

CABINET	AGENDA ITEM No. 8
21 MARCH 2016	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor David Seaton, Cabinet Member for Resources	
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FUTURE DELIVERY OF PROPERTY SERVICES

R E C O M M E N D A T I O N S	
FROM : Corporate Director of Growth and Regeneration	Deadline date : 9 March 2016
<p>Cabinet is requested to:</p> <ol style="list-style-type: none"> 1. Approve the proposal to formally establish a joint venture company with NPS Property Consultants Ltd; 2. Delegate authority to the Corporate Director of Growth & Regeneration and Corporate Director Resources to conclude negotiations and set up a performance framework for managing the joint venture; 3. Delegate authority to the Corporate Director of Growth and Regeneration and Director of Governance the ability to finalise any individual matters within their remit; and 4. Cabinet is requested to recommend to Council amendments to the Constitution 'Appointments to external organisations' to include the joint venture company within the key partnerships category to enable to the Leader to make appointment to the governing body. 	

1. ORIGIN OF REPORT

- 1.1 The Phase One Budget Proposals approved by Council on 17 December 2015 included a proposal to transfer property services into a joint venture with NPS Property Consultants Ltd (NPS), including estate management, asset acquisition, disposals and rent collection.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of the report is to seek Cabinet's approval to formally establish a joint venture property services company with NPS Property Consultants Ltd (NPS), following approval of the Phase One Budget Proposals by Council on 17 December 2015.
- 2.2 This report is for Cabinet to consider under its Terms of Reference Part 3, Section 3.2 paragraph 3.2.6 To lead the delivery of Business Transformation within the Council.

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO
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4. THE PROPOSED JOINT VENTURE

- 4.1 In 2013 East of England LGA undertook a health check of asset management practice in Peterborough and subsequently in January 2015 issued a follow up report. In summary the report stated that although asset management services were functioning within the Council, there were problems with the service being fragmented leaving the authority operating sub-optimally in terms of its property and asset management service.
- 4.2 Taking the East of England LGA report and building upon its proposals, a review of property services was undertaken and responsibility for asset management services has been transferred to the Corporate Director of Growth & Regeneration. This includes client responsibility for property services provided by Serco and Amey.
- 4.3 The Council now plans to start a joint venture with NPS Property Consultants Ltd (NPS) which is part of the Norse Group. This is a substantial property services company owned by Norfolk County Council that has been operating for over 10 years in both the public and private sectors. The NPS joint venture model with local authorities is tried and tested across the market with 23 joint venture companies under the group at present. The benefits of a joint venture include the ability to better access robust and quality property specialisms at short notice, as well as generating additional income by the joint venture trading its services to other organisations within the limit of the procurement regulations. Any trading profits would be split 50:50. Services proposed to be transferred into the joint venture include estate management, asset acquisition, design, disposals and rent collection. We expect that this proposal will make savings of up to £100,000 in 2016/17 and 2017/18, rising to £150,000 in subsequent years.
- 4.4 NPS Property Consultants Ltd is one of three companies in the Norse Group, which is fully owned by Norfolk County Council. NPS provides a full range of property services and operates 23 public sector joint ventures across the country, including Norwich, Humber, Leeds, Wigan, Devon, Herefordshire and Waltham Forest.
- 4.5 The joint venture will initially undertake those services currently provided by Serco under the Strategic Property contract [estates management, commissioning, facilities management and energy billing] together with internal technical expertise and agency staff supporting property services & strategic projects. The agreement/service arrangement is that the joint venture will manage all of the Council's property services with the exception of education project/advice and will either:-
- a. Undertake services directly, or
 - b. Commission and manage services and works undertaken by third parties
- 4.6 The proposal recognises that the joint venture will need to address the service deficiencies and the recommendations identified in the EELGA report. The management arrangements will therefore include a full service review and improvement plan for implementation, in advance of 'going live', anticipated to be by 1 July 2016.

5. CONSULTATION

- 5.1 These proposals have been developed from the approved Phase One Budget for 2016/17, which included the future delivery of Property Services.
- 5.2 As referred to above, NPS Property Consultants Ltd already have similar arrangements in place with a number of local authorities across the country. Officers

have consulted with public sector colleagues in relation to the services provided by NPS Property Consultants Ltd elsewhere.

6. ANTICIPATED OUTCOMES

- 6.1 Should Cabinet agree to the recommendations, it is anticipated that the joint venture company will be operational by no later than 1 July 2016. This will necessitate changes to the contract with Serco under additional services, Strategic Property, and will require agreement in relation to the transfer of staff [including pension arrangements] and resources from Serco to the new entity, the provision of Council office space, together with ICT and support services by Norse Group.

7. REASONS FOR RECOMMENDATIONS

- 7.1 This report seeks to implement the approved Phase One Budget proposals to enter into a joint venture with NPS Property Consultants Ltd, including access to robust and quality property specialisms at short notice and the ability to generate income, thereby contributing toward closing the budget gap.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The following options were considered:-
1. Do nothing – this option was ruled out for the reasons set out in the EELGA report, relating to the sub-optimal way that property services are currently provided.
 2. Bring the service in house to address the issues set out in the EELGA report. This has a number of disadvantages related to cost and the management resource required to establish the significant team required to specify, procure and manage appointments of a wide range of property service providers. It would also run counter to the commissioning council model and would not provide significant income generation opportunities.

9. IMPLICATIONS

9.1 HR & staffing implications.

- 9.1.1 A number of staff within the Corporate Property Team and Serco's Estates Management Team may be affected by these proposals and this will be dealt with in accordance with the Council's (and Serco's) normal employment policies and procedures, in consultation with those staff and the trade unions.

9.2 Financial implications

- 9.2.1 Further to the initial financial information included in the Cabinet and Council reports, further work has been undertaken to refine the high level business case. The main income streams for the JV include:

- Direct funding from the Council
- Charges to Peterborough City Council projects e.g. capital projects, on a fee basis for works undertaken
- Income for works undertaken for customers other than Peterborough City Council.

The costs include the staff employed, running costs and any other services or support brought in.

- 9.2.2 At this stage the indicative level of surplus for the Council is approaching the level outlined above, but further work will be needed in the next three months to ensure the

full target is achieved. The increase in later years is predicated on further income being generated from the JV.

- 9.2.3 It should also be noted that whilst the expectation is for the JV to make a surplus, and the high level business case indicates that it will, it is possible for the JV to make a loss. If this were to happen, then the Council would take a share of this. However as the Council plays a key role in the management of the JV, action would be taken well in advance of such an event.

9.3 Legal implications

- 9.3.1 This section contains the legal implications in the following 4 main areas:

- power of Cabinet to approve the proposal
- procurement and other statutory considerations
- heads of Terms
- property implications

9.4 Power

- 9.4.1 The Council has a statutory power, normally known as a General Power of Competence (GPC) under Section 1 Localism Act 2011 to enter into the proposed joint venture (JV) arrangement. In simple terms, the GPC gives local authorities a broad power to do anything that an individual can do, provided it is not prohibited by legislation.

- 9.4.2 The Council may use the GPC to decide to create a JV company with Norse Property Consultants Limited (NPS), and seek to rely on an exemption under Regulation 12 of the Public Contract Regulations 2015 (PCR). The exemption is more commonly known as the 'Teckal exemption', which is now codified under Regulation 12 of the PCR.

9.5 Procurement

- 9.5.1 Under Regulation 12, the PCR will not apply to an arrangement between two or more contracting authorities to form a separate legal entity such as a JV company, provided the conditions of the 'Teckal exemption' are met.

- 9.5.2 Briefly, the 3 key conditions of the 'Teckal exemption' are:

- the majority (more than 80%) of the JV's company essential work goes back to the contracting authorities;
- the contracting authorities control the JV company similar to that which they exercise over their own departments; and
- there is no private ownership of the JV company. Any private ownership will negate the Teckal exemption.

- 9.5.3 The proposal is for the JV company to provide property services back to the Council which will form the main work of the JV company. It is not the intention of the Council to use the JV company to trade on a commercial basis with its owners or third parties in excess of the permitted 19% limit.

- 9.5.4 The Teckal exemption also requires the owners of the JV company to be public authorities or entities which are wholly public owned so that the public authorities can jointly control the JV company.

- 9.5.5 The proposal for the JV company is to be a company limited by shares whereby NPS is to hold 80% of the shares with the Council holding 20% of the shares. NPS Property

Consultants Ltd is wholly owned by Norse Group Limited and Norse Group Limited is wholly owned by Norfolk County Council (NCC). There is no private sector ownership of NPS Property Consultants Ltd.

9.5.6 Therefore the controlling authorities for the JV company will be two public authorities - NCC and the Council.

9.5.7 The board of the JV company will comprise of 5 directors, 2 of which will be appointed by NCC and 2 appointed by the Council, and an operations director to be jointly appointed by NCC and the Council. The chairman of the board will rotate.

9.5.8 In effect, the JV company will be wholly owned and jointly controlled by NCC and the Council collectively. This arrangement would satisfy the condition of control of JV company by the contracting authorities under the Teckal exemption.

9.5.9 For the above reasons, there are no procurement implications because the proposed arrangement for the Council to create a JV company with NPS Property Consultants Ltd satisfies the Teckal exemption. As such, the Council will be able to pass work to the JV company without having to put the work out to competitive tender. The Council will monitor the ongoing control and work of the JV company to ensure that the JV company operates within the limits of the Teckal exemption.

9.6 State Aid

9.6.1 There is no unlawful state aid implications on the basis that the PCR do not apply to the proposed JV arrangement so no EU competition required, provided the JV Company remains Teckal compliant.

9.7 Other statutory considerations

9.7.1 The Council has a general duty to have regard to the Equality Act 2010. The Council has in accordance with its statutory obligations considered the impact on equalities arising from its proposal. From its initial assessment, the Council considers that there is no equalities impact which requires action or any adverse qualities impact on any protected group. The Equality impact Assessment is listed in the section 'Background Documents'.

9.7.2 There are a number of other statutory considerations (Human Rights Act 1998, Crime and Disorder Act 1998 - as modified) which are considered not to have any implications for this proposal.

9.8 Heads of Terms

9.8.1 The Council and NPS have been in discussions regarding a draft Heads of Terms (HOTS) to outline the key terms of the JV arrangement and the legal agreements to be entered into by NPS and the Council to create and govern the operation of the JV company. The HOTS is agreed in principle subject to Cabinet approval. The HOTS, if entered into are not legally binding, and the legal agreements referred to in the HOTS are subject to written agreements to be formally executed.

9.9 Property Implications

9.9.1 It is proposed that staff employed by the JV and based in Peterborough will be based in Council accommodation. The JV will be a separate legal entity and as such the Council will need to enter into lease or licence arrangements with the JV for occupation

of Council buildings. The exact details of the arrangements will be agreed between the JV and the Council if the proposal receives approval from Cabinet.

9.10 ICT implications

9.10.1 Based on the information available at this time the impact on ICT from this proposal are considered minimal.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

None.