
Meeting	Constitution, Ethics and Probity Committee
Date	24 March 2014
Subject	Joint Venture Board and Constitutional Additions
Report of	Commercial & Customer Services Director
Summary of Report	This reports sets out proposals for dealing with “Reserved Matters” within the Joint Venture Agreement with Capita Symonds under the new governance arrangements.

Officer Contributors	Claire Symonds, Commercial & Customer Services Director
Status (public or exempt)	Public
Wards Affected	All
Key Decision	No
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Appendix A – list of matters that require the consent of each of the Shareholders Appendix B – Clauses 18.3 & 18.4 of Joint Venture Agreement Appendix C – Constitution tracked changes
Contact for Further Information:	Claire Symonds, Commercial & Customer Services Director, Claire.symonds@barnet.gov.uk

1. RECOMMENDATION

- 1.1 That the Committee comment on the proposals contained within this report for inclusion in the drafting of the Constitution.**
- 1.2 Officers be instructed to make the required additions to the Constitution for recommendation to Full Council.**

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.
- 2.2 Cabinet, 18 July 2013 – item 6 agreement of the 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.
- 2.3 Council 16 July 2013 – item 4.6 appointment of representatives to the Joint Venture Company (JVCo) and holding company (Newco)

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The overriding purpose of the Governance System review is to ensure that the Council's decision making structures operate in a way that best enables the Council to deliver its objectives set out in the Corporate Plan.
- 3.2 In addition 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; and
 - Improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study.
- 3.3 The JVCo 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 successful delivery of JVCo as are accelerating the regeneration programme and encouraging healthier and independent lifestyles

4. RISK MANAGEMENT ISSUES

- 4.1 The process of managing the change of governance system through the Constitution Ethics and Probity ensures that the proposals developed meet the needs of key stakeholders, and minimises the risk that the system may not achieve the desired outcomes determined at the start of the project.

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. This review of the Governance system will help ensure that this is the case and ensure the Council is meeting its equality obligations.
- 5.2 An extensive Equalities questionnaire was included within the first phase of Consultation of the change in system of governance and an analysis has been undertaken of different responses from relevant groups.

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

- 6.1 To change the constitution is cost neutral – there is no impact on cost expected from making these changes to the Constitution.

7. LEGAL ISSUES

- 7.1 None in the context of the report.

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

- 8.1 The Council's Constitution, Responsibility for Functions outlines the Committee responsibilities, which includes to "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 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. This JVCo is known as Re. The Council retains a 49% shareholding in the JVCo, through a new holding company (Barnet Holdings Limited known as NewCo).
- 9.2 Barnet Holdings Limited was incorporated on the 31st July 2013 under the Memorandum and Articles of Association, it is the shareholder who appoints the directors. In this case the shareholder is full Council and the Chief Executive and the Leader of the Council were appointed Directors of NewCo

by Council on 16 July 2013. At the same time they were also appointed Directors to the JVCo Board. The Joint Venture agreement limits the authority given to the Newco Directors with the intention of ensuring that no major decisions are taken without explicit authority from the Council.

- 9.3 The decision making arrangements of the JVCo are set out in the Articles of Association and the Joint Venture Agreement. In broad terms the Council's input into decision making will operate at two levels - as a shareholder of the JVCo; and at an operational level through the appointment of two unremunerated directors to be part of the board of JVCo.
- 9.4 All board meetings of JVCo will require the presence of a NewCo (Council) director in order to be quorate. All decisions of the board of directors will be made by resolution with the exception of "Reserved Matters" that will require the prior written consent of each of Capita Symonds Limited and NewCo (the Council). According to the contract "where such Reserved Matters (or any other decision) is beyond the delegated authority of the (Council) directors, the matter will revert to Cabinet for direction".
- 9.5 The list of reserved matters from the JV agreement are set out in Appendix A
- 9.6 As Cabinet will no longer exist under the new governance arrangements post 2nd June 2014 the consent to agree any reserved matter except for item 8.1.31 (agreement not to pursue a bid) will need to be decided by one of the new Committees and it is suggested that the responsibility be given to the Policy and Resources Committee. As a result it has been proposed that this be added to the terms of reference of the Policy and Resources Committee Terms of Reference as item 10 of the specific responsibilities (Appendix C).
- 9.7 Under certain circumstances, Clauses 18.3 and 18.4 of the JV agreement shown in Appendix B, the Council is obliged to give agreement to the JVCo not to bid as soon as reasonably possible and in any event within 5 Business Days. Due to this contractual timescale, it is therefore suggested that this specific task is delegated to the Strategic Director Growth & Environment in consultation with the Chairman of Policy & Resources Committee and a summary of such decisions be presented to the next Policy and Resources Committee for information.

10. LIST OF BACKGROUND PAPERS

- 10.1 Appendix A – list of matters that require the consent of each of the Shareholders
- 10.2 Appendix B – Clauses 18.3 & 18.4 of JV Agreement
- 10.3 Appendix C – Constitution amendments

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Cleared by Legal (Officer's initials)	CA

8 Matters requiring the consent of each of the Shareholders

- 8.1 Each Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no action shall be taken or resolution passed by the Company or any Group Member in relation to the Company in respect of any of the following matters except with the prior written consent of each of CSL and Newco:
- 8.1.1 vary in any respect its articles of association or the rights attaching to any of its shares; or
 - 8.1.2 permit the registration (upon subscription or transfer) of any person as a member of the Company other than the parties in respect of their initial investment and/or any permitted transferees; or
 - 8.1.3 increase the amount of its issued share capital except as provided in this agreement, grant any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeem or purchase any of its own shares or effect any other reorganisation of its share capital; or
 - 8.1.4 issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital; or
 - 8.1.5 make any borrowing other than from its bankers in the ordinary and usual course of business and it shall ensure that its banking facilities do not enable it to have more than £1,000,000 in aggregate borrowed at any one time; or
 - 8.1.6 apply for the listing or trading of any shares or debt securities on any stock exchange or market; or
 - 8.1.7 pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent); or
 - 8.1.8 engage in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business; or
 - 8.1.9 form any Subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not); or
 - 8.1.10 close down any business operation or dispose of or dilute its interest in any of its Subsidiaries for the time being; or
 - 8.1.11 amalgamate or merge with any other company or business undertaking; or

- 8.1.12 alter its name or registered office; or
- 8.1.13 enter into any transaction or arrangement of any nature whatsoever with any of the Company's members or directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its members or directors whether or not any other person shall be party to such transaction or arrangement; or
- 8.1.14 enter into any commitment by way of a transaction or series of related transactions (including without limitation any leasing transaction) with any Group Member which would involve the Company in the payment or receipt of consideration having an aggregate value in excess of £100,000 (one hundred thousand pounds) which has not otherwise been specifically referred to in any approved Business Plan; or
- 8.1.14A enter into any commitment by way of a transaction or series of related transactions (including without limitation any leasing transaction) which would involve the Company in the payment or receipt of consideration having an aggregate value in excess of £500,000 (five hundred thousand pounds) which has not otherwise been specifically referred to in any approved Business Plan;
- 8.1.15 enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms; or
- 8.1.16 give notice of termination of any arrangements, contracts or transactions outside of the ordinary course of business, or materially vary any such arrangements, contracts or transactions; or
- 8.1.17 without prejudice to any other provision of this clause:
- (a) enter into, as lessor or as lessee, any operating lease (as defined in Statement of Standard Accounting Practice 21) for a duration exceeding five years or involving aggregate premium and annual rental payments in excess of £50,000 (fifty thousand pounds); or
 - (b) grant any rights (by licence or otherwise) in or over any intellectual property owned or used by the Company; or
 - (c) create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part or any of its shares; or
- 8.1.18 adopt or amend its annual Business Plan, or enter into any contract or commitment not provided for in the Business Plan under which it may incur costs in excess of £50,000 (fifty thousand pounds), or which may not be fulfilled or completed within the period of one year; or
- 8.1.19 change either:
- (a) its auditors; or

- (b) its financial year end; or
- (c) make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its audited accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom; or

- 8.1.20 declare or pay any dividend that exceeds in any year 100% of its post-tax distributable profits as shown by the audited accounts for that year, or make any other distribution (by way of capitalisation, repayment or in any other manner) out of its distributable profits or any of its reserves; or
- 8.1.21 make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity; or
- 8.1.22 give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person; or
- 8.1.23 factor or assign any of the book debts of the Company; or
- 8.1.24 establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for directors, officers or employees except for employed directors where any bonus scheme cannot exceed 50% in value of the base salary and for other selected employees where any bonus scheme cannot exceed 30% of the base salary (in either case when taking base salary and bonus together not to exceed the figure in clause 8.1.27); or
- 8.1.25 establish or amend any pension scheme or grant any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family; or
- 8.1.26 dismiss any director, officer or employee in circumstances in which it incurs or agrees to bear redundancy or other costs in excess of £150,000 (one hundred and fifty thousand pounds) in total; or
- 8.1.27 agree to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) or to increase the remuneration of any employee, officer of or consultant to the Company in excess of £200,000 (two hundred thousand pounds); or
- 8.1.28 institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business) instituted or threatened against the Company or submit to arbitration or alternative dispute resolution any dispute involving the Company; or
- 8.1.29 make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent exceeding £100,000 (one hundred

thousand pounds) for tax purposes in relation to the Company or its business and which could be interpreted (in the sole opinion of any shareholder) as a tax avoidance scheme; or

- 8.1.30 make any political or charitable donations or grant any sponsorship of any political or charitable organisation; or
 - 8.1.31 agree not to pursue a bid for or to enter a contract for services under clause 18.4 of this Agreement.
- 8.2 Each of the shareholders and the Company shall procure that no Subsidiary takes any action which would constitute a breach of any of the above provisions as if any reference in this clause (express or implied) to the Company were construed as a reference to each Subsidiary for the time being.
- 8.3 The agreement of Newco to any of the matters referred to in clause 8.1 shall be evidenced by the signature of Newco (or its authorised signatory) on the resolution approving the matter in question.
- 8.4 Each Shareholder undertakes to the other Shareholder that it will notify the other Shareholder (immediately following receipt of such offer or approach by it) of details of any written offer or informal approach from any third party for the whole or any part of the issued share capital of the Company (or for the whole or a substantial part of the undertaking or assets of the Company or any Subsidiary Undertaking of the Company). No negotiations with regard to the sale of the whole or any part of the issued share capital of the Company (or for the whole or a substantial part of the undertaking or assets of the Company or any Subsidiary Undertaking of the Company) shall be conducted without the prior written consent of each of the Shareholders.
- 8.5 Newco agrees that it shall determine whether it consents to a matter under clause 8.1.31 of this clause as soon as reasonably possible and in any event within 5 Business Days.

18.3 Notwithstanding the restrictions set out in clause 18.1 and 18.2, Newco and the Company acknowledge and agree that CSL shall (subject to clause 8) be entitled to pursue any contract for services opportunity in the market place that may arise from time to time provided that:

18.3.1 the contract for services is of a total value of below £50,000 and is not identified in the Commercial Development Plan; or

18.3.2 the contract for services opportunity has been evaluated under the Opportunity Assessment Process as not appropriate for the Company to pursue; or

18.3.3 the contract for services is a Competing Arrangement (provided that the contract for services opportunity identified in Schedule 3 has been advertised in the Official Journal of the European Union (OJEU) prior to the date which expires three months after the date of this Agreement).

18.4 If clause 18.3.2 applies or if the Company determines that it will not bid or enter into a contract for services notwithstanding its right to do so in preference to CSL in accordance with this clause 18 and Newco has notified its consent to such in accordance with clause 8.5, the Company shall notify CSL of its decision forthwith.

Policy and Resources Committee Terms of Reference

Body responsible	Functions	Membership												
Policy and Resources	<p>(1) To be the principal means by which advice on strategic policy and plans is given and co-ordinated and to recommend to Full Council, as necessary, on strategic issues. This is to include:</p> <ul style="list-style-type: none"> • Approval of the Corporate Plan • Council's Capital and Revenue Budget setting (subject to Full Council) and Medium Term Financial Strategy • Ensuring effective Use of Resources and Value for Money <p>(2) To be responsible for the overall strategic direction of the Council including the following specific functions/activities:</p> <table border="1" data-bbox="475 909 1106 1944"> <tbody> <tr> <td data-bbox="475 909 794 1077"> <ul style="list-style-type: none"> • Customer Care, Communications and Resident Engagement </td> <td data-bbox="794 909 1106 1077"> <ul style="list-style-type: none"> • Strategic Partnerships </td> </tr> <tr> <td data-bbox="475 1077 794 1352"> <ul style="list-style-type: none"> • Equalities, Diversity and Community Cohesion </td> <td data-bbox="794 1077 1106 1352"> <ul style="list-style-type: none"> • Local Development Framework and associated documents (for adoption by Full Council) </td> </tr> <tr> <td data-bbox="475 1352 794 1520"> <ul style="list-style-type: none"> • Internal Transformation programmes </td> <td data-bbox="794 1352 1106 1520"> <ul style="list-style-type: none"> • Local Taxation-Billing, Collection and Recovery </td> </tr> <tr> <td data-bbox="475 1520 794 1576"> <ul style="list-style-type: none"> • Write off of debt </td> <td data-bbox="794 1520 1106 1576"> <ul style="list-style-type: none"> • Insurance </td> </tr> <tr> <td data-bbox="475 1576 794 1744"> <ul style="list-style-type: none"> • Treasury Management Strategy and Activity </td> <td data-bbox="794 1576 1106 1744"> <ul style="list-style-type: none"> • Information Technology provision </td> </tr> <tr> <td data-bbox="475 1744 794 1944"> <ul style="list-style-type: none"> • Housing Benefit, Council Tax Support and Welfare programmes </td> <td data-bbox="794 1744 1106 1944"> <ul style="list-style-type: none"> • Health and Safety • Mayoralty budget </td> </tr> </tbody> </table> <p>(3) To submit recommendations to the</p>	<ul style="list-style-type: none"> • Customer Care, Communications and Resident Engagement 	<ul style="list-style-type: none"> • Strategic Partnerships 	<ul style="list-style-type: none"> • Equalities, Diversity and Community Cohesion 	<ul style="list-style-type: none"> • Local Development Framework and associated documents (for adoption by Full Council) 	<ul style="list-style-type: none"> • Internal Transformation programmes 	<ul style="list-style-type: none"> • Local Taxation-Billing, Collection and Recovery 	<ul style="list-style-type: none"> • Write off of debt 	<ul style="list-style-type: none"> • Insurance 	<ul style="list-style-type: none"> • Treasury Management Strategy and Activity 	<ul style="list-style-type: none"> • Information Technology provision 	<ul style="list-style-type: none"> • Housing Benefit, Council Tax Support and Welfare programmes 	<ul style="list-style-type: none"> • Health and Safety • Mayoralty budget 	<p>12, Chairman and Vice Chairman to be appointed by Council. Committee to be made up in accordance with proportionality.</p>
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Council in the event of a difference of opinion arising between committees upon a matter which falls within the terms of reference of more than one committee.

(4) To be responsible for those matters not specifically allocated to any other committee affecting the affairs of the Council.

(5) To consider and take any necessary action upon proposals for new legislation, Bills before Parliament, Acts of Parliament and other proceedings before Parliament affecting or likely to affect the interests of the Borough or its inhabitants generally where not the specific concern of any other committee(s). The promotion of Bills and Provisional and Statutory Orders in Parliament shall be dealt with by the Council.

(6) Approve the budget, business plan and Annual Report of the Barnet Group Ltd

(7) To allocate a budget, as appropriate, for Area Sub-Committees and agree a framework for governing how that budget may be spent.

(8) To represent Barnet's strategic interests in dealings with sub-regional, regional and national Government and influence relevant tiers of Government

(9) To consider petitions that contain between 2000 and 6999 signatures in accordance with Public Participation Procedure rules.

(10) To consider reserved matters of the JVCo

If any report comes within the remit of more than one committee, to avoid the report being discussed at several committees, the report will be presented and determined at the most appropriate committee. If this is not clear, then the report will be discussed and determined by the Policy and Resources Committee.

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