

	<p>POLICY AND RESOURCES COMMITTEE</p> <p>11TH JUNE 2018</p>
<p style="text-align: center;">Title</p>	<p>CBAT Licensing to external parties</p>
<p style="text-align: center;">Report of</p>	<p>Councillor Richard Cornelius</p>
<p style="text-align: center;">Wards</p>	<p>All</p>
<p style="text-align: center;">Status</p>	<p>Public</p>
<p style="text-align: center;">Urgent</p>	<p>No</p>
<p style="text-align: center;">Key</p>	<p>No</p>
<p style="text-align: center;">Enclosures</p>	<p>Appendix 1</p>
<p style="text-align: center;">Officer Contact Details</p>	<p>Chris Smith – Head of Estates Chris.Smith@barnet.gov.uk 0208 359 2987</p> <p>Kurtis Lee – Client Lead for Estates, kurtis.lee@barnet.gov.uk 020 8359 7553</p> <p>Melanie Chiknagi – Community Asset Strategy lead, Melanie.chiknagi@barnet.gov.uk 0208 359 6058</p>

Summary

This report seeks authorisation to delegate authority to the Deputy Chief Executive to enter into a joint venture with Simetrica Ltd for the further development of the Community Benefit Assessment Tool (CBAT) and to agree subsequent licensing of the CBAT to fee paying organisations. This arrangement will allow the London Borough of Barnet to enter into licensing agreements with businesses and organisations, resulting in increased revenue for the authority.

Officers Recommendations

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| <p>1. To delegate authority to the Deputy Chief Executive to enter into a legal agreement (joint venture) with Simetrica Ltd for the further development and trading of the Community Benefit Assessment Tool.</p> |
| <p>2. To delegate authority to the Deputy Chief Executive to enter into fee paying licensing agreements with external organisations.</p> |

1. WHY THIS REPORT IS NEEDED

1.1 This report seeks authorisation to sign a Joint Venture agreement with Simetrica Ltd, and sign subsequent agreements with various external users for the licensing of the CBAT tool for an annual fee. The Joint Venture would formalise a majority share for LBB and is required because:

- It allows LBB to trade with organisations not covered by the 1970 Goods and Services Act.
- Under Clause 29 of the original contract with Simetrica Ltd, LBB is not required to seek consent from Simetrica to license the software to other parties as the intellectual property rights (IPR) in the tool vests entirely in the Council (save for the IPR in the Derived Monetary Values, which vest in Simetrica, however, Simetrica has granted the Council a non-exclusive, perpetual licence in this regard.

2. REASONS FOR RECOMMENDATIONS

2.1 In 2015 the London Borough of Barnet led on the procurement of a provider (Simetrica Ltd) to produce a software package that could be used to transparently allocate rental subsidy to VCS groups who occupy Barnet owned community assets. Through this contract, LBB have successfully allocated subsidy to numerous community groups, which has received good feedback from the VCS groups so far. Many of these groups are already benefiting from the process, enabling them to forward plan and actively seek funding from external organisations. Following the success so far other Local authorities and private bodies have now expressed an interest in purchasing licenses of the CBAT tool to allocate subsidy to their VCS groups. Trading with public sector bodies is permitted under the 1970 Goods and Services Act but trading with private organisations is not. LBB officers have conducted informal negotiations with two private organisations so far. So, having established that there is a market, it is now necessary to have a commercial arrangement in place to allow legitimate licensing to these organisations, and others, to take place.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Do Nothing. This was rejected because it doesn't achieve the aim to market the tool and generate a revenue stream.
- 3.2 LB Barnet could establish or utilise an existing limited company. In principle, this would be a trading arm of the Local Authority, and could be an existing registered limited company that has already been created by London Borough of Barnet. This is viable but was discounted because trading would then require tri-party agreements (LBB, Simetrica Ltd, and Licensee), as opposed to a single agreement between a JV and potential licensee. Although, without the JV option, the Council could separately contract with Simetrica for the maintenance and upgrade services and then contract with the potential licensees direct. This would entail two agreements and Simetrica Ltd would not be party to the licence agreement. The JV option would provide a neater arrangement.

4. POST DECISION IMPLEMENTATION

- 4.1 The agreement with Simetrica Ltd will be to enter into a joint venture agreement, with the majority share in favour of London Borough of Barnet. LB Barnet is eligible for the majority share, as this was defined in the original contract agreement with Simetrica Ltd and LB Barnet retained the Intellectual Property Rights.
- 4.2 Licenses for other local authorities and private organisations will be negotiated and agreed on a case by case basis, renewable annually.

Agreement with external parties

- 4.3 **Local Authorities:** Under the 1970 Goods and Services Act, various public bodies can trade with each other,(see Appendix 1 for a comprehensive list) so no committee decision is required for public sector trading.
- 4.4 **Private Organisations:** To trade with private organisations LBB needs to enter into a Joint Venture model with Simetrica Ltd. Detailed assessment is underway and a decision will be made prior to issuing the first licence. The contract with Simetrica Ltd is to be a long-term agreement, to allow further software upgrades and product development.
- 4.5 As part of the agreement Simetrica Ltd will:
- Upgrade and produce an online version of the CBAT tool, the cost of which will be evenly shared between LBB and Simetrica Ltd.
 - Simetrica Ltd will provide regular maintenance of the software as well as quarterly upgrades as necessary.
 - Protect the intellectual property of the software.
 - Comply with the London Borough of Barnet's policies and regulations.
 - Pay any monies due to LB Barnet in a transparent, timely, fashion, and conduct their business activities in a fit and proper manner.
 - Conduct training sessions and quarterly forums, and any other activities LB Barnet may deem necessary for the successful licensing of the tool and management of it thereafter

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 Previous papers regarding the Community Asset Strategy include:

- **Asset Regeneration and Growth, 7th September 2015**
<https://barnetintranet.moderngov.co.uk/documents/s25562/Assets%20Regeneration%20and%20Growth%20Annual%20Performance%20Report.pdf>
- **Policy and Resourcing 28th June 2016**
<https://barnetintranet.moderngov.co.uk/documents/s32739/Community%20Benefit%20Assessment%20Tool.pdf>

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 Resources: One half time Community Asset Strategy Lead Officer (existing) and two days a month for Estates Client Lead (also existing). Once the licensing of the tool has commenced, we anticipate having a large number of external parties interested and therefore:

5.2.2 Support from Finance, Governance, and Insurance will be required, as will some time from LBB Head of Estates. Additional IT support, at some additional cost, may also be required should the tool become very successful. Any such additional costs would be met from licence income.

5.2.3 Income from the licensing of the tool to external parties will generate income on an annual, renewal basis from which LB Barnet will receive a majority share. Anticipated cumulative income is as follows:

Year 1: £5,000

Year 2: £10,000

Year 3: £15,000

5.2.4 Whilst the aim of the tool was to implement a fair and transparent community value assessment process, the ultimate goal of this initiative is to reach a point where the councils investment into the tool is repaid and a steady revenue stream is established. Based on the projections above, the payback point should be no longer than 7 years (2025).

5.3 Procurement

5.3.1 Procurement was undertaken to secure Simetrica Ltd as the successful provider to develop the CBAT software. Before proceeding, the procurement team will need to publish a notice stating that LBB will be extending its' business relationship with Simetrica Ltd.

5.3.2 The new agreement will provide excellent value for money as there is no cost to the council for procuring. Costs for administering the tool have also recently been reduced by employing the Community Business Case Coach and CBAT

Mentor in-house on a part time basis. Sufficient capacity remains to assist with marketing and licensing.

5.4 Legal and Constitutional References

5.4.1 The Council's Constitution – Article 7, paragraph 7.5, Responsibilities for Functions, details the responsibilities for Policy and Resource Committee including:

- To determine strategic policy, finance including recommending capital and revenue budget to full Council, welfare, corporate plan and local plans, procurement, partnerships, IT, grants and the effective use of resources
- To be responsible for those matters not specifically allocated to any other committee affecting the affairs of the Council.

5.4.2 Section 1 of the Local Authorities (Goods and Services) Act 1970 ('1970 Act') permits Local Authorities to enter into agreements to provide administrative, technical and professional services to other public authorities, this includes a number of sports, education, health and other organisations. The courts have confirmed that the 1970 Act empowers local authorities to trade with other public authorities for profit and not limited to cost recovery.

5.4.3 If the council wants to licence the CBAT tool to an organisation which falls outside of the bodies listed under 1970 Act and if they want to charge and make a profit they may only do so through a company otherwise they are limited to cost recovery pursuant to Section 93(3) of the Local Government Act 2003.

5.4.4 To trade commercially the Council needs a specific trading power or the Council will need to rely on a general one. The general powers to trade are:

- s.95 Local Government Act 2003
- s.4 Localism Act 2011

Both the s.95 and s.4 powers to trade require a company structure, whether in the form of a local authority trading company or a joint venture.

5.5 Risk Management

5.5.1 **External parties may not buy the software of renew**

- **CAUSE:** External parties having insufficient funds, a lack of interest, disagree with the LBB fee, or do not wish to renew.
- **EVENT :** External parties may decide against buying the software
- **EFFECT :** LBB does not generate income to recoup the investment
- **MITIGATION:** Market testing with three local authorities has already proven that there is strong interest in the tool. LBB will continue to market the tool using various methods available, such as our communications teams and property forums. Marketing presents an opportunity for LBB to recoup its investment in CBAT. LBB are willing to offer reduced renewal fees on a sliding scale based on the number of years the external party has already

licensed the tool as an incentive to renew.

5.5.2 **Another organisation may create a similar tool**

- **CAUSE:** Another organisation that could offer to the market similar software at a lesser price, or with differing functionalities.
- **EVENT :** This may mean that external parties prefer to not take a license from LBB.
- **EFFECT :** LBB Does not generate income to recoup the investment
- **MITIGATION:** LBB will need to remain open to negotiation on the fee, and is currently ensuring functionality is optimised by upgrading the software. LBB can ensure that external parties are satisfied with the functionality of the software by offering assistance, support, and tailoring the software to suit the requirements of the borough.

5.5.3 **Legal implications**

- **CAUSE :** The legal documentation may be protracted.
- **EVENT :** This may mean that external parties lose interest during the process
- **EFFECT:** LBB does not generate income to recoup the investment
- **MITIGATION:** LBB and HB Public Law have already produced drafts heads of terms so that we are prepared. LBB has proactively engaged in this preparatory work to ensure a timely and efficient process.

5.6 **Equalities and Diversity**

5.6.1 There are no identified equalities and diversity issues. The proposal is to secure a contractual arrangement to continue to provide an existing service to the public, that will enhance assistance to community groups across the country. The CBAT programme and tool applies to all groups, regardless of ethnicity, gender, or religion.

5.7 **Consultation and Engagement**

5.7.1 None

6. **BACKGROUND PAPERS**

- **Asset Regeneration and Growth, 7th September 2015**
<https://barnetintranet.moderngov.co.uk/documents/s25562/Assets%20Regeneration%20and%20Growth%20Annual%20Performance%20Report.pdf>
- **Policy and Resourcing 28th June 2016**
<https://barnetintranet.moderngov.co.uk/documents/s32739/Community%20Benefit%20Assessment%20Tool.pdf>