
Meeting	Cabinet
Date	18 July 2013
Subject	Formation of a company limited by shares wholly owned by the Council to be created as part of the partnership arrangements for Development and Regulatory Services
Report of	Cabinet Member for Resources and Performance Cabinet Member for Environment Cabinet Member for Housing Cabinet Member for Safety and Resident Engagement Cabinet Member for Customer Access and Partnerships; and Cabinet Member for Planning and Regulatory Services
Summary	<p>This report seeks approval for:</p> <p>The formation of a company limited by shares wholly owned by the Council, the adoption of articles of association and the appointment of auditors and bankers, as part of the new partnership arrangements for Development and Regulatory Services.</p> <p>.</p>

Officer Contributors	Steve James, HR Consultant John Hooton, Deputy Chief Operating Officer
Status (public or exempt)	Public
Wards Affected	All
Key Decision	No
Reason for urgency / exemption from call-in	The formation of the company was identified in the Cabinet report (approved 24 June 2013) as an integral part of the business case and is a prerequisite for the implementation of the recommendations approved by Cabinet. With hindsight, the absence of a specific recommendation

to approve this formation raises an unnecessary risk to implementation that can be mitigated by specific approval by Cabinet. Given that implementation may take place during July/August, it is urgent that Council approves the recommendation at the earliest opportunity.

Function of

Executive

Enclosures

Appendix A – Joint Venture Approach

**Contact for Further
Information:**

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1. RECOMMENDATIONS

- 1.1 That Cabinet approves the formation of a company limited by shares (the NewCo) wholly owned by the Council in order to facilitate the formation of a Joint Venture Company with Capita Symonds Ltd (as previously approved) and instructs officers to take all necessary actions.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet 24 June 2013 – resolved that:

- Cabinet note the outcome of the evaluation stage of the Development and Regulatory Services project and accept Capita Symonds' final tender (including subsequent clarifications) as the preferred bid, with reference to the Full Business Case (Appendix A), Equalities Impact Assessment (Appendix B), List of Principal Legislation (Appendix C) and Evaluation Scores (Appendix D exempt);
- Cabinet instruct the officers to take all necessary action to complete the formalities for the finalisation and execution of the contract; and
- That Cabinet approve the formation of a Joint Venture Company with Capita Symonds Ltd and instruct officers to take all necessary actions.

- 1.1. Cabinet Resources Committee 14 December 2011 (Decision Item 5) – resolved that:

- The Cabinet Resources Committee approve the recommended Development and Regulatory Services (DRS) shortlist of two bidders for stage 2 of the competitive dialogue process;
- The recommended shortlist was: Capita Symonds Ltd and the EC Harris / FM Conway consortium. They achieved the highest two scores from the evaluation of the outline solutions provided at the end of the first stage of competitive dialogue; and
- The updated Development and Regulatory Services Business Case be noted.

- 1.2. Cabinet Resources Committee 28 March 2011 (Decision Item 5) – resolved that:

- that the Committee approve the Development and Regulatory Services business case, in order for the council to begin the competitive dialogue process, following the previously approved placing of the OJEU notice.

- 1.3. Cabinet, 10 January 2011 (Decision item 8) – following the referral back by the Business Management Overview and Scrutiny Committee on 16 December 2010, resolved that:

- decision 7 taken by Cabinet on 29 November 2010 on Development and Regulatory Services be reaffirmed (as stated in 2.5 below).

- 1.4. Cabinet, 29 November 2010 (Decision item 6) – resolved that:

- the One Barnet Programme Framework is approved; and

- the funding strategy for One Barnet implementation costs, as set out in paragraph 6 of the Cabinet Member's report, is approved.

1.5. Cabinet, 29 November 2010 (Decision item 7) – resolved that:

- the Commercial Director be authorised to commence the procurement process to identify a strategic partner for the delivery of the Development and Regulatory Services project.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 The Corporate Plan 2013/16 has defined the following objectives:

- Promote responsible growth, development and success across the borough.
- Support families and individuals that need it – promoting independence, learning and well-being.
- Improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study.

3.2 The DRS project supports the corporate plan aims by: protecting a good environment through maintaining all existing service standards in an era of significant financial reductions; and encouraging growth by introducing new technology, skills and commercial ideas to encourage and support sustainable growth in the borough.

3.3 Closer working with other service providers including Barnet Homes, the police and health authority in addition to the business sector and the community is key to the delivery of DRS as are accelerating the regeneration programme and encouraging healthier and independent lifestyles.

4. RISK MANAGEMENT ISSUES

4.1 The formation of the NewCo, as recommended in this report, is identified in the Cabinet report of 24 June 2013 as an integral part of the business case and is a prerequisite for the implementation of the recommendations approved by Cabinet. This report is a risk mitigation measure as it seeks express Cabinet approval to the formation of the NewCo, the need for which has been set out in this and earlier Cabinet reports, and is required as part of the partnership arrangements for Development and Regulatory Services.

5. EQUALITIES AND DIVERSITY ISSUES

5.1 Equality and diversity issues are a mandatory consideration in decision making in the Council, pursuant to the Equality Act 2010. This means the Council and all other organisations acting on its behalf must have due regard to the equality duties when exercising a public function and such an obligation is ongoing.

5.2 The contract with Capita Symonds requires Capita Symonds (and by extension, JVCo) to observe equalities and the Council's own equalities policy requirements.

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

- 6.1 There are no resource implications related to this recommendation over and above those indicated in the Cabinet report of 24 June 2013.

7. LEGAL ISSUES

- 7.1 As set out in the report to Cabinet on 24 June 2013, the Council may enter into the proposed arrangements with Capita Symonds Ltd under the General Power of Competence (GPC) which is set out in section 1 of the Localism Act 2011 (the Act). This power (subject to certain limitations) provides the Council with a power to do anything that individuals generally may do, which includes acting for a commercial purpose and for the benefit of the Council, its area or residents.

- 7.2 The general power is subject to a number of limitations which includes that any restrictions, prohibitions and limitations which applied to the Council's powers and activities before the GPC became law will continue to apply after that date. It is also open for the Secretary of State or Parliament to create new restrictions, limitations or prohibitions after the date that the GPC became law. There is no such existing prohibition, restriction or limitation which would prevent the Council from using the GPC to participate in the JVCo with Capita Symonds Ltd.

- 7.3 Where a Council does things under the GPC for a "commercial purpose" then it must do them through a company. As the JVCo arrangements will include "commercial purposes" the Council intends to set up a company (the NewCo) whose purpose is to invest and hold shares in the JVCo with Capita Symonds Ltd.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Council Constitution, Part 3, Responsibility for Executive Functions – Paragraph 4.7 states the Cabinet may discharge any executive functions whether or not they are also delegated to officers.

9. BACKGROUND INFORMATION

- 9.1 At its meeting on 24 June 2013 Cabinet approved the formation of a joint venture company (JVCo) with Capita Symonds Limited in order to deliver Development and Regulatory Services. The Council will retain a 49% shareholding in the JVCo, with that investment made, according to the provisions of the Localism Act 2011, by a new holding company (the NewCo) that will be fully owned by the Council. It is JVCo that will employ staff (including those transferring from the Council under TUPE), enter into contracts and deliver services

9.2 In the body of the 24 June Cabinet report, although not as a specific recommendation, is the need for the formation of a new company. In particular the report includes reference to Appendix A showing NewCo. And stating that

. “Under a typical joint venture approach the council and the private sector organisation would form a new company, with both owning shares in this new company (as noted the council's shares will be channelled through a separate wholly owned company). The council would then have a contract with this new company (the joint venture company) for the supply of services for an agreed commercial arrangement. The two shareholders will also have a shareholders agreement between them to set out their agreement on matters like Board composition and payment of dividends.”

9.9 The formation of a company limited by shares (the NewCo) wholly owned by the Council will involve officers taking all necessary actions including:

- drafting the Articles of Association and the submission of corporate forms to Companies House in order to form the NewCo;
- acquiring shares in the NewCo;
- appointing the Chief Executive and the Leader as Directors of the NewCo (as agreed at 16 July Council), including contractual, governance and training actions as agreed with Legal advisers to deal with potential conflicts of interest; and
- appointing bankers, auditors and other requirements.

9.10 The Council will then be required, through NewCo, to form the JVCo and for officers to take necessary actions including:

- ensuring that the Articles of Association of the proposed JVCo with Capita Symonds Ltd are fit for purpose;
- negotiating the terms of the joint venture agreement to be entered into between the NewCo and Capita Symonds Ltd;
- acquiring the shares in the JVCo;
- appointing the Chief Executive and the Leader as Directors of the JVCo (as agreed by 16 July Council); including contractual, governance and training actions as agreed with Legal advisers to deal with potential conflicts of interest and
- appointing bankers, auditors and other requirements.

10. LIST OF BACKGROUND PAPERS

- 10.1 24 June 2013 Cabinet Report (Development & Regulatory Services (DRS): Selection of the Preferred and reserved Bidder as the council's Strategic Partner to form a Joint Venture to deliver the DRS Services).

Cleared by Finance (Officer's initials)	JH
Cleared by Legal (Officer's initials)	CM

Appendix A - Joint Venture Approach

Under a typical joint venture approach the council and the private sector organisation would form a new company, with both owning shares in this new company (as noted the council's shares will be channelled through a separate wholly owned company). The council would then have a contract with this new company (the joint venture company) for the supply of services for an agreed commercial arrangement. The two shareholders will also have a shareholders agreement between them to set out their agreement on matters like Board composition and payment of dividends.

