and should not be a representative body. The responsibility of the Directors is to act in the best interests of the company, to pursue a fiduciary duty in

ensuring at all times the company is trading responsibly, in pursuit of its objectives and in compliance with the policies and direction set down by the Boroughs' Representative Body.

4.10 Changes to the Articles of Association

4.11 There are 2 key changes to the articles: -

- **The elimination of classes of membership** – When originally conceived it was anticipated that Capital Letters would have 2 classes of membership. Class A was those Councils who committed wholly to the company and undertook to procure 50% of their accommodation requirements through the company. Class B were those councils who did not commit wholly but agreed to trade with Capital Letters on one basis or another. Based on experience thus far it is proposed to simplify this and have only one class of membership (that previously known as Class A). The articles have been amended to reflect this.
- **Appointments to the Board of Directors** – Again when originally conceived it was estimated that 8 councils would join Capital Letters and that each would have a Director of the company's Board of Directors. It was originally envisioned that there would be three types of directors: Type A were those appointed by Class A members; Type B were those recommended by Class B members; and Type C were to be independent directors. Given the changes to the classes of membership, and the fact that there are currently 13 Member Councils it was agreed that this section of the articles required change.

4.12 Best practice confirms that any Board of Directors should be limited to a maximum of 12 members. Given the MHCLG has required as a condition of the funding, the nomination of 3 independent members, that leaves a maximum of 9 places. The articles have been amended to provide that Director appointments are made in accordance with an appointments policy (see **Appendix B**) which can be adopted, reviewed and amended periodically by the Boroughs' Representative Body. It is proposed in the policy before the Special General meeting that in addition to the 3 independent members, a Chair and Vice Chair are appointed to the Board of Directors drawn from officers from the member boroughs; and 5 additional Directors are appointed to the Board with each being drawn from one of the 5 London housing sub-regions (see map at 4.28). This will take the total number of Company Directors to 10.

4.13 This policy has been constructed

- a) to ensure that the Board is able to perform its duties as per the Articles of Association; and
- b) to deliver appropriate representation and contribution to the operation of the company of member boroughs and their political leadership.
- c) To comply with the NFHA Code of Governance (to be adopted).

4.14 Number and Type of Directors

4.15 There will be 10 Directors on the Board (the articles impose an upper limit of 12 Directors)

4.16 Two directors will be the Chair and Vice Chair (drawn from the participating boroughs). Five will be officers from member boroughs each drawn from one of the five London sub-regions. Three will be Independent Members comprising individuals with expertise in specified fields and will not be affiliated to a particular borough.

4.17 In addition to the ten Directors, the Ministry of Housing, Communities and Local Government (MHCLG) will appoint a non-voting observer to attend meetings of the Board. Additional non-voting observers (up to a maximum of an additional 2) shall be admitted on the approval of the Board of Directors.

4.18 Appointments

- 4.19 All Directors will be formally appointed by the Borough Representative Body.
- 4.20 The Independent Board members will be recommended for appointment following an open recruitment process.
- 4.21 The Chair and Vice Chair will be recommended for appointment following consultation with all member boroughs
- 4.22 The five Directors appointed from the housing sub-regions will be recommended for appointment following consultation within the sub-regions
- 4.23 Directors will be appointed to the Board for periods of 3 years after which they will be re-elected or replaced. Directorships will thus rotate periodically in order to comply with the code of governance and to maintain an appropriate continuity of Governance arrangements.
- 4.24 Code of Governance**
- 4.25 The Board will adopt the NFHA code of Governance and report compliance with the code to the Member Representative meeting on annual basis.
- 4.26 Participating boroughs and sub-regions**



5. Financial implications:

5.1 There are no financial implications to the amendment

6. Legal Implications

6.1 The legal implications are as set out in the report to Mayor and Cabinet dated 21 November 2018. Mayor and Cabinet should be satisfied that the changes to the governance arrangements for the company set out in this report are appropriate and will enable the proper governance of the company and effective representation for the Council at both tiers of Governance.

7. Equalities Implications

7.1 There are no additional equalities implications

8. Summary of Appendices

8.1 Appendix A - Mayor and Cabinet report 21st November 2018

8.2 Appendix B - Articles of Association for Capital Letters (London) Ltd

8.3 Appendix C - Members Agreement for Capital Letters (London) Ltd

8.4 Appendix D- Officers' Mandate and Governance Guide

For more information please contact Nicholas Stabeler (Private Sector Housing Agency Manager) at Nicholas.stabeler@lewisham.gov.uk