Dear Member,

This is formal notice advising you of the above meeting. The Agenda is set out below. Supplementary Items will only be added if pursuant to the Council’s Constitution.

Jacquie Dean  
CHIEF EXECUTIVE

MEMBERSHIP:

Chair: Councillor Robert Sullivan

Vice Chair: Councillor Saima Mahmud

Councillors: M. Ahmad, M. Davis, Gladstone, P Herrington, M. Lewis, A. Mbachu, S. Meiszner, J. O’Rourke and R. Sweden

Non-elected Voting Members:

Church of England  
Canon Peter Hartley

Roman Catholic Church  
Vacant

Parent Governor Representative  
J. St. Claire-Joseph

Parent Governor Representative  
Y. Scott-Robinson

Parent Governor Representative  
B. Ravenscroft
AGENDA

1. APOLOGIES FOR ABSENCE AND SUBSTITUTE MEMBERS

2. DECLARATION OF INTEREST

Members are required to declare any personal or prejudicial interests they may have in any matter, which is to be considered at this meeting. In addition, any private or personal non-pecuniary interest in a matter to be considered at this meeting should also be declared, unless it is insignificant or one which is shared with other members of the public generally as a Council taxpayer or an inhabitant of the area. Members must declare whether they are constrained by party whip when considering any particular item (Constitution, Part 6, Section 17.1).

3. PUBLIC PARTICIPATION.

4. FINANCE REVIEW UPDATE AND POLICY REVIEW 2007/08 - 2009/10 - CALL-IN. (Pages 1 - 20)

5. WASTE & RECYCLING COLLECTION SERVICES CONTRACT – CONTRACT AWARD. (Pages 21 - 28)

6. JOINT VENTURE PROPOSAL FOR BUILDING CONSULTANCY - TO FOLLOW (Pages 29 - 141)

7. MINUTES THE MEETING HELD ON 6th DECEMBER 2006. (Pages 142 - 147)

8. WORK PROGRAMME. (Pages 148 - 150)

9. PANEL UPDATE – VERBAL UPDATE.
1. **SUMMARY**

1.1 A request for a Call-In of a Cabinet decision, made on 12 December 2006 regarding the Finance Review Update and Policy Review 2007/08 - 2009/10 report, has been deemed to be valid by the Monitoring officer.

1.2 A copy of the Call-In request is attached at appendix A.

1.3 As a result of this, members are requested to consider only the relevant part of the Finance Review Update and Policy Review 2007/08 - 2009/10 report as stated in the Call-In request.

1.4 A copy of the Cabinet report is attached at appendix B. The relevant section that Members should be concerned with is at appendix B of the Cabinet report, **policy review item C19**, of the section titled ‘Reductions Proposals’ sub heading ‘Corporate Services Directorate’. This can be found on page 91 of the Cabinet report.

1.5 This report further advises on the Call-In procedure which should be adopted by members when making any decision on this matter.

2. **BACKGROUND**

2.1 In accordance with the Part 6, Section 11.1 of the Constitution,

‘Call-in is the exercise of the Overview & Scrutiny Management Committee’s statutory power to review a Cabinet decision which has been made but not implemented. Decisions that are Called-In cannot be implemented until the Call-In procedure is complete.’
2.2 As a meeting of the Overview and Scrutiny Management Committee has not been convened within 7 days of the request for Call-In, this matter has been referred to the next available meeting of the Overview and Scrutiny Management Committee only with the consent of the Leader and the Chair of the Overview and Scrutiny Management Committee and in consultation with the Members requesting the Call-In.

2.3 Having considered this matter/decision by the Cabinet, the Overview and Scrutiny Management Committee may:

(i) refer it back to the original decision-maker or body for reconsideration, setting out in writing the nature of its concerns;

(ii) refer the matter to full Council; or

(iii) confirm the original decision.

2.4 A decision will be referred to Council if:

(i) it is contrary to Policy Framework;

(ii) it is contrary/not wholly consistent with Budget Framework; or

(iii) the Overview and Scrutiny Management Committee disagrees with Monitoring Officer/Chief Finance Officer view that the decision is legally and/or financially compliant.

2.5 If following an objection to the decision, the Overview and Scrutiny Management Committee does not meet in the period set out above, (or does meet but does not refer the matter back to the decision making person or body), the decision shall take effect on

(i) the date of the Overview and Scrutiny Management Committee meeting; or

(ii) the expiry of that further 5 working day period.

whichever is earlier.

2.6 If a decision is referred to the original decision-making body or individual, the decision maker shall reconsider the matter, taking into account any recommendations of the Overview and Scrutiny Management Committee, and make a final decision on the matter within 7 working days of the referral by the Overview and Scrutiny Management Committee.
If the Called-in decision is referred to Council, the Cabinet will have 5 working days in which to respond and the Council shall not consider it within that period. When the Council does meet to consider the matter, it will also consider the response of the Cabinet on the matter. If it is not possible for the Cabinet to meet in the required timeframe, the Leader, in consultation with the relevant Portfolio Holder may respond on behalf of the Cabinet.

Where a matter has been called in and referred to Council, the Council must meet within 10 working days to consider the matter, or the matter must be included on the summons to the next Ordinary Council Meeting whichever is the earlier (subject to the Access to Information provisions).

After consideration, the Council may:

(i) endorse the decision as falling within the existing budget and policy framework. In this case, no further action is required, save that the decision of the Council will be minuted and circulated to all Members in the normal way;

(ii) amend the Budget and Policy Framework to encompass the decision and agree to the decision with immediate effect. In this case, no further action is required, save that the Council decision will be minuted and circulated to all Members in the normal way; or

(iii) where the Council finds that the decision is contrary to the Policy framework or contrary to or not wholly consistent with the Budget, and does not amend the Budget or Policy Framework to accommodate it, require the decision-maker to reconsider the matter together with the advice of either the Monitoring Officer or the Chief Finance Officer, and any recommendations made by the Council.

Where the Council refers the matter to the original decision-making body or individual, the decision maker shall reconsider the matter, taking into account any recommendations of the Council and any appropriate advice from the Monitoring Officer or Chief Finance Officer, and make a final decision on the matter within 5 days working of the referral by the Council. Where the Cabinet as a whole or a committee of it took the decision, a meeting will be convened to reconsider within 14 working days of the referral by the Council or referred to the next Cabinet meeting if held within this time limit.

If the Council does not meet, or if it does but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held according to these rules, whichever is the earlier.
2.12 The above process is outlined in the Council’s Constitution and members may wish to refer to this for further information.

3. EQUALITIES IMPACT ASSESSMENT

3.1 An assessment has been made in the original report to Cabinet which is attached at appendix B.

4. HEALTH IMPACT ASSESSMENT

4.1 An assessment has been made in the original report to Cabinet which is attached at appendix B.

5. HUMAN RESOURCES

5.1 These have been stated in the original report to Cabinet which is attached at appendix B.

6. FINANCIAL IMPLICATIONS

6.1 These have been stated in the original report to Cabinet which is attached at appendix B.

7. LEGAL IMPLICATIONS

7.1 These have been stated in the original report to Cabinet which is attached at appendix B.

8. CONCLUSION

Members are requested to take note of the guidance contained within this report and make any recommendations accordingly.
Request for Call In of Cabinet Decision

Date of Cabinet: 12th December 2006


We the undersigned Councillors request call in of the above decision.

This item has not been pre-scrutinised and it is only right and proper that Scrutiny considers a report of such significance to both our staff and members before it is fully implemented.

The undersigned councillors are concerned that under Policy Review Item C19 a majority of councillors have expressed, by way of their signatures upon a petition, strong opposition to closure. Cabinet did not consider this in their deliberations and therefore scrutiny should.

Scrutiny should also consider this alternative course of action for recommendation to cabinet:

That Chestnuts and the servery are kept open and that a thorough external review of the service’s management, costs and pricing structure is undertaken in order to identify appropriate and efficient measures for removing the current subsidy.

Signed:

[Signatures]

Page 6
1. SUMMARY

1.1 This report updates Members on the main issues of the budget strategy for 2007/08 and future years, taking on board any changes that have taken place since the Finance Review was presented to Cabinet in July 2006. It takes into account the latest estimates of new commitments and government funding as well as the financial risks that the Council may face in the future.

1.2 The Finance Review set out that in order to set a local Council Tax increase of 2.5% for each of the three years 2007/08 to 2009/10 total reductions of at least £17.3 million were required, of which at least £7.2 million had to be found in the first year. The continuation of the policy to restrict inflation increases on selected items, which is worth £1.8 million over the three years, means that services have to identify reductions of £15.5 million, with at least £6.6 million in 2007/08. As well as balancing the budget strategy, these reductions will also be a significant step in achieving the Council’s Gershon efficiency savings requirement of around £5 million per year.

1.3 This report brings forward proposals from Directorates to meet the savings target over the three years. It should be noted that reductions of at least £6.6 million must be identified for 2007/08 if the Council Tax increase is to be held to 2.5%. Any shortfall in the level of reductions will reduce the amount of revenue growth funding that is available.

2. RECOMMENDATIONS

Cabinet is requested to:-

2.1 note the Medium Term Financial Strategy (MTFS) for 2007/08 to 2009/10, including the forecast level of expenditure for the three years, (appendix A), together with the uncertain prospects for the 2008/09 grant settlement;
2.2 **consider** the savings proposals in services set out in appendix B and indicate which of them are agreed for implementation as soon as possible, (subject to any additional reports required for those items that are deemed to be key decisions or require further consultation);

2.3 **note** that revenue growth proposals in line with corporate priorities will be presented to the meeting of Cabinet on 23rd January 2007, for consideration from the £1.5 million set aside for this purpose, (paragraph 4.25); and

2.4 **note** that the draft capital programme for 2007/08 to 2009/10 will also be presented to the meeting of Cabinet in January for consideration, (paragraph 4.28).

3. **REASON FOR DECISION**

3.1 The consideration and implementation of the Council’s budgetary framework is a key decision for Cabinet. Setting the budget and the level of Council Tax are two of the fundamental decisions that Members have to take each year. Members need to be fully informed and involved in the process at all stages.

3.2 This report sets out the budget strategy for 2007/08 and future years, and is the second in a series of reports, building up to the Council Tax setting report in February 2007. The Council needs to make decisions on 2007/08 savings as early as possible as a matter of good practice, so that work on implementing them may start as soon as possible.

4. **MATTERS FOR CONSIDERATION**

4.1 Members are reminded that the main aims of the budget strategy are as follows:-

- to set a balanced budget for 2007/08 and future years whilst having a modest increase in Waltham Forest’s Council Tax - this was agreed at 2.5% by Cabinet at its meeting in July 2006;
- to invest in the Council’s agreed priorities;
- to strengthen the Council’s financial position, so that it has sufficient reserves and balances to address future risks and unforeseen events without detriment to service delivery;
- to ensure that the Council delivers value for money, continues to identify efficiency savings and meets its Gershon targets; and
- to align budgeting and service planning, ensuring that any reductions required are considered within a corporate and strategic framework.

4.2 The forecast for 2007/08 shows the Council with existing and potential commitments of approximately £353 million before reductions, (see appendix A). This is based on a number of assumptions, including the Government’s intentions with regard to Formula Grant and Dedicated Schools Grant (DSG), inflation estimated at 3% per year overall and a Council Tax increase of 2.5%. Government funding for 2007/08 was set provisionally in December 2005 as the second year of a two-year settlement, with Formula Grant increasing by 2.4% and DSG by 5.6%. The local government finance settlement for 2007/08 was announced on 28th November 2006 and the notified figure for Formula Grant did not change - £111.606 million. This is
made up of Revenue Support Grant (RSG) £16.038 million and NNDR £95.568 million.

4.3 The level of Formula Grant for 2008/09 and beyond is the greatest uncertainty within the Medium Term Financial Strategy (MTFS). The next main settlement announcement will be in December 2007, during the 2008/09 budget setting period. Waltham Forest is a ‘floor’ authority, as are the majority of other London boroughs, which means that its level of Formula Grant increase has been held at 2% for 2006/07 and 2.7% for 2007/08, giving protection of around £1.4 million over and above the formula calculation.

4.4 For future years, any increase in Formula Grant will first go to climbing above the floor before any benefit accrues. Therefore, a modest increase of 2.5% has been assumed in the MTFS from 2008/09 onwards. This is 0.5% below the projected level of in-built inflation, reflecting the trend of past years and the Government’s continued policy of driving down public sector costs through efficiencies. However, it should be noted that the Government has already indicated that it wishes to hold down public sector increases to 2% in the future - this would cost the Authority around £0.5 million in lost Formula Grant.

4.5 There will be some indication of the likely outcome for 2008/09 and onwards when details of the Comprehensive Spending Review are announced in the summer of 2007. However, it is not anticipated that Local Government will benefit to any great extent, apart from additional funding for schools, as central government’s priorities are Health, Police and Education. The December 2007 settlement will be for three years, and so this will give certainty up to 2010/11.

4.6 On 26th October 2006 the Department for Communities and Local Government (DCLG) issued a white paper called ‘Strong and Prosperous Communities’. This aims to give local people and local communities more influence and power to improve their lives. It is about creating strong, prosperous communities and delivering better public services through a rebalancing of the relationship between central government, local government and local people. One of its key themes is to transform local services through efficiency and it is anticipated that ambitious efficiency gains will be required as part of the 2007 Comprehensive Spending Review.

4.7 The results of the review being carried out by Sir Michael Lyons are due to be published in the New Year. This review has been considering various issues for Local Government including the fairness and burden of the Council Tax, alternatives such as Local Income Tax, the balance of funding between local and central government, and the treatment of NNDR. The Government will be considering both the Lyons report and the White Paper during early to mid 2007. Early indications are that there will be no proposals for radical change and that there will be a more developmental approach.

Inflation Assumptions

4.8 An overall inflation increase of 3% has been assumed. The level of pay award for 2007/08 is still not known - 2.5% has been included in the detailed estimate workings, based on a survey of other Local Authorities and initial indications of the employers’ likely offer. If the final award is higher than 2.5% then services will be required to fund the shortfall from their own
resources. If the award is lower than 2.5% then the excess provision will be clawed back from budgets in-year.

4.9 There are pressures in energy budgets, where increases are forecast to be up to 60%. An additional 30% has been built into budget in 2007/08, whilst an additional 30% has been included in the contingency, to be allocated in 2007/08 when there is more certainty regarding the level of increase.

4.10 In addition, a significant proportion of this authority’s expenditure is on external care packages and placements within Social Services, and these are subject to higher rates of inflation than the 3% average. Taking all these factors into consideration, the MTFS continues to assume an overall inflation rate of 3%.

Balances

4.11 For many years, this authority’s level of balances was very low at around £2.5 million, less than 1% of net expenditure. This presented a significant financial risk, and so over the past few years there has been a policy of gradually increasing balances to 2%, currently £6.6 million, and this has been achieved. However, this authority faces many financial risks and uncertainties, and 2% is generally considered to be at the lower end of the scale for good financial management.

4.12 In addition, in order to address the challenges of the future, the authority is committing itself to a programme of continuous dynamic change. As the level of change increases so do the number and scale of financial risks as well as the number of opportunities that the authority would wish to be able to exploit. At its meeting in July 2006, Cabinet agreed to increase balances to 2.5% of net expenditure over the next three years, equivalent to more than £9 million.

4.13 At its meeting on 21st November 2006, Cabinet considered and agreed the latest calculation of the Council Tax base. This has resulted in a decrease in the number of band D equivalents from 74,581 to 74,506, a reduction of 75 properties. This means that there will be a reduction in the Council Tax yield in 2007/08 of around £84,000, and this has been accommodated within the MTFS. The reduction is due to an increase in the number of student discounts awarded and the demolition of two blocks of flats in Leyton, and it is expected that the Council Tax base will increase again in 2008/09, once new properties come on stream.

In-built Spending Pressures

4.14 The deficit on the Pension Fund continues to be a significant risk. £1.6 million is included in the MTFS for 2007/08 in line with the triennial review of 2004 which recommended increasing the employer contribution by 2% per year for three years, bringing the rate up to an average of 19.5%. This was projected to clear the deficit over a twenty-year period. An interim valuation has taken place this year which indicates that the deficit has narrowed due to the Stock Market recovery. However, it is anticipated that the liabilities will increase due to demographic changes and this will be reflected in the next triennial review in 2007.

4.15 There are still many uncertainties regarding the North London Waste Authority (NLWA) levy. Earlier this year the NLWA provided indicative figures for 2007/08 and 2008/09 - above inflation increases of around 22% or £800,000 and 11% or £400,000 respectively. These increases have been
built into the MTFS, but are likely to be amended as the budget setting period progresses. Members are reminded that the NLWA levy is moving from being allocated according to Council Tax to a tonnage basis. The levy for 2007/08 and onwards will therefore depend on the tonnage produced, but it anticipated that the £800,000 increase indicated above will be sufficient in 2007/08.

4.16 Latest indications are that the future NLWA levy is modelled to increase by approximately 150% by 2015/16. This is intended to fund investment of £2 billion in facilities for composting, recycling and residual treatment. This is equivalent to an increase in the Council Tax of 6.8% by 2015/16. In order to inform these deliberations, this authority has been asked to:-

- agree waste flows and service specifications;
- commit to operating kerbside collections;
- inform the NLWA in a timely manner about changes to collections;
- provide an effective planning framework for the new NLWA through the Joint Waste Development Plan Document; and
- be involved in NLWA steering groups during the procurement process.

4.17 No further indication has yet been received on the level of increase on the other remaining levies - Environment Agency, Lee Valley Regional Park Authority, London Boroughs Grants Scheme and London Pension Fund Authority. An increase of 2.5% has been assumed at this stage for 2007/08.

4.18 It is acknowledged that a number of significant spending pressures within Social Services have been identified as part of the budget setting process. This also follows on from the trends that have emerged in this year’s budget monitoring. The most significant spending pressures are within Learning Disabilities Services, (Adult and Community Services) and Children’s Placements (Children’s Services). Clearly, these pressures cannot all be addressed from the £1.5 million growth funding in 2007/08, and the directorates concerned have been asked to identify one-off savings to fund them in the short term. However, the authority is in the process of commissioning a piece of work from both directorates that will consider investment proposals that would reduce future demands on these services or to bring down future costs. These proposals will be considered in year two of the MTFS - 2008/09 - and will need to identify the capacity to carry them out through further efficiencies.

4.19 The cost of the Benefits Service is also rising due to increased volumes of work together with difficulties in recruiting suitably experienced staff, resulting in having to employ more expensive agency staff.

4.20 Following last year’s negotiated settlement on Equal Pay, the Council is now actively working to resolve the issue of Single Status by April 2007. This could result in significant costs in 2007/08, depending on the number of years back pay agreed and the level of protection given to those workers whose pay would reduce. There are likely to be savings in the longer term when protection ceases.

4.21 A new item in 2007/08 is the loss of the ability to capitalise Building Consultancy overheads which results if the proposed joint venture takes place. This is in the region of £850,000, but provision of £750,000 has been made, assuming that £100,000 can either be reduced or capitalised in the future. Whilst this is a significant amount, it needs to be considered in the
context of continuing Building Consultancy losses in the region of £1 million to £1.5 million that will be incurred if no action is taken.

4.22 Every year, the Government introduces new legislation and regulations that have financial implications for local authorities. Sometimes, these changes are funded through the Formula Grant as ‘new burdens’, as was the case in 2006/07 for the new regulations around Electoral Services and Civil Contingencies, but in other instances the changes are not funded. Also, when an authority is in receipt of a ‘floor’ grant settlement, as Waltham Forest is, any additional new burden funding has no effect until the authority’s grant rises above the floor. In order to cover this eventuality, £300,000 has been included in the MTFS each year.

4.23 All these spending pressures will have to be contained within the resources available. As the Government funding for 2007/08 is already known, the only variables are the level of Council Tax and the amount of reductions and growth agreed. For example, any additional growth above the £1.5 million available would have to be funded either from further spending reductions or from a higher increase in Council Tax above 2.5%.

Collection Fund Deficit

4.24 In the past, the budget was sometimes supported by surpluses on its Collection Fund. This policy has been phased out as any such surpluses are one-off, and the authority now has a policy of sustainable budget setting, only allowing on-going savings. For the past three years neither surpluses nor deficits have been declared on the Collection Fund. The position has been reviewed this year, and in particular its bad debt policy has been refreshed and updated, to ensure that best practice is being carried out. This means that the authority has benefited by taking too much from the Collection Fund in the past and it is now time to redress this. In order to do this a deficit of around £2.9 million will be declared on the Collection Fund in January 2007 for 2006/07, (the exact figures will be available before Christmas). Any deficit (or surplus) is shared pro rata with the preceptor, the Greater London Authority - our share will be around £2.3 million and the GLA £600,000. There is a reserve of £1 million for this eventuality, and available bad debt provision of around £1.4 million and so no further funding is required in the MTFS. Some authorities routinely declare surpluses and deficits each year, in accordance with their agreed policies - this is the intention for this authority in the future.

Member Priorities - Revenue and Capital Growth

4.25 One of the most important ways the Council demonstrates that it is well managed (at a strategic level) by Members is that their community priorities, service priorities and budget strategy are in line. Whilst the authority faces a financially challenging few years ahead, it is important that it identifies some resources towards funding the Council’s stated priorities. To this end, an additional £1.5 million is included in the MTFS each year. The £1.5 million is for non-schools expenditure, as schools already have significant growth awarded through the Dedicated Schools Grant.

4.26 Directorates have worked up revenue growth proposals totalling £15 million over the three years of the MTFS and have presented them to the Star Chamber meetings. Of these, £8.7 million are for consideration in 2007/08. This includes Invest-to-Save bids of £470,000 in 2007/08, which will be
funded either from the £500,000 Invest-to-Save fund, which was set up from additional interest income earlier this year, or from prudential borrowing.

4.27 Capital bids of around £6 million have also been put forward. These have been subject to a ‘gateway review’ to ensure that they are feasible and deliverable. The extent of available capital resources is not yet known, and it depends to a large extent on the level of capital receipts, but it is likely to be at least £3 million. However, there will not be certainty until the capital receipts are achieved, and so it is recommended that Members agree a priority list, some of which can be implemented straight away in 2007/08 and some of which will have to wait until there is certainty on the available funding.

4.28 All the above bids, both revenue and capital, will be worked up into priority listings to be presented to Members for their consideration in January 2007. In addition, the draft capital programme for 2007/08 to 2009/10 will also be presented to the meeting of Cabinet in January.

4.29 It should be noted that in the respect of attracting additional capital approvals, Ascham Homes has undergone an Audit Commission inspection and has been awarded a two star rating which enables the Authority to qualify for around £93 million in capital approvals in Round 6, to achieve the ‘Decent Homes’ standard for council dwellings by 2010/11, a central government initiative.

4.30 Other initiatives can be resourced by access to special grants or other external funding. However, despite all of the above, it is clear that the Council does not have the resources to invest extensively across all its priorities, and Members will have to make decisions on the extent that priorities can be resourced over the next three years. Should the Council be unable to resource any essential spending, then its status as a priority should be reviewed.

Reductions Requirement

4.31 As a result of all the factors set out in the report so far, the reductions required over the next three years are still estimated to be £17.3 million. Taking into account inflation restrictions on certain items of expenditure, this reduces the remaining requirement to £15.5 million to be met by services. As well as balancing the budget strategy, these reductions will also be a significant step in achieving the Council’s Gershon efficiency savings requirement of around £5 million per year. The reductions are phased and allocated to Directorates as follows:

<table>
<thead>
<tr>
<th>Reductions requirement</th>
<th>2007/08 £’000</th>
<th>2008/09 £’000</th>
<th>2009/10 £’000</th>
<th>Total £’000</th>
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<tr>
<td>Adult and Community</td>
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<td>Chief Executive’s</td>
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<td>1,400</td>
<td>1,000</td>
<td>900</td>
<td>3,300</td>
</tr>
<tr>
<td>Corporate Services</td>
<td>1,100</td>
<td>800</td>
<td>700</td>
<td>2,600</td>
</tr>
<tr>
<td>Environmental Services</td>
<td>1,400</td>
<td>1,000</td>
<td>900</td>
<td>3,300</td>
</tr>
<tr>
<td><strong>Total reductions</strong></td>
<td><strong>6,600</strong></td>
<td><strong>4,700</strong></td>
<td><strong>4,200</strong></td>
<td><strong>15,500</strong></td>
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</table>

4.32 Directorates have worked up a programme of reductions to be achieved over the three years as a whole, rather than addressing each year in turn, as has happened in the past. The reductions targets are met in a variety of ways - it
is not just about making cuts. Increasing income is equivalent to reducing expenditure for the purposes of Policy Review. Examples are seeking new income streams and reviewing fees, charges and fines. The reductions are set out for consideration at appendix B and are summarised in the table overleaf.

<table>
<thead>
<tr>
<th>Reductions identified</th>
<th>2007/08 £'000</th>
<th>2008/09 £'000</th>
<th>2009/10 £'000</th>
<th>Total £'000</th>
</tr>
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<tbody>
<tr>
<td>Adult and Community</td>
<td>2,610</td>
<td>1,057</td>
<td>1,023</td>
<td>4,690</td>
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<tr>
<td>Chief Executive’s</td>
<td>504</td>
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<td>676</td>
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<td>Children’s Services</td>
<td>1,140</td>
<td>1,010</td>
<td>1,150</td>
<td>3,300</td>
</tr>
<tr>
<td>Corporate Services</td>
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<tr>
<td>Environmental Services</td>
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<td>69</td>
<td>2,364</td>
</tr>
<tr>
<td><strong>Total reductions</strong></td>
<td><strong>6,862</strong></td>
<td><strong>3,788</strong></td>
<td><strong>2,804</strong></td>
<td><strong>13,454</strong></td>
</tr>
</tbody>
</table>

4.33 All the proposed reductions above have been considered by the Star Chamber meetings held during October and November, and have been cleared to go forward to Cabinet. Whilst there is still a shortfall of around £2 million over the three year period, there is a surplus of reductions of £262,000 in 2007/08, arising from Adult and Community Services and Environmental Services, with Chief Executive’s and Corporate Services being on target and Children’s Services being below target. Adult and Community Services has a shortfall in 2008/09 and 2009/10 of £1.5 million whilst the Chief Executive’s Department has a shortfall in of £424,000 in those years.

4.34 If at the end of the budget setting process there is still a surplus of reductions in 2007/08, over and above the £6.6 million target, then this could be reinvested as growth. Ideally, this should be one-off growth, otherwise the total amount of reductions identified over the three-year period will be compromised. A particular Directorate can only be awarded additional ongoing growth to the extent that it has over-achieved its target reductions over the three year period.

4.35 All Directorates will be required to fund at least their savings requirement over the three year period. However, the targets will all be refreshed in the Finance Review of the summer of 2007, and will also have to be revisited once the outcome of the three year grant settlement for 2008/09 to 2010/11 is known in December 2007.

4.36 Members are requested to consider and agree the reductions proposals, and to indicate which of them are agreed for implementation as soon as possible, (subject to any additional reports required for those items that are deemed to be key decisions). It should be noted that reductions of at least £6.6 million must be identified for 2007/08 if the Council Tax increase is to be held to 2.5%. Any shortfall in the level of reductions will reduce the amount of revenue growth funding that is available.

4.37 For the future, there should be a focus on cross-departmental working, as well as working with partners and pan-London groups. Whilst it may not be possible to work up these sorts of initiatives quickly, there is scope to consider them for the later two years of the strategy. This will help to satisfy the Government’s agenda of more ‘joined-up working’. Other considerations include reaping the benefits of improved technology, joint purchasing initiatives and new ways of working.
One option is to be more aggressive in pursuing grants and match-funding opportunities. At its meeting in July, Cabinet agreed to set up a capital match-funding pot from excess capital receipts of around £1 million to begin with. The match-funding pot will be topped-up as it was used - this could be from further capital receipts, or from any surplus revenue monies that accrued. Also, it is proposed to establish a new self-funding post within Strategic Finance that will seek to identify grants and other external funding opportunities.

The ongoing requirements of the Gershon Review must be delivered through the budget process. There is a requirement to identify around £5 million per year in efficiency savings. As a result of the tight definition of efficiency savings, only about two-thirds of the Policy Review proposals rank as efficiencies, as increases in charges and cuts in services do not count. Directorates need to offer up their non-cashable efficiencies as part of the process, to ensure that the £5 million target continues to be achieved.

4.40 It is essential that all agreed savings and growth items are implemented promptly and in accordance with the original proposals. Officers have introduced measures to ensure that this happens, and monitor progress and report back to Members on a regular basis.

5. ALTERNATIVES CONSIDERED

5.1 The Council has an estimated base budget of £346 million in 2007/08. This depends on three main variables - a Council Tax increase of 2.5%, growth of £1.5 million and reductions of at least £6.6 million. Members may choose to trade between these three variables, but must do so in a way that still achieves a balanced budget. Further reports will be presented to Cabinet throughout the budget setting process, as more information becomes available.

6. CONSULTATION

6.1 The report is part of a process that will lead up to the setting of the Council Tax for 2007/08 and beyond. Appropriate consultation is taking place during the course of this process, through the authority’s existing consultation mechanisms.

7. IMPLICATIONS

Financial

7.1 This report is all about financial issues.

Legal

7.2 The Cabinet is responsible for presenting and implementing proposals for the annual budget and Council Tax to full Council for decision. This report informs that process. It is a legal requirement to produce a budget that is robust and fit for the purpose.

Human Resources

7.3 It is likely that there will be some reductions in staff numbers following spending reductions at the level anticipated. Redundancies will be avoided wherever possible and redeployment opportunities sought. £500,000 has been set-aside each year in the MTFS for the potential cost of redundancies.
Staff affected will be consulted in accordance with the framework for managing people.

**Health Impact Assessment**

7.4 Wherever possible, Policy Review reductions will be targeted to minimise the health impact. In particular, there is an opportunity to consider growth bids that will have a positive effect in this area.

**Equalities Impact Assessment**

7.5 An Equalities Impact Assessment of the proposed reductions has been carried out, and the reductions schedules set out the implications and mitigating action where relevant. It is clear that if all the reductions are agreed there will be some impact on four of the vulnerable areas - disability, race, age and gender equality. A summary of the possible impact is set out in appendix C.

8. **CONCLUSION**

8.1 The budget setting for the next three years will be a challenging process. However, the Authority has shown in the past that it is able to take difficult financial decisions. This budget process builds on the good practice in the past, and should enable the Authority to identify the reductions required to set a balanced budget in accordance with its stated service priorities, and to keep Council Tax increases at around the rate of inflation.

8.2 The aims of the Council and its Medium Term Financial Strategy would be best served by agreeing as many cost reductions as possible at this stage of the year, and early in the three-year strategy period. Realistically, the Council will need a reliable flow of revenue savings over the next three years and beyond.

_________________________________

**Background Information**

Budget setting report - Council - February 2006  
Budget process report - Cabinet - June 2006  
Finance Review - Cabinet - July 2006  
Local Government Finance Settlement - 28th November 2006  
Detailed Equalities Impact Assessment

This report has been cleared after discussion with the Leader of the Council

Signed: ___________________________  
Date:  1st December 2006

**Councillor Clyde Loakes**  
Leader of Waltham Forest Council
EQUALITIES IMPACT ASSESSMENT

1. An Equalities Impact Assessment of the proposed reductions has been carried out, and the reductions schedules set out the implications and mitigating action where relevant. It is clear that if all the reductions are agreed there will be some impact on four of the vulnerable areas - disability, race, age and gender equality. The most significant negative impacts are in disability equality, and these are set out in paragraph 3 below. Apart from this, the impact on these groups is not out of proportion with the impact on other services generally, and it is brought about by the necessity to save £6.6 million, which is not possible without affecting all areas of the Council’s business.

2. In all cases, appropriate consultation and where possible mitigating action is taking place, and these are included in the reductions schedules.

Impact on Disability Equality

3. There are a number of proposals that will have a negative impact. In particular these are A10 (SCOPE), A20 (Black People’s Mental Health Association), A21 (QALB), A22 (NELMHT), A25 (Markhouse Road) and A27 (Trumpington Road) which will all result in reductions or changes in service levels.

4. Reduction CHS9, increasing in-house fostering and adoption, may have a beneficial impact on children with disabilities as they are more likely to be placed nearer to home.

Impact on Race Equality

5. The proposals with the most significant negative impact are A3 (Afro Caribbean Elders Association), A20 (Black People’s Mental Health Association), A21 (QALB) and A66 (Young Peoples Caribbean Carnival).

6. Reduction CHS9, (increasing in-house fostering and adoption), may have a beneficial impact on black and ethnic minority children as they will be more likely to be placed within the borough.

Impact on Age Equality

7. The proposals with the most significant negative impact are A3 (Afro-Caribbean Elders Association) and A6 (closure of two Older Persons Residential Homes).

Impact on Gender Equality

8. An attempt has been made to predict the impact of possible redundancies and redeployment arising from the savings proposals. It is not possible to have certainty at this stage, but it does not appear that the proposals will have a disproportionate effect on either men or women. The proposal with the most significant effect is A13, (in-house home care review), where most of the posts are currently filled by female staff. Every effort will be made to redeploy wherever possible.
## Budget 2006/07 and Medium Term Financial Strategy 2007-10

### Budget 06/07

<table>
<thead>
<tr>
<th></th>
<th>Plan 07/08</th>
<th>Plan 08/09</th>
<th>Plan 09/10</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£'000</td>
<td>%</td>
<td>£'000</td>
</tr>
<tr>
<td><strong>Non-schools</strong></td>
<td>189,263</td>
<td>193,798</td>
<td>198,645</td>
</tr>
<tr>
<td><strong>Schools</strong></td>
<td>144,467</td>
<td>152,494</td>
<td>160,119</td>
</tr>
<tr>
<td><strong>LBWF expenditure at beginning of year</strong></td>
<td>333,730</td>
<td>346,292</td>
<td>358,764</td>
</tr>
<tr>
<td>Transfers of Government Funding:-</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mainstreaming into FSS from specific grants</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>New burdens</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Adjusted Base previous year</strong></td>
<td>333,730</td>
<td>346,292</td>
<td>358,764</td>
</tr>
<tr>
<td><strong>Pay and prices</strong></td>
<td>10,012</td>
<td>3.0%</td>
<td>10,389</td>
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<td><strong>Schools growth and change in numbers</strong></td>
<td>3,693</td>
<td>2.6%</td>
<td>3,050</td>
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<tr>
<td><strong>Above Inflationary &amp; Statutory Pressures</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Pension Fund 2% per annum</td>
<td>1,600</td>
<td>1,000</td>
<td>500</td>
</tr>
<tr>
<td>Above-inflation NLWA levy, waste costs</td>
<td>800</td>
<td>400</td>
<td>250</td>
</tr>
<tr>
<td>Financing supported/unsupported borrowing</td>
<td>300</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Write-back of premiums</td>
<td>300</td>
<td>(300)</td>
<td>(400)</td>
</tr>
<tr>
<td>Data / legislation changes</td>
<td>300</td>
<td>300</td>
<td>300</td>
</tr>
<tr>
<td>Above inflation increase in Concessionary Fares</td>
<td>250</td>
<td>250</td>
<td>250</td>
</tr>
<tr>
<td><strong>Other Adjustments</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building Consultancy overheads</td>
<td>400</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Provision for Municipal Elections</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Review of Members Allowances</td>
<td>350</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Increase in balances</td>
<td>200</td>
<td>300</td>
<td>500</td>
</tr>
<tr>
<td>Reversal of prior-year one-offs</td>
<td>(400)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Business Priorities</strong></td>
<td>1,500</td>
<td>1,500</td>
<td>1,500</td>
</tr>
<tr>
<td><strong>Efficiency : Cashable Savings &amp; Policy Review</strong></td>
<td>(6,600)</td>
<td>(4,700)</td>
<td>(4,200)</td>
</tr>
<tr>
<td>Nil inflation policy</td>
<td>(600)</td>
<td>(600)</td>
<td>(600)</td>
</tr>
<tr>
<td><strong>Other changes</strong></td>
<td>357</td>
<td>683</td>
<td>707</td>
</tr>
<tr>
<td><strong>Total Waltham Forest expenditure</strong></td>
<td>333,729,800</td>
<td>346,292</td>
<td>358,764</td>
</tr>
<tr>
<td><strong>Formula Grant (RSG plus NNDR)</strong></td>
<td>(108,995,000)</td>
<td>(111,606)</td>
<td>(114,396)</td>
</tr>
<tr>
<td><strong>Dedicated Schools Grant (DSG)</strong></td>
<td>(144,467,000)</td>
<td>(152,494)</td>
<td>(160,119)</td>
</tr>
<tr>
<td><strong>Total Exchequer support</strong></td>
<td>(253,462,000)</td>
<td>(264,100)</td>
<td>(274,515)</td>
</tr>
<tr>
<td><strong>To be met from Council Tax</strong></td>
<td>80,267,800</td>
<td>82,192</td>
<td>84,249</td>
</tr>
<tr>
<td>Council Tax base</td>
<td>74,581</td>
<td>74,506</td>
<td>74,506</td>
</tr>
<tr>
<td><strong>Waltham Forest Council Tax</strong></td>
<td>£ 1,076.25</td>
<td>£ 1,103.16</td>
<td>£ 1,130.77</td>
</tr>
<tr>
<td><strong>GLA precept</strong></td>
<td>£ 288.61</td>
<td>£ 303.04</td>
<td>£ 318.19</td>
</tr>
<tr>
<td><strong>Total Council Tax</strong></td>
<td>£ 1,364.86</td>
<td>£ 1,406.20</td>
<td>£ 1,448.96</td>
</tr>
<tr>
<td><strong>Overall increase</strong></td>
<td>4.62%</td>
<td>3.03%</td>
<td>3.04%</td>
</tr>
</tbody>
</table>

### Efficiency Review

<table>
<thead>
<tr>
<th></th>
<th>Cashable efficiency savings - Policy Review</th>
<th>Other efficiency savings re-invested</th>
<th>Total Efficiency Savings Target</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>£'000</strong></td>
<td>3,592,000</td>
<td>1,339,000</td>
<td>4,931,000</td>
</tr>
<tr>
<td><strong>£'000</strong></td>
<td>4,400</td>
<td>531</td>
<td>4,931</td>
</tr>
</tbody>
</table>
### Summary Savings Schedules

#### Savings:

<table>
<thead>
<tr>
<th>Services</th>
<th>2007/08 £'000</th>
<th>2008/09 £'000</th>
<th>2009/10 £'000</th>
<th>Total £'000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult &amp; Community</td>
<td>2,570</td>
<td>998</td>
<td>1,017</td>
<td>4,585</td>
</tr>
<tr>
<td>Chief Executives</td>
<td>504</td>
<td>134</td>
<td>38</td>
<td>676</td>
</tr>
<tr>
<td>Children's Services</td>
<td>1,140</td>
<td>1,010</td>
<td>1,150</td>
<td>3,300</td>
</tr>
<tr>
<td>Corporate Services</td>
<td>1,100</td>
<td>800</td>
<td>524</td>
<td>2,424</td>
</tr>
<tr>
<td>Environmental Services</td>
<td>1,508</td>
<td>760</td>
<td>60</td>
<td>2,328</td>
</tr>
<tr>
<td><strong>Total Savings</strong></td>
<td><strong>6,822</strong></td>
<td><strong>3,702</strong></td>
<td><strong>2,789</strong></td>
<td><strong>13,313</strong></td>
</tr>
</tbody>
</table>

#### Targets: (Gross expenditure less uncontrollable expenditure)

<table>
<thead>
<tr>
<th>Services</th>
<th>2007/08 £'000</th>
<th>2008/09 £'000</th>
<th>2009/10 £'000</th>
<th>Total £'000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult &amp; Community</td>
<td>2,200</td>
<td>1,600</td>
<td>1,400</td>
<td>5,200</td>
</tr>
<tr>
<td>Chief Executives</td>
<td>500</td>
<td>300</td>
<td>300</td>
<td>1,100</td>
</tr>
<tr>
<td>Children's Services</td>
<td>1,400</td>
<td>1,000</td>
<td>900</td>
<td>3,300</td>
</tr>
<tr>
<td>Corporate Services</td>
<td>1,100</td>
<td>800</td>
<td>700</td>
<td>2,600</td>
</tr>
<tr>
<td>Environmental Services</td>
<td>1,400</td>
<td>1,000</td>
<td>900</td>
<td>3,300</td>
</tr>
<tr>
<td><strong>Total Targets</strong></td>
<td><strong>6,600</strong></td>
<td><strong>4,700</strong></td>
<td><strong>4,200</strong></td>
<td><strong>15,500</strong></td>
</tr>
</tbody>
</table>
1.0 SUMMARY

At its meeting on 12th December 2006 the Cabinet received the attached report that outlined the results of the evaluation of the tenders received for the Council’s Waste & Recycling Collection Services Contract to commence on 2 April 2007. It recommended that a five year contract, plus a two year extension be awarded to Verdant Group plc at a sum of £5,900,917.37p for the current service provision.

Accordingly, the Cabinet agreed:

To award preferred bidder status for the 2007-2012 Waste and Recycling Collection Services Contract, to commence on 2 April 2007, to Verdant Ltd., for the Tender sum of £5,900,917, subject to the statutory 10 day ‘cooling-off’ period and contract.

To delegate authority to the Executive Director, Environmental Services to agree minor changes to the contract before signature, in the interests of operational efficiency and economy.

Members are asked to note and comment on the attached report.
1. **SUMMARY**

   1.1. This report sets out the results of the evaluation of the tenders received for the Council’s Waste & Recycling Collection Services Contract to commence on 2 April 2007. It recommends that a five year contract, plus a two year extension be awarded to Verdant Group plc at a sum of £5,900,917.37p for the current service provision. The purpose of this report is to conclude the open, inclusive tender process and to recommend an award of contract to Cabinet.

2. **RECOMMENDATION**

   2.1. For Cabinet Decision

   2.1.1. Cabinet is requested to agree

   2.1.1.1. To award preferred bidder status for the 2007-2012 Waste and Recycling Collection Services Contract to commence on 2 April 2007 to Verdant Ltd., for the Tender sum of £5,900,917.37p, subject to the statutory 10-day ‘cooling-off’ period and contract;
2.1.1.2. To delegate to the Director of Environmental Services authority to agree minor changes to the contract before signature in the interests of operational efficiency and economy.

3. REASON FOR DECISION

3.1. This is a key decision for Cabinet because of the significant impact of waste services throughout the borough and its financial value.

4. PROPOSAL

   Background

4.1. In July 2006, Cabinet approved the Council’s Waste Strategy, and authorised that the tenders be sought for a five year with a possible two year extension for the supply of the refuse and recycling collection service. Subsequent reports to Cabinet in October and November reported on the competitive dialogue process, preferred select list and the evaluation process. Contract documents were issued to the five selected organisations on 13 October and were return on 22 November 2006.

4.2. In accordance with legal requirements, the invitation to tender set out the tendering criteria and that the process is open, transparent and robust. This is now complete and a detailed programme drawn up to meet the award timetable as before previously indicated to Cabinet. On 21 November 2006, Cabinet received a report detailing the evaluation process (see Appendix A for a summary).

   Evaluation Results

4.3. The scored assessment of quality via the Technical and Stakeholder Panels together with the financial score from the modelled prices tendered provides a quantitative result for the Tenders received. The three highest ranked tenders scored:

<table>
<thead>
<tr>
<th>Tenderer Name</th>
<th>Score</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECT</td>
<td>75.52</td>
<td>2</td>
</tr>
<tr>
<td>Verdant</td>
<td>81.28</td>
<td>1</td>
</tr>
<tr>
<td>Waltham Forest DSO</td>
<td>67.30</td>
<td>3</td>
</tr>
</tbody>
</table>

   Overall Assessment

4.4. Further criteria relating to the tenders assessed prior to determining the most economic, advantageous tender for the Council are set out below.

4.5. Is the tender;

   • **Acceptable** The proposals are consistent with Council policies, recognise community needs and do not require unacceptable commitments by the Council for future change;

   • **Deliverable** The prices tendered are sufficient to allow an appropriate return to the Provider and minimal risk of financial exposure or default over the duration of the
contract;

- **Achievable** Implementation of the proposals, together with required commitments from the council and community participation, will achieve the objectives and targets contained in the Council’s strategy;

- **Affordable** The total budget required to provide the current and developed services, including contract management, collection, treatment and disposal is available over the duration of the contract given competing demands for resources.

4.6. With the exception of affordability, these aspects are addressed for each of the three tenderers in Appendix C. Affordability is not an issue as all tenders costs, together with council costs can be met from proposed budget allocations.

4.7. In summary, Verdant are recommended for award because:

- They were ranked first in the quality and financial evaluation;

- Their proposals for mobilisation and continuity of service were robust and propose no immediate changes;

- Their proposals for the current service and its future development of service were clear and fully resourced & costed;

- Community engagement and partnership with the Council formed a strong thread throughout their submission.

5. **ALTERNATIVES CONSIDERED**

5.1. Competitive tendering for this contract is mandatory under European and domestic legislation and the Council’s Contract Procedure Rules. The selection of the successful tenderer must also be based on the application of the tendering criteria.

6. **CONSULTATION**

6.1. Previous reports outlined earlier consultation. The trade unions and affected staff will be consulted in accordance with TUPE Regulations.

7. **IMPLICATIONS**

7.1. **Financial**

7.2. The current budget for the services within the scope of the contract is £6.57 million. The cost of the recommended tender is £5.9 million, leaving a surplus of £670,000. However, £70,000 needs to be put aside towards the cost of the client side arrangements, leaving £600,000. Of this sum, £200,000 has been put forward as a Policy Review reduction in 2007/08, with a further £400,000 in 2008/09. The £400,000 is not available in 2007/08 as it will be required to help establish the contract arrangements and to deal with any variations that may be required.
7.3. **Legal**

7.3.1. The Council has a legal duty to provide waste disposal services under the Environmental Protection Act 1990. For a contract of this value, European and domestic law requires an open, non-discriminatory competitive tendering process. This is also required by the Council’s Contract Procedure Rules. This report and earlier reports confirm that these requirements are met. There is also a statutory ‘cooling off’ period of 10 days after the award/preferred bidder decision before the contract can be signed.

7.3.2. The Greater London Act 1999 (Section 358), places a requirement on a waste collection authority (LB Waltham Forest) to notify the Mayor for London of the proposed award of a contract. This requirement has been fully complied with and the Mayor has confirmed that he does not intend to issue any direction.

7.3.3. The Cabinet may lawfully delegated the agreement of the finalised contract to the Executive Director under section 11 of the Local Government Act 2000.

7.4. **Human Resources**

7.4.1. An award to Verdant will result in a TUPE transfer of staff primarily working within these services. With regard to pension provision Verdant subscribe into the 'Prudential Platinum' scheme, which is equivalent (subject to confirmation) to the LGSS scheme. The Council will work closely with the successful tenderer to ensure that legislative requirements and Council policies are followed.

7.5. **Health Impact Assessment**

7.4.1. Improved recycling and reduction of residual waste contributes to the cleanliness and health of the borough.

7.6. **Equalities Impact Assessment**

7.6.1. All tenderers satisfied the Council’s Equal Opportunities Policy. They have been tested against the six equality areas of gender, race, age, disability, faith and sexual orientation and in addition on deprivation. The providers of the service will provide translated material where required, provide assisted collections to people with disability and older people, provide special waste arrangements and collections to faith organisations following religious events and festivals, and provide improved access to recycling facilities for flats and estates. Waste collection has a high profile to residents of the borough, therefore customer care and consultation is a priority for the tenderers.
8. CONCLUSION

8.1 The evaluation process is considered to have been open, fair and robust and met all the relevant law and regulations. It has ensured that each Tender was fully assessed.

8.2 The results of the quantitative and qualitative evaluation summarised in this report show that the Tender submitted by Verdant Limited offers the Council the most economically advantageous service with the best prospects for improvement in recycling and composting performance.

This report has been cleared after discussion with the Portfolio Member

Signed

Date: 7th December 2006

Portfolio Member for Environment
Appendix A

Tender Evaluation Process Summary

Introduction:
The tender is for the contract to provide waste and recycling services to the Council. Organisations invited to Tender have already been assessed for their overall suitability in terms of, inter alia, financial standing, experience and corporate policies on Health & Safety, employment, diversity and customer care. Each of the invited organisations also participated in the competitive dialogue stage of the contract letting.

Evaluation Panel:
The Programme Manager for this contract is Robin Carter, Head of Street Services. In addition to him the evaluation panel comprised procurement, legal, technical and financial representatives. The Panel reported their evaluation to the Project board prior to submission of this report to Cabinet.

Evaluation Process:
The tender evaluation consisted of two elements, quality and financial. The Council is recommended the most economically advantageous tender in terms of the criteria stated in the specification, in the invitation to tender, and other document.

The tender has been undertaken under the terms of the Competitive Dialogue process (OJEU Ref:06/S 137 – 147411/EN). Invitations to tender were issued on Friday 13th October with Tenders returned on Wednesday 22nd November 2006.

On receipt of the tenders using the Council’s CITODEN e-tendering system, the tender opening panel comprised Yvonne Saunders, Corporate Procurement Team, Robin Carter, Environment and Martin Calleja, Performance Management, who opened the 4 tenders at 17.00 pm on Wednesday 22nd November 2006.

The tender opening panel checked each tender to ensure that tenders had been submitted in accordance with the instructions sent out to Tenderers. No tenders had been returned incomplete i.e. had significant areas of key information missing.

Quality:
The proposed method statements; overall submission and supporting documents from each Tenderer was assessed against a number of weighted criteria as follows to produce an overall quality score:

<table>
<thead>
<tr>
<th>Initial Service &amp; mobilisation</th>
<th>25%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Care</td>
<td>20%</td>
</tr>
<tr>
<td>Change Process</td>
<td>5%</td>
</tr>
<tr>
<td>Equipment, Systems &amp; Interfaces</td>
<td>10%</td>
</tr>
<tr>
<td>Organisation/Staff/Premises</td>
<td>5%</td>
</tr>
<tr>
<td>Contract &amp; Performance management</td>
<td>10%</td>
</tr>
<tr>
<td>Service Change &amp; Development</td>
<td>25%</td>
</tr>
</tbody>
</table>
Financial:
Each organisation’s financial standing was checked, together with their compliance on the submission of all required prices and rates.

The prices tendered were input into a financial model that enables the Council to assess the budgetary implications of maintaining the current level of service over the duration of the contract, together with making service changes to improve performance and submitted options to maximise service development.

A net present value was derived for each option, using the Treasury discount rate of 3.5% and the individual components were weighted as follows:

<table>
<thead>
<tr>
<th>Component</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current service</td>
<td>70%</td>
</tr>
<tr>
<td>Service change</td>
<td>20%</td>
</tr>
<tr>
<td>Service development</td>
<td>10%</td>
</tr>
</tbody>
</table>

The model will produce an overall financial score.

Overall Score:
The quality and financial scores were combined in the ratio 60:40 in favour of quality to produce an overall evaluation score.

Stakeholders Panel:
The stakeholders panel, comprising community, elected and technical representatives met to receive and score presentations from the three highest ranked Tenderers on their proposals and visited their operations and/or facilities.

Award decision:
The Evaluation Panel reported to the Project Board on the overall score, presentations and visits and recommended an award. The Project Board endorsed the recommendation in this report for final decision by Cabinet.
1.0 SUMMARY

Members are asked to note and comment on the attached report.
## LONDON BOROUGH OF WALTHAM FOREST

<table>
<thead>
<tr>
<th>Committee/Date:</th>
<th>Cabinet – 23rd January 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td>Joint Venture Proposal for Building Consultancy</td>
</tr>
<tr>
<td>Council Priority:</td>
<td>Working For Waltham Forest</td>
</tr>
<tr>
<td>Directorate:</td>
<td>Environmental Services</td>
</tr>
<tr>
<td>Report of:</td>
<td>Executive Director Environmental Services and Executive Director Corporate Services</td>
</tr>
<tr>
<td>Contact:</td>
<td>Martin Esom and Chan Badrinath</td>
</tr>
<tr>
<td>Phone:</td>
<td>020 8496 6351 or 020 8496 4518</td>
</tr>
<tr>
<td>E.Mail:</td>
<td><a href="mailto:martin.esom@walthamforest.gov.uk">martin.esom@walthamforest.gov.uk</a>, <a href="mailto:chan.badrinath@walthamforest.gov.uk">chan.badrinath@walthamforest.gov.uk</a></td>
</tr>
<tr>
<td>Action required:</td>
<td>For Decision</td>
</tr>
<tr>
<td>Wards affected:</td>
<td>Not ward specific</td>
</tr>
<tr>
<td>Appendices:</td>
<td>Appendix A – Options Appraisal</td>
</tr>
<tr>
<td></td>
<td>Appendix B – Draft Service Agreement</td>
</tr>
<tr>
<td></td>
<td>Appendix C – Draft Service Specification and Commissioning Framework</td>
</tr>
<tr>
<td></td>
<td>Appendix D – Performance Management Framework: Review of the Client Side</td>
</tr>
<tr>
<td></td>
<td>Appendix E – Legal Implications, Equality Impact Assessment and Financial Implications</td>
</tr>
<tr>
<td>Status:</td>
<td>Open</td>
</tr>
</tbody>
</table>

### 1. SUMMARY

1.1. Following the Cabinet Meeting on the 18 July 2006, and subsequent options appraisal by IPF, the Directors of Environment and Corporate Services consider that sufficient progress has been for the Cabinet to formally approve proceeding with the Joint Venture with Norfolk Property Services (NPS), subject to final negotiation. It is anticipated that these negotiations will be concluded by the end of February 2007, with the JVC coming into operation on 1st March 2007.
2. **RECOMMENDATION**

For Cabinet Decision

2.1. Cabinet is requested to agree to:

2.1.1. A joint venture with NPS Property Consultants, subject to contract and if so,

2.1.2. Delegate authority to the Executive Director of Corporate Services, in consultation with the Portfolio Member for Environmental Services to finalise negotiations with NPS Property Consultants, enter into a joint venture contract with NPS Property Consultants on behalf of the Council and to negotiate and enter into all other documents necessary for the joint venture and the outsourcing arrangements. The Joint Venture Company (JVC) will be called NPS London Limited (NPSL).

2.1.3. To recommend to Full Council the appointment of the Portfolio Member for Children and Young People and the Executive Director of Environmental Services as the member and officer representatives respectively to the NPSL Board.

2.1.4. Note the client arrangements.

3. **REASON FOR DECISION**

3.1. This is a key decision for Cabinet owing to the significant level of expenditure involved and the transfer of a number of staff from the Council’s service to that of the JVC.

4. **PROPOSAL**

4.1. Building Consultancy Services is suffering significant financial losses as a result of the loss of work from Ascham Homes and other key clients. This has resulted in a predicted deficit of £1m in 2006/7 that will increase significantly in future years. Therefore it is considered that the Consultancy does not have a viable financial future in its present form.

4.2. There are three options available to the Council with regard to the future of the Building Consultancy Division. It could externalise the service (option 1), it could shut the service down with the resulting loss of jobs and ensuing cost to the Council (option 2) or it could form a joint venture partnership with NPS Property Consultants. A detailed options’ appraisal has been undertaken of these three options by IPF. The scoring methodology has rated option 3 as the least risk option (lowest score represents least risk).

4.3. It is therefore proposed to follow option three to create a joint venture company with NPS Property Consultants. This model has been adopted by a number of other local authorities and a recent Member/Officer visit to Wigan has provided positive feedback about their arrangements. The JVC will be owned 20% by the Council and 80% by NPS. Through the JVC arrangements the Council will have access to the building consultancy services it requires, losses incurred will be eliminated and staff employed within the service will transfer to the JVC.
4.4. There will be two categories of shares: A and B. NPS Property Consultants as class A shareholders will receive a dividend payable from the profit of the annual trading operations. The Council as Class B shareholders will not receive a dividend but will enjoy a discounted fee rate delivering cashable efficiency savings to the Council. NPSL hopes to provide property services across London and particularly in the north-east hoping to grow the business into a successful trading operation. The Draft Service Agreement that will govern the JVC is attached at Appendix B. The Draft Service Specification and Commissioning Framework and the Performance Management Framework are attached at Appendix C and D respectively. The draft documents are at an advanced stage and will be completed within the next four weeks. These documents will be finalised as part of the negotiations referred to in recommendation 2.1.2.

4.5. Subject to Cabinet approval, and agreement with NPS, the JVC will come into force on 1st March 2007. The workload of the Building Consultancy will novate to the new JVC. A ten year agreement is proposed with external benchmarking arrangements in years 4 and 7 to demonstrate value for money. NPSL will be based in the borough. The Council will benefit from a partnership with a professional property service provider that is local, understands the Council’s portfolio, and has access to a full range of skills and expertise as required to meet demand and workload.

4.6. The chief officer responsible for fulfilling the ‘client’ role will be the Head of Property Services as the Council’s Corporate Property Officer. She will be responsible for commissioning arrangements, contract management and ensuring the Council uses the JVC to its advantage.

5. ALTERNATIVES CONSIDERED

5.1 A detailed options appraisal is provided at Appendix One.

6. CONSULTATION

6.1. Departments have been consulted through their representatives on the Project Board. The Trade Unions and staff have been fully informed and consulted on the future prospects for the service and are fully supportive of the JVC proposal.

6.2. Regular meetings are continuing with the trades unions and staff to ensure that if agreed a smooth transition occurs to the JVC in relation to TUPE.

7. IMPLICATIONS

7.1. Financial

7.1.1. The financial implications are outlined in Appendix E.

7.2. Legal

7.2.1. The legal implications are outlined in appendix E.
7.3. **Human Resources**

7.3.1. 59 staff will be transferred from the Council’s employment to the JVC under TUPE provisions. The staff will benefit from being part of a publicly owned specialist arms length organisation that values their skills and expertise. NPS London Limited will be applying for Admitted Body Status to the Local Government Pension Scheme to enable staff that transfer to preserve their pension status and future benefits.

7.3.2. The Trade Unions are fully supportive of the proposal to set up a JVC.

7.4. **Health Impact Assessment**

7.4.1. The Building Consultancy Services deliver upon the corporate priorities that include health.

7.5. **Equality Impact Assessment**

7.5.1. The detailed assessment is attached at Appendix E.

8. **CONCLUSION**

8.1. The IPF options appraisal indicates the formation of a joint venture company with NPS Property Consultants represents the best option for the Council. A report on the first year’s performance of the JVC will be submitted to Cabinet in April 2008.

**Background Information**

Project documentation and business case

This report has been cleared after discussion with the Portfolio Members for Corporate and Environmental Services.

Signed Date: 11th January 2007

Portfolio Member for Corporate Services

Signed Date: 11th January 2007

Portfolio Member for Environmental Services
Review of Building Consultancy Options
Appraisal and Risks

1. Executive Summary and Recommendation

1.1 IPF has reviewed the July Cabinet paper and the Options Appraisal report that led to selection and development of the preferred option to establish a Joint Venture company (JVC) with NPS Property Consultants. Our Health Check report in September confirmed our view that this would best meet the Council’s requirements, deliver benefits and address the risks identified.

1.2 The review of that report and the current situation led to a risk analysis of the three options immediately available to the Council. The total estimate of the risks for each option is shown in brackets:

Option A (99) Establish the JVC;
Option B (142) Dissolve Building consultancy to avoid losses of £75k per month, redistributing some core staff to client directorates including Property Portfolio releasing spare capacity (maximum redundancy and early retirement cost estimated at £1.4m in July 2006) and competitively tendering for non-core services;
Option C (119) Outsourcing to the private sector through competitive tendering.

1.3 IPF has carried out a brief soft market testing exercise with some leading private sector companies to explore how they would respond to an outsourcing opportunity with a North London Borough. The main findings were:

- The delay would be 9 -12 months, thus incurring £750k to £1m further trading loss if there is no change to the current arrangements;
- For the workload outlined a reduction in staff numbers transferring would be expected, leaving release costs with the Council, amount to be determined, of say £500k;
- A workload guarantee for at least 2 years (at about £3m) would be required and a commitment for 5 years minimum, with options to extend, to enable a commercially viable return to be achieved;
- Some protection around the potential for reverse TUPE transfer.

1.4 For the Council to achieve its objectives and find a value for money solution the risks around each option have to be capable of mitigation. The critical risks emerging from the risk analysis for each Option are:

Option A - The critical risk is the re-allocation and managing down of the corporate overhead (£800k) allocated to Building Consultancy.
Some other risks remain high to medium until the JVC has been established. These are largely now around confirmation of the Service Agreement and the resulting workload.

Option B - Effectively the management to closure of Building Consultancy, absorbing the trading losses and reducing staff numbers. The critical risks are the continuing trading losses until new arrangements are in place, the quality of service delivered, and the match of skills to requirements. High risks include the loss of key valued staff and lack of investment to improve capabilities.

Option C - The decision to explore the JVC has now meant this Option would bear the impact of the intervening delay of 5-6 months and its associated costs, plus the increased risk of the offering to market having reduced in value. This option would also involve added costs to manage and supervise the client side commissioning and performance management to achieve the quality of service required. This is now viewed as an expensive option. To make the arrangement attractive to the market might need further work to add in other services.

1.5 Any delay is now seen as having significant impact on the continuing trading losses and the potential for reduced viability of the Building Consultancy operations. NPS are now well-placed if this arrangement were not to be completed to offer key staff appointment in their subsidiaries based in other London Boroughs.

1.6 IPF’s conclusion as a result of this review and risk analysis is that the Council should be invited to approve the Cabinet Paper recommendations to proceed with the establishment of the JVC.
2. The Review of the Options Appraisal and Risks

2.1 The situation has developed and made progress since the July 2006 Cabinet report. The options appraised then have in some instances changed and are no longer realistic. For example the downsizing and transfer of some staff to Property Portfolio has happened. The IPF Health Check report in September confirmed the preferred option to form a joint Venture Company with NPS Property Consultants. This arrangement is now becoming clear in its detail, and final commitment to complete the establishment of the JVC is imminent.

2.2 To help in the decision-making process it has been appropriate to revisit the changes and shape the options now available to the Council:

- Option A is to proceed with the JVC,
- Option B is a mix of the former Options of downsizing, allocating staff to client directorates and releasing spare capacity; and
- Option C is to revisit and pursue Externalisation.

2.3 Trading losses continue at about £900k for the current year. Delays in implementation and making of the decision in these terms could be seen as costing £75k per month. As a significant proportion of this is the corporate overhead on their operations a large part of this has to be absorbed by the Council in the short term.

The Options Appraisal Report to Cabinet in July 2006

2.4 “The schedule below shows the total income received by the Building Consultancy from all its Waltham Forest clients over the past three years and predictions of income from those clients for the next three years.” Added to the Options Appraisal position are the latest business plan estimates.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraisal Report</td>
<td>£6,362k</td>
<td>£5,682k</td>
<td>£5,078k</td>
<td>£3,460k</td>
<td>£2,950k</td>
<td>£2,500k</td>
</tr>
<tr>
<td>Latest</td>
<td></td>
<td></td>
<td></td>
<td>£3,560k</td>
<td>£2,623k</td>
<td></td>
</tr>
<tr>
<td>JVC Bus Plan</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£3,229k</td>
<td>£3,542</td>
</tr>
</tbody>
</table>
2.5 Associated staff numbers are:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff FTE &amp; ? Names</td>
<td>83</td>
<td>68 (72)</td>
<td>59 (62)</td>
<td>59</td>
<td>62</td>
</tr>
<tr>
<td>Agency (FTE)</td>
<td>6.8</td>
<td></td>
<td>2.0 (Included in above)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salary and Agency costs</td>
<td>3,400k</td>
<td>2,964k</td>
<td>3,011k</td>
<td>2,493k</td>
<td>2,618k</td>
</tr>
</tbody>
</table>

2.6 “The table below summarises the financial losses that will be incurred during the 2006-7 financial year during the initial downsizing exercise and as a result of implementing each of the five options available for the future of the Building Consultancy.

2.7 The Sub-options of transferring the purchasing unit (A) and transferring the Corporate Reactive service (B), both to Portfolio Management are also shown for each primary option.” Option (A) transfers have happened.

<table>
<thead>
<tr>
<th>Option</th>
<th>Downsizing one off costs 06-7</th>
<th>Cost to implement</th>
<th>Extra revenue cost of delivering service</th>
<th>Trading loss during transitional period 2006-7</th>
<th>On going trading loss per annum- (2007-8 stated *)</th>
<th>Cost of overheads unable to be recovered per annum</th>
<th>Cost of ongoing contract management</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>117,630</td>
<td>0</td>
<td>0</td>
<td>798,047</td>
<td>782,380</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2A</td>
<td>117,630</td>
<td>1,437,824</td>
<td>16,000</td>
<td>760,096</td>
<td>0</td>
<td>646,274</td>
<td>33,000</td>
</tr>
<tr>
<td>3</td>
<td>117,630</td>
<td>130,000</td>
<td>16,000</td>
<td>760,096</td>
<td>782,380</td>
<td>163,400</td>
<td>0</td>
</tr>
<tr>
<td>4A</td>
<td>117,630</td>
<td>95,000</td>
<td>8,000</td>
<td>760,096</td>
<td>0</td>
<td>646,274</td>
<td>86,000</td>
</tr>
<tr>
<td>5A</td>
<td>117,630</td>
<td>95,000</td>
<td>0</td>
<td>776,791</td>
<td>0</td>
<td>646,274</td>
<td>86,000</td>
</tr>
</tbody>
</table>

2.8 The key costs are the amount of redundancy that might be paid, and the future assignment or management of the overheads. These are most extreme in closing the Building Consultancy unit with release of all staff. The Option B now developed if the JVC is abandoned assumes some further staff transfers to other parts of LBWF.
Assessment of Building Consultancy Viability

2.9 The expectation based on the work done in identifying and planning the workload for Building Consultancy suggests income of £2.7m - 3.0m without the JV and costs of around £3.5m, including £400k of central charges. Thus as a trading operation, it is expected that losses will continue at the level of at least £0.5m per year. In the environment of uncertainty and reduction in morale as their future has now been subject to indecision over at least nine months, it is likely that more valued members of staff will leave. This will accelerate the downward spiral and lead to increasing fee levels to cover costs, worsening difficulties over matching skills to requirements and hence under achievement against the business plan. If the pattern is sustained then this minimum loss of £0.5m is expected to rise in subsequent years.

Review of July Options

2.10 The downsize restructuring to stay in-house as BC under Option 1 assumed a reduction in overhead of £500k or increasing fee levels by 20% thus reducing client service budgets ability to deliver services and works. Further trading losses were predicted to run at £800k - £1m per annum. An increase of £33k in the reactive maintenance budget was foreseen. The downsizing and leakage of good staff would make more evident the issue of the skills mix needed to serve the Council. Now, there is a further risk that NPS establishing another base for NPS London would be well-placed to attract key staff.

2.11 Option 2 closure and function transfer to other directorates. Forecast 10% increase in fees on a £2.5m workload, this is £250k. Up to £1.4m of redundancy and closure costs. Fragmentation of the service makes the skills issue more complex and difficult. Nothing has really changed here.

2.12 Option 3 Redeployment in other client directorates. The SLA schedule, now developed under this project, would be used to agree with client directorates what should be retained in-house using redeployed BC staff. Costs identified at £130k associated with the transfer. Probably another £100k for increased fees for work competitively tendered. Some redundancies arise as an outcome. This would be a proportion of the original £1.4m total used above.

2.13 Option 4 Externalisation Now would reverse the Cabinet decision in July and has lost four months. This would require twelve months to take forward with additional legal and advisory costs. Option parameters of contract management at £86k, £800k of overheads to absorb would again become more unmanageable as staff leave and the BC operation continues to lose value.

2.14 Some soft market testing of this option has indicated some potential interest and given some evidence for making assessments later in this report about taking this option forward now as Option C. The key issues will be guaranteed workload, staff numbers, and the timeframe
for implementation. If NPS London is formed in the interim there may be no business to sell.

Present Choices of Option

2.15 The Council has a decision on completion of the agreed draft documents for establishing the JVC as to whether to proceed and complete the deal or not, Option A. If not then the Options are to use the work done in detailing service requirements to reshape the in-house operations and let external contracts as necessary, or to proceed with an externalisation of Building Consultancy.

2.16 In the event of the Council now deciding against or NPS withdrawing from the proposed JVC, the alternative option, say Option B, is now likely to be a mix of elements of the above. Without the JVC option the optimum strategy may be:

- to use the service schedules to decide the split: in-house or out to tender;
- to redeploy what staff make sense to client directorates, principally Portfolio and Lifelong learning;
- to release surplus staff left over;
- to let and manage external contracts for remaining services.

2.17 The preparation for the JVC arrangements has now a full appreciation of the potential areas of services required by the Council of Building Consultancy. This would be revisited to determine the appropriate division between core services that could continue to be provided in-house, and those that would now be procured externally through competitive tendering. The procurement of external services will require use of some BC staff on redeployment, agency appointments or recruitment to a new cadre of professionals to commission and project manage the work and services required.

2.18 For comparison with the JVC arrangements, some features may be approximately estimated and valued, the assumption is made that 6 staff are transferred to ASCHAM homes. This would leave 5 or 6 to be accommodated. Under the JVC, 3 are accepted by the JVC avoiding an estimated £120k redundancy and early retirement costs. This will leave 2 or 3 to be released in either case at an estimated value of up to £150k. The exact amount would have to be confirmed when individuals are named.

2.19 Lifelong Learning may take a team of 4-5 staff from Building Consultancy to do the feasibility and pre-planning work for their programmes and projects. Others would be transferred to Portfolio Management in the area of planned and responsive maintenance, perhaps up to 15. The support team (10 staff) have generic skills that may be re-deployable in the Council.
2.20 On the capital works and service procurement side perhaps up to 10 may be taken on under Portfolio Management for the CPO, to lead in the overall coordination and management of the Council’s works programmes. The Accommodation strategy programme currently being delivered by Property Portfolio management has employed up to eight agency staff. A team of 8 in-house staff might cost £300-400k in salary costs alone if recruited. If BC staff were used they would require re-training and to replace some of the agency staff.

2.21 If the decision around matching of skills leads to non-acceptance of these staff then inevitably there would have to be a further managed programme of downsizing of the remainder of the unit. Although not fully detailed the above high level review suggests that at least half of the 60 staff presently in Building Consultancy would remain at risk if Option B were to be implemented as the preferred solution. Estimates of the associated release costs would depend on who is successful in being placed within other departments, and may reduce to nearer £1,000k. If this option is selected then a closer investigation and updating of the July Appraisal figures would be necessary.

2.22 The key advantage of the preferred Option A to form the JVC is in its flexibility to open the Building Consultancy service to a wider range of clients, provide a more secure future for the staff and to allow the Council to retain a knowledgeable partnering relationship with its former in-house service. Option C may offer similar advantages of transferring risks of quality of service, workload management and skills matching away from the Council. However the timeframe and questions about what would happen to Building Consultancy in the meanwhile may now make this an impractical option.

Risks

2.23 The evaluation of the risks against each Option appraised in the July cabinet report is attached as at Annex B. This schedule below reevaluates those risks against the options now before the Council. Some of the risks were particular to the original Options Appraisal and may now have a slightly different interpretation as a result of actions taken, for example to consider how the corporate overhead may be redistributed following the transfer to the JVC.

2.24 IPF’s Health Check Report in September identified some key project risks for the Council and these have remained a focus for the Project Board. At the higher level the two primary risks to be managed by the Council were:

- “In the long term to understand that if LBWF is to benefit from access through the collaborative working arrangement to an improved quality and value of service it has to put in place as soon as possible the JV client management arrangements.

- To commit the internal resources required that are necessary to address the future client contract management of the JV workflow. The Building Consultancy cannot propose and agree on behalf of
clients how the arrangements will work in future at the LBWF end”.

2.25 The short review on the Client Management role remains essential for success as this will underpin the viability of the JVC in relation to meeting the Council’s needs and requirements.

2.26 To aid this review the risks in bold are original project risks or those that are now seen as having taken on more significance. So it is possible that:

- The higher cost of service is now at greater risk, as it is linked to any delays in the process and the expected supply side pressures in the Construction industry;
- Gradual loss of key staff similarly becomes more of an issue if the situation is protracted or staff expectations are not met, as good staff will seek their own improved future;
- Delay in the timescale for change is particularly relevant if there is a change of direction. If not then it has to be managed to again meet expectations to resolve the situation by early in the New Year.

<table>
<thead>
<tr>
<th>Risk</th>
<th>Option A JVC</th>
<th>Option B Council</th>
<th>Option C Externalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overhead reduction is not possible</td>
<td>N/A</td>
<td>Major</td>
<td>N/A</td>
</tr>
<tr>
<td>Overhead reduction is possible but extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVPIs</td>
<td>Critical</td>
<td>Major</td>
<td>Critical</td>
</tr>
<tr>
<td>Future years trading will result in significant losses</td>
<td>N/A</td>
<td>Critical</td>
<td>N/A</td>
</tr>
<tr>
<td>Higher cost of service</td>
<td>Minor</td>
<td>Minor</td>
<td>Minor</td>
</tr>
<tr>
<td>Additional fee charges will not be acceptable</td>
<td>N/A</td>
<td>Major</td>
<td>N/A</td>
</tr>
<tr>
<td>Gradual loss of key staff resulting, in time, in a reduction in the quality of service</td>
<td>Major</td>
<td>Major</td>
<td>Major</td>
</tr>
<tr>
<td>Legal Challenge from Unions</td>
<td>Minor</td>
<td>N/A</td>
<td>Minor</td>
</tr>
<tr>
<td>Delay in implementation</td>
<td>Minor</td>
<td>Major</td>
<td>Critical</td>
</tr>
<tr>
<td>Delay in procurement timeline and therefore extended losses during the transitional period</td>
<td>Minor</td>
<td>Minor</td>
<td>Critical</td>
</tr>
<tr>
<td>No interest in the market that may result in no tenders or high tenders</td>
<td>N/A</td>
<td>N/A</td>
<td>Critical</td>
</tr>
<tr>
<td>If NPS feel that we are not serious they</td>
<td>Minor</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
may opt to pursue other options for expansion into East London

<table>
<thead>
<tr>
<th>Risk</th>
<th>Option A JVC</th>
<th>Option B Council</th>
<th>Option C Externalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The level and volume of service required by the Council from Building Consultancy</td>
<td>Major</td>
<td>Critical</td>
<td>Major</td>
</tr>
<tr>
<td>The match of skills to future requirements</td>
<td>Minor</td>
<td>Critical</td>
<td>N/A</td>
</tr>
<tr>
<td>The ability of LBWF to manage and commission services as a client</td>
<td>Major</td>
<td>N/A</td>
<td>Critical</td>
</tr>
<tr>
<td>The failure of the JVC</td>
<td>Minor</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Quality of service delivered</td>
<td>Minor</td>
<td>Critical</td>
<td>Minor</td>
</tr>
<tr>
<td>Legal status allows JVC workflow to meet procurement regulations</td>
<td>Minor</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Office Location</td>
<td>Minor</td>
<td>Minor</td>
<td>Minor</td>
</tr>
<tr>
<td>Investment in improvement of infrastructure and skills</td>
<td>Minor</td>
<td>Major</td>
<td>Minor</td>
</tr>
</tbody>
</table>

2.27 The Project Board have now identified and registered further risks to the project and the business. Some of these have relevance to the decision on selection of options at this stage.

2.28 Supporting calculations of the levels of risk based on the LBWF scoring assessment are included at Annex A. These risk values have been added up to reach an overall score. This has to be treated carefully as it is the criticality of some of the individual risks associated with certain options that may be most significant.

2.29 The following table quantifies where possible at an indicative level, some of the financial impacts of the risks according to the Option selected:
### Impact and/or scope of mitigation with financial value where practical

<table>
<thead>
<tr>
<th>Risk</th>
<th>Option A JVC</th>
<th>Option B Council</th>
<th>Option C Externalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overhead reduction is not possible</td>
<td>N/A</td>
<td>£750k</td>
<td>N/A</td>
</tr>
<tr>
<td>Overhead reduction is possible but extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVPIs</td>
<td>£500k for the Council</td>
<td>£750k</td>
<td>£500k</td>
</tr>
<tr>
<td>Future years trading will result in significant losses</td>
<td>N/A</td>
<td>£900k - £1.5m</td>
<td>N/A</td>
</tr>
<tr>
<td>Higher cost of service</td>
<td>3% fee reduction is the commitment</td>
<td>Above costs have to be recovered</td>
<td>Subject to competitive bids or offers received</td>
</tr>
<tr>
<td>Additional fee charges will not be acceptable</td>
<td>Covered in Service Specification</td>
<td>Above costs have to be recovered</td>
<td>Subject to bidding and negotiation</td>
</tr>
<tr>
<td>Gradual loss of key staff resulting, in time in a reduction in the quality of service</td>
<td>Should be low to nil if deal goes ahead (risk transfers to JVC)</td>
<td>Expect NPS to poach staff if they build London business</td>
<td>Delay and de-motivation will lead to cherry picking by NPS and good staff finding another option</td>
</tr>
<tr>
<td>Legal Challenge from Unions</td>
<td>None so far</td>
<td>N/A</td>
<td>Issue will be opened; Time and cost to address (£10k, say)</td>
</tr>
<tr>
<td>Delay in implementation</td>
<td>Plan being implemented</td>
<td>Additional internal costs arise from work to allocate staff, and determine detailed arrangements</td>
<td>May already be non-viable, additional costs of external support expected</td>
</tr>
</tbody>
</table>
### APPENDIX A

<table>
<thead>
<tr>
<th>Delay in procurement timeline and therefore extended losses during the transitional period</th>
<th>Factored in by corporate finance</th>
<th>Factored in for first year by CF</th>
<th>Extra 9 months @ £900k per annum = £750k</th>
</tr>
</thead>
<tbody>
<tr>
<td>No interest in the market that may result in no tenders or high tenders</td>
<td>N/A</td>
<td>N/A</td>
<td>Some soft market testing carried out; probable release of some staff, guaranteed workload for 2-5 years, a year later to transact, additional advisory costs, no guarantee of price competitiveness.</td>
</tr>
<tr>
<td>NPS may withdraw from negotiations when realistic estimates of income are provided for future years</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>NPS may withdraw from negotiations when realistic estimates of income are provided for future years</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>The level and volume of service required by the Council from Building Consultancy</td>
<td>Variation in workload estimates suggest the range of certainty is +£200k to -£500k (Risk transfers to JVC)</td>
<td>Impossible to manage and coordinate workload. Will revert to local decisions increasing management and procurement costs</td>
<td>Have to revisit Service Specification and match bidders to expected requirements. (Risk transfers to Operator)</td>
</tr>
<tr>
<td>The match of skills to future requirements</td>
<td>Progress made and defined situation (Risk transfers to JVC)</td>
<td>Know this cannot happen under this scenario without tendering and procurement costs</td>
<td>Offers have to match specification requirements. (Risk transfers to Operator)</td>
</tr>
<tr>
<td>The ability of LBWF to manage and commission services as a client</td>
<td>This remains a key area to resolve</td>
<td>N/A, expectation is that client role will revert to Under this scenario the client management</td>
<td></td>
</tr>
</tbody>
</table>
### APPENDIX A

<table>
<thead>
<tr>
<th><strong>The failure of the JVC</strong></th>
<th>present arrangements</th>
<th>arrangement is critical</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some deferred costs of closure of BC and relocation of staff. Impact subject to legal view on liability.</td>
<td>Costs already incurred in winding up BC and releasing any surplus staff. Varies up to worst case of £1.4m</td>
<td>N/A, although similar costs may arise if the outsourcing doesn’t work and staff are transferred back.</td>
</tr>
</tbody>
</table>

| **Quality of service delivered** | Key objective for NPS is to improve the service. (Risk transfers to JVC) | Clients do not believe standards can be met without change. | Subject to successful outsourcing. (Risk transfers to operator) |

| **Legal status allows JVC workflow to meet procurement regulations** | Has no financial implication for the Council this is a risk transferred to the JVC. | N/A | N/A however internal procurement costs are likely to be higher. |

| **Office Location** | Potential is for small impact on leasing of offices and cost base of the JVC. | Will become an issue for allocating and reorganising the staff | Assumption is that this will be part of the evaluation of offers |

| **Investment in improvement of infrastructure and skills** | The amount may vary within the cost base in the Business Plan. (Risk transfers to JVC) | No provision made. NPS expects to invest £300k in operating infrastructure. | Will be included in offer calculation as a risk transferred. |
Annex A  Risk Assessment of Options A, B and C

The assessments below subjectively apply IPF’s view on the risks and options using standard values set in the council’s scoring system:

<table>
<thead>
<tr>
<th>Likelihood</th>
<th>Impact</th>
<th>Overall Risk</th>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remote</td>
<td>Minor</td>
<td>Minor</td>
<td>1 to 6</td>
<td>Adverse but manageable affect on programme</td>
</tr>
<tr>
<td>Possible</td>
<td>Moderate</td>
<td>Major</td>
<td>8 to 12</td>
<td>Warrants consideration &amp; action but will not cause programme to fail</td>
</tr>
<tr>
<td>Probable</td>
<td>Significant</td>
<td>Critical</td>
<td>16</td>
<td>Risks programme failure</td>
</tr>
<tr>
<td>Certain</td>
<td>Severe</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Each Options score is totalled although what may be more important is the associated number of critical risks.

Option A  JVC with NPS (Critical 1, Major 4, Minor 12: Total score 99)

<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Option A JVC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overhead reduction is possible but extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVPIs</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>Higher cost of service</td>
<td>1</td>
<td>4</td>
<td>4 Minor</td>
</tr>
<tr>
<td>Additional fee charges will not be acceptable</td>
<td>1</td>
<td>2</td>
<td>2 Minor</td>
</tr>
<tr>
<td>Gradual loss of key staff resulting, in time, in a reduction in the quality of service</td>
<td>2</td>
<td>4</td>
<td>8 Major</td>
</tr>
<tr>
<td>Legal Challenge from Unions</td>
<td>1</td>
<td>4</td>
<td>4 Minor</td>
</tr>
<tr>
<td>Delay in implementation</td>
<td>1</td>
<td>4</td>
<td>4 Minor</td>
</tr>
<tr>
<td>Delay in procurement timeline and therefore extended losses during the transitional period</td>
<td>1</td>
<td>3</td>
<td>3 Minor</td>
</tr>
<tr>
<td>If NPS feel that we are not serious they may opt to pursue other options for expansion into East London</td>
<td>2</td>
<td>3</td>
<td>6 Minor</td>
</tr>
<tr>
<td>NPS may withdraw from negotiations when realistic estimates of income are provided for future years</td>
<td>2</td>
<td>4</td>
<td>8 Major</td>
</tr>
</tbody>
</table>

Further Risks

<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Option A JVC</th>
</tr>
</thead>
<tbody>
<tr>
<td>The level and volume of service required by the Council from Building Consultancy</td>
<td>3</td>
<td>4</td>
<td>12</td>
</tr>
</tbody>
</table>
### APPENDIX A

<table>
<thead>
<tr>
<th>Risk Description</th>
<th>Major</th>
<th>Value</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>The match of skills to future requirements</td>
<td>1</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>The ability of LBWF to manage and commission services as a client</td>
<td>2</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>The failure of the JVC</td>
<td>1</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Quality of service delivered</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Legal status allows JVC workflow to meet procurement regulations</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Office Location</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Investment in improvement of infrastructure and skills</td>
<td>1</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTAL estimated value of all risks Option A</strong></td>
<td></td>
<td></td>
<td><strong>99</strong></td>
</tr>
</tbody>
</table>
### Option B  
**BC Remains with Council (Critical 4, Major 6, Minor 3: Total Score 142)**

<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Option B Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overhead reduction is not possible</td>
<td>3</td>
<td>3</td>
<td>9 Major</td>
</tr>
<tr>
<td>Overhead reduction is possible but extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVPIs</td>
<td>3</td>
<td>3</td>
<td>9 Major</td>
</tr>
<tr>
<td>Future years trading will result in significant losses</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>Higher cost of service</td>
<td>2</td>
<td>3</td>
<td>6 Minor</td>
</tr>
<tr>
<td>Additional fee charges will not be acceptable</td>
<td>4</td>
<td>3</td>
<td>12 Major</td>
</tr>
<tr>
<td>Gradual loss of key staff resulting, in time, in a reduction in the quality of service</td>
<td>3</td>
<td>4</td>
<td>12 Major</td>
</tr>
<tr>
<td>Delay in implementation</td>
<td>3</td>
<td>4</td>
<td>12 Major</td>
</tr>
<tr>
<td>Delay in procurement timeline and therefore extended losses during the transitional period</td>
<td>1</td>
<td>4</td>
<td>4 Minor</td>
</tr>
</tbody>
</table>

#### Further Risks

<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Option B Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>The level and volume of service required by the Council from Building Consultancy</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>The match of skills to future requirements</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>Quality of service delivered</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>Office Location</td>
<td>2</td>
<td>1</td>
<td>2 Minor</td>
</tr>
<tr>
<td>Investment in improvement of infrastructure and skills</td>
<td>4</td>
<td>3</td>
<td>12 Major</td>
</tr>
<tr>
<td><strong>TOTAL of all risks for OPTION B</strong></td>
<td></td>
<td></td>
<td><strong>142</strong></td>
</tr>
</tbody>
</table>
## Option C  Externalisation (Critical 5, Major 2, Minor 5: Total Score 119)

<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Option C Externalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overhead reduction is possible but extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVPIs</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>Higher cost of service</td>
<td>2</td>
<td>3</td>
<td>6 Minor</td>
</tr>
<tr>
<td>Gradual loss of key staff resulting, in time, in a reduction in the quality of service</td>
<td>3</td>
<td>3</td>
<td>9 Major</td>
</tr>
<tr>
<td>Legal Challenge from Unions</td>
<td>2</td>
<td>3</td>
<td>6 Minor</td>
</tr>
<tr>
<td>Delay in implementation</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>Delay in procurement timeline and therefore extended losses during the transitional period</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>No interest in the market that may result in no tenders or high tenders</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
</tbody>
</table>

### Further Risks

<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Option C Externalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The level and volume of service required by the Council from Building Consultancy</td>
<td>3</td>
<td>3</td>
<td>9 Major</td>
</tr>
<tr>
<td>The ability of LBWF to manage and commission services as a client</td>
<td>4</td>
<td>4</td>
<td>16 Critical</td>
</tr>
<tr>
<td>Quality of service delivered</td>
<td>1</td>
<td>4</td>
<td>4 Minor</td>
</tr>
<tr>
<td>Office Location</td>
<td>1</td>
<td>2</td>
<td>2 Minor</td>
</tr>
<tr>
<td>Investment in improvement of infrastructure and skills</td>
<td>1</td>
<td>3</td>
<td>3 Minor</td>
</tr>
<tr>
<td>TOTAL all risks of OPTION C</td>
<td></td>
<td></td>
<td>119</td>
</tr>
</tbody>
</table>
### Annex B  Extract from Appraisal Report Summarising Risks

**Option 1**  Remaining as a whole Service within the Council

<table>
<thead>
<tr>
<th>Risk Description</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Risk Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overhead reduction is not possible</td>
<td>High</td>
<td>High</td>
<td>Critical</td>
</tr>
<tr>
<td>Overhead reduction is possible but extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVIs</td>
<td>High</td>
<td>High</td>
<td>Critical</td>
</tr>
<tr>
<td>Additional fee charges will not be acceptable</td>
<td>High</td>
<td>High</td>
<td>Critical</td>
</tr>
<tr>
<td>Gradual loss of key staff resulting, in time, in a reduction in the quality of service</td>
<td>High</td>
<td>Medium</td>
<td>High</td>
</tr>
<tr>
<td>Future years trading will result in significant losses</td>
<td>High</td>
<td>High</td>
<td>High</td>
</tr>
</tbody>
</table>

**Option 2** -  Closure of the Building Consultancy, transferring the Building Services function to the appropriate Lead / Commissioning Client Directorates, dismissing staff and externalising parts of the service for each Client

<table>
<thead>
<tr>
<th>Risk Description</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Risk Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher cost of service</td>
<td>Medium</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>Extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVIs</td>
<td>High</td>
<td>High</td>
<td>Critical</td>
</tr>
<tr>
<td>Delay in procurement timeline and therefore extended losses during the transitional period</td>
<td>Medium</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Legal Challenge from Unions</td>
<td>Medium</td>
<td>High</td>
<td>High</td>
</tr>
</tbody>
</table>
## Option 3 - Closure of the Building Consultancy and transferring the Building Services function and staff to the appropriate Lead / Commissioning Client Directorates

<table>
<thead>
<tr>
<th>Risk Description</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Risk Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher cost of service</td>
<td>High</td>
<td>Medium</td>
<td>High</td>
</tr>
<tr>
<td>Delay in implementation</td>
<td>Medium</td>
<td>High</td>
<td>High</td>
</tr>
</tbody>
</table>

## Option 4 - Closure of the Building Consultancy and externalising the whole service through a competitive tender

<table>
<thead>
<tr>
<th>Risk Description</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Risk Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>No interest in the market that may result in no tenders or high tenders</td>
<td>High</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVIs</td>
<td>High</td>
<td>High</td>
<td>Critical</td>
</tr>
<tr>
<td>Delay in procurement timeline</td>
<td>Medium</td>
<td>High</td>
<td>High</td>
</tr>
</tbody>
</table>

## Option 5 - Externalising the whole service through a negotiated tender with NPS Property Services Ltd

<table>
<thead>
<tr>
<th>Risk Description</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Risk Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher cost of service</td>
<td>Low</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>If NPS feel that we are not serious they may opt to pursue other options for expansion into East London</td>
<td>Medium</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>Extra overhead cost burden placed on other services will result in poorer VFM and will put pressure on BVIs</td>
<td>High</td>
<td>High</td>
<td>Critical</td>
</tr>
<tr>
<td>NPS may withdraw from negotiations when realistic estimates of income are provided for future years</td>
<td>Medium</td>
<td>Medium</td>
<td>Medium</td>
</tr>
</tbody>
</table>
DATED 2007

THE LONDON BOROUGH OF WALTHAM FOREST (1)

and

NPS LONDON LIMITED (2)

[and]

[NPS PROPERTY CONSULTANTS/GROUP¹] (3)

AGREEMENT

relating to the provision of building consultancy services to the London borough of Waltham Forest

¹ Are WF seek to any guarantee of the obligations of NPS London from the NPS Group. NPS London will have no/few assets other than WF business at day 1. The relevant NPS Group company owning the 80% shareholding in NPS London should be a party to accept the obligation to call an EGM under Clause 21.2.3. Also Clause 23.6.
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>26 Cumulative Remedies</td>
<td>43</td>
</tr>
<tr>
<td>27 Severance</td>
<td>43</td>
</tr>
<tr>
<td>28 Contracts (Rights of Third Parties) Act 1999</td>
<td>43</td>
</tr>
<tr>
<td>29 Continuing Obligations</td>
<td>43</td>
</tr>
<tr>
<td>30 Notices</td>
<td>44</td>
</tr>
<tr>
<td>31 Entire Agreement and Governing Law</td>
<td>45</td>
</tr>
<tr>
<td>Schedule 1</td>
<td>46</td>
</tr>
<tr>
<td>Employee Information</td>
<td>46</td>
</tr>
<tr>
<td>Schedule 2</td>
<td>47</td>
</tr>
<tr>
<td>Service Specification</td>
<td>47</td>
</tr>
<tr>
<td>Schedule 3</td>
<td>48</td>
</tr>
<tr>
<td>Warranted Information</td>
<td>48</td>
</tr>
<tr>
<td>Schedule 4</td>
<td>49</td>
</tr>
<tr>
<td>[Bonus Plan]$</td>
<td>49</td>
</tr>
<tr>
<td>Schedule 5</td>
<td>50</td>
</tr>
<tr>
<td>[Lease/License]</td>
<td>50</td>
</tr>
</tbody>
</table>

---

2 There is reference to a Bonus Plan in the note of C. Badrinath’s meeting with Mike Britch. Does this require documentation. Is this an issue for NPS only?
THIS SERVICE AGREEMENT is made on 2007
BETWEEN:

THE LONDON BOROUGH OF WALTHAM FOREST of Town Hall, Forest Road, Walthamstow, London E17 4JF (“the Council”) and

NPS LONDON LIMITED whose registered address is situate at [County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH] (“the Company”)

NOW IT IS AGREED as follows:

1 Definitions and Interpretations

1.1 In this Service Agreement the following words and phrases shall have the following meanings unless inconsistent with the context:

“Additional Employees” means persons temporarily or permanently employed by the Company to assist in the provision of the Services who were appointed after the Transfer Date;

“Assets” means the assets listed in Appendix 8 to Schedule 2 (Service Specification);

“Best Value” means securing continuous improvement in the way in which the Council’s functions are administered and exercised having regard to economy, efficiency, effectiveness and quality;

“Building Consultancy Division” means the Council’s former [property services department];

“Business Day” means any day that is not a Saturday, Sunday or a public holiday in the place to which a Notice is sent;

“Business Plan” means the business plan drawn up and agreed in accordance with Clause 9;
“Code” means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03 Annex D;

"Commencement Date” means [1 March 2006⁴];

“Comprehensive Performance Assessment” means [***] and any similar test applied to local authorities in substitution from time to time⁵;

“Confidential Information” means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;

“Contract Liaison Officer” means those officers of the Company and of the Council who are from time to time appointed to liaise between the Company and the Council on all matters relating to the contract;

“Council’s Representative” means the person referred to in Clause 11.2 and any other person who the council appoints in place of such person;⁶


["Estimated Lump Sum” means the estimated lump sum for any Financial Year calculated in accordance with Clause [***];]

["Final Agreed Lump Sum” means the final lump sum for any Financial Year calculated in accordance with Clause [***];]
"Financial Year" means the period between [1 February in each year to 31st January in the following year];

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

"Intellectual Property Rights" means any and all of the following items, whether or not registered, applications for the following (where registrable) and the right to apply for the following items (where registrable) brought into existence, acquired, used or intended to be used by the Company for the purposes of performing the services or otherwise for the purpose of this Service Agreement;

(a) registered or unregistered designs;
(b) patents;
(c) all registered and unregistered trademarks;
(d) service marks;
(e) applications for the items referred to in paragraphs (a), (b) and (c);
(f) copyrights;
(g) the sui generis rights of extraction relating to databases; and
(h) trade secrets and other confidential information or know how;

"Law" means:

(a) any applicable statue or proclamation or any delegated or subordinate legislation;

6 WF and the Company states in Clause 11 who ill be the initial point of contact to discuss operation of the contract. WF and NPS to confirm personnel and if this is acceptable as drafted.

7 Waltham Forest may wish to change the relevant period. To be discussed.
(b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;

(c) any applicable guidance, direction or determination with which the Council and/or the Company is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Company by the Council; and

(d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales;

in each case in force in England and Wales;

“[Licence/Lease]” the\(^8\) [ ] in the form of the lease/license in Schedule [5] to this Service Agreement;

“Local Government Pension Scheme” means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;

"NPS Property Consultants" means [the shareholder vehicle in NPS London – see footnote 1]

“Operating Period” means the period beginning on the Transfer Date and continuing for the period set out in Clause 2 unless terminated sooner in accordance with this Agreement;

“Original Employees” means those permanent employees of the Council employed wholly or mainly to administer or exercise the Services immediately before the Transfer Date who are listed in Schedule 1;

“Performance Indicators” those performance indicators agreed between the Council and the Company set out in the Business Plan for the relevant Financial Year (which, for the avoidance of doubt are independent from the system for performance measurements as described in Schedule 2 (Services Specification);

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\(^8\) To be included if the property aspects to form part of the Services Agreement – see Clause 12.
“Project Data” means all materials, documents and or data acquired, brought into existence or used in relation to the Services or this Service Agreement;

“Project Data” means all materials, documents and or data acquired, brought into existence or used in relation to the Services or this Service Agreement;

“Protocols” means the protocols set out in Appendix 2 to Schedule 2 (Service Specification) and as may be varied from time to time by the Council in consultation with and as agreed with the Company, which detail how the Services will be commissioned by the Council;

“Services” means the asset management, facilities management and design and procurement services formally provided to the Council by [the Building Consultancy Division of the Council]9 up to the Transfer Date and more particularly described in the Service Specification;

“Shareholders Agreement” means the agreement relating between [NPS Property Consultants] and the Council relating to NPS London Limited, dated the same date as this Service Agreement;

“Service Specification” means the Service Specification describing (inter alia) the Services to be provided by the Company and the remuneration for the Services as set out in Schedule 2 to (Service Specification) (particularly, Appendix 5 to such Schedule 2) to this Service Agreement;

“Transfer Date” means [1st March 2006]10;

“Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time;

"Warranted Information" means the information set out in Schedule 3.

1.2 Reference to any statute or statutory provision includes a reference to:

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9 Waltham Forest to confirm.

10 To be confirmed and agreed.
that statute or statutory provision as from time to time amended,
extended, re-enacted or consolidated; and

1.2.2 all statutory instruments or orders made pursuant to it.

1.3 Words denoting the singular number only shall include the plural and vice versa.
Words denoting any gender include all genders and words denoting persons shall
include firms, corporations and vice versa.

1.4 Unless the context otherwise requires reference to any clause, sub-clause or
schedule is a reference to a clause, sub-clause or schedule (as the case may be) of
or to this Service Agreement.

1.5 The headings in this document are inserted for convenience only and shall not affect
the construction or interpretation of this Service Agreement.

2 Appointment

2.1 Subject to Clause 2.2 the Council appoints the Company to carry out the Services
[for itself and on behalf of its Partner Organisations]¹¹ in accordance with the
provisions of this Service Agreement and the Service Specification provided always
that Partner Organisations may approach the Company to carry out work directly
rather than under Agreement¹².

2.2 The Services to be carried out by the Company pursuant to Clause 2.1 shall not
include services which would otherwise form part of the Services;

2.2.1 but where the Council is obliged by a third party or by any Law to offer
such services in accordance with a competitive bidding process, provided
always that the Council will use reasonable endeavours to give the
Company an opportunity to bid for such work;

¹¹ This is set out at 1.4 of the Service Specification. WF to confirm this is acceptable. "Partner Organisations" should be
defined, see also Clause 5.5.

¹² What would NPS expect in terms of fees and discounts if a Partner Organisation commissions work directly. (Should it be
subject to the same rates etc?)
2.2.2 but where the work is of a specialist nature the Council is of the view that, in its sole opinion, and the Company is not able to offer that specialism and to a level or in a manner that is acceptable to the Council;

2.3 Subject to Clause 2.2 during the period that this Service Agreement is in force the Council may offer any additional services that the Council requires to be carried out, that are of a similar type to the Services, (subject always to the same exceptions as are set out in Clause 2.2) to the Company and the Company shall notify the Council within ten (10) Business Days of the date that the Council offered the additional services whether or not it wishes to carry out the additional services [the proposed methodology for carrying out the works and the proposed cost of undertaking such work]. Any additional services shall be deemed to be part of the Services and be carried out under the terms of this Service Agreement as the same may be varied by agreement of the Council and the Company.

3 **Commencement and Duration**

3.1 This Service Agreement shall commence on the Commencement Date and shall end on 28 February 2017, unless terminated earlier in accordance with the provisions of this Agreement, including, without limitation Clauses 3.2, 5.4, [8.4] [and 23]13.

3.2 This Service Agreement shall be subject to review by the Council on an ongoing basis. In addition the price for the Services shall be subject to Benchmarking as more particularly set out at Clause 8. On 1 March 2011 and 1 March 2014 [30 May 2011] years such reviews to be completed by and [30 May 2014] respectively.14 Additionally and without prejudice to any of the other rights of the Council under this Service Agreement, the Council may terminate this Service Agreement in whole or in part following the conclusion of any review contemplated by this Clause 3.2 if the Council is of the view that the Services or any part of the Services have not delivered Best Value for the Council throughout the relevant review period.

13 A 10 year term as agreed.

14 Date to be confirmed by the parties.
3.3 The Company shall use its best endeavours to assist the Council in any review of the Services carried out in accordance with Clause 3.2 at no additional cost to the Council.

4 **Information prior to Service Agreement**

4.1 The Company has entered into this Service Agreement in reliance upon the information provided to it by the Council which is set out in Schedule 3 (Warranted Information) to this Service Agreement and the Council warrants to the Company that so far as it is aware the Warranted Information is accurate in all material respects and (provided always that he Council makes no representations or warranties in relation to any typographical errors or minor inaccuracies).

4.2 [Breach of Warranty][15]

5 **Scope of Services**

5.1 The Company will carry out the Services in full:

5.1.1 in accordance with terms of this Service Agreement;

5.1.2 in accordance with the terms of the Service Specification;

5.1.3 as an obligation independent from, and in addition to Clause 5.1.2, in such manner as ensures that the [Service Level Agreements][16][Service Levels][17] are met in accordance with the [Service Level Agreements][Service Levels] [forming Appendix 6] to Schedule 2 (Service Specification) to this Agreement.

5.2 In performing the Services and in the performance of all its duties and obligations under this Service Agreement and the Service Specification the Company shall:

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15 WF needs to consider the consequences of a breach of warranty. What limits should be imposed? To be discussed.

16 Query whether the reference should be Service Levels rather than SLAs. M&R have not yet seen the detail proposed for Appendix 6 to Schedule 2.

17 Query whether the reference should be Service Levels rather than SLAs. M&R have not yet seen the detail proposed for Appendix 6 to Schedule 2.
5.2.1 exercise the degree skill, care, diligence, prudence and foresight to be expected of a skilled, qualified and experienced person and professional engagement in carrying out services of a similar nature to the Services;

5.2.2 without prejudice to the generality of Sub-Clause 5.2.1 ensure that the Services are performed at all times by appropriately qualified competent and experienced staff;

5.2.3 comply at all times with:

(i) all applicable Laws (including, regulations and orders made pursuant to any statutory instrument and all applicable European Community Regulations and all applicable decisions of the European Court;

(ii) all applicable regulations or bye-laws of any local authority;

(iii) such contract procedures and financial regulations as are from time to time agreed between the parties;

(iv) with the provisions of the Protocols setting out how work will be commissioned by the Council18;

(v) all applicable rules or regulations of any statutory undertaker which has jurisdiction with regard to the Services; and

(vi) good practice and generally in accordance with all appropriate British Standards and all appropriate Codes of Practice (having due regard to the provisions of Clause 5.2.5);

5.2.4 Exercise reasonable skill, care and diligence so as to comply with any programme as may from time to time be agreed by the parties;

5.2.5 Specify or recommend in connection with any the construction or refurbishment or maintenance of any building or site for which Services are being provided such materials and such methods of design and
construction maintenance and/or repair that is as cost-effective as is reasonably possible given the standard, quality, size, scope, nature, complexity and value of the building or site.\textsuperscript{19}

5.3 The Company shall perform its obligations under Clause 5.2.5 above without prejudice to its other obligations under Clause 5.2 and without detriment to the use of materials, workmanship, design and construction of the standard and quality reasonably to be expected for a building or site of the size, scope, nature, complexity and value of the building or site.

5.4 The Company will strive to provide and will seek to demonstrate Best Value in the administration and exercise of the Services and the Company acknowledges that the Council shall be permitted to terminate the whole or part of this Agreement in accordance with Clause 3.2 should the Council consider that Best Value has not been delivered through the Service Agreement following any review as referred to in Clause 3.2.

5.5 The Company shall perform the services so as to co-ordinate with the Council's operations on the relevant site and/or in the relevant facility (in each case which are subject to the services) and shall take all reasonable care to ensure that it does not interfere with the operations of the Council or any relevant Partner Organisation.

6 Co-operation between the Parties

6.1 The parties undertake to each other to co-operate in good faith to facilitate the proper performance of the Service Agreement\textsuperscript{20}.

7 [Commitment to the Community]\textsuperscript{21}

7A Monitoring delivery of Services

\textsuperscript{18} The Council cannot unilaterally change the original agreed Protocols (set out in Appendix 2 to Schedule 2 of the Service Agreement) without the Company's agreement.

\textsuperscript{19} It will be for the Council to approve the expenditure.

\textsuperscript{20} The good faith obligation remains. The other provisions are deleted as agreed.

\textsuperscript{21} WF considering whether this needs to be incorporated or deleted.
8 Benchmarking

8.1 The Company shall be responsible for undertaking benchmarking exercises with other providers of services similar to the Services. NPS will become a member of the London Authorities Construction and Property Benchmarking Club ("LACPBC") and shall retain such membership for the terms of the Service Agreement (at no additional cost to the Council).

8.2 On [1 March 2011] and [1 March 2014] the Company shall undertake benchmarking exercise which should include:

8.2.1 [details of steps to be set out];

8.2.2 the Benchmarking exercise commenced upon 1 March 2011 shall be concluded by 30 May 2011 and the benchmarking exercise commenced on 1 March 2014 shall be concluded by 30 May 2014 to the event that either benchmarking exercise is not concluded by the due date, the Council shall have the right to terminate this Service Agreement forthwith by issuing notice in writing to the Company.

9 Business Plan

9.1 The Company shall draw up a Business Plan for every Financial Year\textsuperscript{23}. The Business Plan for the period [***] is set out at Schedule 4 (Business Plan) to this Agreement.

9.2 The Company will issue a draft Business Plan for consideration by all of the directors of the Company no later than three (3) months prior to the commencement of the next Financial Year. The directors appointed by the Council will discuss the draft Business Plan with the existing directors appointed by NPS. The directors will seek

\textsuperscript{22} Paul Humphries to consider reporting mechanism and linkage to Schedule 2 (Service Specification).

\textsuperscript{23} Waltham Forest are considering if the Business Plan (BP) should follow another period, e.g. WF's annual year. C. Badrinath suggests that this right of the Council may be removed and the WF appointed directors to the JV seek to influence the BP (although it should be acknowledged that such directors could be out voted). To be discussed.
to agree each Business Plan no later than six weeks prior to the commencement of the Financial Year to which the Business Plan relates.\(^{24}\)

9.3 The Business Plan shall:

9.3.1 set out all the outputs of the Company, including an explanation as to how compliance with the Service Specifications (including, without limitation, the) is planned to be achieved;

9.3.2 include the overall strategy of the Company [and how the Company plans to assist the Council in delivery of the Community Strategy] [and how this will dovetail with the business and operational needs of the Council]\(^{25}\);

9.3.3 without prejudice to the provisions of Clause 9.3.1, detail the financial and staffing resources expected to be required to enable the Company to deliver the Services in accordance with the Business Plan;

9.3.4 describe any improvements or enhancements in or development of the provision of any of the Services;

9.3.5 include methods for monitoring the delivery of the Services and the Performance Indicators;

9.3.6 include a financial and resourcing plan; and

9.3.7 include any major investment plan as appropriate.

9.4 [In the event that the directors of the Company cannot agree upon all or any aspect of the Business Plan within the timeframe set out in this Clause, then the matters in dispute shall (subject to Clause 23) be referred for resolution under the provisions of Clause 23.]

9.5 For the avoidance of doubt, insofar as any Best Value performance indicators are introduced by the Government or any other relevant regulatory body which are relevant to the provision of any of the Services (or any part thereof) in any Financial

\(^{24}\) Should there be reference to dispute resolution if the BP cannot be agreed? See clause 9.4.

\(^{25}\) The bracketed words will be deleted if Clause 7 is deleted.
Year after the Business Plan has been agreed for that particular Financial Year, or otherwise been determined in accordance with the provisions of the Service Specifications, then the current Business Plan shall be amended following agreement by the parties to the terms of the changes and any agreed cost and other implications and after a reasonable period to allow implementation provided that any cost implications have been agreed between the parties. Where the parties cannot agree upon the cost implications of implementing such changes the matters in dispute shall be referred for resolution under the provisions of Clause 23.

10 Employees

10.1 From the Transfer Date the Company shall employ the Original Employees and shall be responsible for all remuneration benefits entitlements outgoings in respect of the Original Employees including without limitation all wages holiday pay bonuses commission payment of PAYE national insurance and superannuation contributions to the extent that the same arise on or after the Transfer Date.

10.2 The Council shall provide the Company with the Council’s records for the Original Employees including all personal files and shall provide the Company with the information that it is obliged to provide under regulation 11 of the Regulations.

10.3 The Council undertakes to indemnify and keep the Company indemnified from and against all claims, liabilities, obligations, costs, and demands incurred by the Company arising from or in respect of any of the Original Employees and/or any other employee or former employee of the Council in so far as and to the extent that the same are caused by any act, neglect or default of the Council at any time before the Transfer Date provided that:

10.3.1 the Company makes no statement in connection with such claim that is prejudicial to the Council;

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26 WF to be aware that this will mean that cost risk of changes are allocated to WF subject to DRP.

27 Provisions relating to pensions to be included in this Clause. WF to confirm position.
10.3.2 such claim is not caused or contributed to by acts, neglect or omissions of the Company other than in accordance with the provisions of this Service Agreement;

10.3.3 the Council is immediately notified in writing of the details of the claim;

10.3.4 the Council is allowed to conduct and/or settle all litigation and negotiations resulting from such claims;

10.3.5 the Company takes reasonable steps to mitigate its losses arising from such claim; and

10.3.6 the Company gives the Council all reasonable assistance in connection with such claim.

10.4 The Company undertakes to indemnify and keep the Council indemnified from and against all claims, liabilities, obligations, costs, and demands incurred by the Council arising from or in respect of any of the Original Employees any representative of any of the Original Employees and/or any other employee or former employee of the Company in so far as and to the extent that the same are caused by any act, neglect or default of the Company at any time before or after the Transfer Date provided that:

[Note—there’s no conflict here—these are mutual and mirror indemnities other than the fact that the company’s indemnity also applies to acts it does before the transfer—this is to deal with the constructive dismissal/Humphries risk]

10.4.1 the Company makes no statement in connection with such claim that is prejudicial to the Council;

10.4.2 such claim is not caused or contributed to by acts, neglect or omissions of the Council other than in accordance with the provisions of this Service Agreement;

10.4.3 the Company is immediately notified in writing of the details of the claim;

10.4.4 the Council is allowed to conduct and/or settle all litigation and negotiations resulting from such claims;

10.4.5 the Company takes reasonable steps to mitigate its losses arising from such claim; and
10.4.6 the Company gives the Council all reasonable assistance in connection with such claim.

10.5 TUPE Compliance on Termination

10.5.1 Upon expiry or termination of this Service Agreement the parties agree that if the Council or an incoming contractor takes over the provision of any services the same or substantially the same as the Service then the Regulations shall apply.

10.5.2 Handover on expiry or termination

(i) During the 12 months preceding the expiry of this Service Agreement or immediately after the Council has given notice to terminate or if no notice is given immediately upon termination of this Service Agreement or at any other time as requested by the Council and in such a case within 15 working days of being so requested by the Council the Company shall, to the extent that it is not prevented from doing so by the provisions of any legislation relating to data protection, (having used its best endeavours to obtain any consents as may be necessary under such legislation to allow such disclosure) fully and accurately disclose to the Council and/or any incoming contractor the following information:

(A) a list of employees employed by the Company

(B) a list of agency workers, agents and independent contractors engaged by the Company [Note: we can limit this to those engaged in LBWF work]

(C) the total payroll bill (i.e. total taxable pay and allowances including employer’s contributions to pension schemes) of those personnel

(D) the terms and conditions of employment of the employees their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, and any other factors affecting their redundancy
entitlement and any outstanding claims arising from employment

(E) any disciplinary proceedings or grievance issued within the previous 2 years

(F) any court or tribunal cases brought by the employees in the previous 2 years, or any court or tribunal cases which the company has reasonable grounds to believe that an employee may bring

(G) any collective agreement which will have effect after the transfer of the employees

(ii) The Company shall warrant the accuracy of all the information provided to the Council pursuant to Clause [10.5.2.(i)] and, subject to the Council complying with any relevant data protection legislation, authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any incoming contractor or tenderer for any services which are substantially the same as the Services (or any part thereof)

(iii) During the 12 months preceding the expiry of this Service Agreement or where notice to terminate this Service Agreement for whatever reason has been given the Company shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the employees and their trade union or employee representatives as the Council may reasonably request

(iv) During the 12 months preceding the expiry of this Service Agreement or where notice to terminate this Service Agreement for whatever reason has been given, the Company shall not without prior written consent of the Council unless bona fide in the ordinary course of business
(A) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services. [Note-I don’t see this as necessary. LBWF’s concern is the proper provision of the services. If NPS reduce numbers but still perform to expectation then that should not be an issue for LBWF]

(B) materially increase or decrease the number of employees employed in connection with the Services; or

(C) assign any employee to the Services or redeploy any employee from the Services to other duties unconnected with the Services

(v) Sub-Contractors [Note-I entirely agree that the use of sub-contractors should either not be allowed or be controlled. However, that’s not really an employment issue per se. If use of sub-contractors is going to be allowed then this drafting is fine. If not, then we can delete this]

In the event that the Company enters into any sub-contract to carry out a significant part of the Services it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Clause 10.7 and shall procure that the Sub-Contractor complies with such terms. The Company shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

10.6 Application of Code to Additional Employees
10.6.1 Additional Employees [Note—we have no choice. LBWF is bound by the Code of Practice on Workforce Matters in Public Sector Service Contracts. These clauses implement that Code. For detail of the Code requirements see ODPM circular referred to above in the definition section]

(i) The Council and the Company shall have regard to the Code in interpreting and applying their obligations under Code Obligations.

(ii) Subject to Clause [10.6.1.(iv)] the Company shall employ Additional Employees on terms and conditions of employment which in the reasonable opinion of the Council are, overall no less favourable than those of the Original Employees engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the Additional Employees.

(iii) The Company shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the Additional Employees pursuant to Clause [10.6.1.(ii)]

(iv) In addition to its obligations under Clause [10.6.1.(ii)] above, the Company shall procure that the Additional Employees are offered either:

(A) membership of the Local Government Pensions Scheme; or

(B) membership of a good quality employer pension scheme, being a contracted-out final salary based defined benefit scheme, or a defined contribution scheme under which the Company shall match employee contributions up to 6 per cent; or

(C) a stakeholder pension scheme under which the Company shall match employee contributions up to 6 per cent.
10.6.2 During the term of this Service Agreement, the Company shall immediately upon request by the Council provide the Council with accurate and complete written information as soon as reasonably practicable, including the terms and conditions of employment of the Original Employees and the Additional Employees, where this is necessary to monitor the Company’s compliance with its obligations under the Code.

10.6.3 The Company shall support any Central Government sponsored review and monitoring programme on the impact of the Code and on request by the Council provide the Council immediately upon request with accurate and complete information as may be necessary in order to assist the Council in doing this.

10.6.4 If any Additional Employee or any representative of any Additional Employee complains to the Council that the Company is in breach of its obligation under clause 10.6.1.2 the Council and the Company shall in the first instance seek to resolve by discussion between them any complaints from any employee or any recognised trade union in relation to compliance by the Company of its Code Obligations. [Note-see above-this simply implements the requirement of the Code]

10.6.5 Where it appears to the Council or the Company that it is not possible to resolve the matters by continuing discussions between them pursuant to Clause [10.6.4] or where an employee of the Company or any recognised trade union writes to the Company to confirm that it has been unable to resolve its complaint directly with the Company in relation to the Company’s obligations under the Code

(i) the Council shall first write to the Company to seek an explanation for the alleged failure by the Company to comply with its Obligations under the Code. The Company shall provide such an explanation in writing within 5 working days of receipt of the request from the Council

(ii) if the response provided by the Company satisfies the Council that its Obligations under the Code have been met, then the Council
will inform the complainant of this and the matter will be deemed to have been concluded

(iii) in the event that the Council decides that it is not satisfied by the response provided by the Company the Council shall write to the Company within 5 working days of its decision requiring the Company to take immediate action to resolve the dispute

(iv) if, following such a request by the Council the Company still appears to the Council not to be complying with its obligations under the Obligations, the matter shall be dealt with in accordance with Clause 22 (Dispute Resolution).

10.7 The Company shall employ sufficient employees of sufficient abilities and skills to carry out the work for the Services or procure specialist consultants where shortages arise and shall ensure as far as possible that the Original Employees are employed wholly or mainly in carrying out the Services.

10.8 For the purposes of section 1 of the Contracts (Rights of Third Parties) Act 1999 the parties to this Service Agreement hereby agree that each and every Additional Employee shall have the right to enforce the provisions of Clauses [***] and/or [***] directly against the Company and that it any Additional Employee does so then in respect of any such Additional Employee that shall amount to the Council complying with its obligation to enforce the provisions of the Code in this regard and the provisions of Clause [***] shall not apply. [Note—it’s not really a question of need. The Code requires LBWF to enforce, in particular, the Additional Employees provisions (see e.g. clause 10.10.1.2 above). However, that is not as simple as it sounds. What if NPS/JV Co and the LBWF can’t agree that the Additional Employees’ terms are overall as good as former LBWF staff terms? Does LBWF want to sue NPS/JV Co? What will it sue for, what will it’s loss be? The Additional employees may actually have loss and this clause effectively allows the Additional Employees to sue NPS/JV co directly and therefore allows LBWF to argue that it has complied with it’s Code obligation to enforce the Code in this respect.]
10.9 For the avoidance of doubt, the parties agree that save as required or effected by Law nothing in this agreement shall give rise to any liabilities for or in respect of the Original Employees, any Additional Employees or any other current or former employees of the Company on expiry or termination of the Services or any part thereof.

11 Representatives of the Council and the Company

11.1 During the Operating Period the Managing Director for the time being of the Company shall be the initial point of contact for the Council in relation to the performance by the Company of the Services and its other obligations under this Service Agreement.

11.2 During the Operating Period the Head of Property Services (Corporate Property Officer) shall be the Council’s Representative who will be the initial point of contact for the company in relation to performance by the Council of its obligations under this Service Agreement. The Council may by notice to the Company change the Council’s Representative.

12 Location of Employees

12.1 The Company will take a licence/lease (the [“Licence/Lease”]) of the premises occupied by [the Building Consultancy Services at the Commencement Date (“the Premises”).

12.2 On the expiry of the lease referred to in Clause 12.1 the Company will relocate the Original Employees and any Additional Employees to a to alternative premises, the location of which has been previously agreed with the Council, at the sole cost [and should comply with its obligations under the [Licence/Lease] and Lease the Premises in a condition satisfactory to the Council as more particularly referred to in the [Licence/Lease]28.

28 The obligations of the Company under any Lease/License will also be obligations of the Company under the Service Agreement as currently drafted. Is this required? (It encourages NPS to comply with its obligations to vacate the premises!. Failure to vacate could be an express termination event if this is a key WF concern). What stage is the lease/license at, WF is proceeding with this in-house.

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12.3 [For the period from the Transfer Date to the date that the Original Employees and any Additional Employees are relocated to the alternative premises the Council will permit the Company to use the Assets without charge].

12.4 On relocation to the alternative premises the Company shall at its own expense provide, install, maintain and replace information technology communications systems for the Services and undertake or do anything which is necessary to enable the Company to from such premises.

13 [Payment for Assets]

13.1 [The Company shall pay to the Council the full amount of the lease payment due in respect of any cars that the Original Employees have leased from the Council.

13.2 The Company shall be responsible for collecting contributions towards the cost of each lease from those Original Employees that have leased cars from the Council.]

14 Financial Matters

14.1 Subject to Clause [14.2] the Council shall pay the Company for the administration, exercise and performance of the Services set out [Appendix 5, to Schedule 5 [1a, 1b [2 and 3]]] in to Schedule 2 (Service Specification) in the Fees Schedule at Appendix 3 to Schedule 2 [and those percentages and hourly rates shall be fixed for the duration of this Agreement.]

14.2 [Subject to Clause [14.3] the hourly rates referred to in Clause [14.1] shall be increased or decreased by such amount as may be agreed between the Council and the Company on the first day of February in each year but so that such increase or decrease shall so far as reasonably possible equal the National Joint Council for Local Government Services pay award for local authority employees for the

29 WF understands that there are only two assets (Gas powered car and EC Harris Software). Is payment required? To be confirmed and then drafted.

30 This section should deal with any payment obligations relating to the transferring Assets. Is WF expecting payment for assumption of lease/licence obligations to the Assets?

31 Query whether rates are fixed for the category’s of work on Schedule 2 (re Council Corporate Additional Work) and Schedule 3 (Work fro items not controlled by the Council). If so these should be set out here. Panel Humphreys to confirm.
14.3 On the 1st February in each of the years 2008, 2009 and 2010 prior to the increase or decrease provided for in Clause [14.3] being applied the rates in force for the previous Financial Year shall be reduced by one percent. The percentage reduction figure to be applied to the rates for the remaining period of the Agreement shall be reviewed and agreed by the parties prior to 31st January 2010 on an annual basis. [How do these provisions link to the percentage reductions referred to in part 4 of Chan Badrinath’s note re NPS meeting on 21 December?]

[Remainder of Clause 14 under review. Paul Humphreys/Sue Wright to input]

14.4 In respect of the Financial Year commencing the 1st February 2007 and every subsequent Financial Year of this Agreement the Council shall be entitled to a discount on the fees payable under this Clause [14] which discount will be calculated in accordance with Clause [14.8].

14.5 [Prior to the 1st February in each year of this Agreement the parties shall agree an estimated value for the Services to be carried out by the Company for the Council in the following Financial Year (“the Agreed Value”).]

14.6 Prior to the 1st February in each year of this Agreement the parties shall agree a percentage rate which when applied to the formula set out at Clause [14.8] would result in a figure as near as possible to one half of the Company's estimated operating profit for the following Financial Year (“the Discount Rate”).

14.7 The discount shall be:

14.7.1 calculated in accordance with the following formula:-

\[ £(a \times b) \]
where \( a \) = the Discount Rate

\( b \) = the Agreed Value

14.8 In the event that the Company’s actual profit in any Financial Year is greater than the estimated profit for that Financial Year then the Discount Rate for that Financial Year shall be adjusted to take account of such variation.

14.9 In the event that the parties are unable to agree the Agreed Value or the Discount Rate for any Financial Year, the discount for that Financial Year shall be equal to one half of the Company’s pre-tax profits for the preceding year.

14.10 The discount will be payable to the Council in equal instalments calendar quarterly in arrears and may be deducted from any payment due to the Company from the Council at that time. Any variation arising from Clause \([14.9]\) shall be reflected by adjusting the subsequent due discount payments to reflect the financial variations to the effect that by the end of that year the Council will have received the full and proper amount due.

14.11 The Company shall invoice the Council for the provision of the Services on such basis as shall be agreed between the parties from time to time. The Council shall pay each invoice within 30 days of the date of such invoice.

[Will there be an annual retainer or advanced revenue payment? If so need to be drafted in]

14.12 The Company shall provide a copy of its audited accounts to the Council within six months of the relevant accounting reference date. In the event that the Company fails to provide accounts in accordance with this Clause \(xx\) then, without prejudice to any other rights or remedies available to the Council, the Company shall give the Council access to all and any accounting documents and information in the possession, custody or control of the Company.

15 **Documents [(and] Other Assets [and Information)]**

15.1 [The Council and the Company shall identify and agree which documents, files and records held by the Council for the purposes of the administration, exercise and performance of the Services are necessary to enable the Company to perform the Services and its obligations under this Service Agreement and those documents, files]
and records shall transfer to the Company on the Transfer Date. Any documents, files and records so transferred shall be maintained throughout the duration of this Service Agreement by the Company in accordance with the terms of the Service Specification unless the Council authorises their destruction.]32

15.2 On termination of this Service Agreement the Company shall transfer to the Council all documents, files and records held by the Company for the purposes of the performance of the Services [including, without limitation, the information provided by the Company to the Council in accordance with Clause 15.1].

15.3 The Company shall provide to the Council and shall have access on request to documents, files and records and the like in the possession of, or available to the Company in relation to this Service Agreement, provided that the provisions of any Laws are complied with. The Company shall retain such documents files and records for such period as the Council shall specify and in the absence of any specification for a period of no later than [ten (10)]33 years following termination or expiry of the Service Agreement.

15.4 For the purpose of the examination and certification of the Council’s accounts and/or for the purposes of any examination of the economy, efficiency and effectiveness with which the Council has used its resources, the District Auditor may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Company and may require the Company to produce such oral or written explanations as he considers necessary.

15.5 In the event that the Company is permitted to use Sub-contractors to carry out the Services (pursuant to Clause 10.5.2(v)), the Company shall provide and shall procure that its Sub-Contractors shall provide such information as the Council may require from time to time to enable it to meet its obligations to provide reports and returns pursuant to regulations, directions or guidance applicable to the Council or as required by external agencies.34

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32 WF to confirm acceptability of period or specify a shorter or longer period.

33 Are there any such documents to be transferred?

34 WF to consider if it requires these additional protections.
15.6 The Council shall provide to the Company and the Company shall have access on request to documents, files and records and the like, in the possession of or available to the Council in relation to this Service Agreement, provided that the provision of any law are complied with.

15.7 For the purposes of Clause 15 documents, files and records means documents, files and records held in any form.

16 Confidentiality

16.1 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Service Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

Permitted disclosure

16.2 Paragraph 16.1 shall not apply to:

16.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Service Agreement for the performance of those obligations;

16.2.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause;

16.2.3 any disclosure to enable a determination to be made under the dispute resolution procedures as set out in Clause [***] of this Service Agreement or in connection with a dispute between the Company and any of its Sub-contractors;

16.2.4 any disclosure which is required pursuant to any Law or Parliamentary obligation placed upon the party making the disclosure;

35 These provisions have been made up to date and deal with likely and necessary exceptions not referred to in the original draft.
16.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

16.2.6 any provision of information to the parties’ own professional advisers or insurance advisers to enable the party to carry out its obligations under this Service Agreement;

16.2.7 any disclosure by the Council of information as may be required to:

(i) any proposed new contractor, its advisers and lenders, should the Trust decide to retender this Agreement; or

(ii) any person in connection with the operation of Clause 8 (Benchmarking) of this Service Agreement;

16.2.8 any disclosure for the purpose of the examination and certification of the Council's or the Company's accounts;

16.2.9 (without prejudice to the generality of Clause 16.2.4 above) compliance with the FOIA; or

16.2.10 disclosure to the extent required pursuant to Clause 15 (Documents), provided that, to avoid doubt, neither Clause 16.2.4 nor Clause 16.2.9 above shall permit disclosure of Confidential Information otherwise prohibited by Clause 16.1 where that information is exempt from disclosure under section 41 of the FOIA.

Announcements

16.3 Unless otherwise required by any Law or any regulatory or governmental authority (but only to that extent), neither party shall make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information without the prior written consent of the other party (which shall not be unreasonably withheld or delayed).
17 **FOIA and Data Protection**

17.1 The Company acknowledges that the Council is subject to the requirements of the FOIA and shall facilitate the Council’s compliance with its information disclosure requirements pursuant to the same, in the manner provided for in Clauses 17.2 to 17.5.

17.2 Where the Council receives a request for information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such request for information that it receives and the Company shall:

17.2.1 provide the Council with a copy of all such requested information in the form that the Council requires as soon as practicable; and

17.2.2 provide all necessary assistance as reasonably requested by the Council in connection with any such required information, to enable the Council to respond to a request for information within the time for compliance.

17.3 The Company shall transfer to the Council any request for information received by the Company as soon as practicable.

17.4 The Company acknowledges that (notwithstanding the provisions of Clause 17) the Council may be obliged under the FOIA, to disclose information concerning the Company relating to the Service Agreement in certain circumstances without consulting with the Company;

17.5 The Company shall:

17.5.1 comply with its obligations under the Data Protection Act 1998 (including where appropriate giving notification to the Information Commissioner thereunder) and the Computer Misuse Act 1990 and the Human Rights Act 1998 insofar as the performance of the Services and the other requirements of this Service Agreement give rise to obligations under those Acts; and

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36 These provisions have been made up to date and deal with likely and necessary exceptions not referred to in the original draft.
17.5.2 notify changes to the registerable particulars and take such other steps as may be necessary to afford the Council access to information which is required by the Council in connection with any of its statutory duties and responsibilities and for any purpose connected with this Service Agreement.

17.6 To the extent that any of the data, materials and documents referred to in this Clause 17 are generated by or maintained on a computer or similar system, the Company shall use all reasonable endeavours to procure for the benefit of the Council, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Council or its nominee to access and otherwise use (subject to the payment by the Council of the relevant fee, if any) such data. As an alternative, the Company may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format.

17.7 The Company shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in Clause 17.6. Without prejudice to this obligation, the Company shall submit to the Council's Representative for approval its proposals for the back-up and storage in safe custody of such data, materials and documents and the Council shall be entitled to raise obligations and suggest alternative methods.

17.8 [The Company undertakes to the Trust that it shall comply with the obligations of a "data controller" under the provisions of the Seventh Data Protection Principle as set out in Schedule 1 of the Data Protection Act 1998.]37

17.9 Neither party shall knowingly do anything which places the other in breach of its respective obligations under the Data Protection Acts 1998, Human Rights Act 1998 or the FOIA.

37 Additional warranties could be included to give WF further protection. How sensitive is this issue to WF? Could it be policed through WF’s involved in the JV?
18  **Intellectual Property Rights and Information Technology**

18.1 The Council shall be the owner of all Intellectual Property Rights in existence at the Transfer Date or which may come into existence during the Operational Period in any material created in relation to the performance of the Services under this Service Agreement which is created by the Company and for the avoidance of doubt this shall include the copyright and ownership of plans, drawings and other documents provided for the purposes of this Service Agreement.\(^{38}\)

18.2 The Company shall be entitled to reproduce plans drawings and designs created by the Building Services Division and/or the Company subject to the limits of any licences and to acknowledging the Council's ownership of the Intellectual Property Rights and to ensuring that the Council's rights are not in any way prejudiced by such reproduction and the Company hereby agrees to indemnify the Council against any losses, claims, demands, expenses, damages or other liabilities which may arise out of the use by the Company of such material.

18.3 The Company shall make available to the Council free of charge (and hereby irrevocably licences the Council to use) all Project Data that might reasonably be required by the Council and the Company shall ensure that it obtains all necessary licences, permissions and consents to ensure that it can make the Project Data available to the Council on these terms, for the purposes of:

18.3.1 the Council carrying out its duties under this Service Agreement and/or any statutory duties which the Council may have; and

18.3.2 following termination of this Service Agreement, the carrying out of services the same as, or similar to, the Services Operations,

and in this Clause “use” shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term “the right to use” shall be construed accordingly.

18.4 [The Company:

\(^{38}\) This may need to be expanded to expressly refer to the “EC Harris” software. Details have been requested of this by M&R from WF (Paul Humphreys) to assist drafting.
18.4.1 hereby grants to the Council, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Service Agreement or upon or at any time following termination of this Agreement) licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights which are or become vested in the Company; and

18.4.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in Clause 17.8 above to the Council.]39

Claims

18.5 Where a claim or proceeding is made or brought against the Trust which arises out of the infringement of any rights in or to any Intellectual Property Rights (other than any Disclosed Data) or because the use of any materials, Plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Trust otherwise than in accordance with the terms of this Agreement, Project Co shall indemnify the Trust at all times from and against all such claims and proceedings.

19 Accounts and Reports

19.1 The Council, and the Company shall each keep proper accounts of all receipts and payments made in connection with the Services and each shall permit the other to inspect such accounts at any reasonable time.

19.2 The Company shall prepare and submit to the Council reports of the work it has undertaken and any other information reasonably required by the Council in connection with the carrying out of work for the Services and attend such meetings as the Council shall require at such intervals and at such times as the Council may

39 WF to confirm if it requires these rights and if they should be at no cost, (as obliged).
request from time to time being no more frequent than once a month and, in the
absence of any request, at least once every six (6) months\textsuperscript{40}.

19.3 If requested to do so by the Council, the Company shall provide the Council with any
relevant information in connection with any legal inquiry, arbitration or court
proceedings in which the Council may become involved or any relevant investigation
or disciplinary hearing internal to the Council and through the appropriate officers or
employees shall assist in such investigations and if required give evidence in such
inquiries or proceedings or hearings.

20 \textbf{Indemnities}\textsuperscript{41}

20.1 Without prejudice to any other indemnity given by the Company to the Council in this
Service Agreement the Company shall be responsible for and shall indemnify the
Council against any and all claims, demands and liabilities incurred by the Council in
connection with the Services arising after the Transfer Date which arise as a result of
any act, neglect or default of the Company or its employees, agents or sub-
contractors provided that:

20.1.1 such indemnity should only apply to the extent caused or contributed to by
acts, neglect or omissions of the Company;

20.1.2 the Council is allowed to conduct and/or settle all litigation and
negotiations resulting from such claims subject to the reasonable
requirements of the Council;

20.1.3 the Company takes reasonable steps to mitigate its losses arising from
such claim; and

20.1.4 the Company gives the Council all reasonable assistance in connection
with such claim.

20.2 [Subject to the Company self insuring against any risk to a limit notified to the Council
from time to time]\textsuperscript{42}. [The Company shall take out and prove to the Council that it has

\textsuperscript{40} Are these time periods acceptable to WF?

\textsuperscript{41} It has been agreed that the Council will not indemnify the Company. NPS is currently drafting warranties for WF review.
the benefit of all insurances necessary to reflect the terms of any indemnity given in this Service Agreement and any liability for failure to provide the Services or carry out any of its other obligations under this Service Agreement and, in particular, shall take out Professional Indemnity Insurance covering any liability arising out of the provision of the Services with an indemnity limit of £5,000,000 in respect of any one occurrence or series of occurrences arising out of any one event until at least the expiry of six years from the date of the last Services performed.]43

21 Service Performance Failure

21.1 In the event that the Council considers that the Company is at any time failing to deliver the Services in accordance with the terms of this Service Agreement (including, without limitation, Clause 5) and in accordance with Schedule 2 (Service Specification), in particular, Appendix 6 ([Service Level Agreements] and Appendix 9 (KPIs Performance Measurement), then without prejudice to its rights in Clause 23 (Termination) the Council may:

21.1.1 require the Managing Director of the Company to attend such meetings as the Council shall arrange to discuss the failings in the delivery of the Services and agree a plan for improvement in the delivery of the Services;

21.1.2 require the Company to implement any plan agreed with the Managing Director for improvement in the delivery of the Services44;

21.1.3 require [NPS/Property Services [Shareholder in NPS London]45 to immediately call an Extraordinary Board Meeting of the Company at which the sole item on the agenda will be the assessment of the quality or

42 Is WF content that the Company may self insure?

43 Are insurance advisers going to consider the type and level of insurance which should be taken out by NPS London? This is particularly important if there are no guarantees from the WPS Group and NPW London has no other assets. Also query how the cost of insurance affects profit/discount to WF.

44 Does WF require the right to set a ?? for completion of the agreed plan with there being a right to termination for the Council if this is not achieved? If desired NPS may seek a similar right under Clause 21.2.2.

45 See footnote 1 on front page of Service Agreement.
service performance failing of the Company and proposals for an improvement action plan.

21.2 In the event that the Company considers that the Council is failing to meet its obligations under the terms of this Service Agreement, without prejudice to its rights in Clause 23 (Termination) the Company may:

21.2.1 require the Council’s Representative, [its executive portfolio holder and any other appropriate officer of the Council]46 to attend such meetings as the Company shall arrange to discuss the failures to meet the obligations of the Council and to agree a plan for improvement;

21.2.2 require the Council to implement any plan agreed with the Company for improvement in the delivery of the Services;

21.2.3 call an Extraordinary Board Meeting of the Company at which the sole item on the agenda of such meeting will be the assessment of the Council’s failures and proposals for an improvement action plan.

22 Dispute Resolution47

22.1 In the case of a dispute arising under Clause 10, the provisions of Clause 22.3 shall immediately apply, in relation to all other disputes, complaint, difficulties or problems (hereinafter actively known as “Disputes”) between the Company and the Council such matter will initially be raised between the Managing Director of the Company and the Council’s Representative.

22.2 If a Dispute cannot be resolved by the persons referred to in Clause 22.1 then the Dispute will be referred the appropriate director of the Company and an [appropriate head of service] of the Council.48

22.3 In the event that a Dispute cannot be resolved in accordance with Clause 10.6.5 or Clause 22.1 (as the case may be), in order to overcome where possible the causes

46 Is this acceptable to WF?

47 WF to consider and process to be discussed with M&R.
of Disputes and in those cases where disputes are likely still to arise to facilitate their clear definition and early resolution (whether by agreement or otherwise) the following procedure shall apply for the avoidance and settlement of Disputes.

22.4 Notwithstanding the existence of a Dispute, unless this Service Agreement has already been determined or abandoned the parties shall continue to perform their obligations.

22.5 Mediation

22.5.1 Any party may at any time before the service of a Notice of Adjudication pursuant to Clause 22.6 or a Notice to Refer (Arbitration) pursuant to Clause 22.7 by notice in writing seek the agreement of the others for the issue to be considered by the Royal Institution of Chartered Surveyors Dispute Resolution Service to mediate.

22.5.2 If the other party agrees to a mediation procedure any recommendation of the mediator shall be deemed to have been accepted as finally determining the issue by agreement so that the matter is no longer in dispute unless a Notice of Adjudication under Clause 22.6 or a Notice To Refer under Clause 22.7 has been served in respect of that issue not later than one month after receipt of the recommendation by the dissenting party.

22.5.3 All matters and information placed before a mediator pursuant to a reference under Clause 22.5.1 shall be deemed to be submitted without prejudice and the mediator shall not be called as a witness by the parties or anyone claiming through them in connection with any adjudication arbitration or other legal proceedings arising out of or connected with any matter so referred to him.

22.6 Adjudication

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48 Is this reference to a Council member sufficiently clear? WF to consider.

49 Is WF content with this body as a forum?
22.6.1 Subject to Clause 22.5.1, each of the parties has the right to refer an issue as to a matter under this Agreement for adjudication and either party may give notice in writing (“the Notice of Adjudication”) to the other of its intention so to do. The adjudication shall be conducted by the Royal Institution of Chartered Surveyors Dispute Resolution Service.

22.6.2 Unless the adjudicator has already been appointed he is to be appointed by a timetable with the object of securing his appointment and referral of the dispute to him within seven (7) days of such Notice of Adjudication.

22.6.3 The adjudicator shall reach a decision within twenty eight (28) days of referral or such longer period as is agreed by the parties after the issue has been referred.

22.6.4 The adjudicator may extend the period of twenty eight (28) days by up to fourteen (14) days with the consent of the parties.

22.6.5 The adjudicator shall act impartially.

22.6.6 The adjudicator may take the initiative in ascertaining the facts and the law.

22.6.7 The decision of the adjudicator shall be binding until the issue is finally determined by arbitration or by agreement of the parties.

22.6.8 The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator is similarly not liable.

22.7 Arbitration

22.7.1 All Disputes arising under or in connection with this Service Agreement other than failure to give effect to a decision of an adjudicator shall be finally determined by reference to arbitration. The party seeking
arbitration shall serve on the other parties a notice in writing (the “Notice to Refer”) to refer the dispute to arbitration.

22.7.2 Where an adjudicator has given a decision under Clause 22.6 in respect of the particular Dispute, the Notice to Refer must be served within three (3) months of the giving of the decision otherwise it shall be final as well as binding.

22.7.3 The arbitrator shall be a person appointed by agreement of the parties.

22.7.4 If the parties fail to appoint an arbitrator within one (1) month of any party serving on the other parties a notice in writing (the “Notice to Concur”) to concur in the appointment of an arbitrator the dispute shall be referred to a person to be appointed on the application of any party by the President for the time being of the Royal Institution of Chartered Surveyors.

22.7.5 If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one (1) month of the vacancy arising fill the vacancy then any party may apply to the President for the time being of the Royal Institution of Chartered Surveyors to appoint another arbitrator to fill the vacancy.

22.7.6 In any case where the President for the time being of the Royal Institution of Chartered Surveyors is not able to exercise the functions conferred on him by this Clause the said functions shall be exercised on his behalf by a Vice-President for the time being of the said Institution.

22.7.7 Any reference to arbitration in this Service Agreement shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force. The arbitration shall be conducted by the Royal Institution of Chartered Surveyors Dispute Resolution Services. The arbitrator shall
have full power to open up review and revise any decision, opinion, instruction, direction, certificate or valuation of an adjudicator.

22.7.8 Neither of the parties shall be limited in the arbitration to the evidence or arguments put to any adjudicator pursuant to Clause 22.5.

22.7.9 The award of the arbitrator shall be binding on all parties.\(^53\)

23 Termination and Review

23.1 This Service Agreement shall terminate automatically on [28 February 2017] unless terminated either (in whole or in part) in accordance with the provisions of Clause 23 and any other relevant provision of this Service Agreement.

23.1.1 If the Company or where applicable any director appointed by NPS Property Consultants:

(i) commits a substantial breach of any of the Company’s obligations under this Service Agreement;

(ii) changes the Company’s structure in a way which in the opinion of the Council adversely affects the ability of the Company to discharge its obligations under this Service Agreement;

(iii) has any director or senior manager of it convicted of dishonesty;

(iv) becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal for voluntary arrangements for a composition of debts, or any scheme or arrangement approved in accordance with the Insolvency Act 1986;

(v) has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;

\(^{53}\) There would be no further right to appeal. Is this acceptable?
(vi) has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

(vii) has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

(viii) has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed;

(ix) has possession taken by or on behalf of the holders of any debenture secured by a floating charge or any property comprised in or subject to the floating charge;

(x) is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver, manager, and administrator or and administrative receiver, or which entitle the Court to make a winding-up order;

then in any such circumstances the Council may (if it so decides) exercise the rights described in Clause 23.7.1.

23.2 If there is or has been any act, omission or failure by the Company, its employees, Sub-contractors or agents in the performance of the Company’s obligations under this Service Agreement which in the opinion of the Council [materially/significantly] delays or interrupts or prevents the performance of the Services required under this Service Agreement in accordance with the terms of the Service Agreement and any standard and/or performance target specified in this Agreement (including Schedule 2 (Service Specification), the Council shall be entitled (if it so wishes) to exercise the rights described in Clause 23.7.1.

23.3 If any review held under Clause 3.2 or Clause 8 concludes that the Services did not deliver Best Value in any review period the Council shall be entitled (if it so wishes) to exercise the rights described in Clause 23.7.1.

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54 It is difficult to categorise the meaning of “significantly”. However, I have suggested “materially” rather than “significantly” as it is a more usual provision and its meaning is tried and tested. To be discussed.
23.4 In the event that Norfolk County Council is the ultimate parent company of the Company and Norfolk County Council is re-categorised under the Comprehensive Performance Assessment as a “weak” or “poor” (or any similar category in any similar test applied to local authorities from time to time) and is not further re-categorised within 12 months of the date of being categorised as “weak” or “poor” (or any similar category in any similar test applied to local authorities from time to time) the Council shall be entitled (if it so wishes) to exercise the rights described in Clause 23.7.2.

23.5 In the event that the Council has:

23.5.1 required the Company to implement any plan agreed pursuant to Clause 21.1.2, but where the Company has failed to fully implement the plan within the timescale agreed by the parties; and/or

23.5.2 required the Company to implement a plan pursuant to Clause 21.1.2 on [two (2) or more occasions in any twelve (12) month period throughout the Operating Period\(^55\), where such plans are as a result of non performance by the Company, resulting in a failure to meet any of the Key Performance Indicators contained at Appendix 9 to Schedule 2 (Service Specification)\(^56\);

23.5.3 the Council shall be entitled (if it so wishes) to exercise the rights described in Clause 23.7.2.

23.6 In the event that the Council elects to require [NPS Property Services] to serve notice on the Council of an Obligatory Transfer Event (as such term is defined in the Shareholders Agreement) pursuant to paragraphs 2.3 and/or 2.4 of the Shareholders Agreement, the Council shall be entitled (if it so wishes) to exercise the rights described in Clause 23.7.2.

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\(^{55}\) This is a proposed escalation process. I have linked 23.5.2 to plans which arise from poor performance under Schedule 2 (Service Specification) only. WF could not then simply engineer new plans to trigger termination. The number of events needs to be considered by WF. What is a reasonable position? WF may wish for another process to replace this. For discussion. This approach is consistent with Mike Britch requiring time to put right before termination can take place.

\(^{56}\) WF/Paul Humphries to confirm if either areas of Schedule 2 need to be referred to here.
23.7 In the event of any one or more of the events described in Clauses 23.1 to 23.6 the Council may:

23.7.1 in the case of the events referred to in Clauses [23.1, 23.2 and 23.3], first serve notice of an event of default on the Company requiring remedy of the default within twenty eight (28) days or such time as is agreed between the parties, and if the Company fails to remedy the default within the required time, take any or all of the following actions referred to in Clauses 23.7.3 to 23.7.5;

23.7.2 in the case of the events referred to in Clauses [23.5 and 23.6], immediately take any or all of the actions referred to in Clauses 23.7.3 to 23.7.5;

23.7.3 either provide itself or procure the provision of the whole or the relevant part of the Services until such time as (if at all) the Company shall demonstrate to the satisfaction of the Council that the whole or such part of the Services will be once more provided by the Company in accordance with the provisions hereof;

23.7.4 without determining the whole of this Service Agreement terminate forthwith the relevant part of the Services only and thereafter itself provide or procure a third party to provide such part of the Services; or

23.7.5 determine the whole of this Service Agreement forthwith.

23.8 In the event that the Council is re-categorised under the Comprehensive Performance Assessment as a weak or poor and is not further re-categorised within 18 months of the date of being categorised as a weak or poor the Company shall be entitled (if it so wishes) to determine the whole of this Service Agreement forthwith.

[Query whether inability of WF to trade should (i) permit termination of (ii) prevent NPS offering services to third parties]

23.9 On termination of this Service Agreement:

57 There is no additional time for remedy for these events of default. This is because remedial plans for prior defaults have been permitted before escalation to termination for these grounds.
23.9.1 the Council shall have the option to purchase any equipment, materials, vehicles, fittings, office furniture, loose tools and other materials used by the Company for the purpose of providing the Services at a fair value determined as between a working vender and a willing purchaser to be agreed between the parties or if the parties fail to agree determined pursuant to Clause 22 (Dispute Resolution). Any such items shall be acquired by the Council fee from any security interest with full title guarantee;

23.9.2 the Company shall deliver to the Council the information required in Clause 10.5.2.

23.10 On completion of the acquisitions required by Clause 23.9 (except in so far as any of the requirements of that Clause may be waived by the Council), this Agreement shall terminate and, save as provided in Clause 29 (Continuing Obligations), all rights and obligations of the Council and the Company under this Service Agreement shall cease and be of no further force and effect.

24 **Force Majeure**

24.1 Neither the Council nor the Company shall be liable for any failure or delay in performance of this Service Agreement that is caused by circumstances beyond the reasonable control of a party, provided always that such party affected by the event of Force Majeure takes all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement and resumes performance of its obligations affected by the event of Force Majeure as soon as practicable following cessation and or alleviation of the relevant event of Force Majeure.

25 **Waiver**

25.1 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
26 **Cumulative Remedies**

26.1 Termination of this Service Agreement shall not affect any rights of any of the parties accrued up to the date of terminations and the provisions of Clause 29 (Continuing Obligations) will apply following termination.

26.2 All rights granted to any of the parties shall be cumulative and no exercise by any of the parties of any right under this Service Agreement shall restrict or prejudice the exercise of any other right granted by this Service Agreement or otherwise available to it.

27 **Severance**

27.1 If any provision of this Service Agreement shall be prohibited by law or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed from this Service Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Service Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Service Agreement.

28 **Contracts (Rights of Third Parties) Act 1999**

28.1 A person who is not a party to this Service Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of that Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce or be enforced against any of the obligations of the Service Agreement.

29 **Continuing Obligations**

29.1 Save as otherwise expressly provided in this Agreement, termination of this Agreement shall not affect the continuing rights and obligations of the Company and the Council under Clauses (or parts of Clauses (as the case may be)) 10 (Employees), 15 (Documents), 16 (Confidentiality), 17 (FOIA Data Protection), 17 (FOIA), 18 (Intended Property), 20 (Indemnity), 22 (Disputes), 23.9 and 23.10 (Termination) and 30 (Notices).
30. Notices

30.1 Any notice given under this Service Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or by sending it by prepaid recorded delivery or special delivery to the address and for the attention of the relevant person set out in Clause [30.2] (or as otherwise notified by that party). Any such notice shall be deemed to be received:

30.1.1 If delivered personally, at the time of delivery

30.1.2 In the case of recorded delivery or special delivery, 2 working days after the date of posting

Provided that if deemed receipt occurs before 9.00am on a Business Day the notice shall be deemed to have been received at 9.00am on that day and if deemed receipt occurs after 5.00pm on a Business Day the notice shall be deemed to have been received on the next Business Day.

30.2 The addresses of the parties for service of notices are as follows:

The Council:

Town Hall, Forest Road, Walthamstow, London E17 4JF

for the attention of the Chief Executive

The Company:

address NPS [London]

for the attention of The Managing Director

Or such other addresses and/or named representatives as may be notified in writing from time to time by the relevant party to the other party.

30.3 For the avoidance of doubt notice under the Service Agreement shall not be validly served if sent by fax or email.

---

58 To be confirmed by WF.
31 **Entire Agreement and Governing Law**

31.1 This Service Agreement (and any deeds and documents made consequential to it) constitutes the entire contract between the parties and may be varied or modified only in writing by the parties stating that this Service Agreement is varied in the manner specified.

31.2 This Service Agreement shall be governed by and construed in accordance with the law of England and Wales, and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** whereof the parties hereto have executed this document as a deed on the date stated at the head of this Service Agreement:
Schedule 1

Employee Information
Schedule 2

Service Specification
Schedule 3

Warranted Information
Schedule 4

[Bonus Plan] 59

59 There is a reference to a Bonus Plan on the meeting note of Chan Badrinath and Mike Britch. Is this to be documented in the Service Agreement. To be discussed.
Schedule 5

[Lease/License]
The Common Seal of

The London Borough of Waltham Forest

was hereunto affixed in the presence of:

Authorised Officer

Executed as a deed by

NPS [London] Limited

acting by two Directors/

one Director and the Company Secretary

Director

Director/ Company Secretary
PROVISION OF DESIGN, PROPERTY MAINTENANCE
AND ASSOCIATED SERVICES

by

NPS LONDON

for

LONDON BOROUGH OF
WALTHAM FOREST

SERVICE SPECIFICATION
&
COMMISSIONING FRAMEWORK

Document History

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Authorisation

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<td></td>
<td>Keith Flaherty</td>
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<td></td>
<td>Paul Humphreys</td>
<td>Client</td>
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Reviewed by

Approved by

Project Board
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1. **Introduction**

1.1. This Service Specification sets out the standards to which work commissioned from NPS London by London Borough of Waltham Forest ("the Council") will be performed. It forms an essential part of the Agreement between The Council and NPS London for the provision of design, property maintenance and associated services.

1.2. This Service Specification forms part of a suite of documents that together provide the contract documentation between the Council and NPS London for the provision of services.

1.3. The Document Map at Appendix 1 sets out the suite of documents.

1.4. For the purposes of this Service Specification, work commissioned by the Council shall include work commissioned for all the Council's departments and its partner organisations including schools for whom the Council provides services. Partner organisation may approach NPS London directly to commission work otherwise than through the Council.

1.5. NPS London, will undertake work commissioned by the Council efficiently and effectively and at all times and all respects in accordance with the standards set out in this Service Specification. In addition NPS London will carry out all such work in accordance with the NPS London Customer Care Policy.

1.6. NPS London will not sub-contract work to any other person or company unless authorised to do so in writing by the Client Officer.

1.7. If NPS London do not have the resources or expertise to undertake a commission, regardless of which schedule of work the commission arises from, then LBWF will have the right to place the work with another service provider.

1.8. NPS London may resource work commissioned to it by LBWF from staff/teams employed within other parts of the NPS group of companies.

2. **Innovation, Efficiency and Cost Reduction**

2.1. NPS London and the Council will work in partnership with the shared aim of reducing the Council's property related costs, both in new build and maintenance and for NPS London to be a successful trading organisation.

2.2. Both parties will seek to deliver innovative solutions that will assist the Council in its journey on becoming an excellent local authority.

2.3. NPS London will manage all works on behalf of the Council to ensure the Council receives the maximum value for money and cost effectiveness.

3. **Quality**

NPS London has received ISO 9001:2000 accreditation for Architectural, Quantity Surveying, Mechanical and Electrical Engineering, Structural
Engineering, CDM and Property and Surveying Services. London Borough of Waltham Forest expects all services to be provided in accordance with the requirements of the relevant professional bodies.

NPS London shall seek to continuously improve the quality of service through client care questionnaires, benchmarking exercises during years 4 and 7 of the partnership, post implementation reviews and the Performance Management Framework set out in this Service Specification.

NPS London shall co-operate with and assist the Council fully in relation to any relevant service reviews undertaken by the Council and/or Audit Commission including, but not limited to, those related to Best Value, audit and/or comprehensive performance assessments by means of the provision of information or by such other appropriate means.

NPS London shall liaise with other agencies, bodies and organisations as appropriate.

NPS London will at all times ensure that sufficient resources are available to undertake work commissioned under this contract at all times and in all respects in accordance with this Service Specification.

NPS London shall give every assistance to the Council in relation to its strategic and statutory role with particular regard to the following:

Preparation of delivery plans, performance plans, business plans and/or funding applications;

Provision of relevant service, statistical and/or financial information required to complete statutory returns;

Development of the Council’s corporate and strategic objectives for its services, including spending plans.

4. Client Side Arrangements

The Council will nominate the Head of Property Services (Corporate Property Officer) as the Client Officer who will represent it in relation to the overall performance of NPS London within the terms of the Service Specification. The Client Officer will ensure that the Council is at all times advised on its responsibilities under the contract with NPS London.

The Managing Director of NPS London will be responsible for the overall performance of NPS London in respect of this agreement. A schedule of names and contact numbers of senior staff within NPS London should be provided at the commencement of the contract and updated as changes occur through the contract period.

The Client Officer and the Managing Director of NPS London, together with such other persons as they shall nominate will meet on a quarterly basis to review NPS London performance under this Agreement and any other appropriate matters.

There shall be an annual meeting between the parties to review the performance of NPS London over the previous year and to discuss the estimated workload for the year to come.
The Council will ensure that sufficient resources are made available to the Client Officer to undertake the responsibilities set out in the partnership documentation.

5. **CDM**

The Council will maintain overall responsibility as the “Client” under CDM Regulations.

6. **Contact with Council Members**

NPS London shall liaise with Council Members, Members of Parliament and other elected representatives in such a manner as shall be reasonably required from time to time by the Council. NPS London will not liaise with Members etc. unless directly authorised to do so.

If required to do so NPS London staff will attend meetings with councillors, Members of Parliament, partner organisations and the Public and assist with or give presentations as appropriate.

7. **Conflicts of Interest**

NPS London will put in place such measures as the Council may require from time to time to ensure that conflicts of interest between the Council and other clients of NPS London are avoided and will inform the Council at the earliest possible opportunity of any situation where such conflicts might arise. Where any such situations arise NPS London will allow the Council to inspect any relevant documentation to ensure that any measures are being adhered to.

8. **Schedule of Work (see Appendix 5)**

The schedule of work sets out the areas and types of work that will be provided to NPS London during the partnership period.

Schedule 1a includes all work currently commissioned from the Council’s Building Consultancy division. All work across the Council in this schedule will be commissioned from NPS London.

Schedule 1b includes work that currently would not be commissioned from NPS London but undertaken by consultants, other contractors or undertaken by short contract staff within the Council. All new work in this category will be commissioned from NPS London. If appropriate, existing projects may be commissioned from NPS London but in most cases existing projects will continue to be resourced through the staff, consultants etc. that are currently undertaking the work until the project is complete.

Schedule 2 includes work that may be required by the Council as part of a project, but where the project has attracted external funding which requires all contracts to be tendered. In this case NPS London will in all cases be asked to tender on the same basis as other potential suppliers.

Schedule 3 includes work that is undertaken on or involves Council funding or property assets, but owing to pre-existing contractual arrangements (e.g. with Ascham Homes) or through central government regulation (e.g. LMS), the Council cannot influence or control the commissioning of these services.
In these cases the Council will promote the use of NPS London, or recommend that the tender list include NPS London.

Schedule 4 contains a summary of the quantum of work in the different categories in the schedules in the Council’s financial year 2006/2007.

9. **Commissioning Procedures**

All commissions/instructions for work must be made in accordance with the Protocols as defined in para. 10.1 below. The commissioning process will initially be managed through the use of the Project Delivery System (PDS). This bespoke system allows commissions to be managed, monitored and reported on to ensure that quality procedures are adhered to by NPS London. The system is web based and will provide clients with online access to information and real time reporting.

All commissioned work will be the subject of an order raised in SAP (or such other financial system that the Council shall from time to time use). Each order will have a unique order number, which shall be used by both parties to identify the item of work.

The Council will identify nominated officers within the client side (Property Services) and in specialist work areas e.g. Children’s Services who can access the system and create new commissions. The parties will work together to use the system to its full capacity and gain the most benefit.

In the event that a more appropriate or cost effective commissioning system is identified the parties will agree how to introduce and implement such a system.

10. **Protocols**

The commissioning of work by the Council will be governed by Protocols (“Protocols”). The existing protocols are set out in the Appendix 2 to this specification. New protocols will be developed by and agreed between the partners and each partner agrees to comply with the provisions of those Protocols. The Protocols will be revised from time to time by agreement between the partners and any such revised Protocol will form part of this Service Specification in substitution for its predecessor.

The commissioning procedure and protocols for each area of work are attached at Appendix 2.

11. **Service Level Agreements (SLA’s)**

Service Level Agreements for all types of work are set out in the appendix 6 to this specification.

NPS and The Council will keep these SLA’s under review and will agree updating as appropriate.

Individual SLA’s for each type of work are attached at Appendix 6

12. **Documentation and Information**

All documents and information remain the property of LB Waltham Forest, and will be made available to the Council by NPS London at any time with reasonable notice. Reasonable notice shall not be more than 3 working days
in the case of paper-based documents and information or 2 days in the case of electronically held documents and information.

NPS London shall use standard and consistent documentation as required by the quality assurance schemes set out in this service specification and by the Council.

NPS London shall only use Information Systems compatible with the Council’s Standards

Copyright in all documents and drawings prepared by NPS London and in any works executed from those documents and drawings shall remain with the Council or be assigned by NPS London to the Council.

NPS London shall inform the Council at the earliest opportunity of any matter of which it becomes aware, which would have a significant impact on the Council’s assets or services.

NPS London shall inform the Council at the earliest opportunity of any matter of which it becomes aware which would prevent it from carrying out the services in accordance with this Service Specification.

NPS London will provide information to the Council as required in order to assist in the response to a request under the Freedom of Information Act.

13. Fee Schedules

NPS London fees and charges for work commissioned through the Council will be calculated as detailed in the fee Schedule at Appendix 3, and invoices will be submitted to the Council on a monthly basis in accordance with this Service Specification.

14. Financial and Legal Framework

NPS London will at all times ensure that all NPS London staff are aware of the Council’s Constitution.

NPS London will comply with the Council’s Constitution in so far as it relates to the services provided by NPS London under this Service Specification.

All contracts for goods or services will be prepared, tendered (as appropriate) and authorised in accordance with the Council’s Constitution.

Where necessary to comply with the Council’s Constitution, legal formalities on individual contracts will be undertaken by the Council’s Head of Legal Services.

15. Placing Works Orders/Contractor Payments

The Council’s Property (client) team will raise all orders for property construction or maintenance work (or any other related activity) to be placed with any contractor or supplier.

NPS will provide any information or assistance required by the Council in relation to the placing of orders for work on behalf of the Council and the processing of invoices submitted by contractors in respect of that work.

Invoices from contractors will be submitted to the Council’s Property (client) team. NPS will assist in checking contractors invoices as required to ensure:
Accurate payments are made
That payments are only made for works undertaken or goods received
That the quality of works or goods is as required
The Council uses SAP. NPS will ensure any information requested by the Client Officer is provided to the Council in a format that can easily be input to SAP.

If required to do so NPS London will train staff to enter information directly into SAP.

16. **Performance Standards**

NPS London will seek to achieve continuous improvement in the quality of its services by operating standard programmes of review and through benchmarking of performance and processes.

NPS London performance will be monitored against the Key Performance Indicators (KPI’s) referred to in the Appendix 9 to this Service Specification, which can be added to or deleted by the Council in consultation with NPS London as circumstances change.

17. **Key Performance Indicators**

Set out in Appendix 9 are the agreed Key Performance Indicators that will be collected and monitored during the period of the partnership. These KPI’s will be reviewed regularly to ensure they are relevant and meet the requirements of the Council for the management of construction and maintenance property resources and the services related to them.

NPS London will collect all data required to report fully on its performance against the KPI’s and will provide the Council with a report (in a format to be agreed) on a quarterly basis. At the end of each year, NPS London will amalgamate the information for all 4 quarters during that year and provide a consolidated annual report.

The quarterly and annual reports will set out performance against the agreed targets, and will, as the contract progresses and in particular after the first year, show performance in previous quarters and years.

In areas where performance is below the standard set out in the Service Specification (or as subsequently agreed) NPS London will advise the council of steps to be taken to improve performance so that it meets the standards required in the Service Specification and NPS London will immediately implement such steps and improvements.

18. **Benchmarking**

In addition to the KPI’s set out above, NPS London will maintain membership of a benchmarking club approved by the Council and will provide data, and analyse performance in comparison to other members of the club. The current approved Club is the London Authorities Construction and Property Benchmarking Club (LA CPBC).

In addition to meeting the standards set out in the Service Specification, NPS will seek to ensure that in all areas its work for LBWF will be at a
standard of performance necessary to remain in the top quartile of London Boroughs.

In the 4th and 7th year of the partnership, NPS will undertake a full benchmarking exercise on the fee levels charged in comparison to other London Boroughs and similar Councils.

Fees charged to LBWF shall be set (through the benchmarking process) to a level at or below the average fee level enjoyed by comparative local authorities. In the event of the review indicating LBWF fees to be higher than the average then LBWF fee levels will be reduced to that average level. If fees are below the average they will remain as set.

Professional Competence

All work undertaken for the Council under this Service Specification by NPS London will be in accordance with the standards set by the relevant Professional Institutions, i.e. Royal Institute of British Architects, Royal Institution of Chartered Surveyors, Institute of Structural Engineers, Institute of Building Services Engineers, Chartered Institute of Building, Institution of Civil Engineers, and Institute of Occupational Safety and Health etc.

All members of NPS London staff shall be suitably qualified and experienced for the work undertaken by them in accordance with this Service Specification, and shall, where appropriate, follow a structured course of “Continuing Professional Development” where required by their Professional Institutions.

NPS London is committed to supporting the professional development of its employees and will be seeking to secure IIP accreditation as soon as possible.

Invoices

Invoices will be submitted (to the Council by NPS London) monthly in arrears. Invoices will clearly indicate the job name and SAP order number.

Invoices for hourly rated fees will clearly indicate the number of hours worked that are being invoiced for.

Invoices for part payment of lump sum or set fees will only be submitted once the appropriate fee point has been reached in the job unless otherwise agreed by the Client officer.

The Council shall seek to notify NPS London of any dispute of or related to an invoice within 14 days of receipt.

In the event that the parties cannot initially resolve the invoice dispute then the dispute resolution procedure will be used.

Diversity and Equality

The Council’s Diversity and Equalities vision is to make Waltham Forest a proud and prosperous borough where:

- All have an equal opportunity to participate and receive services according to their needs
- Individuals are respected and their contributions are valued
• Where people are proud to live, work and visit and
• Where cultural diversity is celebrated.

18.17 To achieve the above vision, the London Borough of Waltham Forest will:
• Promote equality of opportunity
• Oppose all forms of discrimination, intolerance and disadvantage
• Ensure our workforce reflects the diverse communities of Waltham Forest at all levels of the organisation
• Provide fair, appropriate, accessible and excellent services to all.

18.18 NPS London will endorse and support the Council’s vision, and will ensure that all work commissioned to it under this Service Specification is undertaken in accordance with the policies of the Council in respect to Diversity and Equality.

18.19 NPS London will ensure that its own Diversity and Equalities Policies are in accordance (and meet) the Equalities Standard for Local Government.
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Appendix 2

Protocols

Currently being finalised in partnership with NPS Property Services.
Fee Schedule

General:

Hourly rated fees will be reduced by 1% per annum (amounting to 10% over the life of the contract).

Hourly rated fees will be increased annually by the rate of increase attributable to pay awards, increases in National Insurance, etc.

The 1% annual reductions in fees will be applied to hourly rated fees after the annual increase has been added.
Appendix 4

DEFINITIONS

Commit to invest
Feasibility
Practical completion
Defects Liability period
Final Account
Procurement team
Council Constitution
Procedure rules
Dispute
Invoice
End of construction period
## Schedule of Work (Categories)

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<td><strong>Council Corporate</strong>&lt;br&gt;Additional work not previously commissioned to BC</td>
<td>Work that cannot be commissioned by the Council as it does not control the budget.</td>
</tr>
<tr>
<td>(b) Council Corporate&lt;br&gt;Additional work not previously commissioned to BC</td>
<td>Council Corporate&lt;br&gt;Additional work which has to be tendered for (funding rules etc.)</td>
<td>Children’s Services - Schools. (LEP/BSF)</td>
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<td>R&amp;M</td>
<td>R&amp;M</td>
<td>R&amp;M</td>
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<tr>
<td>Capital</td>
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<td>Capital</td>
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<td>Advice</td>
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<td>Advice</td>
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<tr>
<td>Adaptations</td>
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<tr>
<td>Renovations/ rants</td>
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<tr>
<td>Landscape</td>
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<td>Landscape</td>
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<tr>
<td>Civil Engineering</td>
<td></td>
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<tr>
<td>Planning Apps./ s106/Building Reg's.</td>
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<tr>
<td>Project Management</td>
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<tr>
<td>Employers Agent</td>
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<tr>
<td>Floor Space Planning</td>
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<td>Move Management</td>
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<tr>
<td>Condition Surveys</td>
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<tr>
<td>DDA Surveys</td>
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<tr>
<td>Asbestos Surveys</td>
<td></td>
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<tr>
<td>Fire Risk Assessments</td>
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</tr>
</tbody>
</table>
Appendix 6

Service Level Agreements

Currently being finalised in partnership with NPS Property Services.
Appendix 7

NPS London – Customer Care Policy

To recognise the importance of the customer to the success of the business by:

- Seeking a thorough understanding of the customer requirements.
- Striving to meet customer needs in an honest and professional way within agreed timescales.
- Responding to communications from clients without delay.
- Continually seeking customer views on the performance of NPS London.
- Maintaining systems to monitor customer care to ensure standards are maintained or improved wherever possible.
- Ensuring that all staff within NPS London are aware of the NPS London Mission Statement.
## Inventory

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gas powered Ford Fiesta</td>
<td>To be determined</td>
</tr>
<tr>
<td>EC Harris Software</td>
<td>LBWF Intellectual rights</td>
</tr>
<tr>
<td>Databases</td>
<td>Council Asset List</td>
</tr>
<tr>
<td></td>
<td>Cyclical service contracts</td>
</tr>
<tr>
<td></td>
<td>Term Contractors List including schedules of rates</td>
</tr>
<tr>
<td></td>
<td>Approved Contractors list</td>
</tr>
<tr>
<td>Council Constitution</td>
<td>Paper and electronic version</td>
</tr>
<tr>
<td>CAD drawings</td>
<td>Paper</td>
</tr>
<tr>
<td></td>
<td>Electronic</td>
</tr>
<tr>
<td>Project Files</td>
<td>Historic – how far back?</td>
</tr>
<tr>
<td></td>
<td>Current commissioned</td>
</tr>
<tr>
<td>Library</td>
<td>Books</td>
</tr>
<tr>
<td></td>
<td>Data</td>
</tr>
<tr>
<td></td>
<td>CD’s</td>
</tr>
<tr>
<td>Survey Equipment</td>
<td>Levels</td>
</tr>
<tr>
<td></td>
<td>Theodolite</td>
</tr>
<tr>
<td></td>
<td>Hand Helds</td>
</tr>
<tr>
<td></td>
<td>Electronic Measuring devices</td>
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<tr>
<td></td>
<td>Tapes</td>
</tr>
<tr>
<td></td>
<td>Torches</td>
</tr>
<tr>
<td></td>
<td>GPS equipment</td>
</tr>
<tr>
<td>Personal Safety</td>
<td>Site Hats</td>
</tr>
<tr>
<td></td>
<td>Jackets</td>
</tr>
<tr>
<td></td>
<td>Boots</td>
</tr>
<tr>
<td>Drawing equipment</td>
<td>Boards</td>
</tr>
<tr>
<td></td>
<td>Misc drawing equipment</td>
</tr>
<tr>
<td></td>
<td>CAD software</td>
</tr>
<tr>
<td></td>
<td>CAD hardware / plotters</td>
</tr>
<tr>
<td>Computers etc.</td>
<td>Hardware</td>
</tr>
<tr>
<td></td>
<td>Software</td>
</tr>
<tr>
<td></td>
<td>Peripherals</td>
</tr>
</tbody>
</table>
**Appendix 9**

**Key Performance Indicators**

A Key Performance Indicator (KPI) is the measure of performance of an activity that is critical to the success of an organisation.

Information, which enables KPI’s to be monitored, will be collected by NPS London and reported to the client. NPS London will put in place cost effective procedures for collecting, collating and reporting on KPI’s.

Set out in Schedule 1 below are the KPI’s that the Council wishes to monitor against agreed targets.

NPS will improve the target for each KPI annually.

No fees will be charges to the Council for the collection, analysis or reporting on KPI’s or of Benchmarking data, either quarterly, annually or at the contract benchmarking points.

**KPI Definitions**

<table>
<thead>
<tr>
<th>KPI</th>
<th>What it measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client satisfaction – product</td>
<td>Measures how satisfied the client was with the quality of the finished product. Usually measured at or shortly after completion and handover.</td>
</tr>
<tr>
<td>Client satisfaction – service</td>
<td>Measures how satisfied the client was with the service received during the project. Usually measured at or shortly after completion and handover.</td>
</tr>
<tr>
<td>Defects</td>
<td>Measures the degree to which the completed facility was free from defects. Usually measured at handover.</td>
</tr>
<tr>
<td>Predictability – cost</td>
<td>Measures how well out-turn costs compared with original estimates provided at the commit to invest stage.</td>
</tr>
<tr>
<td>Predictability – time</td>
<td>Measures how closely the project was delivered to the original timetable provided at the commit to invest stage.</td>
</tr>
<tr>
<td>Safety</td>
<td>A measure of the accident incidence rate. Includes accidents to own employees, subcontractors and members of the public</td>
</tr>
<tr>
<td>Environmental Impact - Process</td>
<td>Measures how satisfied the client was that the environmental impacts were controlled during the construction phase</td>
</tr>
<tr>
<td>Environmental Impact - Product</td>
<td>Measures how satisfied the client was that environmental impacts were taken into account in the finished product</td>
</tr>
<tr>
<td>Qualifications &amp; Skills</td>
<td>Measures the percentage of the workforce with formal qualifications to NVQ level or higher, including all technical &amp; professional qualifications</td>
</tr>
</tbody>
</table>
### 2007/08 KPI's and Targets

<table>
<thead>
<tr>
<th>KPI</th>
<th>Method of measurement for performance - data collected</th>
<th>Target 07/08</th>
</tr>
</thead>
</table>
| 1   | Capital Projects on time. 
(To measure the reliability of time estimate for design and for construction). | • No of projects 
• Practical completions date as set at commit to invest point 
• No of projects delivered by date | 95% |
| 2   | Capital Projects to budget. 
(To measure the reliability of cost estimates for design and for construction) | • No of projects 
• Project budget as set at commit to invest point 
• No of projects within budget | 95% |
| 3   | Visits requested for reactive maintenance on time. 
(To measure efficiency and reliability of service). 
*NB Visit to meet requirements as set out in SLA.* | • No of visits requested (visits to be made within 24 hours of request) 
• No of visits made within 24 hours | 90% |
| 4   | Planned Maintenance Programme budget expended. 
(To measure the ability to deliver programme of commissioned work within time). | • Commissioned Programme budget 
• Actual expenditure at year end 
Overspend not acceptable unless additional resources provided | 90% |
| 5   | Service Contracts undertaken 
(To measure efficiency and reliability of service and to meet legal and regulatory requirements). | • No of buildings requiring service contracts 
• No of service contract inspections due 
• No of service contract inspections undertaken | 90% |
| 6   | Advice received on time 
(To measure efficiency and reliability of service). | • No of commissions for professional advice 
• No of advice reports provided by date required | 95% |
<table>
<thead>
<tr>
<th></th>
<th>Surveys undertaken on time (To measure efficiency and reliability of service).</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• No of surveys commissioned</td>
<td></td>
<td>95%</td>
</tr>
<tr>
<td></td>
<td>• No of surveys undertaken and reported on within requested timescales</td>
<td></td>
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<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Floor layouts finalised on programme (To measure efficiency and reliability of service).</td>
<td></td>
<td>90%</td>
</tr>
<tr>
<td></td>
<td>• No of Floor layouts commissioned</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• No of layouts finalised on time</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Final Certificates issued (To reduce the time taken to settle final accounts, providing better control).</td>
<td></td>
<td>80%</td>
</tr>
<tr>
<td></td>
<td>• No of final accounts settled.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Complete 80% of final accounts within 18 months of practical completion PROVIDED that where the Council has notified NPS London that final accounts must be completed by a specified date then NPS London will complete final accounts by that date in all cases.</td>
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<td></td>
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<tr>
<td></td>
<td>Client Satisfaction – Project (Measures how satisfied the client was with the quality of the finished product).</td>
<td></td>
<td>80%</td>
</tr>
<tr>
<td></td>
<td>• No of customers / projects where customers indicate that they are satisfied with project. Achieve an 80% measure of client/customer satisfaction on individual projects (measured at Tender, Handover and End of Defects Liability Period), which measure shall increase by 1% per annum during the period of this Agreement up to a maximum of 85%. Definition of customer satisfaction being 7.5 out of 10 scored on project related questionnaires.</td>
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<td></td>
</tr>
</tbody>
</table>
| 11 | Client satisfaction - Service  
(Performance questionnaire client survey form sent to Client Departments after practical completion and also annually) | • No of customers / projects where customers indicate that they are satisfied with service provided by NPS London during a project. Achieve an 80% measure of client/customer satisfaction on individual projects (measured at Tender, Handover and End of Defects Liability Period), which measure shall increase by 1% per annum during the period of this Agreement up to a maximum of 85%. Definition of customer satisfaction being 7.5 out of 10 scored on project related questionnaires. | 80% |
| 12 | Safety on Site  
(To ensure construction safety is paramount in all projects) | • No of Capital and Planned projects  
• No of recorded accidents  
• No of projects having no recorded accidents | 95% |
| 13 | Office moves undertaken on programme | • No of moves commissioned  
• No of moves completed within project timescale +/- 5% | 90% |
| 14 | Adaptations undertaken to programme | • No of adaptation projects commissioned  
• No of projects completed on time | 90% |
| 15 | Adaptations undertaken to budget | • No of adaptation projects commissioned  
• No of projects completed to budget | 90% |
### Dispute Resolution

#### JVC Arrangements - Escalation Hierarchy

The table below sets out the hierarchy through which any dispute or issue will be dealt with. In urgent cases issues may be raised at level 3 or above immediately depending on the nature of the matter.

<table>
<thead>
<tr>
<th>Level</th>
<th>LBWF</th>
<th>NPS London</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Project Officer</td>
<td>Project Manager</td>
</tr>
<tr>
<td>2.</td>
<td>Client Officer's Contract</td>
<td>Senior Operational Manager</td>
</tr>
<tr>
<td></td>
<td>Manager</td>
<td>(Departmental Director)</td>
</tr>
<tr>
<td>3.</td>
<td>Client Officer (CO)</td>
<td>Managing Director (MD)</td>
</tr>
<tr>
<td>4.</td>
<td>Executive Director</td>
<td>MD NPS Group</td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td>JVC Board</td>
</tr>
<tr>
<td>6.</td>
<td></td>
<td>Dispute Resolution</td>
</tr>
</tbody>
</table>

#### Potential Event requiring use of this procedure

Unsatisfactory performance requiring and invoking remedial action may arise from the following potential sources:

a. In relation to the Key Performance Indicators (KPIs) and the Performance Management Framework set out, reviewed and agreed as Appendix 9 to the Service Specification.

b. An issue arising on an individual project or performance on an individual commission falling below, or likely to fall below, (i.e. potential event) the agreed standard.

c. Disputed invoices

#### Performance Management

The KPIs and performance management framework generally aggregate information on achievement of targets and service delivery. The measures specified are collected over a period from a number of projects, reported on monthly and are then reviewed and evaluated more formally quarterly. The service specification and appendices establish the format and frequency of the information exchanges required. The Service Agreement outlines and provides the process for normal escalation and dispute resolution under the JVC arrangements.

In brief:
a. The CO reviews performance and addresses any problem with the MD NPS London as part of the regular monitoring and reporting arrangements;
b. The JVC Board receives regular reports on the performance and any issues arising. The MD NPS London presents proposals for resolution of problems and to tackle remedial action required;
c. LBWF directors will ensure the JVC Board requirements are met and NPS London delivers the improved performance needed and agreed to. If not, then the potential arises to withdraw support for the service delivery arrangements and to change the service supplier if appropriate.
d. The impact of the change may or may not lead to termination of the JVC arrangements. This will require assessment according to the circumstances.

Non-Performance criteria or action triggers

The Service Specification and supporting Appendices/schedules will identify any specific performance measures or criteria that if not met will trigger remedial action. There are areas in construction such as Health and Safety where immediate assessment, evaluation and action may be necessary. This would lead to generation of reports, assessments and action plans. In other areas, there may well be project specific objectives agreed in the commissioning process that will determine the need for immediate decisions and actions. An example might be the overrunning of works on a schools project, affecting the ability of the school to re-open or deliver educational services.

This leads to a project specific non-performance event that has to be dealt with under the JVC arrangements. Following immediate responses at levels 1 & 2 above, the exceptional circumstances would escalate the problem to level 3 rather rapidly.

a. The potential risk event has to be clearly identified and defined.
b. The reporting and monitoring arrangements have to be designed and agreed to ensure progress is effectively managed.
c. By exception the arrangements will enable escalation to level 3 as quickly as possible once the difficulty has been identified as insoluble at the working levels.
d. In the event that the CO and MD cannot agree resolution of the issue, any suggested compensation or steps to be taken then escalation will follow to levels 4 and 5 as appropriate.
e. Ultimately LBWF will wish to call in an alternative service provider if no immediate resolution is visible. The formal dispute resolution procedure will only be actioned if the MD NPS London cannot accept the proposed course of action recommended by LBWF.
Review of Client Side Arrangements

1. **Purpose**

1.1 This report reviews and assesses the client side arrangements that have to be in place to successfully manage and deliver the JVC services. Our short review has examined present arrangements, discussed how they will operate in future and considered whether any of the issues identified would be likely to affect the Council’s ability to achieve value for money.

1.2 This summary of our findings is included as an annex to our review of the proposals for implementing and establishing the JVC arrangements.

2. **Context**

2.1 The Corporate Property Officer (CPO) acts as the Council’s corporate landlord for all corporate property, including advising the LEA on its responsibilities of ownership for the schools estate. The CPO should implement the Council’s asset management strategy through the corporate asset management plan (AMP). The LEA in parallel is accountable for the schools estate and assets in line with DfES requirements.

2.2 Property services covered under the proposed JVC arrangements are largely in relation to the built environment of the operational estate. Broadly they may be considered as for delivery of capital, cyclical, inspection, surveys, repairs and maintenance works. The principal budgets are for capital, planned and reactive works.

2.3 Once these budgets are set by clients and service users, with advice where appropriate from the JVC through for example surveys, the responsibility for delivery of works and achievement of programmes passes to the technically skilled professionals, who make day-to-day decisions on changes, variations and timing of commitments. This is an important client function that has to be managed effectively through the service and works supply chain. Essentially under the JVC arrangements the CPO will act as the intelligent client for the Council, reporting back to clients on issues that may affect service and operational efficiency and ensuring they are able to fulfill their roles as sponsors and responsible owners.

2.4 To date Building Consultancy have dealt with budget holders in client service areas directly. In future under the JVC arrangements the commissioning, procurement and placing of orders for works and services primarily will be focused through Corporate Property and Children’s Services. The Corporate Property procurement team will place orders and pass invoices for schools work. There may be specific services commissioned directly by the client directorates and departments that have to be entered as orders placed on the system by this team.
2.5 The specifying and ordering of aids and adaptations work is presently undertaken by specialist officers and the future arrangements for this are to be clarified by Corporate Property.

2.6 The majority of services to be procured via the JVC are detailed on a set of service level agreements which are presently being finalised. In addition, some ad-hoc works will be procured, particularly for reactive maintenance.

2.7 Currently Corporate Property has a number of contractors engaged to undertake cyclical and other maintenance work. Responsibility for the provision of such activities is expected to be included in the schedule of services to be provided by the JVC when the annual contracts with the Council reach their expiry date.

**Corporate Property**

2.8 The CPO will perform the role of intelligent client in accordance with the Council's AMP and manage the client-side, with the exception of works to school premises. Essentially, with the exception of the term contracts referred to above, work previously undertaken by Building Consultancy will now be channelled to the JVC.

2.9 Corporate Property will order works (including works for the Schools Service) using a software package produced by E.C. Harris which is currently being developed and used in Building Consultancy. The JVC will manage and administer the software, making it available by a web server to Corporate Property and Council clients to read and enter commissions and orders into. The SAP system will continue to be used as previously and arrangements for access to this by the JVC are to be clarified. The Council’s Central Procurement Team will not be directly involved in this process.

2.10 All lines of responsibility in relation to school buildings will follow the budget responsibilities set for maintenance budgets under delegated authority. The CPO will continue to be involved on matters that are the responsibility of the corporate landlord.

**Children’s Services**

2.11 All offices or social services buildings are identifiable and known through the information databases supporting the Schools/DfES AMPs. Payment for work and commissioning will be through Children’s Services. A protocol and procedure will need to be developed and agreed with Corporate Property. Corporate Property will order work but Children’s Services Project Officers will manage the contracts and authorise payments.
Organisational Responsibilities

Corporate Property

2.12 The Corporate Property Procurement Team is in effect an ordering monitoring and invoice processing team. It should be recognised the skills are in the administrative parts of the procurement function, not in provision of technical or professional contract services. This Team will be responsible for:

- Operating the Help Desk – maintenance and repairs – ‘reactive’ calls
- Placing orders with contractors for maintenance and repairs
- Authorising payment of contractors and NPS.

Issues to be clarified and resolved:

- The placing of orders and payment process for capital works and associated services will now be managed through SAP by the CPO using staff transferred from Building Services. The use and relevance of the developing NPS/BC EC Harris software as a tool to help manage and progress projects and work is being established jointly;
- Commissioning of planned maintenance work by NPS – second year onwards
- There is no accredited list of approved contractors that would satisfy governance standards – Central Procurement Team to establish approved list as a matter of urgency.

Children’s Services

2.13 Children’s Services employ four Project Officers (POs) whose main role is the formulation of the Asset Management strategy for the Schools estate on behalf of the LEA. The primary responsibility of the POs is to help the schools manage their assets strategically to meet their educational needs. The unit is established to deliver the DfES requirements and to support and act as the client agent in planning and commissioning.

2.14 The focus is on meeting educational needs. This role is expected to demand about 60% of PO time. The remaining 40% is the scheme-by-scheme activity. Children’s Services commission Building Consultancy direct for all surveys, including legionella, asbestos and DDA. They will (through the CPO) now commission this work via the JVC. Children’s Services have paid for the surveys; any resulting works programme needs are met by the Schools. One PO acts as client adviser for the Planned Maintenance Programme, funded by the schools.

2.15 Children’s Services and schools separately provide commissions to procure work and will be shown this way in the schedules. Children’s Services do not place orders or procure on behalf of schools. Where work is procured by
Children’s Services, orders for the JVC will be placed through the process agreed under the Service Agreement

Issues to be clarified and resolved:

- Schools will wish to understand their recourse leverage if there are payment/procurement process conflicts
- If work is procured direct by schools they will liaise directly with NPS, not the CPO. This process and way of working has to be defined and shared with the schools

Organisational Structures

Corporate Property

2.16 The Help Desk and Procurement (ordering and monitoring) staff have transferred to Corporate Property from Building Design. These staff provided the reactive repairs service ordering and also maintained the construction and equipment database in SAP for all Council works procurement. This work will continue in the context of the JVC. There are presently two building surveyors who provide the intelligent client interface. It is intended that a Team be established managed by a new post (qualified practitioner) of Team Leader who will manage the Help Desk and the building surveyors.

2.17 The Team will have two main roles:

- Managing the ordering interface with the JVC, including maintenance of the SAP system
- Liaising with term contractors currently working under annual contracts for inspections, planned maintenance etc.

2.18 Within Corporate Property there are also scheme-specific Project Officers managing the accommodation review who will leave upon completion of that work.

Children’s Services

2.19 Currently there are four Project Officers, working to a Project Manager. The Project Officers manage individual or groups of projects according to size and complexity. The present arrangements will continue for all non-NPS commissioned work.
Issues to be clarified and resolved:

- The need for and level of Project Officer involvement in work procured via NPS – possible duplication of effort and value for money considerations as to whether the added value is outweighed by the added cost
- Overall strategic management efficiency and possible duplication of roles and contributions will need to be reviewed regularly if LBWF are to make the most of the opportunity of working with the JVC.

Monitoring and performance

2.20 The systems proposed are the EC Harris software and SAP. The client side will wish to access and print from these financial and physical reports to monitor expenditure on programmes and scheme progress.

2.21 An issue will be how much to do in-house and how much to invite the JVC to submit for review. The Service Agreement will include KPIs and performance measures, as will some of the specialised protocols and procedures. An agreed basis for regular review will be an important element of working together to achieve continuous improvement and meet agreed objectives. IPF have separately reviewed and advised on the KPIs and performance measures.

2.22 A protocol and procedures annex to the Service Agreement is being drafted covering:

- Common reporting frameworks
- Practices.

3. Assessment and Options

3.1 Based on evidence to hand and recognising that final versions of the SLA and schedules are not yet available, the review has not found any areas that will require substantial or significant organisational changes. The key group is seen as the Procurement Team (ordering team) in Corporate Property. Until the JVC is up and running, the amount of support they will require from the CPO and Senior Managers can only be estimated. Initially a team of two surveyors will be strengthened by providing them with a Team Leader. It is possible this may prove to be sufficient and in fact if one of the two is sufficiently well-experienced and qualified for the senior role, it may be feasible to postpone replacing him/her at the surveyor level until more experience is built up of managing the arrangements.

3.2 We believe that of the issues identified above the key ones for resolution prior to conclusion of the establishment of the JVC are:
• The capacity for Corporate Property to translate the Council’s asset management strategies into a workable asset management plan that will be needed to identify what needs to be done, how and where by the JVC

• Clarity over lines of responsibility for all property and services to be delivered by the JVC, including the arrangements for schools;

• How capital works and associated services are to be commissioned, and how this fits with the role of the project officers;

• How a select list for maintenance contractors, use of Constructionline, and/or approved lists will be set and managed;

• How forward programmes of planned maintenance will be agreed and managed;

• Confirmation of the use of the Building Consultancy software package as the Web server tool for placing orders and monitoring progress.

3.3 Further integration of the property services activities can be achieved by employing the JVC to also act as Client Agent. This is not seen as advisable until the JVC has demonstrated its ability to act in the client’s interests and deliver services to the highest standards. The ability of the JVC effectively to organise term contractors for planned maintenance, safety inspections etc. will be a good indicator of their aptitude for the Client Agent role.

4. Recommendations

4.1 On completion of the Service Schedules in the Service Agreement, the responsibilities for commissioning and placing orders should be made clear.

4.2 The commissioning of capital works services and the subsequent management of works contracts should be set out clearly in the protocols to the Service Agreement.

4.3 The Central Procurement Team should determine and agree how the Council will establish and manage lists of accredited and approved contractors for the range of capital works, repairs and maintenance works contracts, setting up framework arrangements where appropriate.

4.4 Work in the transition period with the JVC to determine and agree how future works and service programmes will be developed and agreed.

4.5 Keep under review

• The professional time inputs required of the CPO and Senior Managers in monitoring, reviewing and managing the services provided by the JVC;

• The efficiency of the management arrangements for schools and the support of project officers in commissioning and delivery of projects.

4.6 Review the capacity for Corporate Property to translate the Council’s asset management strategies into a workable asset management plan that will be needed to identify what needs to be done, how and where by the JVC.
Legal Implications

1. The Council has the power to enter into a joint venture company under section 2 of the Local Government Act 2000 and subject to the control mechanisms set out in Part V of the Local Government and Housing Act 1989.

2. The outsourcing of functions carried out by the Building Consultancy is subject to the provisions of the EU Procurement Regime. However, under an exemption (known as the “Teckal exception”) the European Court of Justice has ruled that in certain circumstances the Procurement Regime does not apply where a contracting authority (such as the Council) gives work to a company established and controlled by that authority.

3. To fall within the Teckal exception the Council needs to exercise a measure of control over the JVC and, together with Norfolk County Council, must be able to control the JVC as it would internal departments. Equally, the essential part of the work done by the JVC must be for its controlling authorities.

4. NPS is wholly owned and controlled by Norfolk County Council. The JVC between the Council and NPS would be an organisation where 2 local authorities exercise control, namely Waltham Forest and Norfolk County Council.

5. Most of the staff employed within the Building Consultancy will transfer to the JVC under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

6. The JVC Board will have overall responsibility for the performance of the JVC. There will be two Council appointed directors on the JVC Board that will include one Executive Member and the Executive Director. It is proposed that this role is undertaken by the Portfolio Holder for Children and Young People and the Executive Director for Environmental Services. A management board of NPS London will be responsible for day-to-day operational management. The Council Directors will be involved in the appointment of the Managing Director for NPS London. Appointment of Councillors to outside bodies, such as JVC is a decision reserved to Full Council.

7. As these 2 directors will be appointed by the Council it will be appropriate for the Council to provide an indemnity to each of them in accordance with the Local Authorities (Indemnities for Members and Officers) Order 2004. This indemnity provides protection to the member and officer when acting for the Council on the board of the JVC. The indemnity cannot cover any criminal offence, fraud or deliberate wrongdoing or recklessness by the member or officer.

8. The appointed directors will owe a duty of care to the JVC and, when acting as a director, must always act in the best interests of the JVC. Therefore, they will have separate duties and responsibilities to both the Council and the JVC.
Joint Venture Proposal for Building Consultancy – Appendix E Legal & Financial Implications and Equality Impact Assessment

9. Under s95 of the Local Government Act 2003 the Secretary of State may authorise best value authorities to trade in their ordinary functions through a local authority company. Under the Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order 2006 (which came into force on 15 December 2006) authorities with a 1, 2, 3 or 4 star rating are categorised as best value authorities.

10. In respect of "Employees"

The Service Agreement contains drafting covering the following key points:

TUPE will apply to all 'Original Employees' (as defined) on NPS taking up the Services on the 'Transfer Date'. LBWF’s relevant employment records will be transferred to NPS. LBWF will WF will indemnify NPS for liabilities in relation to claims by the Original Employees which LBWF caused or created and likewise NPS indemnifies LBWF for liabilities form claims which it, NPS causes or creates. Importantly, on expiry or termination of the Services, either TUPE will apply, in which case the employees then undertaking the Services will transfer to the new provider (or LBWF if it takes the Services back in-house), or, if TUPE does not apply, then LBWF has no liabilities for NPS staff (whether originally LBWF employees or otherwise). If NPS uses subcontractors then the same obligations apply to them. The drafting applies the Code of Practice on Workforce Matters in Public Sector Service Contracts"

EQUALITIES IMPACT ASSESSMENT

An initial Equalities Impact Assessment has been undertaken on the proposal to form a JVC.

In respect of service delivery it found that more precise and robust equality and diversity service delivery requirements need to built into the service specification and contract. Whilst all 6 equality strands are relevant, the scope for this new arrangement to contribute to the Council’s disability equality objectives in respect of enabling disabled people to get out and about more easily and live independently is particularly relevant. This will be developed further through negotiation with NPS Consultancy Services to ensure that opportunities to promote disability equality are fully exploited and that there is no scope for this proposal to have a negative impact on any of the six equality groups. These additional equalities and diversity requirements will be added into the service specification and contract and will be performance managed accordingly.

In respect of employment, the impact assessment found opportunities to increase diversity in the workforce which is currently both white and male dominated. This presents an opportunity to better promote race and gender equality. The joint venture will be taking on board all the Council’s obligations with regard to CRE Standards and this will be monitored through LBWFs presence on the board.
Financial Implications

The Building Consultancy is currently making losses of between £1 million and £1.5 million per year out of a gross budget for 2006/07 of approximately £6.4 million. The JVC proposal will mitigate these losses, together with the possible cost of redundancy and/or retirement should option 2 be pursued.

Depending on the outcome of the TUPE transfer negotiations with Ascham Homes there may be redundancy costs arising for a very small number of staff, although all possible attempts will be made to redeploy if necessary. These costs will be borne from the corporate redundancy provision.

Currently, approximately £800,000 of central overheads are charged to the Building Consultancy and capitalised accordingly. The authority will lose the ability to capitalise these costs if the service is transferred to NPS. Provision has been made for this in the Council's Medium Term Financial Strategy.
Overview and Scrutiny Management Committee

Minutes of Meeting 6 December 2006

PRESENT

Chair:
Councillor R Sullivan

Vice Chair:
Councillor S Mahmud

Councillors:
M Ahmad
A Gladstone
P Herrington
M Lewis
S Meiszner
J O’Rourke
R Sweden

Also Present
Councillor Naz Sarkar Portfolio Lead Member for Leisure, Arts and Culture.
Councillor Terry Wheeler Portfolio Lead Member for Enterprise and Investment.

Officers in Attendance
Kris Malde Head of Scrutiny
Neil Murphy Committee Manager, Scrutiny Unit, LBWF
Clive Morton Head of Cultural Services
Brian Whiteley Head of Planning Policy Team, Environmental Services

There were no members of the public present.

43. APOLOGIES FOR ABSENCE AND SUBSTITUTE MEMBERS
Apologies for absence were received from Councillors M Davis and Mbachi and the Committee noted the appointment of Councillors Reardon and Sinclair as Substitute Members.

44. DECLARATIONS OF INTEREST
There were no declarations made.

45. PUBLIC PARTICIPATION – REQUESTS TO SPEAK AT THE SUB COMMITTEE
Members were informed that there had been no requests received to address the committee.

46. MINUTES.
The minutes of the meeting held on 15 November 2006 were confirmed as a correct record.
47. WALTHAM FOREST LOCAL DEVELOPMENT PROGRAMME (SCI)
As a significant part of this report had not been made available to Members until a short time before the meeting the Management Committee agreed to receive a briefing on the item but to defer discussion of the report until our next meeting.

Arising from this decision the Overview and Scrutiny Management Committee agreed that was very concerned that it was unable to give due consideration to a number of strategy and policy items that require pre-cabinet scrutiny because of the late circulation of reports to members.

The Committee noted that the statutory requirement for the publication of reports is that they should be available 5 working days before the published date of the committee meeting, and that in cases where the business is considered to be urgent this can be reduced with the permission of the Chair of the Committee.

The Committee therefore agreed that: -

1. In future all reports must be available in full to members 5 working days before the committee meeting.

2. In cases where the report is not available, and the business is considered to be urgent, and then the report must be circulated to members no later than 3 working days before the meeting.

3. Where the report is not ready within the above time scales the item should be withdrawn from the Cabinet’s Agenda until it has been adequately pre-scrutinised.

4. In cases where the reports are not available in the prescribed time and the item not withdrawn from the Cabinet’s Agenda the Overview and Scrutiny Management Committee will seriously consider calling in the item for post Cabinet Scrutiny.

5. That officers write to the Chief Executive and the Leader of the Council outlining the detail of this decision.

48. LIBRARIES IMPROVEMENT ACTIVITIES AND PERFORMANCE INDICATORS
Members received a report which outlined activities planned to improve the library service in 2006-07. It was noted that these improvements were largely identified in the Peer review of the Library service conducted in 2005 with the addition of activities identified in the Libraries Strategy and the Cultural Services Improvement Plan.

The plan includes actions to improve customer satisfaction, performance indicators and the buildings within which the service is delivered and
explained the consultation with users which undertaken on these improvement activities.

The report also explained that the improvement activities had been broken down into four major areas

- Improving Leadership and Governance;
- Improving Customer Focus and Community Engagement;
- Improving Resource and Performance Management; and,
- Improving our Organisation and People.

and reported on the progress made in these target areas.

It also outlined progress to date on the borough’s library refurbishment programme, and progress against the library service’s key performance indicators.

The following questions represent the discussion on his matter:

**Question** The report mentions wireless access at libraries, is this free to the public?

**Answer** We have negotiated a very favourable deal with BT and yes this service is to be provided free to the public commencing on December 18.

**Question** The items which have been identified as not reaching target, is this due to slow progress, or other reasons?

**Answer** In the majority of cases problems exist in the documentation of achievement, physical progress on targets has been made but recording is poor.

**Question** The maximisation of external funding for projects is identified as a failing area. Is this a historical problem – has much been achieved in this area in past times?

**Answer** Our record in this area is not good possibly due to a lack of current expertise in this field. Whether or not this is true of the past I cannot say.

**Question** While the report details work on some libraries it is apparent that some issues exist at most libraries, and public toilet facilities seems to be a case in point. What is going to happen for other libraries?

**Answer** Certainly all libraries do have outstanding issues, and these are dealt with on an individual basis, I believe that accompanied children are allowed to use staff toilets at some locations. In addition a report on minor works is to be presented to the next Libraries Board meeting.

**Comment** It was concerning to read that the consultation on Walthamstow Library had been lost.

**Response** The report was a little confusing over this - the results of the consultation had not been lost but the analysis had not been completed.

**Question** The report shows a fall in the number of books being lent out is this correct?
Answer: It is correct but the re opening of Walthamstow Library will improve the figures.

Question: It is concerning to hear that computers are stolen from libraries, how does this happen? How long should replacement take?

Answer: As with most thefts from public buildings these generally happen at night when the libraries are closed and broken into. However there is one notable exception where a library user simply unplugged a computer from its mounting, slipped it into a haversack, and walked out with it when staff were not looking. This type of theft has been prevented by the installation of better physical protection for machines. If machines are stolen our current contract ensures they will be replaced within a few days.

Comment: Our on line services for reservation and renewal of books needs to be better publicized, as the majority of users do not know that this can be done.

Question: How do we control the non return of books?

Answer: In general reminders are issued, then second reminders if the first yields no results, then a decision has to be taken if it is worth pursuing any further – some books are simply not worth pursuing.

Question: I have concerns relating to the security and safety of staff especially those at smaller branches. What instructions are issued regarding personal safety issues?

Answer: Staff are instructed to involve the Police if at any time they feel physically threatened. Additionally individual libraries have their own ways of dealing with issues, and individual safer neighbourhood teams are to be involved at this level.

Question: What is the current situation regarding the recruitment of senior library management? When will a Head of Service be recruited?

Answer: Currently an interim management service is in place until March 2007. Advertisements have been placed for senior management staff, but the position of Head of Service is still under discussion.

Question: What happens to old library books? I have a group that is interested in old books.

Answer: These are dealt with in a number of ways, some are sold on, some are given to schools and some are pulped. I will take the details of this group for consideration.

Question: How is the redevelopment of the Hale End site to be funded?

Answer: A portion of this is being “borrowed” from the Libraries Capital Programme pending the release of monies from section 106 funds relating to the Costco and Tesco developments.

Question: £6.25 million has been earmarked for library refurbishment, but this originally included Leytonstone library – why has this been removed?

Answer: A bid is currently being drawn up for Leyton Library; I am not aware why it was excluded from the current Capital works.
Question: The mobile library to be used to temporarily replace the Hale End building, will it remain in its current location?

Answer: The vehicle will remain on the site but will be positioned parallel to the road at the front of the site. It will be remote from the building to remove the risk of damage or accident to the vehicle or public.

Question: I understand there are changes to the plans for North Chingford Library, what is the new timescale?

Answer: There have been extensive changes to the plans and consequently it is hoped that contracts for the works will be let in the early part of 2007. However while the works are in progress it is not planned to close the Library and the service will be maintained.

Comment: It is important that the Educational value of library services is not lost when choosing replacement books for libraries. It is too easy to boost lending figures by stocking popularist books and forsaking the academic value of the service.

Response: I totally agree and to this end we involve local schools in purchasing and try to encourage schools to use services by stocking sets of books that they use.

Question: Do we know how many members of the public are actually library members, compared with the population of the borough?

Answer: We currently do not have this comparison, indeed we need to complete a clean up of the membership to ascertain which memberships are still live.

Question: Could not all elected members be offered membership?

Answer: This can be done.

Comment: I have noticed numbers of non resident using facilities at local libraries; can we curtail this and limit use to borough residents?

Response: We are bound by the conditions of the funding we received for the IT that it is available to anyone to use; we cannot limit its use at all.

Question: Do we carry substantial numbers of books in Community languages?

Answer: We do carry such books but the numbers do vary depending on the balance and demand for these.

The Chair thanked Mr Morton for his thorough report and for the depth of answer given to the questions asked.

49. WORK PROGRAMME
Members received the draft work programme for the forthcoming meetings and were informed that suggestions for future meetings should be passed to the Chair or Officers for consideration.

Members expressed some concern that items identified at the last meeting had not been included in the work programme, that the dates of the remaining meetings had not been included, and that the role of the Management committee was being overtaken by the regular Chairs’ meeting.
Additionally it was noted that it was proposed to introduce an action tracker to monitor the progress of reports across scrutiny committees.

The following items were put forward for inclusion in the work plan for forthcoming meetings:

- Disposal Programme and Review
- Schedule of Contracts
- Waltham Forest Magazine
- Library Development Plan - Progress

50. FEEDBACK ON REFERENCES TO CABINET
Members received an update on the progress of those issues which had been referred to the Cabinet.

51. PANEL UPDATE
Members received a progress report on the work of the Scrutiny panels currently convened. It was noted that problems seem to exist with the Budget Working Panel as a number of Members had not attended the meetings on a regular basis.

It was also noted that resources existed for an additional Panel to be established, and Members agreed to receive an assessment of the need for a panel to be established to consider the suitability of the SAP Customer Relationship Management system.
1.0 SUMMARY

Members are asked to:

1. Note and comment on the attached Work Programme; and

2. Suggest potential items for inclusion in the Work Programme for the period up until the end of this municipal year.
## Overview and Scrutiny Management Committee:

**THIS WORK PROGRAMME CAN CHANGE AT SHORT NOTICE.**

Members of the public should contact David Knight before attending a meeting to ensure their item of interest is on the agenda.  
**Contact details:** David Knight, Scrutiny Unit, Room 101, Town Hall, Forest Road, Walthamstow, London E17 4JF  
**E-mail:** davidj.knight@walthamforest.gov.uk  
**Tel:** 020 8496 4736  
**Fax:** 0208 496 4579  
**AGENDAS & MINUTES** online at:  
www.walthamforest.gov.uk

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<td>Local Development Framework</td>
<td>B. Whitely</td>
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<td>Bed Spaces</td>
<td>Dr L. Moore</td>
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<td>Library Development Plan - Progress</td>
<td>C. Morton</td>
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### Overview and Scrutiny Management Committee:

**Work Programme 2006/07 – updated: 4th January 2007**

THIS WORK PROGRAMME CAN CHANGE AT SHORT NOTICE.

Members of the public should contact David Knight before attending a meeting to ensure their item of interest is on the agenda.

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**E-mail:** davidj.knight@walthamforest.gov.uk  
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**Fax:** 0208 496 4579  
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