

**BRECKLAND COUNCIL**

**Report of the Deputy Chief Executive to the**

**CABINET 12 May 2009**

**PROPOSED CONTRACTING OUT OF PLANNING AND BUILDING CONTROL – REPORT  
ON FINAL DRAFT CONTRACT**

**Purpose of report**

The purpose of this report is to update members on the essential features of, and the risks associated with, the final draft of a contract between the Council and Capita Symonds Limited under which the latter will be responsible for providing a planning and building control service for a term of 15 years. This is intended to provide the basis upon which the Cabinet may decide whether or not the authority should enter into the contract, and if so on the terms set out in the draft or subject to such modifications (if agreed by Capita) as it considers necessary to mitigate the risks that are described.

**Recommendation**

1. That before deciding whether to agree to the externalisation of the Council's planning and building control service the Cabinet carefully weighs the service's existing high level of performance with the benefits that may be achieved from entering into a long term contract with Capita and the risks associated with the arrangement.
2. If the Cabinet decides to enter into the contract with Capita the Deputy Chief Executive be authorised, in consultation with the Portfolio Holders for Business Transformation and the Environment, to make minor amendments to the agreement to finally resolve any outstanding matters of detail; to execute the agreement on behalf of the authority; and take such steps as are required to implement the agreement.

**Reasons for making a further report to the Cabinet**

3. On 29<sup>th</sup> January 2009 the Cabinet authorised the Deputy Chief Executive to settle and execute an agreement to contract out the Council's planning and building control services to Capita subject to conditions that provide, inter-alia, (1) the delegation may not to be exercised unless the terms of the contract accord with, and give effect to, 5 outcomes specified by the Portfolio Holder for Business Transformation and (2) any provision that affects or is likely to materially affect the value of the contract to the Council must first have been reported to the Cabinet. The Deputy Chief Executive is satisfied the contract will satisfy the Portfolio Holder's 5 outcomes. Lengthy and complex negotiations and due diligence have, however, illuminated, and helped to clarify, a number of issues that were of interest to the Member Working Group, relating to:-
  - a) The quantum of efficiency savings that may be realised;
  - b) Delegated decision making;
  - c) Client side arrangements;
  - d) Specification of services; and
  - e) Termination arrangements and the return of the service to the Council;

4. In the circumstances the Deputy Chief Executive, after consultation with the Portfolio Holders for Business Transformation and the Environment, considers it would be inappropriate to exercise the powers delegated to him and that the matter should be reported back to Cabinet for further consideration. In accordance with the instructions of the Portfolio Holder for Business Transformation the report also provides a concise summary of the main terms of the contract to assist members in taking their decision (a full copy of the contract is provided to members of the Cabinet as a separate, exempt document under Schedule 12A of the Local Government Act 1972).

#### **Structure of the report**

5. The remainder of the report begins by drawing members' attention to objective evidence of the high quality of the Council's in house planning and building control service. It then discusses aspects of the draft contract that have attracted the particular interest of members throughout the contracting out process. The third part highlights the risks associated with entering into this arrangement. The report concludes with a summary of the potential risks and benefits of an agreement having regard, in particular, to the Portfolio Holder's 5 criteria. It should be noted that the Council's section 151 Officer will prepare an independent assessment of the financial aspects of the proposal early in the week commencing Monday 5<sup>th</sup> May 2009.

#### **Current performance levels**

6. The planning and building control service is operating at a very high level. Building Control's indicators are always in the top quartile making them one of the best performing teams in East Anglia. Development control's key performance indicator, NI 157, has 3 components, of which 2 are top quartile and 1 second quartile, having improved continuously year on year for the past 5 years. The Council's Local Development Framework is one of the most advanced in the county: the Enquiry in Public into the Core Strategy and development control policies is programmed to begin in June and consultation on the preferred options for the Thetford Area Action Plan has been completed.
7. Building Control's satisfaction rating is consistently over 90 per cent and even in the face of difficult trading conditions the team has maintained a 94 per cent share of the market. The Council's Building Control section is also the only team in the County to have quality management systems externally accredited to be ISO.9000.2001. Development Control's recent satisfaction survey demonstrated that 84 per cent of Town and Parish Councils are satisfied with the service overall and with some not expressing a view only 4% were dissatisfied. A survey of agents revealed a similarly strong performance: 73 per cent of respondents were satisfied with the service overall, with only 1 person expressing dissatisfaction. Environmental Planning also enjoys a good reputation, there having been a very positive feedback about the preparation of the LDF and the TAAP. The Historic Buildings and Trees & Countryside teams enjoy a good reputation within Norfolk and with bodies such as English Heritage and Natural England. The Historic Buildings team has also been extremely successful in obtaining funding from external bodies for schemes within the District.
8. The strong performance of the in-house service does not, of course, mean externalisation cannot be justified or ought not to take place. It does, however, mean that the reasons for contracting out must be clear and substantial and outweigh the principal risks associated with it.

#### **The principal terms of the agreement**

##### *Services to be provided by Capita*

9. Capita will provide all of the services that are presently provided by the authority's planning and building control teams, including the land charges service and spatial information service. The remit that has been given to Capita is described in service specifications that form part of the contract. The service specifications are intended to capture all the activities planning and building control carry out at present but it is important to bear in mind that it is impossible to specify what they do comprehensively and precisely. Negotiations with Capita have demonstrated the

company is tenacious in pursuing its interests and has an eye for detail and whilst this is only to be expected, and in certain respects is to be welcomed, it elevates the risk that problems of specificity will lead to additional cost pressures. Having regard to the fact that the specifications have been drawn up with care by Breckland it is, however, reasonable to assume any issues about the range of services transferred should be marginal in terms of their contribution to overall activity and total cost.

*Standard of performance and performance management*

10. Capita are required to prepare a business plan every year, which must be agreed with the Council (if the parties are not able to agree on the plan paragraph 3.7 of the contract allows the Council to terminate the agreement). The business plan will describe the work that must be carried out, the standards that are to be achieved and the price that will be paid. Part 4 of Schedule 3 to the contract describes the performance standards that will be set at the beginning of the agreement. These are based on existing levels of performance and are focused on a relatively small number of indicators that have a significant bearing on the reputation of the service from the shared perspective of central government, elected members and users of the service.
11. Capita will be required to maintain the initial performance standards whilst simultaneously delivering cashable savings to the authority. It will be possible for the authority to change the standard of performance required under the contract. This may have the effect of triggering an increase in price if Capita are able to demonstrate it would not be reasonable to deliver the change required within the pre-existing resource envelope.
12. Under the contract Capita are required to monitor Critical Service Standards, which are specified in Schedule 3 of Part 4. Any failure to achieve these standards is deemed to be a "Critical Service Failure". If a Critical Service Failure occurs Capita must implement a "Remediation Plan" and restore performance to the required level within 6 months. Failure to do so would entitle the Council to terminate the contract. Improvement in the event of underperformance is also given added impetus by the Council's right to make deductions from the contract price until the service is restored. Finally, even if a service failure is remediated, 3 separate Critical Service Failures during the life of the contract would entitle the Council to terminate the agreement, whether or not the third Critical Service Failure is remediated.
13. Other performance standards will be set out in the business plan (see paragraph 3.3.1). Capita will be required to measure and report on performance relative to these standards (see paragraph 9 of Schedule 2, Part 3). Under-performance in respect of these criteria will not, in itself, give rise to any right to terminate the contract or reduce the contract price. Instead, monthly meetings of the Service Planning and Performance Group will be used to identify the cause of problems and the way in which they will be resolved. Repeated and substantial failure to satisfy the requirements of the business plan would, however, amount to a breach of contract, which would enable the Council to terminate the agreement and pursue other common law remedies.
14. Taken as a whole it is considered the performance management framework is simple, robust and focused on matters of strategic importance whilst facilitating and creating a framework for dialogue about "non-critical" performance issues that should ensure the service performs to a high standard.

*Price, efficiency gains and income*

15. The charge made by Capita for the performance of the contract is described in Schedule 4. The initial contract price for 2009-2010 is £2,108,108. In Year 1 of the contract the financial benefit to the Council will be £226,749. This includes a figure of £225,000 towards the upgrade of the Ocella system.
16. Over the life of the contract the total saving attributable to efficiency gains has been *modelled* as £2,213,659. The contract defines such savings as "guaranteed savings" It is important to note that the *actual saving* will be very different to that modelled because over 15 years it is inevitable that assumptions about costs and savings will

differ from those actually achieved. Examples of key assumptions that may change are:-

- a) Pension costs not rising as assumed
  - b) Residual costs not being removed from the Council
  - c) Additional demand for work reflecting increased contract costs
18. Put another way, the guaranteed savings are “not” guaranteed but used to distinguish savings that are independent of the growth of Capita’s business. The negotiation process has demonstrated that it is impossible to devise a simple, robust mechanism for tracking the delivery of savings over time as the baseline and subsequent service levels demanded and provided change. This is not to say the savings will not be delivered; they cannot, however, be identified with sufficient precision to be enforced under contract. Members therefore need to satisfy themselves that the mechanism for controlling costs as volumes change will promote the delivery of more efficient services than could otherwise be provided in-house over the same period.
19. In addition to efficiency gains the Council should obtain a significant financial benefit from the contract’s proposals for sharing income generated by Capita’s Breckland business. Capita have offered to share 1.25 per cent of all income generated by the new business once the “annual core charge” (essentially the base price) is 130 per cent of the initial annual core charge. Capita estimate the business ought to generate £1.5 million over 15 years<sup>1</sup>, although if this figure is exceeded the contract does not place a cap on the sum that may be paid to the Council. The Council will also benefit from the payment of an introductory payment in certain circumstances, which may result in a payment of up to £50,000 per new contract won by Capita.
20. Taking guaranteed savings and income generated from trading together the maximum total value of the contract to the Council is around £3.85 million. Officers believe if the service were to remain in-house then over 15 years it would be possible to formulate a management plan with a cost profile that would deliver savings broadly comparable to those offered by Capita as guaranteed efficiency savings.<sup>2</sup> The added value of the contract is thus dependent on the ability of Capita to grow a successful trading unit in Breckland and the retention of new business within the Breckland unit rather than any other business unit that might be established by the company.

#### *Price change mechanism*

21. It is possible that the current recession will deepen. In the medium term the economy is, however likely to recover. Any deepening of the recession and a recovery will have a significant impact on the volume of planning and building control activity. If activity falls off from current levels the Council is entitled to reduce the charge it pays to Capita to 90 per cent of the annual core charge in year 1 of the contract, (although its ability to maintain low levels of payment is limited by the indexation of the core charge, which reflects the NJC negotiated pay award and RPIX). If the Council does pin the annual core charge to a level that remains at or around the initial annual core charge it should be noted this will defer the receipt of income generated by the Breckland business unit.
22. Capita has confirmed it has sufficient resources to deliver existing service volumes. An increase in activity affecting core elements of the planning and building control service (which are defined in table 2 of Schedule 4) of more than 10 per cent above the baseline position that is maintained for 2 quarters would trigger a report by Capita, which would present the Council with the option of either:-

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<sup>1</sup> This is a significant sum. For the purpose of illustration, if the Council were to raise an equivalent sum through council tax this would equate to an increase of about 54 per cent of the existing charge.

<sup>2</sup> By way of illustration, a post costing £50,000 (including on-costs) is worth £750,000 over the life of the contract. A £2.6m saving is delivered by writing out the equivalent of @ 3.5 scale 7/8 posts over 15 years or a larger number of posts over shorter period(s), specified in accordance with anticipated peaks and troughs in work-load.

- a) Increasing the volume of work required to be carried out within the part of the service that is subject to pressure, accompanied by an increase in the charge.
  - b) A redistribution of work, resulting in no increase in charge (i.e. part of the service would do less and part would do more).
  - c) Agreeing some work need not be carried out (N.B. whilst this may be a viable option for some of planning and building control, such as forward planning, it cannot sensibly be applied to the building control and development control functions).
23. The price change mechanism that has been described is intended to ensure a sensible balance is maintained between resource levels and the demand for services, whilst avoiding excessive price volatility or a tendency to sacrifice quality of performance for reduced cost. Since the relationship between increases in volume and the need for additional staff is necessarily approximate (being affected by issues such as morale, goodwill and the quality of the workforce) there is a risk that as demand increases Capita's entitlement to demand extra resources might result in staffing levels (and thus price increases) that exceed the cost of in-house provision. Senior planning and building control officers are, however, satisfied that the contractual provisions for triggering access to increased resources strikes a fair balance between demand and staffing levels.

*Client side arrangements*

24. Over 15 years the cost of an officer employed at scale 7 is about £750,000 (assuming salary costs and on-costs amount to an average of £50,000 p.a.). It will be readily appreciated that the maintenance of even a very small client side would obliterate the financial value of the contract to the Council: the guaranteed savings would, for example, disappear with a client side comprising of more than about 4 relatively junior officers, and the impact would be much more dramatic if the Council were to retain one or more service manager scale posts, which could easily cost in excess of £1 million each over the term.
25. In the light of the cost implications of a client side the approach taken has been to transfer its normal functions to the contractor. Thus Capita is responsible for:-
- a) Business planning;
  - b) Identifying and reporting on opportunities for service improvement;
  - c) Monitoring and reporting on performance;
  - d) Preparing decision notices.
26. Each of the items listed above will be prepared for the Council's representative (the Deputy Chief Executive) who will either deal with issues arising from them in consultation with the Portfolio Holder for the Environment (items (a) to (c)) or the Chairman of the Development Control Committee (item (d)). There is short term financial provision for the Deputy Chief Executive to be assisted by a junior officer to help bed the contract in and undertake such administrative duties as may be necessary to ensure it runs smoothly. It has been assumed that this support will be absorbed into a contracts management team drawn from the client side of other services the Council has externalised within 2 years. It is further assumed that in so far as it may be necessary to resource activities associated with the day to day running of the contract support will be drawn from existing services without any significant impact on service provision or resource levels. By way of example, it is assumed:-
- a) Finance will check and pay invoices and assist in the negotiation and calculation of the annual charge made by Capita.
  - b) The Performance team will participate in meetings of the Service Planning and Performance Group and Service Improvement Group help shape, comment on and feed information received from Capita into the Council's performance management system.

- c) Member Services will support meetings Service Planning and Performance Group and the Service Improvement Group.
  - d) The Portfolio Holder for the Environment and Chairman of Development Control will continue to liaise directly with Capita's officers on matters of operational detail in the normal way rather than through intermediary client side officers.
27. Thus setting the issue of delegated decision making to one side there appears to be no good reason for creating a team of officers to administer the contract. To the contrary, it is suggested the Capita client side model ought to be regarded as an approach that might be adopted more generally to achieve cashable efficiency gains. The approach is not, however, risk free.

*Decision making by the local planning and building control authorities*

28. The adequacy of the client side in relation to decision making and the approach to the exercise of the Council's statutory functions has been subject to some controversy. It has also been a matter that has taxed the ingenuity of both parties' legal advisers during the due diligence process. The first point that needs to be made is that both parties now agree there is no scope for devising arrangements under which staff employed by Capita would effectively make decisions on behalf of the Council (by signing notices of decision in the name of a nominated Council officer without that officer having had sight of the notice, or any involvement in the matter). The upshot is that a Council officer will need to formally deal with any decision made on behalf of the local planning authority or building control authority amounting to a discharge of one of its functions (as opposed to mere administrative acts which do not involve the exercise of a duty or power).
29. So far as planning decisions are concerned matters that would normally fall to be determined by committee are not touched by this issue at all. Delegated decisions are, however, affected. Normally delegated decisions are made by the Head of Planning or one of his two principal officers. In future those officers will not be able to make decisions on behalf of the Council. They will, instead, prepare a notice of decision, complete with reasons and any conditions and send it with a pro-forma report to the Deputy Chief Executive and he, or an officer authorised by him, will make the decision. It is not essential for an officer making a decision to be professionally qualified as a town planner. Unqualified elected members routinely make decisions that are more complicated and controversial than those that will be determined by officers under delegated powers. This fact serves to illustrate the safety and quality of decision making turns not on the qualifications of the decision maker but on the advice that underpins it, albeit this needs to be coupled with the good sense and a degree of understanding of how this material should be used on the part of the person making the decision.
30. The Deputy Chief Executive is content to sign decisions in the first instance, supported by other officers (including the contract support officer) who will be trained to the extent it is necessary (along the lines of the training received by members of planning committee).
31. Building control presents a different challenge. Many decisions will be made in the same way as planning decisions (that is, through Capita's preparation of a notice of decision supported by a report that contains such reasons as are necessary to make intelligible the action that is proposed). Building control officers also give advice on site about matters that require a formal decision of the authority. For the reasons set out previously unless every building control officer were to be accompanied on site by a client officer with full delegated powers (which would be both impracticable and uneconomic) it might be thought that delegation issues would preclude the externalisation of building control. In the Deputy Chief Executive's opinion it is, however, permissible for Capita's staff to *advise* building control clients on site as to what is or is not permissible whilst reserving the *formal decision* to the nominated Council officer, who will ratify the advice that has been given provided, of course, the

reasons for authorising a particular course of action are properly made out. This approach carries with it a risk that the nominated officer may disagree with the advice that was given on site. It is difficult to envisage any circumstances under which the authority's nominated representative would disagree with the expert advice he receives, with the result that soundly based decisions will be made properly and predictably by the Council without harming the operational efficiency of the service.

32. In setting out this approach it is not intended to suggest that there will be no impact on the work load of the Deputy Chief Executive who will need to devote a significant amount of his time to decision making. Based on the advice of senior officers in planning and building control the arrangements that are proposed appear, however, to be practicable. If, however, members conclude this is not the case it is doubtful whether the Council ought to proceed with the contract since any significant expansion of the client side to support decision making would threaten to erode the financial case for entering into the agreement.

#### *Governance*

33. The contract's governance arrangements are described in Schedule 2 of the contract.
34. Operational issues will be managed through a Service Planning and Improvement Group ("SPIG"), which will be responsible for developing the annual business plan, monitoring performance, agreeing variations to the service, setting the contract price (subject to approval by Council) and resolving operational issues that cannot be settled informally in the course of normal day to day business. The SPIG will meet monthly and be attended by senior officers and elected members.
35. More strategic planning and long term improvement of the service will be managed through a Service Improvement Group. This forum will meet every 6 months and will consider the potential for significant enhancements of the service that is provided to local people and the Breckland business unit – the latter with a view to maximising the income received by the Council.
36. Members will need to be satisfied that the opportunities for engaging formally with Capita under these arrangements are adequate. It should, in particular, be noted that these arrangements do not (and are not intended to) admit detailed intervention in the operations of the planning and building control service. Such intervention would be antithetical to the purpose of contracting out, which is to enable a contractor to deploy the full range of private sector management techniques to deliver more efficient and effective services unencumbered by the exigencies associated with operating in a political environment.

#### *Transfer of staff to Capita*

37. All of the staff employed in Breckland's planning and building control services will transfer to Capita under their existing terms and conditions of service save that upon transfer staff will join a final salary pension scheme operated by Capita instead of the Local Government Pension Scheme. The Government Actuary's Department has certified that Capita's scheme provides benefits that are broadly comparable to the Local Government Pension Scheme. A number of the posts to be transferred are temporary posts. Capita is not obliged to extend the term of these posts or transfer them to the permanent establishment although the company has indicated that it intends to retain most temporary staff.
38. In accordance with members' wishes the contract provides that staff working in Thetford may not, without the permission of the Council, be engaged in any activity save for that associated with Moving Thetford Forward. Capita will charge a premium of £8,000 per annum (£120,000 over 15 years) for the Thetford team to reflect the fact this restriction will prevent the team from making a full contribution to the Breckland business unit whilst requiring the support of Capita's wider resources to maintain its resilience. Capita have confirmed orally that if this restriction on the employment of Thetford based staff is lifted (so that they may be deployed as Capita see fit) the premium will cease to be charged. Members may wish this provision to be incorporated into the contract.

### *Arrangements on termination of the contract*

39. The approach to devising satisfactory arrangements for recovering a service on termination of the contract poses some difficult challenges and has been discussed extensively by the parties in recent weeks.
40. The existing size and composition of the service, the range of functions that are carried out and the priorities allocated to it by members are unlikely to be the same as those which exist when the contract comes to an end. Moreover, if the Breckland business unit grows as Capita intend it should some of the staff employed within the district may not qualify for transfer back to the Council if they are employed in delivering activities that would not be delivered by a district council or if they generally work for other clients.
41. Because it is impossible to predict what kind of service will be transferred back to the Council or to another provider in 15 years time Schedule 3, Part 5 of the contract sets out a range of principles to guide the formulation of an exit plan to define and shape the service that returns and avoid any adverse impact on service users. Capita are responsible for preparing the exit plan within 6 months of the commencement of the contract, which must be submitted to the SPIG for approval. Thereafter the plan will be reviewed annually to ensure it reflects changes in the service so that it can be brought into operation quickly should the agreement be terminated unexpectedly. This approach provides a structured, objective process for reconstituting an in-house service if outsourcing is judged not to have been a success. A better solution to this issue cannot be devised. The approach nonetheless carries some risk – Capita’s staff may not, for example, wish to transfer to the Council, which could cause serious retention issues and a loss of morale and performance. It will also be difficult in practice to determine precisely who should transfer or remain with Capita, especially if potential transferees are cease to work for the Breckland business unit in the run up to termination. Members will need to decide whether they wish to accept this risk.

### *Termination*

42. The Council may terminate the contract in the following circumstances:-
  - a) If it is unable to agree a business plan;
  - b) If Capita fail to put together and implement a remediation plan that fully repairs any critical service failure;
  - c) The occurrence of 3 critical service failures during the term of the contract;
  - d) Any service failure that causes significant damage to the Council’s reputation.
43. Otherwise the contract will terminate after 15 years (unless the council elects to extend the term).
44. Capita is not prepared to accept the insertion of a clause into the contract that allows it to be terminated by the Council “without cause”. Capita’s decision reflects the company’s view that it will make very little profit in the early years of the contract and that the growth of its business unit will require significant investment, which it would not be prepared to make without some certainty (barring lack of performance) as to the term of the contract and the ability to achieve “pay back” and the recovery of profit. Members may also conclude that the development of a strong relationship based on trust may take a little while to become established, and that this might be undermined if exit arrangements are too easy. In the circumstances neither the Deputy Chief Executive nor the Council’s legal adviser, Eversheds, take exception to Capita’s stance on this point.
45. In view of the risk that there may be a challenge to decision making arrangements and that the contract might be rendered uneconomic if a challenge were to succeed, the Deputy Chief Executive recommends the Council should not agree to contract unless Capita agree that unlawful clauses may not be “blue pencilled” from the contract, leaving the remainder intact, but may, in the Council’s discretion result in the termination of the contract.

### *Ocella upgrade*

46. Capita will implement a significant upgrade of the planning and building control services' IT and software systems at their own cost. The upgrade will enable customers of the planning service to view planning applications and associated forms and plans using the Council's web site. Improvements to the building control system will enable officers to send documents to the Ocella record system from site, which will ease remote working. Schedule 13 to the contract indicates the planned improvements to the Council's systems represent an investment by Capita, worth around £230,000. The implementation of the planning upgrade is programmed to start on day 1 of the contract and is likely to take 3 months to go live. The building control upgrade will be implemented as a pilot from the beginning of the contract, with the intention (but no guarantee) of rolling out remote access working once the concept is proved.
47. There can be no doubt that the Ocella upgrade will significantly enhance the delivery of planning and building control services for both customers and staff, and represents a key benefit of the agreement (but see paragraph 54).

### **Risk**

48. A risk assessment is provided in Appendix 1 to this report. The principal risks are those associated with:-
  - a) Whether the culture of the organisation is well suited to arms length political control of a highly sensitive, public facing service;
  - b) Control of contract cost;
  - c) Non-delivery of the Ocella upgrade;
  - d) The lawfulness of arrangements for delegated decision making;
  - e) Achievement of income;
  - f) The delivery of "guaranteed savings";
  - g) The adequacy of client side arrangements;
  - h) The adequacy of the service specifications.
49. Whilst the impact of most of the above risks would be high none are considered highly likely to crystallise (it should be noted that officers express no opinion on the likelihood of risk (a) occurring; this is a matter for elected members to consider).

### **Overall assessment and conclusions**

50. The Portfolio Holder for Business Transformation has directed that a proposal to contract planning and building control falls to be assessed in terms of the following criteria:-
  - a) The value of the contract to the Council, comprising:-
    - i. The delivery of substantial efficiency gains; and
    - ii. Significant income to the Council.
  - b) Strong governance arrangements for the effective delivery of a contract.
  - c) Provision for the return of strong planning and building control services upon the termination of the contract.
  - d) Demonstrable improvements to the quality of the service.
51. The Deputy Chief Executive is satisfied the contractual arrangements that have been agreed with Capita meet all of the Portfolio Holder's criteria. This does not necessarily mean the Council should enter into an agreement. The quantum of "guaranteed savings" is considered to be significant but unremarkable, and the Deputy Chief Executive and Assistant Director – Governance are satisfied they could plan a service with a similar overall cost profile if it were to remain in-house. The value that may be derived from trading income produces an overall cost saving that

is of a different order to that which might reasonably be achieved by an in-house service. This component of contract value is, however, subject to quite significant risk. There are also several sources of risk that could cause the cost base to increase, albeit these have been controlled as far as is reasonably practicable. It follows that the Council should not base a decision to contract solely or substantially on its potential to deliver savings.

52. The arrangements proposed for governance are simple but robust. They will probably need to evolve as a relationship develops, but since this would be in the interests of both parties it is not likely to prove problematic.
53. The arrangements for transferring the service back to the Council at the end of the contract take the form of a framework for the preparation and annual review of an exit plan. This is considered to be the most sensible approach because the planning and building control service and the Council's aspirations for it will change over time so there would be no merit in trying to fix what will be transferred back at the outset.
54. The contract also makes provision for improvements to Ocella, which will certainly enhance the delivery of both planning and building control. Capita are making a substantial investment in these systems. It is, however, perfectly feasible and affordable for the Council to implement these improvements quickly if the service remains in-house. The upgrade to Ocella does not, therefore, represent a compelling reason to contract out.
55. Adopting a rather broader perspective members may conclude that the contracting out of planning and building control reflects a philosophy that a major private sector contractor will be able to plan, manage and operate the service more efficiently, effectively and creatively than if the service were to remain in-house. Members may wish to explore the evidential basis for this belief taking account of their experience of other services that have been contracted out by Breckland and other public sector bodies. In making a decision members will also need to consider whether they are comfortable with operating a very high profile service at arms length. Moreover, to the extent members are content to proceed on the basis that a significant and sustained fall-off in performance may be remedied by a right to terminate the contract this must be balanced with the probability that an unplanned return of the service following early termination will be accompanied by a drop in performance of what is presently a very good service.
56. Finally, it is important to acknowledge that commentators have expressed considerable interest in this proposal, which could confer significant reputational benefits on the Council, especially in the short term: this is an innovative proposal that will, if adopted, reinforce the Council's entrepreneurial credentials amongst the local government community. It must also be recognised that if the Council accepts this test of its entrepreneurial appetite it could (but may not) realise a significant financial benefit.
57. Overall, the Deputy Chief Executive recognises a decision as to whether or not to proceed is essentially and quite legitimately an exercise of political not technical judgement: a high quality planning and building control service *can be* delivered under contract at arm's length but there is no *necessity* to enter into this arrangement and there are some unique and novel risks associated with doing so. In the circumstances, and having regard to the learning obtained from detailed negotiations and due diligence, officers have decided that it would be inappropriate to make a recommendation on whether or not to enter into the contract that is on the table: that is properly a matter for members.