

<b>CABINET</b>	AGENDA ITEM No. 3
<b>18 DECEMBER 2017</b>	<b>PUBLIC REPORT</b>

Report of:	Simon Machen, Corporate Director Growth and Regeneration	
Cabinet Member(s) responsible:	Councillor Gavin Elsey, Cabinet Member for Waste and Street Scene	
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**PROPOSAL FOR THE TERMINATION OF THE CONTRACT WITH ENTERPRISE MANAGED SERVICES LIMITED AND THE FUTURE PROVISION OF SERVICES**

R E C O M M E N D A T I O N S	
<b>FROM:</b> <i>Simon Machen, Corporate Director of Growth and Regeneration</i>	<b>Deadline date:</b> <i>N/A</i>
<p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> <li>1. Authorise the entering into a Deed of Termination relating to the Council's contract for services with Enterprise Managed Services Limited;</li> <li>2. Agree for the Cabinet Member for Waste and Street Scene to approve the award of replacement contracts or arrangement of alternative provisions for all services currently provided under the Enterprise Managed Services contract (such steps to include matters relating to contracts, leases and other relevant legal documentation and pensions arrangements) including: <ul style="list-style-type: none"> <li>● Refuse, street cleansing vehicle workshop</li> <li>● Parks and open spaces</li> <li>● Property maintenance and property cleaning</li> <li>● Community link and home to school transport</li> <li>● Grounds and trees maintenance</li> <li>● Catering</li> </ul> </li> </ol>	

**1. ORIGIN OF REPORT**

1.1 The Medium Term Financial Strategy (MTFS) 2017/18 – 2026/27 presented to Council on 8 March 2017 included a proposal for the Council's current contract for services with Enterprise Managed Services Limited (EMS) to terminate by mutual agreement and for the Council to consider alternative ways of providing those services.

**2. PURPOSE AND REASON FOR REPORT**

2.1 The purpose of this Report is to seek approval from Cabinet to formally terminate the existing EMS contract and to commence arrangements to identify and put in place replacement contracts or other alternative provision for those services listed above.

2.2 This report is for Cabinet to consider under its Terms of Reference 3.2.6, 'To lead the delivery of Business Transformation within the Council.'

### 3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	<b>N/A</b>
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### 4. **BACKGROUND AND KEY ISSUES**

4.1 The current contract with EMS was awarded after an OJEU compliant procurement process in April 2011. It was to be a 23 year contract encompassing a wide range of services including, refuse, street cleansing, parks and open spaces, property maintenance and property cleansing, community link and home to school transport, grounds and trees maintenance, vehicle workshop and catering. EMS was subsequently purchased by Amey Limited (Amey) which has fulfilled the contract thereafter.

4.2 Over the course of the past two years the EMS contract has seen several operational challenges and it has been recognised by both the Council and Amey that the contract is no longer fit for purpose. It was procured prior to the significant financial challenges that have resulted from Government's austerity cuts and increased demands on services. As such both parties have informally agreed to mutually terminate the contract from August 2018 subject to agreement on the terms of a deed of termination.

4.3 An options appraisal has been carried out and this identified several potential solutions looking at the pros and cons of each. The following is a summary of some of the key options explored: -

4.3.1 **Continue with the existing Amey contract** – this option has been explored but Amey has advised that it is not willing to carry on with the existing contract, which both parties have acknowledged is no longer fit for purpose, at the current value and it wishes to proceed with an agreement for mutual termination.

4.3.2 **Transfer the majority of services into a new Joint Venture company with the Norse Group** – it was originally proposed that the Council would transfer services in the EMS contract to a new joint venture company with Norse Commercial Services. However, given the scope of services and in the absence of a procurement process it has not been possible to demonstrate that this represents the best value for money for the Council or that such a solution would be affordable. However, the potential transfer of those property services provided under the contract with EMS to NPS Peterborough Limited, the Council's existing property joint venture company set up with Norse will be considered.

4.3.3 **Bring services back in house** – The Council operates a commissioning model for service delivery and this brings significant benefits through provider economy of scale and access to specialist resource and skill set beyond what the Council itself can sustain. An in house model would be likely to require new investment in specialist and managerial resource and is highly unlikely to be an affordable option. Where contracts work effectively, for example the Peterborough Highway Services contract with Skanska Limited, the Council has been able to achieve significant year on year financial and efficiency savings and at the same time generate increasing levels of third party income. There may however be discreet areas of service where it could in the short term be appropriate to return in-house until a new delivery model, potentially with one or more existing local authority partners, can be identified.

4.3.4 **Re tender in separate packaged contracts** – One of the challenges of the existing EMS contract is that it covers a broad range of services. This option would allow us to repackage certain services to allow specialist contractors to bid for elements rather than one contractor doing all. This would have the benefit of increasing the potential for competition between eligible providers who specialise in such services. Also, by utilising service specialists we should be able to access innovation in service delivery and put in

place contracts that are more responsive to the changing needs of the Council.

4.3.5 **Re tender as a single bulk contract** - The options appraisal has confirmed that there would be no economic or operational benefit in simply procuring a like for like replacement contract.

4.4 We are currently exploring whether benefits could be achieved through the Community Asset Transfer of areas of public open space to recognised charitable and community groups within Peterborough.

4.5 We are also engaging with existing Council service partners to ascertain how elements of the services might be delivered alongside their existing functions where a defined benefit to the Council can be obtained and that value for money can be demonstrated.

## 5. **CONSULTATION**

5.1 We have consulted with service leads on their specific areas, noting their concerns with the current service and the improvements they feel are needed.

5.2 We have briefed Union officials on the current proposals and kept staff members informed.

## 6. **ANTICIPATED OUTCOMES OR IMPACT**

6.1 That Cabinet approve the termination of the EMS contract and that the process to put in place replacement contracts and services will begin immediately to ensure a mobilisation date of no later than the 1 of September 2018.

## 7. **REASON FOR THE RECOMMENDATION**

7.1 This report seeks to implement the proposals set out as part of the 2017/18 budget decision to terminate the current EMS contract as the contract is no longer fit for purpose. The new contracts and service delivery arrangements will improve service delivery, to achieve value for money, and to be more responsive to the Council's changing needs. One of the key objectives will be to increase the levels of and quality of recycling to reduce potential treatment costs.

## 8. **ALTERNATIVE OPTIONS CONSIDERED**

8.1 The following alternative options have been considered: -

8.1.1 Do nothing and remain with EMS – this option was ruled out due to performance concerns in connection with the EMS contract rendering improvements unlikely within the current operating climate.

8.1.2 Bring the services in house as a whole - this was ruled out due to a number of disadvantages related to the management resource required to establish the significant team necessary to operate the services in house. It would also run counter to the trend towards a commissioning council model which the Council is increasingly adopting across its service areas.

## 9. **IMPLICATIONS**

### **Financial Implications**

9.1 It is clear that additional resources will be required in the Contracts and Procurement and Growth and Regeneration teams within Legal Services to deal with the termination of the existing contracts and lease/licence arrangements and the preparation and completion of new arrangements with different service providers. These teams are already facing capacity issues and are supported by locums to deal with existing workload. Ideally this work will be kept in house as the existing team members have knowledge of the services and issues involved and can

support the Council to achieve the best possible outcomes. Additional resource will also be required to support the technical and operational team through the procurement and mobilisation phase.

- 9.2 In addition to the above mentioned legal costs there will also be procurement and resource costs associated with the termination of the contract and re-procurement of the services.
- 9.3 It is proposed to set aside a £500,000 allocation from reserves for the procurement of these services and the current forecasted support needs are as per the below:-

<b>Area</b>	<b>Cost</b>
Legal and Legal admin support	£150,000.00
Procurement and Verto Management	£150,000.00
Environment Team	£100,000.00
External Support	£40,000.00
Human Resources	£28,000.00
Contingency	£32,000.00
Total	£500,000.00

#### **Legal Implications**

##### Termination of Enterprise Managed Services Limited operational services agreement (EMS agreement)

- 9.4 The EMS agreement was awarded following a procurement process for EMS to deliver various operational services including refuse collection, street cleansing, grounds maintenance, facilities management, property design and maintenance, and transport (“operational services”). The duration of the EMS agreement is 23 years to run from 4 March 2011 and to end on 5 March 2034.
- 9.5 The EMS agreement provides for both sides to end the agreement earlier on prescribed grounds where there is default or without default. The earliest date that the Council could for convenience seek to end the EMS agreement is on 4 March 2020 or 4 March 2027.
- 9.6 However, the termination provisions in the EMS agreement do not exclude both sides mutually agreeing to end the EMS agreement earlier than as provided under the prescribed grounds. On the basis that there is a mutual agreement, the parties will end the EMS agreement by way of a deed of termination. The deed of termination will be legally binding, and it will discharge EMS from its performance obligations of all the operational services under the EMS agreement.
- 9.7 In addition to the EMS agreement, the Council has granted a number of lease and licences to Amey to provide the services. In addition, they have a licence to occupy land at the athletics track that has been granted to them by Vivacity on the Council’s behalf. It is not anticipated that there will be any issues in termination of these agreements as the termination of the contract is being undertaken by mutual consent but further investigation is required to determine the exact process for terminating the various agreements.
- 9.8 Any property transactions are subject to the requirement to obtain best value pursuant to s123 Local Government Act 1972.
- 9.9 On the expiry of the EMS agreement, the Council has to continue to meet its statutory obligations

to provide all the operational services.

#### Where services would be procured?

- 9.10 Under the Public Contract Regulations 2015 (PCR), all public contracts where the value of the contract awarded is above the EU threshold value must publish a notice in the Official Journal of the European Union (OJEU notice) to invite expressions of interests from providers who may be in a position to meet the Council's service requirements. Prior to publishing the OJEU notice, the Council aims to publish a Prior Information Notice (PIN) to alert the market that an OJEU notice will shortly be published and to inform potential bidders of market consultation activities. The Council will use the restricted procedure route which is a two stage procurement process involving a selection criteria, and an award criteria. The purpose of using the restricted procedure is so that only those bidders which qualify under the selection criteria will be invited to tender.

#### Potential direct award of the facilities management, property maintenance and building cleaning services ("property services") to NPS Peterborough Limited (NPS)

- 9.11 A previous Cabinet decision ( MAR16/CAB/20) approved the establishment of NPS to deliver certain property and management services. NPS is wholly owned and controlled by the Council and Norfolk County Council and primarily set up to deliver property services back to the Council. There is no procurement implication to award the property services direct to NPS because the arrangement will be exempt under Regulation 12(1) of the PCR or more commonly known as the "Teckal exemption", provided the Council monitors the ongoing control and work of NPS to ensure that NPS operates within the limits of the 'Teckal exemption'.
- 9.12 If this option is pursued the Council would pass the property services to NPS under the terms of an existing Service Deed of Agreement with NPS. The Service Deed of Agreement permits variations to the existing services by written agreement so the Council will have to enter into a variation agreement with NPS to include the property services.
- 9.13 Under this option the property services provided under the contract would be transferred to NPS Peterborough Limited, the Council's existing property JV set up with Norfolk Property Services because the services align directly with the functions included within this JV

#### Direct award

- 9.14 Existing Council contracts are being reviewed to determine whether it may be possible to directly award services. For example, the Skanska contract has provision for traffic management and speed control and could potentially be used for cutting grass verges or wider grounds maintenance.

#### Community Asset Transfers (CATs)

- 9.15 A community asset transfer (CAT) occurs when public bodies', usually local authorities, transfer or change the ownership and/or management of land or buildings owned by the local authorities to communities (community and voluntary bodies, charitable bodies, commercial and social enterprises). The usual benefit of a CAT is that the asset may be managed at less than market value if there are social, environmental and economic benefits for the community.
- 9.16 The Council is statutorily obliged to consider expressions of interests from communities wishing to take over and/or manage a local authority service. (Section 81 of the Localism Act 2011 (Community Right to Challenge) and DCLG's Statutory Guidance on Community Right to Challenge).
- 9.17 In addition to considering approaches from community groups under the Localism Act, the Council has a Community Asset Transfer Strategy which aims to:
- encourage and support the retention of local facilities which are used for a variety of social, community and public purposes without the use of Council funds in the future – on

the basis that we are satisfied that the business case for such a transfer is financially viable and sustainable in the long term;

- increase the effectiveness and efficiency of council owned community assets through local management;
- maintain local public facilities through community management;
- explore innovative ways of enhancing existing community facilities, for example by transferring multiple assets to one provider who can then deliver benefits linked to economies of scale;
- support the development of social enterprises that clearly demonstrate the returns to the local community.

9.18 Asset transfer means moving the responsibility for management and running of assets from the Council to a civil society sector organisation. This also has the potential of achieving a range of key objectives from promoting civic renewal, community cohesion, active citizenship and improving local public services to tackling poverty and promoting economic regeneration.

9.19 If this option is pursued for areas of open space the Council would seek expressions of interest in line with the Council's published Community Asset Transfer Strategy 2013 to 2017

9.20 Where the value of the service exceeds the EU procurement threshold, the procurement must be conducted in accordance with the PCR 2015 (advertising, selection and award) unless it is a service contract specifically excluded from the PCR.

9.21 In each of the options above, any decision to be made to award a contract for services to the new provider either following the exercise of a procurement process, or by way of a direct award or by a community asset transfer, each decision will be further subject to a CMDN being submitted for the Cabinet Member to approve the award of each contract, where required.

9.22 In addition to an award of contract, certain services may require the grant of leases or licences in the same way as is currently under the EMS contract. These will be reviewed as part of the tender process and any lease or licence will be further approved in the CMDN in relation to the contract. Any CAT will also be the subject of further approval by way of a CMDN.

### **HR & Pensions Implications**

9.23 A total of 402 employees are currently employed by EMS and will be affected by these proposals. This will be dealt with in accordance with TUPE regulations, which will include consultation with those employees and trade unions.

## **10. BACKGROUND DOCUMENTS**

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

10.1 None.

## **11. APPENDICES**

11.1 None.