

Council
Tuesday 24 January 2012

Statutory Council Business
Reports from Committees

Item 4.1.1 Report of Cabinet Resources Committee

Pages 1 – 25

Item 4.3.1 Report of Special Committee (Constitution Review)

Pages 26 - 74

Item 4.1.1 Report of Cabinet Resources Committee

16 January 2012

Cabinet Members:

*Cllr Daniel Thomas (Chairman)

* Brian Coleman AM, FRSA

* Andrew Harper

* Robert Rams

* Richard Cornelius

* Sachin Rajput BA (Hons)
PgD Law

* denotes Member present

ADULTS IN-HOUSE SERVICE REVIEW: THEBARNETGROUP LTD BUSINESS PLAN (Report of the Cabinet Member for Adults and Cabinet Member for Customer Access and Partnerships)

Cabinet Resources Committee agreed to forward to Council for ratification the Articles of Association of TheBarnetGroup LTD (the holding company), Barnet First Limited (temporary shell company to enable incorporation of TheBarnetGroup LTD) and Your Choice (Barnet) Limited (the subsidiary established to deliver Adult Social Care services). Council is thus asked to ratify the Articles of Association attached at Enclosures 1, 2 and 3.

RESOLVED TO RECOMMEND:

That Council ratify the attached Articles of Association of TheBarnetGroup LTD, Barnet First Limited and Your Choice (Barnet) Limited.

Enclosure 1

Private company limited by shares

Articles of Association

of

The Barnet Group Limited

Model Articles

- 1 The model articles of association for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles (the **Model Articles**), shall apply to the Company save in so far as they are excluded or varied hereby and such Model Articles (save as so excluded or varied) together with the following articles shall be the articles of association of the Company. References to **these articles** shall be to the following articles as amended from time to time together with such Model Articles as apply to the Company.

Objects clause

- 2 The Company's objects are unrestricted.
- 3 Notwithstanding article 2, the Company shall not, without the prior written consent of the London Borough of Barnet:
 - 3.1 permit the registration (upon subscription or transfer) of any person as a member of the Company;
 - 3.2 change the nature of the Company's business from [that of a holding company] or commence any new business which is not ancillary or incidental to such business;
 - 3.3 form any subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not);
 - 3.4 amalgamate or merge with any other company or business undertaking;
 - 3.5 declare or pay any dividend; or
 - 3.6 establish or amend any pension scheme.

Unanimous decisions

- 4 A decision of the directors which takes the form of a resolution in writing may consist of several copies each signed by one or more eligible directors. Article 8 of the Model Articles shall be modified accordingly.

Calling a directors' meeting

- 5 A director may waive the requirement that notice of a meeting of the directors or of a committee of the directors be given to him at any time before or after the date on which the meeting is held by notifying the Company to that effect. Where a director gives such notice to the Company after the meeting has been held, that does not affect the validity of the meeting or of any business conducted at it. Article 9(4) of the Model Articles shall be modified accordingly.
- 6 If all the directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting is. Article 10(3) of the Model Articles shall not apply to the Company.

Quorum for directors' meetings

- 7 The quorum for the transaction of business of the directors shall be such number as is equal to one half of the number of directors then in office unless there is a sole director, in which event, the sole director shall constitute a quorum. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. Article 11(2) of the Model Articles shall be modified accordingly.

Conflicts of interest

- 8 Provided that a director has disclosed his interest in an actual or proposed transaction or arrangement with the Company in accordance with the Companies Acts or the provisions of these articles, he may nevertheless be counted as participating in the decision-making process for quorum and voting purposes in respect of any such matter in which the director is in any way interested, and shall not, save as otherwise agreed, be accountable to the Company for any benefit which he derives under or in consequence of any such transaction or arrangement. Article 14 of the Model Articles shall be modified accordingly.

Authorisation of directors' conflicts of interest

- 9 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time (the **2006 Act**), the directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act. Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 10 Authorisation of a matter under article 9 shall be effective only if:
- 10.1 the matter in question shall have been proposed in writing for consideration by the directors, or in such other manner as the directors may determine;

- 10.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other interested director (together the **Interested Directors**); and
- 10.3 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.
- 11 Unless otherwise determined by the directors (excluding the Interested Directors), any authorisation of a matter under article 9 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 12 Any authorisation of a matter under article 9 shall be on such terms and/or conditions as the directors (excluding the Interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the directors (excluding the Interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the directors (excluding the Interested Directors) pursuant to any such authorisation.
- 13 A director, notwithstanding his office, may be a director or other officer of, employed by, or otherwise interested (including by the holding of shares) in, the member who appointed him as a director of the Company and no authorisation under article 9 shall be necessary in respect of any such interest.
- 14 If a director receives or has received any information otherwise than by virtue of his position as a director of the Company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:
- 14.1 disclose any such information to the Company, the directors or any other director or employee of the Company; or
- 14.2 use or apply any such information in connection with the performance of his duties as a director;
- provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, this article shall apply only if such situation or relationship has been authorised by the directors under article 9.
- 15 A director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under article 9 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

Appointment and removal of directors

- 16 Unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is one.
- 17 Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the Company may at any time and from time to time:
- 17.1 appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); or
- 17.2 remove any director from office.

Every such appointment or removal shall be effected by notice in writing to the Company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.

- 18 In any case where, as a result of bankruptcy, the company has no shareholders and no directors, the trustee in bankruptcy or other transmittee(s) of the last shareholder to have a bankruptcy order made against him has the right, by notice in writing, to appoint a natural person (including himself) who is willing to act and is permitted to do so to be a director.

Termination of a director's appointment

- 19 Notwithstanding any other provision of these articles, a person ceases to be a director as soon as he has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated.

Appointment and removal of alternate directors

- 20 Any director (the **appointor**) may appoint as an alternate any other director, or any other natural person to:
- 20.1 exercise that director's powers; and
- 20.2 carry out that director's responsibilities

in relation to the taking of decisions by the directors in the absence of the alternate's appointor. Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors. The notice must identify the proposed alternate and, in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

Rights and responsibilities of alternate directors

- 21 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor. Alternate directors are deemed for all purposes to be directors, are liable for their own acts and omissions,

are subject to the same restrictions as their appointors, and are not deemed to be agents of or for their appointors. A person who is an alternate director but not a director may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and may sign a written resolution (but only if it is not signed or to be signed by that person's appointor). No alternate may be counted as more than one director for such purposes.

- 22 An alternate director is not entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

Termination of alternate directorship

- 23 An alternate director's appointment as an alternate terminates:
- 23.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- 23.2 on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the terminate of the appointor's appointment as a director;
- 23.3 on the death of the alternate's appointor; or
- 23.4 when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

Company secretary

- 24 The directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the directors.

Nil- or partly-paid shares permitted

- 25 Article 21 of the Model Articles shall not apply to the Company. If the Company at any time has nil or partly-paid shares in issue, articles 52 to 62 (inclusive) of the model articles of association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these articles, shall apply to the Company and form part of these articles as if the text of such provisions was set out in full in these articles.

Allotment of shares

- 26 Any allotment of equity securities (as defined in Section 560 of the 2006 Act) by the Company may only be made where approved by a special resolution of the members.

Share certificates

- 27 Every share certificate must specify the amount paid up on the shares to which it relates. Article 24(2)(c) of the Model Articles shall not apply to the Company.

Share transfers

- 28 The instrument of transfer of any share taken on formation of the Company by a subscriber to the company's memorandum of association need not be executed by or on behalf of the transferee even where the share is not fully paid.

Calculation of dividends

- 29 Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:
- 29.1 declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
- 29.2 apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount. Article 30 of the Model Articles shall be modified accordingly.

Appropriation of capitalised sums

- 30 A capitalised sum which was appropriated from profits available for distribution may be applied in or towards paying up any amounts unpaid on existing shares held by the persons entitled.

Proceedings at general meetings

- 31 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given to all the members of the Company. Article 41(5) of the Model Articles shall be modified accordingly.

Poll votes

- 32 A poll may be demanded by any member (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation. Article 44(2)(c) of the Model Articles shall be modified accordingly.
- 33 A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made. Article 44(3) of the Model Articles shall not apply to the Company.

Proxies and corporate representatives

- 34 The failure of any proxy or corporate representative to vote in accordance with any instructions given by the member by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the Company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

Written resolutions

- 35 A proposed written resolution of the members of the Company (or of a class of members) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the 2006 Act).

Means of communication to be used

- 36 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- 36.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
- 36.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- 36.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
- 36.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

- 37 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the 2006 Act.

Indemnity

- 38 The Company may indemnify any relevant officer out of the assets of the Company from and against any loss, liability or expense incurred by him or them in relation to the Company (including any liability incurred in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)) **provided that this**

article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the 2006 Act. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the 2006 Act and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled. Article 52 of the Model Articles shall not apply to the Company.

- 39 To the extent permitted by, and subject to the restrictions in, the 2006 Act and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the 2006 Act, or to enable him to avoid incurring such expenditure.
- 40 Without prejudice to the provisions of Article 53 of the Model Articles, the directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the Company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the Company.
- 41 In these articles:
- 41.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate;
- 41.2 **relevant officer** means any current or former director, alternate director, secretary or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)), other than any person (whether an officer or not) engaged by the Company (or associated company) as an auditor, to the extent he acts as an auditor.

Enclosure 2

Private company limited by shares

Articles of Association

of

Your Choice (Barnet) Limited

Model Articles

- 1 The model articles of association for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles (the **Model Articles**), shall apply to the Company save in so far as they are excluded or varied hereby and such Model Articles (save as so excluded or varied) together with the following articles shall be the articles of association of the Company. References to **these articles** shall be to the following articles as amended from time to time together with such Model Articles as apply to the Company.

Objects clause

- 2 The Company's objects are unrestricted.
- 3 Notwithstanding article 2, the Company shall not, without the prior written consent of [The Barnet Group Limited (company number []]):
 - 3.1 permit the registration (upon subscription or transfer) of any person as a member of the Company;
 - 3.2 change the nature of the Company's business from [the provision of adult social care services] or commence any new business which is not ancillary or incidental to such business;
 - 3.3 form any subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not);
 - 3.4 amalgamate or merge with any other company or business undertaking;
 - 3.5 declare or pay any dividend; or
 - 3.6 establish or amend any pension scheme.

Unanimous decisions

- 4 A decision of the directors which takes the form of a resolution in writing may consist of several copies each signed by one or more eligible directors. Article 8 of the Model Articles shall be modified accordingly.

Calling a directors' meeting

- 5 A director may waive the requirement that notice of a meeting of the directors or of a committee of the directors be given to him at any time before or after the date on which the meeting is held by notifying the Company to that effect. Where a director gives such notice to the Company after the meeting has been held, that does not affect the validity of the meeting or of any business conducted at it. Article 9(4) of the Model Articles shall be modified accordingly.
- 6 If all the directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting is. Article 10(3) of the Model Articles shall not apply to the Company.

Quorum for directors' meetings

- 7 The quorum for the transaction of business of the directors shall be such number as is equal to one half of the number of directors then in office unless there is a sole director, in which event, the sole director shall constitute a quorum. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. Article 11(2) of the Model Articles shall be modified accordingly.

Conflicts of interest

- 8 Provided that a director has disclosed his interest in an actual or proposed transaction or arrangement with the Company in accordance with the Companies Acts or the provisions of these articles, he may nevertheless be counted as participating in the decision-making process for quorum and voting purposes in respect of any such matter in which the director is in any way interested, and shall not, save as otherwise agreed, be accountable to the Company for any benefit which he derives under or in consequence of any such transaction or arrangement. Article 14 of the Model Articles shall be modified accordingly.

Authorisation of directors' conflicts of interest

- 9 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time (the **2006 Act**), the directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act. Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 10 Authorisation of a matter under article 9 shall be effective only if:
- 10.1 the matter in question shall have been proposed in writing for consideration by the directors, or in such other manner as the directors may determine;

- 10.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other interested director (together the **Interested Directors**); and
- 10.3 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.
- 11 Unless otherwise determined by the directors (excluding the Interested Directors), any authorisation of a matter under article 9 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 12 Any authorisation of a matter under article 9 shall be on such terms and/or conditions as the directors (excluding the Interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the directors (excluding the Interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the directors (excluding the Interested Directors) pursuant to any such authorisation.
- 13 A director, notwithstanding his office, may be a director or other officer of, employed by, or otherwise interested (including by the holding of shares) in, the member who appointed him as a director of the Company and no authorisation under article 9 shall be necessary in respect of any such interest.
- 14 If a director receives or has received any information otherwise than by virtue of his position as a director of the Company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:
- 14.1 disclose any such information to the Company, the directors or any other director or employee of the Company; or
- 14.2 use or apply any such information in connection with the performance of his duties as a director;
- provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, this article shall apply only if such situation or relationship has been authorised by the directors under article 9.
- 15 A director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under article 9 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

Appointment and removal of directors

- 16 Unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is one.
- 17 Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the Company may at any time and from time to time:
- 17.1 appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); or
- 17.2 remove any director from office.

Every such appointment or removal shall be effected by notice in writing to the Company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.

- 18 In any case where, as a result of bankruptcy, the company has no shareholders and no directors, the trustee in bankruptcy or other transmittee(s) of the last shareholder to have a bankruptcy order made against him has the right, by notice in writing, to appoint a natural person (including himself) who is willing to act and is permitted to do so to be a director.

Termination of a director's appointment

- 19 Notwithstanding any other provision of these articles, a person ceases to be a director as soon as he has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated.

Appointment and removal of alternate directors

- 20 Any director (the **appointor**) may appoint as an alternate any other director, or any other natural person to:
- 20.1 exercise that director's powers; and
- 20.2 carry out that director's responsibilities

in relation to the taking of decisions by the directors in the absence of the alternate's appointor. Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors. The notice must identify the proposed alternate and, in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

Rights and responsibilities of alternate directors

- 21 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor. Alternate directors are deemed for all purposes to be directors, are liable for their own acts and omissions,

are subject to the same restrictions as their appointors, and are not deemed to be agents of or for their appointors. A person who is an alternate director but not a director may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and may sign a written resolution (but only if it is not signed or to be signed by that person's appointor). No alternate may be counted as more than one director for such purposes.

- 22 An alternate director is not entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

Termination of alternate directorship

- 23 An alternate director's appointment as an alternate terminates:
- 23.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- 23.2 on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the terminate of the appointor's appointment as a director;
- 23.3 on the death of the alternate's appointor; or
- 23.4 when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

Company secretary

- 24 The directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the directors.

Nil- or partly-paid shares permitted

- 25 Article 21 of the Model Articles shall not apply to the Company. If the Company at any time has nil or partly-paid shares in issue, articles 52 to 62 (inclusive) of the model articles of association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these articles, shall apply to the Company and form part of these articles as if the text of such provisions was set out in full in these articles.

Allotment of shares

- 26 Any allotment of equity securities (as defined in Section 560 of the 2006 Act) by the Company may only be made where approved by a special resolution of the members.

Share certificates

- 27 Every share certificate must specify the amount paid up on the shares to which it relates. Article 24(2)(c) of the Model Articles shall not apply to the Company.

Share transfers

- 28 The instrument of transfer of any share taken on formation of the Company by a subscriber to the company's memorandum of association need not be executed by or on behalf of the transferee even where the share is not fully paid.

Calculation of dividends

- 29 Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:
- 29.1 declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
- 29.2 apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount. Article 30 of the Model Articles shall be modified accordingly.

Appropriation of capitalised sums

- 30 A capitalised sum which was appropriated from profits available for distribution may be applied in or towards paying up any amounts unpaid on existing shares held by the persons entitled.

Proceedings at general meetings

- 31 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given to all the members of the Company. Article 41(5) of the Model Articles shall be modified accordingly.

Poll votes

- 32 A poll may be demanded by any member (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation. Article 44(2)(c) of the Model Articles shall be modified accordingly.
- 33 A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made. Article 44(3) of the Model Articles shall not apply to the Company.

Proxies and corporate representatives

- 34 The failure of any proxy or corporate representative to vote in accordance with any instructions given by the member by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the Company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

Written resolutions

- 35 A proposed written resolution of the members of the Company (or of a class of members) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the 2006 Act).

Means of communication to be used

- 36 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- 36.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
- 36.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- 36.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
- 36.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

- 37 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the 2006 Act.

Indemnity

- 38 The Company may indemnify any relevant officer out of the assets of the Company from and against any loss, liability or expense incurred by him or them in relation to the Company (including any liability incurred in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)) **provided that this**

article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the 2006 Act. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the 2006 Act and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled. Article 52 of the Model Articles shall not apply to the Company.

- 39 To the extent permitted by, and subject to the restrictions in, the 2006 Act and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the 2006 Act, or to enable him to avoid incurring such expenditure.
- 40 Without prejudice to the provisions of Article 53 of the Model Articles, the directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the Company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the Company.
- 41 In these articles:
- 41.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate;
- 41.2 **relevant officer** means any current or former director, alternate director, secretary or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)), other than any person (whether an officer or not) engaged by the Company (or associated company) as an auditor, to the extent he acts as an auditor.

Enclosure 3

Private company limited by shares

Articles of Association

of

Barnet First Limited

Model Articles

- 1 The model articles of association for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles (the **Model Articles**), shall apply to the Company save in so far as they are excluded or varied hereby and such Model Articles (save as so excluded or varied) together with the following articles shall be the articles of association of the Company. References to **these articles** shall be to the following articles as amended from time to time together with such Model Articles as apply to the Company.

Objects clause

- 2 The Company's objects are unrestricted.
- 3 Notwithstanding article 2, the Company shall not, without the prior written consent of TheBarnetGroup Limited:
- 3.1 permit the registration (upon subscription or transfer) of any person as a member of the Company;
- 3.2 change the nature of the Company's business from the provision of adult social care services or commence any new business which is not ancillary or incidental to such business;
- 3.3 form any subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not);
- 3.4 amalgamate or merge with any other company or business undertaking;
- 3.5 declare or pay any dividend; or
- 3.6 establish or amend any pension scheme.

Unanimous decisions

- 4 A decision of the directors which takes the form of a resolution in writing may consist of several copies each signed by one or more eligible directors. Article 8 of the Model Articles shall be modified accordingly.

Calling a directors' meeting

- 5 A director may waive the requirement that notice of a meeting of the directors or of a committee of the directors be given to him at any time before or after the date on which the meeting is held by notifying the Company to that effect. Where a director gives such notice to the Company after the meeting has been held, that does not affect the validity of the meeting or of any business conducted at it. Article 9(4) of the Model Articles shall be modified accordingly.
- 6 If all the directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting is. Article 10(3) of the Model Articles shall not apply to the Company.

Quorum for directors' meetings

- 7 The quorum for the transaction of business of the directors shall be such number as is equal to one half of the number of directors then in office unless there is a sole director, in which event, the sole director shall constitute a quorum. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. Article 11(2) of the Model Articles shall be modified accordingly.

Conflicts of interest

- 8 Provided that a director has disclosed his interest in an actual or proposed transaction or arrangement with the Company in accordance with the Companies Acts or the provisions of these articles, he may nevertheless be counted as participating in the decision-making process for quorum and voting purposes in respect of any such matter in which the director is in any way interested, and shall not, save as otherwise agreed, be accountable to the Company for any benefit which he derives under or in consequence of any such transaction or arrangement. Article 14 of the Model Articles shall be modified accordingly.

Authorisation of directors' conflicts of interest

- 9 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time (the **2006 Act**), the directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act. Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 10 Authorisation of a matter under article 9 shall be effective only if:
- 10.1 the matter in question shall have been proposed in writing for consideration by the directors, or in such other manner as the directors may determine;
- 10.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other interested director (together the **Interested Directors**); and
- 10.3 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.

- 11 Unless otherwise determined by the directors (excluding the Interested Directors), any authorisation of a matter under article 9 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 12 Any authorisation of a matter under article 9 shall be on such terms and/or conditions as the directors (excluding the Interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the directors (excluding the Interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the directors (excluding the Interested Directors) pursuant to any such authorisation.
- 13 A director, notwithstanding his office, may be a director or other officer of, employed by, or otherwise interested (including by the holding of shares) in, the member who appointed him as a director of the Company and no authorisation under article 9 shall be necessary in respect of any such interest.
- 14 If a director receives or has received any information otherwise than by virtue of his position as a director of the Company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:
- 14.1 disclose any such information to the Company, the directors or any other director or employee of the Company; or
- 14.2 use or apply any such information in connection with the performance of his duties as a director;
- provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, this article shall apply only if such situation or relationship has been authorised by the directors under article 9.
- 15 A director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under article 9 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

Appointment and removal of directors

- 16 Unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is one.
- 17 Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the Company may at any time and from time to time:
- 17.1 appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); or

- 17.2 remove any director from office.

Every such appointment or removal shall be effected by notice in writing to the Company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.

- 18 In any case where, as a result of bankruptcy, the company has no shareholders and no directors, the trustee in bankruptcy or other transmittee(s) of the last shareholder to have a bankruptcy order made against him has the right, by notice in writing, to appoint a natural person (including himself) who is willing to act and is permitted to do so to be a director.

Termination of a director's appointment

- 19 Notwithstanding any other provision of these articles, a person ceases to be a director as soon as he has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated.

Appointment and removal of alternate directors

- 20 Any director (the **appointor**) may appoint as an alternate any other director, or any other natural person to:

- 20.1 exercise that director's powers; and

- 20.2 carry out that director's responsibilities

in relation to the taking of decisions by the directors in the absence of the alternate's appointor. Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors. The notice must identify the proposed alternate and, in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

Rights and responsibilities of alternate directors

- 21 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor. Alternate directors are deemed for all purposes to be directors, are liable for their own acts and omissions, are subject to the same restrictions as their appointors, and are not deemed to be agents of or for their appointors. A person who is an alternate director but not a director may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and may sign a written resolution (but only if it is not signed or to be signed by that person's appointor). No alternate may be counted as more than one director for such purposes.

- 22 An alternate director is not entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

Termination of alternate directorship

- 23 An alternate director's appointment as an alternate terminates:
- 23.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- 23.2 on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the terminate of the appointor's appointment as a director;
- 23.3 on the death of the alternate's appointor; or
- 23.4 when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

Company secretary

- 24 The directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the directors.

Nil- or partly-paid shares permitted

- 25 Article 21 of the Model Articles shall not apply to the Company. If the Company at any time has nil or partly-paid shares in issue, articles 52 to 62 (inclusive) of the model articles of association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these articles, shall apply to the Company and form part of these articles as if the text of such provisions was set out in full in these articles.

Allotment of shares

- 26 Any allotment of equity securities (as defined in Section 560 of the 2006 Act) by the Company may only be made where approved by a special resolution of the members.

Share certificates

- 27 Every share certificate must specify the amount paid up on the shares to which it relates. Article 24(2)(c) of the Model Articles shall not apply to the Company.

Share transfers

- 28 The instrument of transfer of any share taken on formation of the Company by a subscriber to the company's memorandum of association need not be executed by or on behalf of the transferee even where the share is not fully paid.

Calculation of dividends

- 29 Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:

- 29.1 declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
- 29.2 apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount. Article 30 of the Model Articles shall be modified accordingly.

Appropriation of capitalised sums

- 30 A capitalised sum which was appropriated from profits available for distribution may be applied in or towards paying up any amounts unpaid on existing shares held by the persons entitled.

Proceedings at general meetings

- 31 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given to all the members of the Company. Article 41(5) of the Model Articles shall be modified accordingly.

Poll votes

- 32 A poll may be demanded by any member (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation. Article 44(2)(c) of the Model Articles shall be modified accordingly.
- 33 A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made. Article 44(3) of the Model Articles shall not apply to the Company.

Proxies and corporate representatives

- 34 The failure of any proxy or corporate representative to vote in accordance with any instructions given by the member by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the Company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

Written resolutions

- 35 A proposed written resolution of the members of the Company (or of a class of members) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the 2006 Act).

Means of communication to be used

- 36 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:

- 36.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
- 36.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- 36.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
- 36.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

- 37 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the 2006 Act.

Indemnity

- 38 The Company may indemnify any relevant officer out of the assets of the Company from and against any loss, liability or expense incurred by him or them in relation to the Company (including any liability incurred in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)) **provided that** this article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the 2006 Act. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the 2006 Act and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled. Article 52 of the Model Articles shall not apply to the Company.
- 39 To the extent permitted by, and subject to the restrictions in, the 2006 Act and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the 2006 Act, or to enable him to avoid incurring such expenditure.
- 40 Without prejudice to the provisions of Article 53 of the Model Articles, the directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the Company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of

duty or breach of trust or any other liability which may lawfully be insured against by the Company.

41 In these articles:

41.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate;

41.2 **relevant officer** means any current or former director, alternate director, secretary or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)), other than any person (whether an officer or not) engaged by the Company (or associated company) as an auditor, to the extent he acts as an auditor.

Item 4.3.1 Report of Special Committee (Constitution Review)

18 January 2012

Members:

* Cllr Melvin Cohen (Chairman)
Cllr Joan Scannell (Vice Chairman)

* Jack Cohen
* Richard Cornelius
* Anthony Finn

* Andrew Harper
* Alison Moore
* Barry Rawlings

* Alan Schneiderman
* Andrew Strongolou

* denotes Member present

AMENDING THE COUNCIL'S FINANCIAL REGULATIONS (Report of the Assistant Director of Financial Services)

The Committee considered the report attached as enclosure 1, seeking to amend to the authority's financial regulations.

The Committee agreed to add the word 'timely' at paragraph 3.1 of the Financial Management Regulations to read as follows:

3.1 *The Executive will publish a draft business planning document for consultation. Arrangements for **timely** budget consultation will be determined by the Executive.*

Subject to the inclusion of the above amendment, the Committee

RESOLVED TO RECOMMEND:

That Council approve the amendments to the Financial Regulations as identified in appendix A to the enclosed report.

LOCAL AUTHORITY TRADING COMPANY: CONSEQUENTIAL CHANGES TO COUNCIL CONSTITUTION (Report of the Business Governance Manager)

The Committee considered a report, appended at enclosure 2, setting out proposed consequential changes to the Council's constitution as a result of the establishment of TheBarnetGroup LTD.

Subject to appropriate provisions being included to require senior officers of TheBarnetGroup LTD to attend before Scrutiny (as set out in Enclosure 3), and in requesting that TheBarnetGroup LTD to make appropriate arrangements to ensure that those arrangements will be included in their constitutional documents, the Committee

RESOLVED TO RECOMMEND:

That Council approve the proposed consequential amendments to the Council's Consitution as the result of the establishment of TheBarnetGroup LTD, as set out in Appendix A to Enclosure 2, and, as a consequence, approve the amendment to the Overview & Scrutiny Procedure Rules as set out in Enclosure 3.

AGENDA ITEM: 7 Pages 8 – 10

Meeting	Special Committee (Constitutional Review)
Date	18 January 2012
Subject	Amending the Council's Financial Regulations
Report of	Assistant Director of Financial Services
Summary	To consider amendments to the Financial Regulations

Officer Contributors	Maria Christofi – AD Financial Services Antony Russell – Finance Manager, Closing & Monitoring
Status (public or exempt)	Public
Wards affected	Not applicable
Enclosures	Appendix A – Financial Regulations with proposed amendments
For decision by	Special Committee (Constitution Review)
Function of	Council
Reason for urgency / exemption from call-in	Not applicable
Contact for further information: Antony Russell, Finance Manager Closing & Monitoring, 020 8359 7862	

1. RECOMMENDATION

- 1.1 That the Committee comments upon and recommends to Council for approval the amendments to the Financial Regulations as identified in this report and in Appendix A to this report.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Special Committee (Constitutional Review) 09 February 2011, Council 01 March 2011.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 Clear, relevant and up to date Financial Regulations support the quality of decision making and ensures adherence to corporate policies.

4. RISK MANAGEMENT ISSUES

- 4.1 Failing to have in place robust and appropriate Financial Regulations could place the financial administration of the council at risk.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Clear and robust Financial Regulations are important to ensure the management of resources to enable the equitable delivery of services to all members of the community and to reduce the differential impact of the services received by all of Barnet's diverse communities.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 Financial Regulations ensure that the council manages its financial and other resources properly in line with statutory requirements and good financial management practice. There are direct consequences for all the implications listed above.

7. LEGAL ISSUES

- 7.1 The statutory duties of the Chief Finance Officer are set out in section 151 of the Local Government Act 1972. The wording of section 151 covers, amongst other things, financial management and the financial appraisal of projects.
- 7.2 Section 114 of the Local Government Finance Act 1988 places a specific duty on the Chief Finance Officer to make a public report in specified cases of actual or anticipated financial misconduct.
- 7.3 The duties of the Monitoring Officer are set out in section 5 of the Local Government and Housing Act 1989.

8. CONSTITUTIONAL POWERS

- 8.1 Part 3, Section 2 of the Council's Constitution details the functions of the Special Committee (Constitution Review) which are " Proactively to review and keep under

review all aspects of the Council's Constitution so as to ensure that it remains current and fit for purpose, and to make recommendations thereon to Council."

- 8.2 Article 14, paragraph 14.01, indicates that the management of the Council's financial affairs will be conducted in accordance with the financial rules set out in Council's Procedure Rules – Part 4 Financial Regulations. It is therefore important to make certain that the Financial Rules ensure the highest standards of financial governance.

9. BACKGROUND INFORMATION

9.1 Introduction

The Financial Regulations were last amended in February 2011. It is important to make certain that the Financial Regulations ensure the highest standards of financial governance. The draft amendments to the Regulations are now presented to this Committee for discussion and recommendation to Council for approval. Once approved they will become final. The following section sets out the main issues that have been addressed in the draft.

9.2 Issues that have been addressed in the proposed amendments to the Financial Regulations

The June 2011 Internal Audit report on the Financial Regulations made a recommendation that certain CIPFA recommended clauses in the CIPFA Financial Regulations Good Practice Guide, in particular arrangements with External Providers and Partners, should be addressed in the Financial Regulations. To meet this recommendation the relevant section in the Financial Regulations has been expanded to make it more consistent with the model recommended by CIPFA. This can be found at paragraphs 5.12 to 5.17 of Part 1 – Financial Management.

- 9.3 Other amendments include providing more detail on the authority of the Head of CAFT and Chief Internal Auditor (paragraph 4.15 of Part 2 – Financial Administration). In addition, further detail is given on the processes around risk management (paragraphs 5.1 to 5.8 of Part 2 – Financial Administration).
- 9.4 Other amendments to the Financial Regulations address a number of minor changes to wording; updating names of roles and teams; and changes to enhance the clarity of the document.
- 9.3 A version showing the changes is attached as Appendix A.

10. LIST OF BACKGROUND PAPERS

- 10.1 None.

Legal – SCS

CFO – MC

Policy & Equalities – AN

Part 1 – Financial Management

1 MEDIUM TERM FINANCIAL STRATEGY

The Council's Constitution sets out how decisions are made including setting the Council Budget. Whilst the Council Budget sets out what those decisions are, the Medium Term Financial Strategy (MTFS) is the framework within which the budget is set. It assesses the Spending Review and the impact of the Local Government Finance Settlement, and sets this against any other changes that are needed to council budgets (For example for inflation or changes in statutory responsibilities).

Deleted: determines the underlying principles behind them and is key in driving the delivery of the Corporate Plan

The Financial Forward Plan sits beneath the MTFS indicating future years' budgets and council tax levels. Those indications are based on the current available information and provides the starting point for the following year's budget.

Deleted: edium Term Financial Strategy

1.1 The Medium Term Financial Strategy, approved by Cabinet, sets out the Executive's approach on a range of issues, including:-

- the way in which corporate service priorities are considered as part of the Council's capital and revenue budget processes;
- the level of balances and reserves (having taken account of advice from the Chief Finance Officer);
- the management of financial risks.

Deleted: ial

Deleted: <#>the approach to bidding for external funding;¶
<#>the setting of fees and charges;¶

1.2 The Medium Term Financial Strategy will normally be approved by Cabinet at the start of each four year municipal term, and be updated annually or sooner if there is a need to respond to significant changes in resource and/or expenditure assumptions.

Deleted: <#>the recovery of debt.¶
¶
¶
The guiding principles for the Medium Term Financial Strategy are set out in a separate document. ¶

2 FINANCIAL FORWARD PLANNING

2.1 The Chief Finance Officer, in consultation with the Cabinet Member with responsibility for Resources, will maintain a Financial Forward Plan that covers a period of at least four financial years, including the current financial year.

Deleted: ial

2.2 The Financial Forward Plan will be produced in line with the Medium Term Financial Strategy and reported in conjunction with the annual budget, council tax and rent proposals to Cabinet and Council before 11 March of the preceding financial year. Further updates on the Financial Forward Plan may be reported during the year.

2.3 The Financial Forward Plan will cover revenue and capital budgets including reserves, and will highlight how resources are being re-directed to address Corporate Plan priorities.

2.4 In respect to resources, the Financial Forward Plan will take account of the following:-

- forecasts of formula and specific grants;
- increases in fees and charges, and the introduction of new charges;
- interest earnings;
- levels of reserves and balances;
- increased income from rents and council tax;
- capital receipts and grants.

2.5 In respect to expenditure, the Financial Forward Plan will take account of the following:-

- full year effects of previous decisions;
- changes in responsibility arising from new or amended legislation or regulations, net of increased income from new fees and charges;
- re-direction of resources to achieving Corporate Plan priorities and targets and away from non priority areas;
- forecast changes in service demand;
- forecasts of inflation, pay awards and interest rates;
- efficiency savings;
- planned service reductions;
- prudential borrowing and;
- financial risks.

2.6 In that the Financial Forward Plan has a four year horizon it is to be expected that figures in later years will often be preliminary estimates and/or aspirations of future decisions and changes in council policy.

3 ANNUAL BUDGET SETTING

3.1 The Executive will publish a draft business planning document for consultation. Arrangements for budget consultation will be determined by the Executive.

Deleted: budget and performance management plans

Deleted: , usually after the Provisional Local Government Finance Settlement has been announced

3.2 The Chief Finance Officer will set the council taxbase for tax-setting purposes before 31 January of the preceding financial year, and notify precepting and levying bodies of this figure by this date. The Chief Finance Officer will, at the same time, notify all Council Members.

3.3 The Executive will finalise its recommendations to Council on the revenue budget, council tax, capital programme and rent levels taking account of the results of budget consultation. This will normally be in February.

Deleted: , following announcement of the Final Local Government Finance Settlement

3.4 The Executive's recommendations to Council must be made in time for Council to set the capital and revenue budget and council tax before 11 March of the preceding financial year.

3.5 The budget and capital programme that the Executive recommends to Council must be based on reasonable estimates of expenditure and income, and take account of:-

- outturn forecasts for the current year;
- guidance from the Chief Finance Officer on the appropriate level of reserves, balances and contingencies;
- financial risks associated with proposed budget developments, reductions and ongoing projects;
- forecasts of capital receipts;
- affordability of prudential borrowing over the period of the council's financial forward plan;
- recommendations from the external auditor on matters such as the level of reserves and provisions.

Deleted: ial

3.6 The budget recommended by the Executive will incorporate the latest projection of income from fees and charges.

3.7 Corporate Directors and Heads of Service may approve changes to fees and charges annually where the change is broadly in line with inflation. The date for annual increases need not be 1 April.

3.8 Cabinet Resources Committee must approve changes to fees and charges that are significantly different from inflation, the introduction of new fees and charges, and changes to fees and charges outside the normal annual cycle.

Alternative Budget Motions

3.9 Alternative budget motions must be validated by the Chief Finance Officer before they are accepted as a valid budget motion. This is essential since if an alternative budget motion is approved, the Chief Finance Officer will need to amend the council tax bills immediately following the Council meeting and Cabinet and officers will be required to implement the detailed budget proposals.

3.10 The alternative budget motion must set out the appropriate changes to Cabinet's recommendations as they affect the budget for the

forthcoming year and any element of the Financial Forward Plan (e.g. balances, full year effects, council tax levels). The Chief Finance Officer may also require further information to be included if he/she considers it will improve the Council's understanding of the financial implications in the forthcoming or future years.

- 3.11 Any Member proposing to put an alternative budget motion to Council is responsible for ensuring it is received by the Director of Corporate Governance. It is also their responsibility to ensure they give the Chief Finance Officer sufficient time to fully validate their alternative budget proposals.

Definition of Capital Expenditure

- 3.12 Section 16 of the Local Government Act 2003 and Regulation 25 of the Local Authorities (Capital Finance and Accounting)(England) Regulations 2003, provide a definition of capital expenditure.
- 3.13 Capital expenditure is principally in respect of acquiring, constructing or enhancing physical assets (including buildings, land and immovable equipment) which provide benefit over several years. In this instance, enhancement relates to works which are intended to lengthen the useful life of an asset, increase the open market value of the asset or substantially increase the extent to which an asset can be used in the delivery of services. Capital is also defined more widely for example expenditure on computer software and on the making of loans or grants for capital expenditure by another body.

4 BUDGET MANAGEMENT & MONITORING

Budget Monitoring – Capital

- 4.10 Service Area Directors will make adequate arrangements for the management and monitoring of their capital programme. They must report scheme progress, slippage and forecast overspends. Forecast overspends on approved capital projects must be communicated to the Chief Finance Officer immediately.
- 4.11 Having notified the Chief Finance Officer, the Director or Head of Service must submit options to the Chief Finance Officer for offsetting the forecast overspend (e.g. by reducing the project specification, or budget for other projects) and/or identifying additional funding.
- 4.12 Due to the uncertainty around the generation and timing of capital receipts, and the impact that delays could have on the level of prudential borrowing, project managers must obtain the prior approval of the Chief Finance Officer before entering into any individual capital commitment on an approved capital project over £500,000.

Deleted: ial

- 4.13 The Chief Finance Officer must set aside an amount of minimum revenue provision (MRP) which is prudent and also prepare an annual statement of their policy on making MRP to Full Council.

Central Contingency

- 4.14 The Chief Finance Officer will determine which budget developments are to be held within the central contingency.
- 4.15 Allocations from the central contingency relating to planned developments will be approved by the Chief Finance Officer, in consultation with the Cabinet Member for Resources, following the receipt from a Director or Head of Service of a fully costed proposal to incur expenditure that is in line with planned development (including full year effect). Where there is a significant increase in the full year effect, the contingency allocation must be approved by Cabinet Resources Committee.
- 4.16 Allocations from the central contingency for unplanned expenditure up to £250,000, including proposals to utilise underspends previously generated within the service and returned to central contingency, will be approved by the Chief Finance Officer in consultation with the Cabinet Member with responsibility for Resources. Where there are competing bids for use of underspends, additional income or windfalls previously returned to central contingency, priority will be given to the service(s) that generated that return.
- 4.17 Allocations for unplanned expenditure over £250,000 must be approved by Cabinet Resources Committee.

5 FURTHER RESPONSIBILITIES OF CORPORATE DIRECTORS AND HEADS OF SERVICE

Budget Monitoring

5.1 Corporate Directors and Heads of Service must establish arrangements for managing revenue and capital budgets within their services. These arrangements must include:-

- schemes of delegation, which set out the authority that cost centre managers and capital project managers have for taking budget decisions within the scheme of virement;
- a budget monitoring framework that reports back to service management teams, enabling Corporate Directors and Heads of Service to provide the Chief Finance Officer with a report on their revenue and capital budgets in accordance with the timetable he/she sets;
- details of who has authority to take decisions in respect to their service's budget in their absence.

Deleted: ial

External Funding

5.2 Corporate Directors, in consultation with the Chief Finance Officer, are encouraged to explore all feasible options that maximise external funding available to the Council. External funding covers bids to Government and other organisations that are offering funding for projects that meet certain criteria. It also covers contributions being sought from participating organisations and individuals, from either public or private sources. This may include lobbying Government with new funding proposals.

Deleted: ial

5.3 Corporate Directors and Heads of Service must provide the Chief Finance Officer with details of all bids for external funding. Bids will follow the requirements of the Council's investment appraisal process. In particular, the following information must be provided:-

Deleted: ial

- how the bid supports achievement of Corporate Plan targets;
- whether the bid is for capital and/or revenue funding;
- revenue and capital matched funding contributions required from the Council, and how these will be identified;
- revenue and capital matched funding contributions required from other organisations and individuals, how these amounts will be secured, and the risks associated with them;
- an 'exit strategy', which sets out how budgets will be adjusted after the grant expires;

- where the bid is for revenue funding:-
 - whether this is to support existing levels of activity or enhanced / new activities;
 - proposals for reducing the activity OR incorporating it in the base budget once the external funding is exhausted;
- where the bid is for capital funding :-
 - whether an asset will be created, and if so, how this fits in with the Council's Asset Management Strategy;
 - how the ongoing cost of maintaining the asset will be funded;
 - whether the asset can / will be disposed of at a later date.

5.4 Corporate Directors and Heads of Service must not commit expenditure on projects requiring matched funding contributions until the external funding has been confirmed, unless approval has been given by the Chief Finance Officer. Decisions to proceed ahead of confirming external funding will be taken after assessing all relevant risks. The Chief Finance Officer has the right to refer the decision to the Cabinet Resources Committee or Cabinet Member for Resources.

Deleted: ial

Deleted: ial

5.5 Corporate Directors and Heads of Service must advise the Chief Finance Officer of all grant and subsidy notifications as soon as they are received. Where the amount notified is greater than the budget, the excess will be deemed a windfall and should in the first instance be returned to the central contingency unless regulations specify restrictions on their use which make this inappropriate or the underspend, additional income or windfall is to be used to offset uncontrollable overspends elsewhere within the service. Where the amount notified is less than the budget, the Director or Head of Service must notify the Chief Finance Officer of options for containing any potential overspend.

Deleted: ial

Deleted: ial

5.6 Where external funding is applied for, it is the responsibility of the Director or Head of Service to ensure that the monies are received from the paying body and, wherever possible, received ahead of the planned expenditure being incurred by the council.

5.7 Corporate Directors and Heads of Service must ensure that all conditions associated with external funding are met and that information and evidence required to complete grant and subsidy claims are provided on time.

Full Year Effects

5.8 In preparing any estimates of expenditure and income, Corporate Directors and Heads of Service must give proper consideration to full year effects.

Control of Establishment Lists

- 5.9 Corporate Directors and Heads of Service are responsible for making arrangements to ensure control of the service HR Establishment list. In particular to ensure that proper controls are in place to ensure that the service HR structure is fully and accurately maintained in the Council's financial accounting system (SAP) and that a system of control is in place to ensure that no new posts are created without adequate resources being in place.

Impact on Other Services

- 5.10 Before a Director or Head of Service makes a decision that could affect the budget of another Director or Head of Service they must first consult with the other Director(s) or Head(s) of Service.

Annual Governance Statement

- 5.11 Corporate Directors and Heads of Service must support the work on corporate risk management led by the Director of Corporate Governance, contributing to the production of the Annual Governance Statement that has to be published alongside the Statement of Accounts.

Partnership Working

- 5.12 The London Borough of Barnet provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders. It also acts to achieve the promotion or improvement of the economic, social or environmental well-being of its area.
- 5.13 The Executive is responsible for approving delegations, including frameworks for partnerships. The executive is the focus for forming partnerships with other public, private, voluntary and community sector organisations to address local needs. The executive can delegate functions – including those relating to partnerships – to officers. These are set out in the scheme of delegation that forms part of the Authority's constitution. Where functions are delegated, the executive remains accountable for them to the full Council.
- 5.14 The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the authority. He or she, in consultation with other statutory and senior officers as appropriate, must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies.

Deleted: Before entering into a partnership with another organisation that involves pooling some of the Council's revenue and/or capital budgets, the Director or Head of Service must ensure that adequate financial controls are in place. A financial risk assessment must also be prepared and monitored over time.

- 5.15 The Chief Finance Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory. He or she must ensure that the risks have been fully appraised before agreements are entered into with external bodies.
- 5.16 Chief Officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies. This would require consultation with the Cabinet Member with portfolio for Customer Access and Partners.
- 5.17 The Executive is responsible for approving the contractual arrangements for any work by third parties or external bodies.

Comment [A1]: This wording is based on the CIPFA Guidance

General Requirements

- 5.18 Corporate Directors and Heads of Service must consult the Chief Finance Officer at an early stage on any current or future matter or decision that has financial implications that are not incorporated in the Financial Forward Plan or could impact on the Medium Term Financial Strategy.
- 5.19 Corporate Directors and Heads of Service must adhere to guidance issued by the Executive Director for Resources and Chief Finance Officer in respect to financial forward planning, budget setting, budget monitoring and closing of the accounts.

Deleted: ial

Deleted: ial

6 CLOSING OF ACCOUNTS & STATEMENT OF ACCOUNTS

- 6.1 The Chief Finance Officer is responsible for making arrangements for closing the accounts and producing the annual Statement of Accounts, as well as all matters relating to their audit and public inspection. Corporate Directors are responsible for ensuring that they and their staff adhere to the timetable and requirements set out by the Chief Finance Officer. Deleted: ial
- 6.2 The Statement of Accounts will be prepared in accordance with the CIPFA Code of Accounting Practice, which includes the deadline for their production and the requirement to include an Annual Governance Statement (AGS).
- 6.3 Corporate Directors and Heads of Service must provide on time any information and evidence the Chief Finance Officer requires to close the accounts and complete all grant and subsidy claims. Deleted: ial
- 6.4 In closing the accounts, the Chief Finance Officer may amend the originally approved funding of revenue and capital services and projects if this is to the Council's financial benefit. Deleted: ial
- 6.5 The Annual Audit Letter includes the external auditor's report and opinion on the audit of the accounts, as well as comments and recommendations on the Council's financial performance, value for money and financial resilience. This will be reported each year to the Audit Committee, together with an appropriate action plan. Deleted: financial standing, the legality of financial transactions and internal control

Part 2 – Financial Administration

3 INTERNAL AUDIT

- 3.1 Under the Accounts and Audit Regulations 2006 the Council has a statutory obligation to have an adequate and effective system of internal audit. The Chief Internal Auditor has the delegated authority for providing and maintaining this service.
- 3.2 Internal Audit is an assurance function that provides ‘an independent and objective opinion to the council on the control environment, by evaluating its effectiveness in achieving the organisation’s objectives. It objectively examines, evaluates and reports on the adequacy of the control environment as a contribution to the proper, economic, efficient and effective use of resources’. *CIPFA 2006*
- 3.3 Management (Corporate Directors) are responsible for establishing and maintaining appropriate risk management processes, control systems, accounting records and governance arrangements. Internal Audit plays a vital part in advising the organisation that these arrangements, reviewed on a risk basis, are in place and operating properly. The annual internal audit opinion, which informs the Annual Governance Statement, both emphasises and reflects the importance of this aspect of internal audit work. Management’s response to internal audit activity should lead to the strengthening of the control environment and, therefore, contribute to the achievement of the organisation’s objectives
- 3.4 Internal Audit has unrestricted access to all information (including records, computer files, property and personnel) and activities undertaken by the Council, in order to review, appraise and report on:-
- the adequacy and effectiveness of the systems of financial, operational and management control and their operation in practice in relation to the business risks to be addressed;
 - the extent of compliance with, relevance of, and financial effect of, policies, standards, plans and procedures established by the Council and service management and the extent of compliance with legislation and regulations, including reporting requirements of regulatory bodies;
 - the extent to which the assets and interests are acquired economically, used efficiently, accounted for and safeguarded from losses of all kinds arising from waste, extravagance, inefficient

administration, poor value for money, fraud or other cause and that adequate business continuity and risk management strategies exist;

- the suitability, accuracy, reliability and integrity of financial and other management information and the means used to identify, measure, classify and report such information;
- the integrity of processes and systems, including those under development, to ensure that controls offer adequate protection against error, fraud and loss of all kinds; and that the process aligns with the Council's strategic goals;
- the suitability of the organisation of the units audited for carrying out their functions, to ensure that services are provided in a way which is economical, efficient and effective;
- ~~that~~ follow-up action ~~has been~~ taken ~~by management~~ to remedy weaknesses identified by Internal Audit review, ensuring that good practice is identified and communicated widely;
- the operation of the Council's Corporate Governance arrangements.

Deleted: e

Independence

- 3.5 Internal Audit should be independent of the activities that it audits to enable auditors to perform their duties in a way that allows them to make impartial and effective professional judgements and recommendations. Internal auditors should not have any operational responsibilities.

Audit advice and recommendations, including where Internal Audit has been consulted about significant changes to the internal control systems, are given without prejudice to the right of Internal Audit to review and make further recommendations on the relevant policies, procedures, controls and operations at a later date.

- 3.6 The status of Internal Audit should enable it to function effectively. The support of the organisation is essential and recognition of the independence of Internal Audit is fundamental to its effectiveness. The ~~Chief Internal Auditor~~ should have direct access to, and freedom to report in his or her own name and without fear or favour to, all officers and members and particularly to those charged with governance.

Deleted: Head of Internal Audit

- 3.7 The Chief Internal Auditor shall be able to meet the Chairman of the Audit Committee alone outside of the normal Audit Committee meetings.

Responsibility & Authority

3.8 Internal Audit is an integral part of the organisation and functions under the policies established by management and the Council.

3.9 The purpose, scope, authority and responsibility of the internal auditing service is defined in a formal charter. The charter makes clear the independence of the internal auditing service and emphasises that it must not be restricted when carrying out its responsibilities.

3.10 Any suspected irregularity involving any asset, or the exercise of any function, of the Council must be reported by the appropriate Chief Officer to the Chief Internal Auditor to determine and inform the Corporate Anti Fraud Team (CAFT) Manager for investigation. Primary responsibility for the prevention, detection and initial investigation of fraud lies with line management.

Deleted: the overall assurance that can be delivered and to

3.11 The Chief Internal Auditor and Chief Finance Officer, CAFT Manager or authorised representative, shall have authority to:-

- enter any Council land or premises;
- have access to all records, documents, correspondence and assets of the Council;
- receive such explanations as are necessary concerning any matter under examination, and
- require any employee of the Council to produce cash, stores or any other Council property under his or her control

3.12 The Council's Chief Officers shall have regard to the principles of risk management, and to the Council's risk management strategy and policy statement. It is the responsibility of Internal Audit to review the adequacy and effectiveness of the council's arrangements for risk management.

3.13 The Chief Internal Auditor shall report to the Chairman of the Audit Committee all significant concerns that he or she may have over the adequacy and effectiveness of internal controls and risk management activities within the organisation.

Deleted: Ethical Governance

¶
<#>The Chief Internal Auditor shall raise the profile and awareness of governance activities throughout the Council and set standards for modern, proactive and cost-effective governance in the Council.¶

4 CORPORATE ANTI-FRAUD TEAM

- 4.1 Under Section 151 of the Local Government Act 1972 the Council has a statutory obligation to ensure the protection of public funds and to have an effective system of prevention and detection of fraud and corruption. The Director of Corporate Governance has the delegated authority for providing and maintaining this service.

Objective & Scope

- 4.2 The CAFT is an independent, objective activity designed to add value and improve the Council's operations. It helps the Council achieve its objectives by bringing a systematic, disciplined approach to investigation, evaluating and improving the effectiveness of fraud prevention and detection and the subsequent prosecution of individuals and organisations where appropriate. The Council has a zero tolerance approach to fraud and other irregularity.

- 4.3 The objective of the CAFT is to assist officers and Members in the effective discharge of their responsibilities. To this end, the CAFT furnishes them with assurance, analysis, appraisals, recommendations, counsel, and information concerning the activities it is required to become involved with. The objective includes promoting fraud awareness across the authority.

- 4.4 The scope of the CAFT encompasses both the investigation and examination of the effectiveness of the council's systems of fraud control when subject to breach. In carrying out assigned responsibilities, Investigation Officers:-

- review the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information;
- provide an effective system, which ensures accurate reporting of any such fraud (including "Whistleblowing" and a "Fraud Hotline"), create and promote policies, plans, procedures, law, regulations and guidance which have a significant impact on the organisation;
- provide an effective, efficient and value for money investigation service;
- provide the organisation, its employees and business partners with a comprehensive guide in areas such as anti money laundering and other legislation relating to the proceeds of crime.

Deleted: s

Independence

- 4.5 CAFT officers are independent when they can carry out their work so act freely and objectively. Independence permits Investigators to render the impartial and unbiased judgements essential to the proper investigation and conclusion of fraud.

Responsibility & Authority

- 4.6 The primary responsibility for the prevention detection and deterrence of fraud or money laundering activity lies with Heads of Service. This responsibility includes ensuring that staff and partners are aware of both the implications of fraud and money laundering and the risks of fraud and money laundering across their service area. The primary responsibility for the investigation of any suspected fraud or money laundering activity found in a service area lies with the CAFT. All details must be immediately forwarded to the CAFT, to preserve the chain of evidence linked to such investigations within the law.

- 4.7 All Council Members and employees are personally responsible for ensuring they (and any subordinates) are aware of the Council's Counter Fraud Framework, Anti Money Laundering Framework, procedures and policies, and for alerting either their Head of Service, CAFT Manager, Director of Corporate Governance and / or the council's Money Laundering Reporting Officer to any suspected breach.

- 4.8 The Director of Corporate Governance will nominate an officer to undertake the duties of the Council's Money Laundering Reporting Officer as detailed within the Council's Anti Money Laundering Framework.

- | 4.9 The Head of CAFT, is the designated Whistleblowing officer for the London Borough of Barnet and shall undertake the responsibilities of the role as described within the Council's Whistleblowing Policy.

Deleted: Manager

- | 4.10 The Head of CAFT, and / or the CAFT Fraud Manager are the officers designated by the Secretary of State under the provisions of the Social Security & Administration Act 2001 to act as the Authorised Officer in the obtaining of data prescribed within the Act which may otherwise be protected, in connection with the prevention and/or detection of a crime.

Deleted: Manager

Deleted: Deputy

- | 4.11 The Head of CAFT, and / or the CAFT Fraud Manager are the London Borough of Barnet's 'Senior Appropriate Officers' for the authorisation of production orders, restraint orders, customer information orders and account monitoring orders as described within the Proceeds of Crime Act 2000

Deleted: Manager

Deleted: Deputy

- 4.12 The Head of CAFT, and / or the CAFT Fraud Manager are the London Borough of Barnet responsible officers for the authorisation of arrest and prosecution of offenders including deciding on any appropriate sanction action available within the law. Those officers are responsible for ensuring that all investigations are conducted in accordance with the Criminal Procedures & Investigations Act 1996 (CPIA) the Police & Criminal Evidence Act 1984 (PACE) and the Human Rights Act 2000.
- 4.13 The Head of CAFT, and / or an officer nominated by the Director of Corporate Governance are the designated persons for the authorisation of covert surveillance powers in accordance with Regulation of Investigative Powers Act 2000 (RIPA).
- 4.14 Any suspected irregularity involving fraud/corruption within any function of the Council or its partner organisations or suppliers and contractors must be reported to the CAFT and the Chief Internal Auditor (see Regulation 3.10). Responsibility for the subsequent investigation of potential fraud and corruption lies with the CAFT.
- 4.15 The Head of CAFT, and Chief Internal Auditor / or other authorised representative shall have authority to:-
- Enter or visit any land, premises, offices or establishments of the Council; and carry out any necessary searches of the aforementioned.
 - have unrestricted access to, search, and remove any and all records, documents and correspondence, including electronically held data, correspondence, documents and records, and property and assets of the Council;
 - receive such explanations as are necessary concerning any matter under examination, and / or fraud investigation;
 - in conjunction with the relevant Chief Officer, suspend any employee of the Council under CAFT investigation from duty: acting in accordance with the Council's disciplinary procedures; and, in cases concerning illegal working, employees may be exited from the organisation and/or may be suspended without pay pending investigation.
 - require any employee of the Council to produce and surrender any cash, stores, equipment or any other Council property under his or her control
 - interview any and all employees and individuals in connection with investigations including interviews in accordance with the Police & Criminal Evidence Act (on tape).
- Deleted:** Manager
Deleted: Deputy
- Deleted:** Manager
- Deleted:** Manager
- Deleted:** ¶
4.12 . The Deputy Director of Corporate Governance, Chief Internal Auditor, the CAFT Manager, the Chief Financial Officer, or other authorised representative, shall have authority to:-¶
¶
<#>Enter or visit any land, premises, offices or establishments of the Council; and carry out any necessary searches of the aforementioned. ¶
<#>have access to, search, and remove any and all records, documents and correspondence, including electronically held correspondence, documents and records, and property and assets of the Council;¶
<#>receive such explanations as are necessary concerning any matter under examination, and / or fraud investigation;¶
<#>require any employee of the Council to produce and surrender any cash, stores, equipment or any other Council property under his or her control¶
interview any and all individuals in connection with investigations including interviews in accordance with the Police & Criminal Evidence Act (on tape).

- 4.16 The Head of CAFT shall notify and keep updated the Chief Internal Auditor of any investigations that will have an affect on the stability of the internal control environment.

Deleted: Manager

Deleted: the outcome of all investigations.

5 RISK MANAGEMENT

- 5.1 Sound governance requires effective and efficient management of risk, covering all forms of risk, not just financial.

- 5.2 The process of identifying risks should demonstrate a direct link to the Corporate Objectives.

- 5.3 Risks are assessed for impact and probability using a 5 X 5 matrix scoring system. the resultant scores from the scoring both impact and probability will be low, moderate, high and extreme risk to delivering against the Corporate Objectives. Risks rated as high or extreme risks require action plans that are monitored regularly by Senior Management Teams or equivalent.

Deleted: the

Deleted: which rates each risk as having a high, medium or low likelihood of occurring and a high, medium or low impact on the ability

- 5.4 All risks should be monitored and re-assessed based on the actions and activities that either mitigate the risk or have had an impact on the risk objective that has either increased or decreased the likelihood or impact.

- 5.5 The process of re-assessing the risk is conducted by the "lead officer" who is identified in the risk management system (JCAD). Those risks rated as 12 or above within the Directorate or Corporate Risk Register should be included within the quarterly performance report and approved by the relevant Director and/or Assistant Director.

Deleted: log, and accepted by the Director or Head of Service.

- 5.6 The approach to risk management within Barnet is that Corporate Directors, Assistant Directors and Heads of Service are responsible for ensuring their service has a robust and efficient method of managing risk that complies with the Risk Management Strategy and Policy Statement.

- 5.7 It is the responsibility of Corporate Directors, Assistant Directors and Heads of Service to ensure that risks are identified in their Service Plans and are reviewed on a regular basis. Corporate Directors, Assistant Directors & Heads of Services are responsible for taking action to mitigate against the risk or to develop contingencies to be introduced should the risk materialise.

Deleted: Key Priority Plans and

- 5.8 The Risk Management Strategy and Policy Statement should be reviewed and refreshed annually by the Chief Internal Auditor to ensure a consistent approach to the identification, mitigation and monitoring of risk across the Authority.

Deleted: and operational policies and procedures

Deleted: Head of Risk and Insurance

7 SECURITY OF ASSETS

General

- 7.1 Corporate Directors and Heads of Service are responsible for the proper security of all buildings, stocks, furniture, equipment and cash etc. within their service. The Chief Executive shall exercise a co-ordinating role on security issues and shall be consulted where it is felt that security is inadequate or in special circumstances. Deleted: Maximum limits for cash
- 7.2 Holdings shall be set by the Chief Finance Officer, which may not be exceeded without prior authority. Areas where cash is counted and held must be secure and with access restricted only to authorised staff. Deleted: ial
- 7.3 All keys to safes and similar items shall be carried by the person responsible. Corporate Directors and Heads of Service shall keep a record of key holders. Any loss of keys must be reported to the Director or Head of Service. Deleted: the like
Deleted: on
Deleted: of the officer
- 7.4 Corporate Directors and Heads of Service are responsible for the proper security and privacy of all information held in computer systems under their control, for ensuring that these systems can only be accessed by authorised personnel and that adequate controls exist to ensure the separation of duties.
- 7.5 Corporate Directors and Heads of Service are responsible for undertaking a risk assessment of all assets considered crucial to the delivery of the service. The risk assessment should cover the loss of the asset caused by malfunction and the possibility of restricted access caused by an emergency crisis and the mitigating actions and contingency plans that will need to be developed to support business continuity.

Land & Property

- 7.6 The Valuations Manager within Property Services shall maintain an asset register of all properties owned by the Council (except houses and flats provided under the Housing Acts) with those assets valued on a five year cycle. Deleted: Head of
- 7.7 The Assistant Director - Legal shall have secure custody of title deeds and maintain an indexed register of those titles (terrier). Deleted: <#>The asset register will show the service user of the property and link to a database of details of interest and rents payable and tenancies granted.¶
Formatted: Bullets and Numbering

Other Assets

- 7.8 Corporate Directors and Heads of Service must maintain inventories of all assets employed in their service, and make arrangements for these to be checked at least annually. Deleted: Head of
Deleted: The Geographic Information Services Manager will maintain a digital map of the extents of the titles.

7.9 Any surpluses/deficits in excess of a figure set by the Chief Finance Officer shall be reported to him/her. The Chief Finance Officer shall agree the action to be taken in relation to these differences, including, if necessary reporting to the Cabinet Meeting or Cabinet Committee.

Deleted: ial

Deleted: ial

7.10 Council assets may only be used for Council business, and may only be removed from Council premises with the consent of the Director or Head of Service. The officer removing the asset then becomes responsible for the safekeeping of the asset.

7.11 All Council assets shall, wherever possible, be security marked.

7.12 Corporate Directors and Heads of Service are responsible for the sale or disposal of assets employed in their service, and for accounting for these transactions. All disposals in excess of £6,000 (or a higher figure that is consistent with capital accounting regulations) are to be notified to the Chief Finance Officer.

Deleted: ial

7.13 The Council has set a *de minimis* threshold for capital expenditure at £50,000. This figure provides guidance only; the Chief Finance Officer may exercise discretion on the *de minimis* threshold.

Deleted: ial

Stocks & Stores

7.14 Corporate Directors and Heads of Service are responsible for the safekeeping of stocks and stores held, ensuring no deterioration or damage occurs whilst held and not allowing levels held to exceed a reasonable level. All records, returns and accounts shall be held in a form approved by the Chief Finance Officer and returns will be submitted as and when required.

Deleted: ial

7.15 Stores shall only be issued against properly authorised requisition notes, which shall be receipted by the person collecting the goods.

7.16 Unused items returned to stores shall be recorded on a stores return note.

7.17 The condition of stocks shall be checked on a regular basis by the Officer responsible for them. Decisions regarding stock that has become obsolete should be made against clearly defined criteria and options for the most cost effective disposal of that stock must be identified.

7.18 Corporate Directors and Heads of Service must ensure that items classified as stock are checked at least once each financial year.

7.19 All surpluses or deficits identified during stock takes shall be entered onto an adjustment record and the appropriate Director or Head of Service, with the agreement of the Chief Finance Officer, may write-off deficiencies or bring surpluses into account. Wherever possible all stock considered for writing off should first be

Deleted: ial

offered for sale. A record of all write-offs and disposals must be maintained. Specialist items such as hazardous chemicals must be disposed of in accordance with relevant safety procedures.

7.20 Stock balances must be valued in accordance with the relevant accounting standards, i.e. where applicable lower of historical cost or net realisable value.

| 7.21 The Chief Finance Officer or authorised representative may have access to all stock and stores and may make such checks as thought necessary.

Deleted: ial

|

13 SALARIES, PENSIONS & ALLOWANCES

13.1 All appointments shall be made in accordance with the Council's contractual terms and conditions (i.e. pay, grading, allowances etc).

13.2 The Head of HR ~~Service~~, Delivery will ensure that arrangements are made to calculate and pay all remuneration, pensions, compensation and other payments to current and former employees.

Deleted: Shared

Deleted: s

13.3 School Governing Bodies shall be responsible for assessing teachers' remuneration and the Head of HR ~~Service~~ Delivery shall maintain teachers' salary and pensions for Schools that purchase the HR & Payroll Traded Service.

Deleted: hared Services

13.3 Corporate Directors and Heads of Service must provide to the Head of HR Service Delivery:-

Deleted: Shared Services

- the names and specimen signatures of all officers authorised to sign HR records;
- relevant details of appointments, leavers and any other change of circumstances that may affect payment;
- details of all work related absences due to sickness, accidents on or off duty;
- details of special leave without pay or other paid/unpaid leave or absence;
- when required, overtime and certified time-sheets for staff paid at hourly or weekly rates, at intervals and in the format determined by the Head of HR Service Delivery.

Deleted: hared Services

13.4 On an annual basis, the Head of HR shall require that each pensioner residing overseas provides a life certificate.

13.5 Salaries and wages will be paid direct to the employee's bank account. Pensions and gratuities shall be at the discretion of the Head of HR Service Delivery. All payments shall be made direct to the person concerned unless that person authorises otherwise.

Deleted: Strategy

13.6 Payment will be paid on contractual dates. The Head of HR has the discretion to change payment date.

Deleted: Shared Services

13.7 All cost centre managers should use SAP to periodically verify correct payments to staff.

13.8 All claims for payment of car allowances shall be approved through SAP self service or through a paper format approved by the Head

- | of HR Service Delivery. The names of certifying officers and specimens of their signatures shall be forwarded by Corporate Directors and Heads of Service to the Head of HR Service Delivery. The certifying officer must be satisfied that all expenses claims are valid and that the allowances should be paid by the Council before authorising the payment.
- 13.9 The Chief Finance Officer shall make payments of allowances to Members of the Council, co-opted members and members of the public who attend other Council bodies who are entitled to make such claims on submission of the approved form.
- 13.10 The Director of Corporate Governance is responsible for notifying the Heads of HR of any changes to Members' Allowances.
- | 13.11 Employees are responsible for providing HR Service Delivery with accurate personal details including bank account details.
- 13.12 In accordance with procedures agreed by Audit, the Pension Manager can write off debts resulting from overpayment of pension to a maximum of £500 per debtor and a total of £5,000 per year.

Deleted: Strategy

Deleted: hared Services

Deleted: hared Services

AGENDA ITEM: 8 Pages 11 – 14

Meeting Special Committee (Constitutional Review)

Date 18 January 2012

**Subject Local Authority Trading Company:
Consequential Changes to Council
Constitution**

Report of Business Governance Manager

Summary This report sets out the proposed consequential changes to the Council's constitution as a result of the establishment of TheBarnetGroupLTD Local Authority Trading Company.

Officer Contributors Jeremy Williams – Business Governance Manager

Status (public or exempt) Public

Wards affected Not applicable

Enclosures Appendix A – Proposed Amendment to Responsibility for Functions

Appendix B – Proposed Amendment to Overview & Scrutiny Procedure Rules

For decision by Special Committee (Constitution Review)

Function of Council

Reason for urgency / exemption from call-in Not applicable

Contact for further information: Jeremy Williams, Business Governance Manager,
020 8359 2042

1. RECOMMENDATION

- 1.1 That the Committee comments upon and recommends to Council for approval the proposed consequential amendments to the Council's Constitution as the result of the establishment of The Barnet Group LTD Local Authority Trading Company.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet Resources Committee, 24 May 2011, Agenda Item 8, 'Adults In House Service Review: Initiation of Full Business Plan' agreed the initiation of the business plan for the Local Authority Trading Company.
- 2.2 General Functions Committee, 30 June 2011, Agenda Item 9, 'Adults In House Service Review: TUPE Transfer of Staff' considered the staffing implications of the establishment of the Local Authority Trading Company.
- 2.3 Cabinet Resources Committee, 16 January 2012, will be asked to agree the Local Authority Trading Company Business Plan at its meeting of 16 January 2012.
- 2.4 General Functions Committee, 16 January 2012, will be asked to ratify decisions previously taken in respect of establishing the Local Authority Trading Company and to appoint the Chairman of TheBarnetGroup LTD.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 To ensure that the Council has robust governance arrangements, the Constitution requires to be kept under review and amended/updated periodically such that it continues to be an evolving document.
- 3.2 To ensure appropriate democratic oversight of TheBarnetGroup LTD, this report seeks to codify the authority's oversight of the Local Authority Trading Company.
- 3.3 The Council Corporate Plan 2011-13 outlined that the Council was seeking an alternative delivery vehicle for services which were currently provided 'in-house' by Adult Social Services. The establishment of TheBarnetGroup LTD implements such a vehicle and is consistent with the objective of "a new relationship with citizens" to promote choice and independence for residents.

4. RISK MANAGEMENT ISSUES

- 4.1 Failure to ensure the Constitution reflects the changing nature of the organisation risks insufficient or inappropriate arrangements being in place to effectively govern the operation and activity of the authority and its partners.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The decision making processes of the Council, as enshrined within the Constitution, need to be transparent and accessible to all sectors of the community. The regular

review of the Constitution will help ensure that this is the case and ensure the Council is meeting its equality obligations.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 None arising from this report

7. LEGAL ISSUES

7.1 None arising from this report.

8. CONSTITUTIONAL POWERS

8.1 Article 12, paragraph 12.03 (a) – one of the functions of the Monitoring Officer is to maintain an up-to-date version of the Constitution and ensure that it is widely available for consultation by members, staff and the public.

8.2 Part 3, Section 2 of the Constitution details the functions of the Special Committee (Constitution Review) which are “proactively to review and keep under review all aspects of the Council’s Constitution so as to ensure that it remains current and fit for purpose, and to make recommendations thereon to the Council”.

9. BACKGROUND INFORMATION

9.1 This report contains proposed amendments to the Council's constitution to enshrine the authority’s formal oversight of TheBarnetGroup LTD. The report seeks to specifically amend the Council’s Responsibility for Functions to enshrine its status as the body to approve the major strategic documents of the Barnet Group, and further seeks to amend the Overview & Scrutiny Procedure Rules to formalise Scrutiny’s role in respect of the TheBarnetGroup LTD.

9.2. Responsibility for Functions

9.2.1 It is intended that the primary formal accountability of the Barnet Group to the authority is through Council’s reserved approval of its major documents on an annual basis, including:

- Budget
- Business Plan
- Annual Report
- Other major strategic documents

9.2.2 The proposed amendment to the Explanatory Note to the Responsibility for Functions (attached at appendix A) codifies the annual approval of the above documents as responsibility of Council.

9.2.3 Although delegation is generally specified to other Committees and officers on an exception basis, in the interests of clarity and accountability Members, are requested to agree to specific reference being made to these Council functions as set out in the proposed amendments.

9.2.4 By specifically reserving these functions to Council, delegation of the approval of major documents to any other Council body would require a further amendment to the Constitution.

9.3 Overview & Scrutiny Procedure Rules

- 9.3.1 The changes to the Overview & Scrutiny Procedure Rules proposed at Appendix B seek to constitutionally enshrine robust Scrutiny of the operations of TheBarnetGroup LTD.
- 9.3.2 Since its inception, the Budget & Performance Overview and Scrutiny Committee has periodically scrutinised the performance of Barnet Homes through receiving both Performance Information on a regular basis, as well as its Annual Report.
- 9.3.3 In performing these activities, the Budget & Performance Overview and Scrutiny Committee was carrying out its mandate as set out in its Terms of Reference to scrutinise “the effectiveness of the Council’s partnerships”.
- 9.3.4 To ensure robust Scrutiny of the operations of the Local Authority Trading Company, Members are asked to agree to make specific reference to this function in the Terms of Reference of the Budget & Performance Overview and Scrutiny Committee. The proposed changes specify that the Committee will receive on an annual basis the Annual Report and Mid-Year Performance Information of the Barnet Group, together with conducting pre-decision Scrutiny of other strategic documents.
- 9.3.5 A proposed amendment to the Procedure Rules has also been drafted to clarify that relevant officers of TheBarnetGroup and other external bodies will be expected to attend as requested by the Committee.

10. LIST OF BACKGROUND PAPERS

- 10.1 None.

Legal – JEL

CFO – JH

APPENDIX A

Responsibility for Functions

Explanatory Note

1. The Local Government Act 2000 divides the functions of the local authority between the full Council (and its Committees) and the Executive. The Council is no longer the body responsible for all the activities of the local authority in the borough.

The Council is operating the 'new style' leader executive arrangements in accordance with the Local Government and Public Involvement in Health Act 2007"

The Council's statutory duties are now broadly:

1. Approval of the budget and statutory policy framework.
2. Constitutional and quasi-legislative functions.
3. Dealing with applications for licences, approvals, consents, permissions (including planning permission) and registrations; and related regulation and enforcement action.

The Council also has the duty to approve, on an annual basis, the major strategic documents of The Barnet Group LTD, including its Budget, Business Plan and Annual Report, and to make appointments and changes to its Board as appropriate.

All other functions of the local authority are functions of the Executive, i.e. the Leader and Cabinet, and cannot be exercised by the Council (Section 13 (10) Local Government Act 2000).

This Part of the Constitution is the Scheme of Delegation that sets out the detailed arrangements for the allocation and discharge of responsibilities.

2. The principles of the Scheme of Delegation are that functions are delegated from the Council and the Executive to subordinate bodies and persons by exception rather than specifically.

This Part of the Constitution, therefore, also sets out the decisions that are reserved to specific decision takers and cannot be taken by subordinate decision takers.

3. It is a general legal principle that although delegation involves conferring authority on subordinate bodies and individuals, this does not mean that the delegator gives up the authority to act or take decisions. That general principle is expressly recognised in Section 15(9) of the Local Government Act 2000:-

"Any arrangements made by virtue of this section by an Executive Leader, Executive Member or Committee for the discharge of any functions by an Executive, Member, Committee or officer are not to prevent the executive Leader, Executive, Member or Committee by whom the arrangements are made from exercising those functions".

APPENDIX B

Overview and Scrutiny Procedure Rules

- 1.1 The Local Government Act 2000 determined that the following responsibilities would fall within the remit of the Overview and Scrutiny function:
 - (a) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive;
 - (b) to make report or recommendations to the authority or the executive with respect to the discharge of any functions which are the responsibility of the executive;
 - (c) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive;
 - (d) to make report or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive;
 - (e) To make recommendations to the authority or the executive on matters which affect the authority's area or inhabitants.
- 1.2 These responsibilities have been further strengthened by other legislation, including the Local Government and Public Involvement in Health Act 2007, and the Crime and Disorder Act 2006.
- 1.3 The Health and Social Care Act 2001 paved the way for scrutiny by local authorities of other statutory bodies, by establishing Overview and Scrutiny Committees with the remit of scrutinising health service provision.
- 1.4 The authority shall appoint a nominated Scrutiny Officer in line with the requirements of the Local Democracy, Economic Development and Construction Act 2009.
- 1.5 The following procedure rules provide the framework for the operation of the Overview and Scrutiny processes in Barnet.

Part 1: Formal Committees

1. What will be the number and arrangements for Overview and Scrutiny Committees?

- 1.1 The Council will have the Overview and Scrutiny Committees set out in the attached Terms of Reference. Such Committees may appoint sub-Committees. Overview and Scrutiny Committees may also be appointed by the Council for a fixed period and with terms of reference stated when they are appointed, on the expiry of which they shall cease to exist

2. Who may sit on Overview and Scrutiny Committees?

- 2.1 All Councillors except Members of the Executive may be members of an Overview and Scrutiny Committee. However, no Member may take part in scrutinising a decision in which he/she has been directly involved.

3. Co-opted Members

3.1 Education

Co-opted Education members who will be invited to attend and vote at any meeting where matters are being considered that relate, either in whole or in part, to any education functions which are the responsibility of the Executive.

Where the Committee considering education functions then considers other items that do not relate to the above, the co-opted members may remain and speak but not vote.

VOLUNTARY AIDED SCHOOL REPRESENTATIVES (3)
• One Church of England diocese representative
• One Roman Catholic diocese representative
• One representative of persons who appoint foundation governors to voluntary aided Jewish schools
PARENT GOVERNOR REPRESENTATIVES (2)
Two parent governor representatives - one for secondary schools and one for primary schools

3.2 Housing

Where issues relating to housing or housing benefits and/or the Council's functions as a housing authority are to be discussed by any Overview and Scrutiny body, the Head of Governance, in consultation with the relevant Chairman will arrange for two non-voting representatives appointed by the Barnet Homes Performance Advisory Group to be invited to attend the meeting and speak but not vote on such issues.

4. Formal Meetings of the Overview and Scrutiny Committees and sub-Committees

- 4.1 Each Overview and Scrutiny Committee shall meet as frequently as it considers necessary to complete its programme of work.

- 4.2 Although Overview and Scrutiny Committees will normally meet at the Town Hall, meetings may be held at other venues, provided the venue fulfils legislative requirements with respect to the admission of the press and public.

5. Quorum

- 5.1 The quorum for an Overview and Scrutiny Committee shall be as set out for committees in the Council Procedure Rules in Part 4 of this Constitution.

6. Who chairs Overview and Scrutiny Committee meetings?

Chairmen of Overview and Scrutiny Committees will be appointed by the Council, normally at their Annual Meeting, from among the councillors sitting on the committee.

7. Annual Review of Effectiveness and Annual Report

The Business Management Overview and Scrutiny Committee will, each year, produce an Overview and Scrutiny Annual Report for Council which will include:

- (a) details of Overview and Scrutiny work carried out during the municipal year;
- (b) a review the effectiveness of the Overview and Scrutiny processes; and
- (c) detail an outline Work Programmes for Overview and Scrutiny Committees for the coming year.

8. Agenda Items

- 8.1 Any member of an Overview and Scrutiny Committee shall be entitled to give notice to the Head of Governance that he/she wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee. On receipt of such a request, the Head of Governance will ensure that the item is included on the next available agenda.

- 8.2 In instances where multiple Overview and Scrutiny Committees request to scrutinise the same item, the item will be considered by the Committee with the most appropriate terms of reference. Members of the other committee(s) which have requested to scrutinise the item will be invited to the meeting where the subject is considered and invited to contribute to the debate (but not vote) on the item. Where there are multiple requests to scrutinise an item, the Chairman of the Business Management Overview & Scrutiny Committee will, in consultation with the Overview & Scrutiny Manager, determine the most appropriate committee.

- 8.3 The following matters, subject to paragraph 8.3 below may not be considered by an Overview & Scrutiny Committee:

- (a) a matter relating to an individual planning decision;
- (b) a matter relating to an individual licensing decision;
- (c) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;

- (d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the Overview and Scrutiny Committee or at a meeting of a sub-Committee

8.4 A matter does not fall within a description in paragraph 8.3 if it consists of an allegation that a function for which the authority is responsible has failed or is failing on a systematic basis, notwithstanding the fact that the allegation specifies or refers to a planning decision, a licensing decision or an appeal matter

9. Referrals by others

9.1 Requests, reports and submissions from the Council, Executive, residents' forums, community and voluntary groups, partnership and outside bodies and locally constituted groups and responses to "Councillor Call for Action" will be referred to the Business Management Overview & Scrutiny Committee.

9.2 The Committee will meet within one month of the referral being received and will determine what, if any, action is required

9.3 Matters clearly within the remit of the Health, Safeguarding or Budget and Performance Overview and Scrutiny Committees will be referred direct to those Committees by the Head of Governance.

10. Reports from Overview and Scrutiny Committees

10.1 Once it has formed recommendations on proposals for development the Overview and Scrutiny Committee will prepare a formal report and submit it for consideration to either:

- (i) the Executive (if the proposals are consistent with the existing budgetary and policy framework),
- (ii) to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).

10.2 If an Overview and Scrutiny body cannot agree on a single final report to the Council or Executive as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or Executive with the majority report.

10.3 The Council or Executive shall consider the report of the Overview and Scrutiny Committee at their next scheduled meeting.

11. Ensuring that Overview and Scrutiny Reports are considered by the Executive

11.1 Agendas for Cabinet meetings will include items of business referred from Overview and Scrutiny Committees. Where referrals from Overview and Scrutiny relate to the Executive's deliberations on another substantive item on the agenda, these will be considered concurrently.

11.2 Under the Local Government and Public Involvement in Health Act 2007, the Executive has a duty to:

- (a) consider reports or recommendations made by Overview and Scrutiny bodies;

- (b) respond to the overview and scrutiny committee indicating what (if any) action the authority or the executive propose to take; and
- (c) publish the response within two months of the report or recommendations being received.

- 11.3 Where an Overview and Scrutiny Committee or sub-Committee prepares a report for consideration by the Executive in relation to a matter where decision making power has been delegated to another individual member of the Executive, then the Overview and Scrutiny Committee will submit a copy of their report to that individual for consideration with copies to the Head of Governance and Leader.
- 11.4 If the relevant Cabinet Member does not accept the recommendations of the Overview and Scrutiny Committee then he/she must then refer the matter to the next available meeting of the Executive for debate, before exercising his/her decision making power and responding to the report in writing to the Overview and Scrutiny Committee.
- 11.5 The Executive Member to whom the decision-making power has been delegated will respond to the Overview and Scrutiny Committee in line with the provisions set out at 11.2 above. A copy of his/her written response to it shall be sent to the Head of Governance and he/she will attend a future meeting of the relevant Overview and Scrutiny Committee to respond.

12. Rights of Overview and Scrutiny Committee Members to Documents

- 12.1 In addition to their rights as councillors, members of Overview and Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

13. Members and Officers Giving Account

- 13.1 Any Overview and Scrutiny body may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, the body may require any member of the Executive, the Head of Paid Service and any Director or Head of Service or other senior officer to attend before it to explain in relation to matters within their remit and to produce a report if so requested, and it is the duty of those persons to attend if so required.
- 13.2 Where any member or officer is required to attend an Overview and Scrutiny Committee under this provision, the Democratic Services Manager shall inform the member or officer in writing giving notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that documentation.

- 13.3 Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the member or officer arrange an alternative date for attendance or agree a suitable substitute.

Deleted: 13.3 .

Formatted: Indent: Left: 0 pt, Hanging: 36 pt, Tabs: 36 pt, List tab + Not at 18 pt

Formatted: Bullets and Numbering

13.4 Where an Overview & Scrutiny Committee has requested reports of external organisations, including The Barnet Group LTD and relevant Health partners, the relevant officers of those organisations will be expected to attend Committee to present these reports.

Enclosure 2
Hanging: 36 pt, Tabs: 36 pt, List
tab + Not at 18 pt
Formatted: Bullets and Numbering

14. Ability to invite others to attend meetings

- 14.1 The Overview and Scrutiny Committees, Task and Finish Groups and other bodies appointed to carry out any aspect of the Overview and Scrutiny responsibilities may invite whoever they wish to assist them in their work.
- 14.2 The Committees may, for example, wish to hear from residents, stakeholders and Members and/or officers in other parts of the public sector and shall invite such people to attend.
- 14.3 Attendance by non-Executive Members and the community is, of course, entirely optional, but they will be encouraged to attend, send representatives and/or make submissions. **Officers unable to attend must send a representative.**

15. Call-in

Explanatory note:

Call-in is a statutory process under Section 21 of the Local Government Act 2000.

- 15.1 When a key decision is made by the Cabinet, a committee of the Cabinet or an individual member of the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet, the decision shall normally be published on the Council's website within 2 days of being made.
- 15.2 The Head of Governance shall send a copy of each decision to all Members of the Business Management Overview & Scrutiny Committee and to all Members of the Cabinet.
- 15.3 Each decision will bear the date of publication and will specify the date on which it will come into force and can be implemented.
- 15.4 Only key decisions as defined by Article 13 (b) (i) of the Constitution may be called in under Section 21 of the Local Government Act 2000 and for the purposes of Call-in, a key decision under Article 13 (b) (i)
 - (a) must involve expenditure or savings in excess of £500,000 as well as otherwise being significant having regard to the Council's budget for the service or function to which the decision relates, or
 - (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the borough.
- 15.5 Where the decision is a qualifying key decision for call-in purposes, the implementation date will not be less than 5 working days after publication. Before the expiry of that date any Member of the Business Management Overview & Scrutiny Committee (or any substitute Member of that sub-Committee whose appointment for

that meeting has been received by the Head of Governance), may call-in the decision by a written request to the Head of Governance to place the decision on the agenda for the next meeting of the Business Management Overview & Scrutiny Committee. The decision shall not take effect until that Committee has met.

Enclosure 2

- 15.6 If a report has more than one recommendation/decision, the Member must in the written request state and specify which decision(s) he or she is calling in, the reason for the Call-in and what objective the Member seeks to achieve.
- 15.7 The Head of Governance shall return incomplete or inadequate call-in requests, following consultation with the Chairman of the Business Management Overview & Scrutiny Committee (or in the absence of the Chairman, the Vice-Chairman), requesting that the Member calling-in the item provide clarification as to the decision called in, the reason(s) and the objective(s) within one working day in order to progress the call-in.

Attendance at Meetings

- 15.8 For Executive decisions called-in under Rule 15.5, the relevant Cabinet Member shall attend the meeting of the Business Management Overview & Scrutiny Committee in order to respond to:
- (i) the reason(s) and objective(s) for the call-in; and
 - (ii) questions and other issues raised by the Committee.

The relevant Cabinet Member is the Member with delegated executive responsibility for the subject matter of the call-in. If the Cabinet Member is unable to attend the meeting, then the Leader or the Deputy Leader will attend to deal with the item.

Reference Back

- 15.9 If, having considered a decision the Business Management Overview & Scrutiny Committee remains concerned about it then it may refer it back to the decision making body or person for reconsideration, setting out the nature of its concerns, or refer it to full Council if they consider the decision is contrary to the budget or policy framework.

The Committee shall indicate, in the case of decisions with several aspects, the part(s) that is (are) referred back in order that the remaining decisions may be implemented.

If the Committee is content with the action/decision, then can be implemented immediately.

Procedure for decisions referred back to decision-maker

- 15.10 Where a decision is referred back to the original decision maker, he/she will reconsider the decision and decide whether or not to change it before adopting a final decision.
- 15.11 Where the decision was taken by the Executive as a whole or a committee of it, the Democratic Services Manager shall place it on the agenda for the next regular meeting of the Executive or of the relevant committee.

Appendix B – Page 7

Procedure for decisions referred to Council

- 15.12 The Head of Governance shall include those decisions referred to Council on the agenda for the next available ordinary meeting of the Council.
- 15.13 If the matter was referred to full Council and the Council does not object to a decision or refer it back to the decision maker, then no further action is necessary and the decision will be effective in accordance with the provision below.
- 15.14 However, if the Council does object, it has no locus to make decisions in respect of an Executive decision, unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that it is the case, the Council will refer any decision to which it objects back to the decision-making person or body, together with the Council's views on the decision.
- 15.15 Subject to the arrangements in 16.9 above applying where appropriate, that decision-making body or person shall choose whether to amend the decision or not before reaching a final decision within 5 working days of the Council request.

Executive decisions taken by Area sub-Committees

- 15.16 Where a key decision has been taken by an Area sub-Committee then the right of call-in shall extend to any other Area sub-Committee

Exceptions

- 15.17 In order to ensure that Call-in is not abused, nor causes unreasonable delay, certain limitations are to be placed on its use. These are:
- (i) a decision maker can only be asked to reconsider a particular decision once;
 - (ii) day-to-day management and operational decisions taken by officers shall not be subject to any Call-in procedure
 - (iii) The Call-in procedure does not apply to recommendations made by the Cabinet to full Council on the budget or any part of the policy framework. However, the Business Management Overview and Scrutiny Committee may comment on such recommendations.

16. Call-in and urgency

- 16.1 The call-in procedure set out above shall not apply where the decision being taken by the executive is urgent. An urgent decision may be exempted from the call-in process.
- 16.2 A decision which, if it were not taken promptly or otherwise delayed by the call-in process, would seriously prejudice the Council's or the public's interests will be regarded as urgent.
- 16.3 The record of the decision shall state whether, in the opinion of the decision-making body or person, it is urgent and therefore should be exempted from call-in.

- 16.4 The Chairman of the Business Management Overview and Scrutiny Committee must agree that the decision proposed is reasonable in all the circumstances and is urgent and consent to it being exempted from call-in.
- 16.5 In the absence of the Chairman of the Business Management Overview and Scrutiny Committee, consent to exempt a proposed decision from call-in must be obtained:
- (i) From the Vice-Chairman of the Committee; or
 - (ii) From the Head of Paid Service in the absence of both the Chairman and Vice-Chairman; or
 - (iii) From the nominee of the Head of Paid Service in the absence of the Chairman, Vice-Chairman and the Head of Paid Service.
- 16.6 For the purposes of granting consent to exempt an urgent decision from call-in, the Head of Paid Service may, if absent, delegate the granting of that consent only to his/her deputy or another Chief Officer of the Council.
- 16.7 For the purposes of this Rule, “absence” is deemed to mean:
- Where the individual concerned cannot be contacted by any method of communication or has indicated by formal notice to the Head of Governance that he or she will not be contactable during a specified period.
- 16.8 Urgent decisions treated as exempt from call-in must be reported, with an explanation for the reasons for urgency, to the next available Council meeting.
- 16.9 The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

17. The Party Whip

- 17.1 When considering any matter in respect of which a Member of an Overview and Scrutiny Committee is subject to a party whip the Member must declare the existence of the whip and the nature of it before the commencement of the Committee’s deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

18. Procedure at Overview and Scrutiny Committee Meetings

- 18.1 Overview and Scrutiny Committees shall consider the following business:
- (i) minutes of the last meeting;
 - (ii) declarations of interest (including whipping declarations);
 - (iii) responses of the Executive to reports of the Overview and Scrutiny Committee;
 - (iv) the business otherwise set out on the agenda for the meeting.

Note

The following item will also appear on the Agenda of the Business Management Overview and Scrutiny Committee;

- 18.2 The Business Management Overview and Scrutiny Committee may not transact any business after 10pm (Section 2 – Committees and Sub-Committees – para 17)
- 18.3 At 9.45pm, if the meeting has not yet concluded and it does not appear that it would otherwise complete its business, the Chairman, without further debate, shall immediately call for a vote on any motion, duly moved and seconded, that any remaining items on the agenda be referred back to the original decision making body or person, or that it be referred to full Council if it is considered that the decision is contrary to the policy framework or budget.
- 18.4 Any motion by a Member to refer a decision back must concisely articulate the Member's reasons for concern about the original decision; the motion to refer back must be voted upon immediately without further debate.
- 18.5 Any Call-in matters not dealt with by 10pm will be implemented forthwith.
- 18.6 Where an Overview and Scrutiny Committee (or Task and Finish Group/Panel etc) conducts investigations (e.g. with a view to policy development), the body may also ask people to attend to give evidence at Committee meetings which are to be conducted in accordance with the following principles:
- (i) that the investigation be conducted fairly and all members of the scrutiny body be given the opportunity to ask questions of attendees, and to contribute and speak;
 - (ii) that those assisting the scrutiny body by giving evidence be treated with respect and courtesy; and
 - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- 18.7 Following any investigation or review, the committee/task and finish group/panel etc shall prepare a report, for submission to the executive and/or Council as appropriate and shall make its report and findings public.

19. Speaking at Executive Meetings

- 19.1 A member of any Overview and Scrutiny Committee may speak on an item of business on the agenda for a meeting of the Cabinet or a Cabinet Committee subject to:
- (i) giving notice to the Leader or Chairman respectively at least 15 minutes before the start of the meeting;
 - (ii) the Leader or Chairman respectively giving his or her consent; and
 - (iii) the effective conduct of the business of the meeting not being prejudiced.

Explanatory Note – Speaking at Executive meetings

Although the rule says only 15 minutes' notice is required, it is courteous and good practice to ensure the Leader or Chairman knows of your request in good time and is able to discuss any concerns with you. The Leader or Chairman is unlikely to withhold consent to any reasonable requests that would not interfere with the effective conduct of the business of the meeting. However your request could be refused if a large number of members have requested to speak on the same item. A note sent the day before the meeting or message left on the answer phone or at an e-mail address on the day of the meeting is unlikely to reach the Leader or Chairman in time.

Unless the Leader or Chairman receives the message, notice has not been given.

20. **Application of Committees and Sub-Committees Rules to Overview and Scrutiny Committee Meetings**

The following rules contained within Section 2 of Part 4 of the Constitution shall apply to Overview and Scrutiny Committees .

Rule 17 below will **not** apply to the Business Management Overview and Scrutiny Committee, as Overview and Scrutiny Procedure Rule 19.2 deals with this point.

1	Substitute Members and Quorum
2	Substitute Members – Rules
4	Quorum – Rules
5	Chairman of Meetings
6	Minutes
8	Councillors' rights to attend meetings where they are not a member of the committee or sub-committee
9	Councillors' rights to speak at committees or sub-committees when they are not a member
10	Personal and prejudicial interests
11	Disorderly conduct
12	Validity of Motions and amendments
13	Motions which may be moved during debate
14	Decisions
16	Reports of Sub-Committees and Panels
17	The time limit for meeting and outstanding business
18	Voting at meetings
19	Members dissent
20	Voting on appointments

21. **Part 2 - Other arrangements**

Explanatory Note – Councillor Call for Action

Councillor Call for Action is a statutory process under section 119 of the Local Government and Public Involvement in Health Act 2007

- 21.1 Any Member may, by giving notice to the Head of Governance using the form provided, initiate a Councillor Call for Action relating to a local government matter that is not an excluded matter and where other routes to resolve the issue have not succeeded.

- 21.2 A Councillor Call for Action can only be initiated where:
- (i) it relates to the discharge of any of the Council's functions;
 - (ii) it relates to a matter which affects the ward of the Member initiating it;
 - (iii) it does not relate to individual planning decisions, licensing decisions or matters where the affected person or body has a statutory right of appeal;
 - (iv) it does not relate to any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for a scrutiny committee meeting.
- 21.3 The Head of Governance will determine whether the request meets the criteria for a Councillor Call for Action. Where the Head of Governance determines that the request does not meet the criteria for a Councillor Call for Action, he/she will, within 10 working days, give written notice of the decision to the Member making the request. In those circumstances, the Member may submit a written request for a review of that decision by the Director of Corporate Governance who will, within 10 working days, determine and give notice of the outcome of that review to the Member. Where the Head of Governance determines that the request does meet the criteria for a Councillor Call for Action, he/she will arrange for the matter to be included on the agenda for the **next available meeting** of the Business Management Overview and Scrutiny Committee.
- 21.4 Where a Councillor Call for Action is included on the agenda for a meeting of the Business Management Overview and Scrutiny Committee, the Committee will consider the evidence submitted and determine how the Call for Action should be progressed. The Member making the request may address the committee before it is considered. Members of the public are able to speak in support of a Councillor Call for Action. Procedures for speaking as set out in Section 4, Public Participation, are applicable.
- 22. Task and Finish Groups**
- 22.1 Task and Finish Groups will carry out their work in the manner in which they see fit. The findings and recommendations of Task and Finish Groups will be presented for consideration to the Business Management Overview and Scrutiny Committee, operating under the Access to Information Rules.
- 22.2 When conducting their research there will be a general expectation that:
- (i) Members in carrying out these activities will, as appropriate, visit and meet with local communities, meet with the Council's partners and others as necessary.
 - (ii) Members will look at a variety of methods for inviting comments and views and publicising their work.
 - (iii) Meetings and other activities may, on occasions, take place at locations away from the Town Hall or other Council offices. The Democratic Services Manager will make the necessary arrangements in consultation with the relevant Chairman and Members.
- 23. Part 3 - Constitutional issues**
- 23.1 The Business Management Overview and Scrutiny Committee will review the operational and constitutional arrangements each year and make recommendations, as necessary, to the Special Committee (Constitution Review).

Terms of Reference

Budget and Performance Overview and Scrutiny Committee

Membership

10 Non-executive Members of the Council

Responsibilities:

Budget and Performance

1. To scrutinise the overall performance, effectiveness and value for money of Council services, including the planning, implementation and outcomes of all corporate improvement strategies.
2. To scrutinise the Council's Information and Communications Technology systems including e-government, investment, implementation and service delivery.
3. To scrutinise the Council's annual budget process, reviewing and scrutinising its performance in relation to budget management, and assisting the Council in developing the three-year budget strategy.
4. To consider, consult upon, comment and, where appropriate, make recommendations to the Executive in respect of the proposed Council budget and Medium Term Financial Strategy.
5. To scrutinise the financial management of resources available to the Council including: property and asset acquisitions and disposals; reviewing the council-wide property and asset strategy; and the capital investment programme.
6. The effectiveness of the Council's partnerships (not within the remit of other overview and scrutiny committees) in furthering the Council's community and corporate plans, communication and public consultation including:
 - Local Strategic Partnership
 - Thematic Boards
 - Partnerships and sub-Partnerships
 - Relevant partner associations not covered by other stand alone committees

One Barnet

7. To perform the overview and scrutiny role in relation to the One Barnet transformation programme, particularly performance and financial issues.
8. To receive and consider options appraisals, business cases and closure reports for One Barnet projects.
9. To monitor the implementation of One Barnet projects throughout the programme lifecycle.

10. To engage with partner organisations, other relevant public sector bodies, private sector organisations, trade unions, local residents or any other appropriate witnesses when fulfilling the overview and scrutiny role in relation to the One Barnet programme.

Enclosure 2

The Barnet Group

11. To scrutinise the performance of The Barnet Group LTD and subsidiary companies, to include:

- The Annual Report
- The mid-year Performance Report
- Pre-decision Scrutiny of other strategic documents as requested by the Committee.

Formatted: Indent: Hanging: 36 pt

Formatted: Bullets and Numbering

Formatted: Bulleted + Level: 2 +
Aligned at: 54 pt + Tab after: 72 pt
+ Indent at: 72 pt

Formatted: Bullets and Numbering

Other Responsibilities

12. To ensure that overview and scrutiny in Barnet is reflective of Council priorities as evidenced by the Corporate Plan and the programme being followed by the Executive.

Formatted: Bullets and Numbering

13. To contribute to producing an annual report on the overview and scrutiny function in Barnet in accordance with the provisions of Overview & Scrutiny Procedure Rule 7.

Formatted: Bullets and Numbering

14. Additionally and insofar as relating to matters within its remit, to perform the overview and scrutiny role in relation to:

Formatted: Bullets and Numbering

- The Council's leadership role in relation to diversity and inclusiveness; and
- The fulfilment of the Council's duties as employer including recruitment and retention, personnel, pensions and payroll services, staff development, equalities and health and safety.

ENCLOSURE 3

Overview & Scrutiny Procedure Rules

13. Members and Officers Giving Account

- 13.1 Any Overview and Scrutiny body may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, the body may require any member of the Executive, the Head of Paid Service and any Director or Head of Service or other senior officer of the authority or of TheBarnetGroup LTD to attend before it to explain in relation to matters within their remit and to produce a report if so requested, and it is the duty of those persons to attend if so required.