

MEETING**BUDGET AND PERFORMANCE OVERVIEW AND SCRUTINY COMMITTEE****DATE AND TIME****TUESDAY 11TH JUNE, 2013****AT 7.00 PM****VENUE****HENDON TOWN HALL, THE BURROUGHS, NW4 4BG**

Dear Councillors,

Please find enclosed responses to public questions for the above meeting.

Item No	Title of Report	Pages
4.	Public Questions and Answers	1 - 30

Andrew Charlwood 020 8359 2014 andrew.charlwood@barnet.gov.uk

This page is intentionally left blank

Question Number	Raised By	Question Raised	Answer
1	Mr John Dix	How much additional gross revenue is required to generate the net income growth share to Barnet of £33.8 million	CSL have projected significant additional gross revenue in their final tender, underpinned as a contractual commitment. Contractual guarantees ensure that even if these opportunities are not fully realised, this makes no difference to the guaranteed financial benefit. The specific gainshare percentage that the JV Co will take from this arrangement is subject to commercial confidentiality.
2	Mr John Dix	What circumstances have changed between March 2011 and today to justify a tripling in net income growth?	The March 2011 business case was a very prudent assessment of income growth. One of the purposes of involving a private sector partner in the provision of DRS services was to bring a more commercial outlook. Throughout the extensive due diligence undertaken the preferred bidder has been able to identify opportunities that could result in significant income growth. However contractual guarantees ensure that even if these opportunities are not fully realised the Council is still guaranteed a minimum amount that underpins the financial benefit.
3	Mr John Dix	In the March 2011 business case it stated that cost reductions over the period of the contract would amount to £19.7 million yet the Capita bid suggests the savings are now forecast at only £5.3 million or just over £500,000 per annum. What reason has been given for a saving that is only 26.9% of that originally forecast.	The preferred bidder has identified a more modest saving but a higher level of income, resulting in a greater guaranteed net benefit to the Council. This income is guaranteed and will be as binding on the provider as a cost saving.

AGENDA ITEM 4

4	Mr John Dix	At Table 7.1 in the business case it illustrates that the DRS staff numbers will stay relatively static over the period of the contract. How can the same number of staff generate so much more additional revenue?	The use of new technology and processes will release capacity to deliver some of the new revenue. If the preferred bidder is successful in generating the levels of new business that they anticipate then there will need to be an increase in staff numbers over the contract term. Regardless of this success or any new staff employed by the JV Co the cost to the Council and the minimum guaranteed income remains the same, although there is potential for additional income.
5	Mr John Dix	At Table 8.2 in the business case it suggests that the £5.3m guaranteed benefit represents a saving of 3.5% of costs. It also says that CSL will retain 13% of the cost savings as their fee. Based on my calculation that means that CSL will receive £31.8 million of the costs reduction. Does this seem to be an equitable split of cost savings?	CSL will receive £18.5m in terms of profit and overhead recovery over the 10 year term. This represents 13% of the costs, not of the cost savings.
6	Mr John Dix	Where will the 21% reduction of core operating costs be made given that staff numbers are virtually unchanged over the period of the contract	Efficiencies will be found by utilising new technology and streamlining existing processes, resulting in lower operating costs. Staff will be redeployed to work on new areas of work which will generate new revenue streams and are therefore not part of the 'core operating costs'.
7	Mr John Dix	At Table 8.2 in the business cases it states that pre-purchasing of graves will deliver additional benefit. As an advance payment for a service to be provided in the future surely it should not be counted as additional revenue?	This is a service that customers will pay for and as a consequence is included as an additional revenue.

8	Mr John Dix	At Table 8.2 in the business cases it states that there will be extended opening hours (at Hendon Cemetery and Crematorium) and additional cremation activities. What opening hours are envisaged and will this mean that local residents will have to wait longer for their loved ones to be cremated unless they choose an early morning or late night slot?	The hours proposed by CSL are: 9.00 - 4.00 seven days/week, including bank holidays, for burials and 9.00 - 5.15 seven days/week, including bank holidays, for cremations. The Council has already implemented extended opening hours to cover weekends and bank holidays. These longer opening times will not mean longer waiting times, but will increase the range of choice to residents and potentially will reduce waiting times for services at any time of day.
9	Mr John Dix	How much additional highways advertising will we be forced to endure in order to generate the additional £9.8 million of guaranteed benefit?	There is no requirement for Members to agree to additional highways advertising. As stated on p38 of the Business Case, should a proposal be deemed unviable, the JV Co is obliged to develop alternative proposals to meet the guaranteed financial benefit from other projects.
10	Mr John Dix	Of the £6 million investment in IT what is the phasing of that investment over the 10 year contract period, what specific software will be purchased and what mechanism is in place to ensure that the money promised is actually spent?	Approximately a quarter of the total investment is in year 1 with the remainder profiled over the contract term in line with timescales for refresh. The mechanism to ensure that the money promised is spent will be robust contract management and monitoring of delivery of contract commitments.
11	Mr John Dix	Where specifically will the DRS staff be located?	CSL have committed to locate DRS staff in the Borough for the duration of the contract.
12	Mr John Dix	How many posts will be joint employment contracts?	Circa 30% of roles across the JV Co will be on joint employment contracts. This figure will be finalised during the preferred bidder discussions.
13	Mr John Dix	What happens if Council and Members do not approve new services or changes to fee levels or fee structures and how does this impact on the guarantees?	Members (sitting as the Cabinet Resources Committee) retain all their existing rights over fee levels and fee structures. Should a new fee proposal from the provider not be accepted then the guaranteed minimum income remains unaltered.

14	Mr John Dix	If the contract is terminated early how much will Barnet have to pay CSL in compensation?	This is commercially sensitive information but we confirm there are clauses that specify the amount payable depending on the reason for early termination and when the termination event occurs.
15	Mr John Dix	When a planning decision is made, who will make that decision, a Barnet Council employee, a Capita employee or an employee of a new JV Co?	As is the current situation and in accordance with the Council's Scheme of Delegation elected members will be responsible for making statutory planning decisions.
16	Mr John Dix	Given that the report states that CSL will maximise the financial and economic benefits of new developments including increase receipts of New Homes Bonus what reassurance can we have that they will not push through massive new housing developments simply because they have a financial incentive to do so?	Contractually enforceable conflict of interest prevention provisions will be in place. This will mean CSL cannot be involved in supporting planning processes where it or one of its clients has a financial incentive in doing so. These provisions are legally enforceable and if breached could lead to termination of the contract.
17	Mr John Dix	Who will sit on the board of the Council wholly owned company that will manage its interests in the JV Co, how many company directors will be created and how much will they be paid?	We are currently working to finalise these arrangements. The decision is for the Council to take and as sole shareholder the Council will have full control of appointments. Suitable limits will be put in place. As a limited company Directors' Remuneration will be disclosed in published accounts and as the sole shareholder such matters are in the Council's ability to control.
18	Mr John Dix	Will directors of the Council wholly owned company sit on the board of the JV Co and what level of decision making will they have discretion over?	We are currently working to finalise these arrangements. All Directors of the JV Co the will have a significant input to decision making.
19	Mr John Dix	What provisions are in place to stop the directors of the Council wholly owned company or the JV Co from paying themselves excessive salaries?	Appropriate limits on remuneration will be incorporated. The Council is able to veto any Director of the JV Co being paid more than £150,000
20	Mr John Dix	What is the anticipated level of corporation tax payable by the JV Co over the ten year period of the contract.	Profits in the JV Co will be subject to the standard corporation tax rate of 24% in 2013, dropping to 21% from 2014/15 and 20% in 2015/16.

21	Mr John Dix	On page 12 of the business case it states that one of the reasons why a JV Co was favoured over the original strategic partnership is that "the risks were lower". Please can you clarify which risks are lower under the JV Co model and are there any risks that are higher?	A key risk that the JV Co model addresses is the risk of the Council not obtaining a share of any profits made. The JV Co model also increases transparency and visibility through the Council being able to appoint Directors and its rights as shareholders. Appendix 1 of the business case explores these issues in more detail - a number of the reasons given in the section titled "Why make use of a JV Co?" of that appendix are benefits related to the reduction of risk compared to other approaches. As a shareholder in a limited company, the Council's liability is limited. Although, there is a risk that the Council may lose their investment, the shareholding will be a nominal sum and there is no obligation for the Council to commit any further investment in shares.
22	Mr John Dix	At page 14 in the business case it states that the Council reserves the right to veto salary and rewards schemes above £150,000. Is that £150,000 in total for all DRS staff or £150,000 to any one individual?	To any one individual.
23	Mr John Dix	At the end of the 10 year contract how will the JV Co be dissolved, what liabilities will accrue to the Barnet wholly owned company and how will DRS staff be separated from the staff carrying out duties for other customers?	At the end of the DRS Agreement the Council has the option to continue being a shareholder in the JV Co or it can require CSL to acquire all of its shares.
24	Mr John Dix	Why are 30 posts to be added in year one only for them to be removed in year two, will the posts to be removed in year two be the individuals are were brought in in year one and what safeguards do existing staff have that Capita will not simple bring in 30 new staff on much lower terms and conditions and then make 30 Council TUPE'd staff redundant at the end of year two.	The 30 posts primarily represent an investment in implementing new IT and processes, and providing training. These are mainly project resources that will only be needed during this phase. The JV Co may make whatever decisions it chooses for any of its staffing arrangements as long as it is legal and in line with the contract and this does not preclude redundancies of existing staff. However the nature of the staff who would be used for transformational project activates (such as IT implementation) are unlikely to be those that it would retain for the on-going running of the services so the scenario envisaged in the question is possible but unlikely.

25	Mr John Dix	At the end of the contract can the shares in the JV Co owned by the Barnet wholly owned company be sold to a third party?	There is no obligation to sell the shares at the end of the DRS contract. If the Council chooses to sell the shares there is a 'put option' in place which is an obligation on CSL to buy them from the Council.
26	Mr John Dix	Why was this report cleared by Trowers&Hamblins not the Council's own legal service (outsourced to Harrow Council) and does this not represent a massive conflict of interest given that Trowers&Hamblins have provided legal advice on the outsourcing project?	This is standard procedure where external solicitors have been instructed to ensure continuity of advice. T&H in common with other law firms in accordance and are regulated by the SRA. This does not constitute a conflict of interests because T&H are continuing to advise Barnet Council and their clients. In addition and as is standard, the advice of T&H has been reviewed by the shared legal service HB Public Law.
27	Mr John Dix	Why were registration services included in the 2011 business case but excluded from the Capita bid and who will provide registration services when the DRS contract is let?	The Council does not currently have legal powers to outsource the majority of the Registrars service to an external provider. At present, the Registrars service will continue to be provided through the existing service model.

28	Mr John Dix	Please can you tell me what, specifically, is the Barnet Observatory?	<p>The Barnet Observatory will provide Borough-wide economic and socio economic intelligence and foresight utilising the expertise of Middlesex University's Centre for Enterprise and Economic Research (CEEDR).</p> <p>The Observatory shall provide forward-looking intelligence to inform the prioritisation of projects and provide informed opinion at key major programme investment and implementation decision making points.</p> <p>The Observatory shall provide an agreed annual programme of needs driven research to underpin investment decisions and new policy making to drive growth in the Borough. It would provide a triennial Borough Economic Strategy report and Annual Performance report. CSL will invest in Local Futures Smart Observatory product and create an Observatory web-site as a repository of research, forecasts and economic intelligence, providing access to businesses who want to invest in Barnet.</p>
29	Mr John Dix	Is there any requirement in the contract for CSL to hold open meetings with the general public to explain what they are proposing and how the new contract will operate?	<p>There is no requirement in the contract for this, however in addition to the prescribed requirements for formal consultation (such as for planning applications), CSL's approach to the delivery and development of the DRS services will include proactive engagement with residents, local business and other service users and stakeholders. This will include, for example, providing 'Community Liaison Officers' to attend Town Centre forums and providing detailed information and updates to Members, as part of an enhanced Member Liaison service, to enable them to be more informed and able to provide information to their constituents on delivery performance, plans and initiatives.</p>

30	Mr John Dix	Will the chairman consider setting up a separate workshop meeting open to and involving members of the public at which a more detailed analysis of the contract proposals can be discussed.	The Council has put the maximum amount of information into the public domain as it legally can at this point in time, given the fact that there is not as yet a signed contract and all CSL bid material was submitted as commercial in confidence. Once there is a signed contract the Council will publish a version that members of the public can review in detail. It is the job of elected members on the Scrutiny committees to provide appropriate oversight to the decisions made by the Cabinet, and to listen to the people of Barnet in doing this, but it is not appropriate for Scrutiny members to hold workshops with members of the public on matters that are the domain of executive decision making.
----	----------------	---	--

31	Ms Musgrove	<p>In reference to the Scrutiny Report included in the agenda, at item 2.4 (ii) we are told that previously it has been agreed as follows:</p> <p>1.RESOLVED that – the Cabinet Resources Committee be requested to take into account the following comments/recommendations made by the One Barnet Overview and Scrutiny Panel in relation to the Development and Regulatory Services Business Case: (I) the Committee be requested to provide assurance the any contracts entered into as part of the One Barnet programme would be both robust and flexible to enable the authority to:</p> <ul style="list-style-type: none"> • incorporate legislative changes, including additional responsibilities for local authorities as part of the Public Health agenda; and • minimise the risk of costly contract disputes arising during the term of the contract; <p>(ii) the Committee be requested to prioritise commissioning work on Elected Member Governance in relation to One Barnet programme and involve the One Barnet Overview and Scrutiny Panel in this work;</p> <p>In the light of revelations that the decision to change the model of the DRS contract to a JV Co was made in secret, by the Corporate Directors Group, a body with no executive powers, and without consultation with the Leader or any elected member, does the Chair not agree that scrutiny and elected member governance of the One Barnet programme, and specifically the DRS tender process has been completely undermined?</p>	<p>The JV Co option was clearly and explicitly set out in the OJEU notice published in March 2011 as a vehicle that would be explored through the competitive dialogue process alongside that of a strategic partnership, following the agreement of the options appraisal by Cabinet. The JV Co has developed as a progressively more attractive option following detailed discussions with bidders.</p> <p>The relevant Member Panel, in association with Cabinet Members, were briefed on the options and gave direction on the appropriate course of action. The direction provided by Cabinet is reflected in the current business case.</p>
----	----------------	---	---

32	Ms Khatiri	<p>On Page 5 - "Guaranteed investment". How is the £8.2m being divided between the three identified investment areas? Who owns / controls the intellectual property?</p>	<p>Please refer to table 8.4 on pages 39 & 40 of the business case. If the Service Provider creates any bespoke intellectual property (IP) for Barnet, or any databases in connection with the services, Barnet will own that material. Barnet does not take ownership of any background IPR (i.e. intellectual property created by the Service Provider independently of the DRS contract), any 'standard' software provided by the Service Provider, or any third party software (i.e. software owned by third parties, e.g. Microsoft). The Service Provider is also obliged to ensure that any background IP or third party IP (if it is embedded in or required to use any bespoke items created for Barnet) is licensed to Barnet as is standard for contracts. Barnet can use those materials on a perpetual basis but not for commercial exploitation. Barnet also licences the bespoke materials back to the Service Provider for it to comply with its obligations under the DRS contract for the length of that contract. The Service Provider has to indemnify Barnet against any third party claims of IP infringement (unless those were caused by Barnet's actions)</p>
----	------------	--	--

33	Ms Khatiri	<p>On Page 11 - The JV Co Approach The JV Co diagram is complex, but even so it over-simplifies the situation. The Council is represented twice (correctly) as a single entity, but in reality is composed of multiple elements (including the executive, scrutiny, residents/traders, other stakeholders etc.) 'Services designed around (residents) etc.' but where do they fit into the JV Co model – What are the other links and dependencies which are not shown on the diagram? In order for there to be better scrutiny of the JV Co operation, can the linkages to elected Members, residents and other key groups be shown, explaining how it works for them?</p>	<p>The JV Co is a limited company in which the Council will own shares in (via a wholly owned subsidiary). The Council is able to appoint Directors (e.g. Senior Officers and/or Members) Barnet residents and others may of course become clients of the JV Co. The remit of the JV Co will be accountable to the council in its role as a shareholder and the new scrutiny committee will provide oversight of the contract.</p>
34	Ms Khatiri	<p>On Page 13 - the 'non-competition' area for the JV Co covers the administrative areas of 150 Councils. Has Barnet Council contacted any of the 150 to discuss their views on the Barnet JV Co effectively seeking exclusivity for CSL's service provision in this field?</p>	<p>No. This does not reduce the market options available to the Councils within the non-competition area as the JV Co may bid for work in this area instead of CSL. The exclusivity only relates to DRS services, which the JV Co will be able to provide. The purpose of the non compete provisions is to protect the Council's interests as a shareholder in the JV Co.</p>

35	Ms Khatiri	<p>On Page 15 – ‘Weakness minimised’ – Second bullet point refers to the financial arrangements of the JV Co but there are no details.</p> <p>In the interests of transparency please provide the information which elected Members have seen in order that they are able to assess the risk of the capability of the JV Co to carry out Barnet work to agreed standards and provide the anticipated financial benefit.</p>	<p>There are three headings of ‘Weakness Minimised’ on page 15, two of which have two bullets, we are unclear exactly which point the question refers to.</p> <p>With regard to service standards there are three key elements within the bid that provide this information 1) the Council developed detailed service output specifications which the bidders were required to accept and will form part of the service providers contractual obligations. These are the service requirements and were written by the Council Officers who will specialise in these services.</p> <p>2) There will be agreed key performance indicators which the bidder must contractually meet, if these are not met then payment deductions can be made and other legal remedies may be available; 3) the bidders submitted Service Development and Improvement plans which set out their ideas related to all the services in scope. These were evaluated by Officers who specialise in these services.</p> <p>The guaranteed financial benefit is £39.1m.</p>
36	Ms Khatiri	<p>On page 16 – The table on this page tends to state how the benefit to the Council will be limited.</p> <p>In the interests of transparency please provide the information which elected members can assess corporate risk about the relationship between the Council and CSL within the JV Co arrangement.</p>	<p>The risk of the JV Co approach is addressed in the business case, primarily in table 3.1.</p> <p>The table of page 16 shows how the Council can benefit from financial success (either lower costs, or higher income). The only limitation is to prevent this benefit being unintentionally taken twice i.e. in some instances we extract our benefit contractually and as we already have obtained our benefit we do not get it a second time as a share dividend. This approach leads to a preferable outcome for the Council as it has greater certainty over obtaining the benefit.</p>

37	Ms Khatiri	<p>On Page 22 - First bullet point: How is customer satisfaction to be measured and what happens if this key commitment is not realised as defined?</p>	<p>CSL's bid commits to meet existing levels of customer satisfaction and proposes a new customer satisfaction key performance indicator with targets to increase satisfaction to 80% after Year 1 and to 85% by Year 5. Should these not be achieved the contract incorporates performance penalties through payment deductions.</p>
38	Ms Khatiri	<p>On Page 22 - Fourth bullet point :How is this to be monitored – what are the targets, milestones and reporting framework to inform elected Members?</p>	<p>Customer satisfaction and customer service standards will be monitored through regular assessment against the super key performance indicators and service related performance measures including complaint monitoring, quality checks on telephone and written communications, feedback from customers and regular focus and user group sessions. Performance will be reported to the council on a regular basis through agreed contractual arrangements. There will also be a new scrutiny committee which will focus on the Council's contracts.</p>
39	Ms Khatiri	<p>On Page 23 - Second (black) bullet point : 'Implementation of 'life event' based customer contact management processes ...' What does this mean? How will customers' personal information data be protected – will this be held by CSL?</p>	<p>A 'life event' based customer contact management processes enables groups of related services likely to be required by a type of customer associated with a type of event to be delivered through a single point of contact and provide end to end support. A one-stop-shop resident and business support service is proposed which will provide advice and information across all service areas. Customers' personal data will be held by the JV Co as necessary in providing services and it will be obliged to comply with all Council information management policies and the Data Protection Act. The Service Provider must deliver the Services in accordance with a written environmental management strategy which will be at least equivalent to the Authority's current policy in scope and effectiveness.</p>

40	Ms Khatiri	<p>On Page 38 - "Table 8.2 Cost reduction" What is the actual "13% CSL partner fee" amount? Are there any other elements within the DRS area where other partner fees will be charged?</p>	<p>The entirety of the cost reduction equals £30.3m and represents a 21% saving from the existing cost base. This breaks down as follows: £6.5m returned to the JV Co, £18.5m to CSL and £5.3m to LBB. CSL's bid contains a Commercial Development Plan which identifies a number of new initiatives for further growth. If additional financial benefit is earned for LBB over and above the guarantee, then this will be payable to the authority net of additional partner fee.</p>
41	Ms Khatiri	<p>On Page 38 - "Table 8.2 Income increase" How much of the £18m "guaranteed" benefit will be earned from work undertaken outside Barnet?</p>	<p>This benefit could come from a variety of different business plans contained within the Commercial Development Plan (CDP). The overall split of work within the CDP is 60% inside the borough and 40% outside.</p>
42	Ms Khatiri	<p>On Page 36 - 'Table 7.1 DRS Staff Numbers' Staff numbers are being reduced in six of the twelve groups. In particular, the Regeneration team is being reduced by 18%. This is a key stated area for CSL as they anticipate significant additional income streams from this activity area. Please provide an explanation as to how this will be achieved with less staff?</p>	<p>Whilst there will be fewer FTEs they will be able to call on wider and more specialised regeneration resources from CSL outside Barnet.</p>
43	Ms Waisel	<p>On Page 40 - Transfer of Assets What Highways assets will be transferred? Will traffic signs etc. become an asset of the JV Co? If not, will the new signs etc. installed by the JV Co become the property of the Council? Has there been any investigation into possible legal restrictions on the transfer of highway assets to the JV Co/private company?</p>	<p>Highways assets are not going to be transferred to the JV Co and the JV Co will be maintaining and improving the highways asset base on behalf of the Council. All new assets provided on behalf of the Council will be and will remain the property of the Council.</p>

44	Ms Waisel	<p>On Page 49 - "Risk Area - Commissioning Group" - 'Key posts in Commissioning Group not filled' Are the opportunities open to existing Barnet staff? Apparently work has already started to fill these vacancies. Can you explain how that can be if a decision wasn't made yet?</p>	<p>All new post opportunities are open to existing Council staff in accordance with the Council's usual HR policies. These post's have been created as part of the creation of a Commissioning Council structure at Barnet. The new model will allow us to take a flexible approach to shape the future of the organisation and, most importantly, to continue to provide excellent services to residents during these challenging times. This new structure is not dependent upon the DRS decision. All commissioning posts are currently filled.</p>
45	Ms Waisel	<p>On Page 10, paragraph 3.1, the report refers to the Council owning shares. How many shares are owned by CSL? How many Shares are owned by Barnet Council?</p>	<p>Barnet Council will control 49 shares, and CSL will own 50. The total number of shares available is 99 however these will be minority protection rights for Barnet.</p>
46	Mr Cohen	<p>On Page 4 - "Contractual elements" - 'JV Co shareholders agreement'. Please provide the details of this shared arrangement? Is it 50:50 for Barnet work and is this split differently (if so, what) for work elsewhere?</p>	<p>The JV Co agreement is a detailed and quite lengthy document covering a number of areas. Amongst other things it specifies some 'reserved matters' over which it gives the Council as shareholder a right of veto. For dividend payments the amount of dividends differs for different classes of sales.</p>
47	Mr Cohen	<p>On Page 4 - Staffing impacts" - '£500 per person per annum... invested in training and development ...' How does this compare with current spend levels within the Council? And how this is being calculated? i.e. is that the cost of training per se or it also includes the time that the employee was supposed to do his regular work?</p>	<p>The £500 pp pa covers training per se.</p>
48	Mr Cohen	<p>On Page 4 - Staffing impacts" - '30 additional posts brought into Barnet ...' What are these roles? Are these existing CSL employees? Who pays for these employees?</p>	<p>These are new resources from CSL in temporary project and training roles related to transformation and improvement of the service. These are costed into the bid.</p>

49	Mr Cohen	On Page 4 – Staffing impacts” – 30.1 posts removed from year 2....’ Are they the same staff, does this mean that staff numbers are neutral or is there is a cumulative loss of 60.1 full time posts after the first year?	The 30.1 temporary posts are removed after year 2, the net resourcing position remains level.
50	Ms Jacobsen	How can benefit cuts and the requirement for people on housing benefit to contribute to Council tax support families and individuals that need it and how can they promote well--being, and what evidence is there that they can and do?	This is not specific to the DRS contract. Can you please provide further clarity?
51	Ms Jacobsen	How can the Council’s lack of consultation and restriction of dialogue with residents improve the satisfaction of residents and businesses in the borough, and what evidence is there that they can and do?	The council would engage in appropriate consultation in the event there were a major change proposed to DRS which would result in a material impact on citizens.

52	Ms Jacobsen	<p>In the table: Financing/Insolvency, and elsewhere It has been confirmed by Councillors at previous committee meetings that a parent guarantee is worthless if the parent company itself fails, so why do you continue to accept parent guarantees throughout this agreement rather than a third-party guarantee?</p>	<p>The parent company guarantee will be obtained from Capita Group PLC, a company listed on the London Stock Exchange. A third party could theoretically provide a guarantee but there would be no incentive for a third party to want to do so and also costly for the council to obtain. Further there is no guarantee that a third party would not itself fail. The contract contains provisions related to the required financial fitness of the guarantor, should these not be met then another form of surety is required to be put in place.</p> <p>One option is to buy a Performance Bond and this has been considered. The issue with a Performance Bond is that it could be very costly, often representing a significant proportion of the potential risk it is covering. Such a bond, if we were able to obtain one, which secured the full benefits of the deal could cost several million pounds. This would therefore be a certain cost added to the deal to protect against an outcome which is, in our assessment based on Capita Group's current financial standing, unlikely. The question is therefore one of achieving an acceptable balance of cost and risk, and noting that there would be no guarantees (parent company or otherwise) were we to attempt to achieve similar financial benefits in-house.</p>
----	----------------	---	--

53	Ms Jacobsen	<p>In the table: Financing/ Provider is unable... income The wording here is unclear and therefore unsafe. Who is the 'provider'? If it is the preferred bidder and that entity and the Council are partners in a JV Co, this reads 'The preferred bidder and the Council as partners in the JV Co will make up the shortfall in guaranteed financial benefit', which is clearly nonsense.</p> <ul style="list-style-type: none"> • How can there be a shortfall is something that is guaranteed? • How can the JV Co, of which the provider is a part, make up for that provider's failure? • If the JV Co is supposed to be earning money for LBB, why would LBB be paying the provider anything? 	<p>The provider is the JV Co. In the sentence commencing "The company is required..." the 'company' is the JV Co also. By 'guaranteed' we mean that the arrangement is a contractual requirement, this does not mean it is an absolute impossibility for the requirement to be failed.</p> <p>The Council's financial risk in the JV Co is limited to its shareholding (nominal) and the Council is under no obligation to inject further funds. Should any shortfall exceed the funds available to the JV Co then in order to avoid financial failure of the JV Co, CSL would need to inject funds. If the JV Co did fail and therefore cease to deliver the DRS services or meet its key contractual obligations then the council can terminate the contract due to supplier default and this could have major financial implications for CSL.</p> <p>Regarding "If the JV Co is supposed to..." - its is necessary and helpful for us to separate out our contractual arrangement (and the guaranteed financial benefit inherent in that) from the trading of the JV Co, which will not solely exist to supply Barnet's DRS services but which may supply other local authorities' or authorities within Barnet.</p>
54	Ms Jacobsen	<p>Core service performance/Inadequate specification Re the 'extensive work and review carried out', can the specifications now be guaranteed, without caveat, to be adequate in every way?</p>	<p>It is prudent to consider this a risk, although there are no known problems or issues with the specification. These are however complex services and the specifications run to several hundred pages.</p>

55	Ms Jacobsen	Core service performance/Inadequate design, resourcing, methods For the controls to be applied, there would need to be supervision of all the services. Who will be responsible for supervision and does the contract use the word 'supervision' in this context in all relevant clauses?	The Commercial Function will have a team dedicated to oversight of the DRS contract, carrying out all contract management and performance monitoring activities, and ensuring that appropriate controls are applied on behalf of the Chief Operating Officer. This team will be supported by a dedicated accountant within the retained Finance team to ensure that payments and deductions are correctly calculated and applied. Contract performance will be reported to the Partnership Operations Board, the Strategic Partnership Board, and the Council's Delivery Board. The responsibility to supervise staff is addressed in the output specifications.
56	Ms Jacobsen	ResilienceWho is supervising the PIs and KPIs? IF the contract mentions only 'monitoring', what steps has the Council taken or will it take to ensure that the contract stipulates who is responsible for 'supervision'?	The Commercial Function will have a team dedicated to oversight of the DRS contract, carrying out all contract management and performance monitoring activities, and ensuring# that appropriate controls are applied on behalf of the Chief Operating Officer. This team will be supported by a dedicated accountant within the retained Finance team to ensure that payments and deductions are correctly calculated and applied. Contract performance will be reported to the Partnership Operations Board, the Strategic Partnership Board, and the Council's Delivery Board. and will also be subject to scrutiny by the Council's scrutiny committee for contracts.

57	Ms Jacobsen	<p>Resilience: inadequate arrangements How does a (presumably financial) penalty compensate or in any way help anyone affected by the failure of KPIs in this or any other context?</p>	<p>The financial deduction could, if necessary and practical, temporarily enable the Council to pay for this service from another provider. The contractual deduction continues for as long as the underperformance persists and this will incentivise the provider to rectify the situation as soon as possible.</p>
58	Ms Jacobsen	<p>Volume/Change in demand If 'increased costs will be offset in some instances by increased income',</p> <ul style="list-style-type: none"> • what are those instances or types of instance? • what happens in other instances: is there no offset and therefore a loss, <p>or is there offset by some other means?</p> <ul style="list-style-type: none"> • how can an increase in income be guaranteed? • what happens if there is no increase in income? 	<p>DRS contains many paid for services, there are actually currently several hundred fee types across all the services e.g. planning fees, building control fees, licensing fees etc. If volumes increase in these fee paying functions then the increased number of fees collected offsets the cost and there is no increase in the service charge paid by the Council. The increased income is therefore guaranteed as the charge is applied to each transaction in the same way as any business makes more income if it makes more sales of products or services it charges for. Any risk for bad debts is with CSL. Where there is no fee for a service e.g. environmental health inspections, noise and nuisance response then there are agreed pricing increases and indeed decrease in place if there is a significant change in volume, and controls around this. It should be noted that the Council itself would have had an increase or decrease in costs had these volumes changed whilst the services were in-house - typically the cost change reflects the need to adjust staff levels to meet the new volume.</p>

59	Ms Jacobsen	<p>JV Co/transfer of risk If the contract contains 'the same performance and financial requirements and guarantees as a direct contract with the bidder', exactly why is the JV Co a better arrangement?</p>	<p>The JV Co brings other advantages such as opportunity to share income and extra transparency for the Council, as set out in the business case document in Appendix 1 "Why make use of a JV Co?".</p>
60	Ms Jacobsen	<p>JV Co/Unsustainable levels of debt</p> <ul style="list-style-type: none"> • It is clear that a loan can be voted, but as a debt describes a situation that has occurred, precisely how will the Council veto a debt? • What impact will vetoing a debt have on the delivery and quality of services? • Why is a debt of £1m considered acceptable, who would the debt be to, and what rate of interest to service the debt has been included in the business plan, and what happens if the rate increases beyond that forecast? 	<p>Borrowings by the JV Co are capable of veto by the Council if they are not made in the ordinary and usual course of business and/or allow for total borrowings to be made which would take indebtedness above £1M at any one time. Borrowings cannot be made unless approved by the company and the effect of the Council's veto is that if the circumstances described above apply, the consent of both shareholders is required. The purpose of the veto is not to enable the Council to micro manage the running of the JV Co, in which it is a minority shareholder. Therefore, borrowings up to the above figure are considered to be rightly within the remit of the company to make in order to run its business. An annual business plan is required to be produced and approved by both shareholders during the life of the arrangement.</p>
61	Ms Jacobsen	<p>Financial probity/lack of transparency</p> <ul style="list-style-type: none"> • How does the fact that LBB will have a single director on the JV Co board guarantee transparency in the JV Co's finances? • What power does a single director have in making decisions? • Who will this person be, how will he or she be appointed, and for what length of time will he or she be on the board? • Since the borough will be an almost equal shareholder in the JV Co, will residents have a right to vote for the people nominated as directors at successive AGMs? 	<p>A Director will have the right to scrutinise the accounts of the JV Co. Any Director has a significant input to Board decisions. This has not yet been decided - work is on-going. The Council will decide on its Director appointments. Members represent residents in relevant Council decision making.</p>

62	Ms Jacobsen	<p>Financial probity/weak project commercials• Who were the internal and the external specialists who conducted the reviews?• Did any of these reviewers have any relationship to or with the Council or the bidders?• How many reports are there and what do they say about the commercial elements? If you refuse to answer that reasonable question, to what degree do the reports agree with each other and in what specific ways do they not agree?</p>	<p>Due diligence was conducted extensively and we have followed a highly rigorous evaluation process which involved external specialists. • Trowers&Hamilins: external legal specialist with extensive experience in outsourcing and JV Co arrangements, have provided advice throughout the procurement and were formal members of the evaluation team • iMPower Consulting: specialists in providing commercial advice on major local government procurements have advised throughout. iMPower's Chief Executive was a formal member of the evaluation team • PWC: were involved in reviewing a sample of the KPIs that formed part of the final tender • KPMG: provided tax advice that formed part of the final tender • JLT Group: insurance brokers 'Public Sector Risk Practice' advised on insurance requirements • Budget and Performance Overview and Scrutiny Committee: provided O&S throughout the procurement • Internally approximately 40 individuals were involved in the evaluation and challenge of the evaluation, including: service leads and specialists, Assistant Directors, Directors, the Section 151 Officer, finance, legal, procurement, insurance, HR and Health and Safety. All scores were reviewed in challenge meetings and the scoring and their justification is fully documented (but commercially confidential). The process undertaken has been designed to comply with all relevant regulations and commercial confidentiality requirements, and to be able to withstand a challenge from an unsuccessful bidder. We have full confidence in the process followed. The question on the reports is unclear, please clarify</p>
----	----------------	--	--

63	Ms Jacobsen	<p>Non--delegable statutory duties</p> <ul style="list-style-type: none"> • Has the legality of making an officer a joint employee of the Council and the JV Co for the specific purpose of trying to get around the non--delegable aspect of statutory duties been examined and confirmed, and if so, by whom? • What is the mechanism that controls when an employee is working for the Council and when he or she is working for the JV Co? Will they be working on the non--delegable duties full time? • If these non--delegable duties are in fact being delegated to the JV Co, to whom at the Council will such a joint employee be responsible? And if, indeed, there is anyone left at the Council to whom such an employee can be responsible, why are these duties being delegated to the JV Co? • If such employees in fact are responsible only to a superior at the JV Co, how can their independence of action be guaranteed and be shown to be operating? • How will the joint employee's (or employees') pay be worked out: will the Council pay them a set percentage of their salary directly or will the JV Co pay them directly and be reimbursed by the Council? 	<p>1) Trowers and Hamlins our legal partner have assessed the legal aspects of joint employment based on the Queens Counsel advice provided during the Competitive dialogue process. The advice was commissioned jointly between the Council and both bidders.</p> <p>2) The joint employment contract is the mechanism that controls the points at which an employee works for either the Council or the JV Co. Each contract of employment will have the scheme of delegation for that role attached which dictates which activities can be carried out by the individual on behalf of the JV Co or the Council.</p> <p>3) Non-delegable duties are not being delegated to the JV Co.</p> <p>4) Any employee on a joint employment contract would report to the JV Co for their delegable duties and the Council for their non-delegable duties. The individual they report to within the council would depend on their role. In a number of operational roles the employee's line manager may also be on a joint employment contract.</p> <p>5) The final position on payroll will be defined in the preferred bidder discussions with Capita Symonds. The discussion will be based on the JV Co making the payment on the Council's behalf, shown as a separate payment line and reimbursed to the JV Co by the Council.</p> <p>6) The final position on payroll will be defined in the preferred bidder discussions with Capita Symonds.</p>
----	----------------	--	---

64	Ms Jacobsen	Re ensuring contract management arrangements are effectively structured and resourced, how long is the contract, how long have you had to scrutinize it, and what form does this scrutiny take, e.g. do you actually read it?	The contract is to last for 10 years plus a potential 5 year extension. If the question pertains to the length of the contract in terms of pages then the body of the contract (known as the Partnership Agreement) is just under 200 pages long however there are 39 schedules which add over 1,000 additional pages. The contract was developed and issued by the Council's lawyers based on industry best practice - it is not based on a document issued by the bidders. It had been negotiated with bidders for over a year, and the final version submitted by CSL was reviewed in detail by a number of individuals including the Council's external legal advisors.
65	Ms Jacobsen	Involving citizens • 'A key strategic objective for this procurement has been to secure a strategic partner who will enable a new relationship with citizens': what is the nature of that new relationship intended to be? • 'This requires understanding citizens better in order to design and commission intelligently for their needs, finding ways to involve citizens more in service design and delivery, and better integrating local community groups into service delivery.' Given the deplorable and illegal lack of consultation with the residents of the borough, how has this better understanding been achieved, what ways have been found to involve citizens, and how is it envisaged that local community groups will be better integrated into service delivery? How do you refute that this is a way of saying the intention is to find ways to dump the responsibility for, and therefore costs of, public services on to the residents and their community organisations?	The new relationship is intended to be citizen focused. The Council would conduct appropriate communication with citizens in regards to DRS which would have a material impact on citizens.

66	Ms Jacobsen	Re 'As part of its contract monitoring arrangements, the Council will rigorously monitor the partner's adherence...' and regarding similar phrases elsewhere, how do you explain your understanding of the difference(s) between 'monitoring' and 'supervising' and the legal implications of each term, and can you ensure that 'supervising' is used in all such phrases and clauses?	In plain English, monitoring involves checking and measuring services delivered under a contract whilst supervision implies the assumption by the Council of a level of responsibility and retention of risk for a service provider's delivery. Hence, it would not be in the Council's or residents' interests to substitute supervision for 'monitoring' as it would blur the service provider's contractual responsibility to provide the DRS services to defined levels.
67	Ms Jacobsen	Given that the proposal is for a JV Co, why is it only CSL that is reporting on KPIs and PIs? Why doesn't the contract stipulate independent, objective monitoring of KPIs and PIs rather than allowing one shareholder to control performance? In what way is this safer than, for example, allowing an embezzler to audit the books? In what way is this a JV Co if one party has control of all the action?	The JV Co (not CSL) is required to submit details of how it has performed against KPIs and PIs. This information will need to come from processes and systems that are part of the DRS service e.g. the planning IT system, hence the operator of those processes and systems (the JV Co) is the appropriate organisation to report this. The Council has the right to audit this information, and it will form part of the client function to do so.
68	Ms Jacobsen	What are the circumstances in which the 'Council can require introduction of new PIs and KPIs, are there any associated costs, and does CSL have any right of refusal?	The KPIs and PIs can be reviewed and amended annual and the Council can propose the addition, removal or modification of the KPIs or PIs via a contract change. The JV Co is not able to unreasonably refuse such changes. In the unlikely event that a required KPI or PI were particularly onerous, to monitor this could potentially lead to a charge agreed via the detailed change processes in the contract. Additionally we have the right to carry out performance and cost benchmarking in years 4 and 7, and at one other time of the Council's nomination.

69	Ms Jacobsen	<p>In what circumstances would the Council 'want to make targets more ambitious'?</p> <ul style="list-style-type: none"> • What is the change mechanism that allows this and does it have any associated costs, restrictions or caveats? • If the Council is wanting to make changes, why is it CSL rather than the Council that would be providing options to be considered? 	<p>There are detailed change provisions within the contract that control how change is handled - this is essential and normal market practice in a 10 year contract. The approach is designed to ensure the Council is left in a similar position to that which it would be in had the change occurred whilst it was running the services in-house. A more ambitious target may be possible within the existing cost with no other changes, or it may be at an additional cost, or it may be possible to reprioritise other services to allow the change to take place within cost. We are only able to very briefly summarise these detailed provisions here.</p> <p>The provider is required to provide options as they operate the service - they have the service experts who can identify the options available and make recommendations for the Council to review.</p> <p>(To give an analogy if you required a different service from your bank they could tell you the account options and associated costs available to you, from which you could choose)</p>
70	Ms Jacobsen	<p>Does the wording of the relevant clause(s) allow for the possibility that in future years the strategic objectives of the Council might be to return services to in-house provision?</p>	<p>Yes however this option would have financial implications. The Council can choose to break the contract at any stage however there may be significant payments to the provider e.g. to repay the provider for its investment and potentially also to compensate them for loss of profit, as is industry standard and accords with normal English contract law principles. The exact amounts are dependent on a number of factors although timing is a key determinant - the Council choosing to break the contract in year 2 would be more costly than a terminate in year 8. If however the contract is terminated early for other reasons (e.g. service provider under performance) then the financial implications differ, for example no loss of profit compensation if the service provider terminated early or termination due to service provider default.</p>

71	Ms Jacobsen	Re 'The Council's contract has a sustainability clause, requiring (amongst other things) ...', what are the 'other things'?	The service provider shall comply with all current environmental legislation, guidance and codes of practice and shall support the Council in meeting the Council's environmental targets and obligations including, but not limited to, carbon reduction, reductions in energy and water usage and increased levels of recycling. The service provider must deliver the services in accordance with an environmental strategy and ensure its staff comply with the strategy. The service provider shall provide energy and environmental monitoring data and energy, water and waste production data to the Council.
72	Ms Jacobsen	Given that the phrase 'forming a JV Co ... residents' is meaningless verbiage, please specify what a Barnet Observatory will be, how it will be staffed, what it will do, how long it will exist, where it will be located and how the money will be spent. <ul style="list-style-type: none"> • What form will the new business support and advisory services take and will they be free? • what in practical terms is meant by 'give support to local town centre forums' and what forums are these? • How do each of these measures relate to the delivery of the eleven specific services for which the JV Co is supposedly being formed? 	It is a joint service provided by Capita and Middlesex University to analyse data about Barnet to provide insight to our residents so that services can be better tailored to residents needs.

73	Ms Jacobsen	As well as provisions that enable the Council to monitor performance, what structures, resources or mechanisms have been designed and will be implemented to ensure monitoring occurs and at what intervals?	The contract provides the Council with the rights it requires to carry out this monitoring and auditing. The structures, resources and mechanism are, in accordance with our plan, being developed as part of the contract finalisation activity and will continue to be developed during the mobilisation stage (up until the date when the services transfer to the new provider). Additionally we have the right to carry out performance and cost benchmarking in years 4 and 7, and at one other time of the Council's nomination.
74	Ms Jacobsen	Since when does the listing of a company on the Stock Exchange guarantee its financial strength for a 10--year period? <ul style="list-style-type: none"> • What is the Council's record on assessing the financial strength of contract partners in the last year? • Why wait until a company fails to get a performance bond, which it might not be able to supply in the circumstances. 	The Council are not relying on the provider's listing on a stock exchange as a test of its financial strength. Both bidders' financial strength was assessed throughout the second stage of competitive dialogue as per LBB's usual financial evaluation process including credit reference checks with Experian. There are also tests set out in the contract which have to be met and financial strength will need to continue to be monitored throughout the life of the contract.
75	Ms Jacobsen	What are the provisions and what are the grounds?	We are unclear what 'provisions' and 'grounds' the question relates to.
76	Ms Jacobsen	What is the value of the heads of compensation?	The amounts vary depending on the precise reason for termination and timing. They could lead to a cost for the Council of several million pounds, for example if the Council were to exercise a right of termination at will or alternatively they could lead to a payment to the Council of several million pounds if the service provider is in default. The compensation provisions accord with current standard market practice.

77	Ms Jacobsen	<p>Is Hendon Cemetery and Crematorium the only one to be included in the JV Co, and if so, who will be responsible for the other cemeteries and crematoria in the borough and why are they not all considered together?</p> <ul style="list-style-type: none"> • There is a real concern that the JV Co might result in increased costs for cemetery or crematorium services and that many people might not be able to afford to pay for these. As it has been stated in the Council that people shouldn't live in Barnet if they can't afford it, is it now the Council's position that people should not die in Barnet if they cannot afford the funeral? 	<p>Hendon Cemetery & Crematorium is the only Council owned facility in the borough. All the other 5 cemeteries and crematoria in the borough are operated either by other Councils or are privately owned.</p> <p>The Council retains the right to set fees and charges for all statutory services provided in DRS including Hendon Cemetery & Crematorium</p>
----	----------------	--	--

This page is intentionally left blank