

CABINET	AGENDA ITEM No. 14
16 JANUARY 2023	PUBLIC REPORT

Report of:	Cecilie Booth, Executive Director of Corporate Services and S151 Officer	
Cabinet Member(s) responsible:	Councillor Andy Coles, Cabinet Member for Finance and Governance	
Contact Officer(s):	Cecilie Booth, Executive Director of Corporate Services and S151 Officer	

CONFIRMATION OF THE ARRANGEMENTS TO TRANSFER SERVICES PROVIDED BY NPS PETERBOROUGH LIMITED FOLLOWING TERMINATION OF THEIR AGREEMENT IN RELATION TO PROPERTY AND ESTATES

RECOMMENDATIONS
<p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> 1. Agrees to bring forward the termination of the Council's Agreement with NPS Peterborough Limited to 31 January 2023 or as soon as reasonably possible thereafter. 2. Notes that upon termination of the Council's Agreement with NPS Peterborough Limited, property and estate management services will be provided in-house by the Council and staff will transfer accordingly. 3. Delegates authority to the Executive Director of Corporate Services and S151 Officer in consultation with the Cabinet Member for Finance and Resources and the Director of Law and Governance and Monitoring Officer to agree to decommission and wind up NPS Peterborough Limited or dispose of its shareholding in accordance with the shareholders agreement and articles of NPS Peterborough, subject to appropriate due diligence and their agreement that it is appropriate to do so. 4. Agrees that the Council, as a shareholder of NPS Peterborough Limited, will exercise its vote and give such consent as may be required, to give effect to these recommendations. 5. Delegates authority to the Executive Director of Corporate Services and S151 Officer, in consultation with the Director of Law and Governance and Monitoring Officer to: <ol style="list-style-type: none"> a) negotiate and enter into a Commercial Transfer Agreement with NPS Peterborough Limited in respect of the termination; b) in respect of the earlier termination date referred to in recommendation 1 above, approve any financial payment to NPS Peterborough Limited; and c) issue notices, negotiate and enter into any other documentation and take all other steps reasonably necessary in the view of the Executive Director of Corporate Services and S151 Officer to facilitate and give effect to these recommendations.

1. ORIGIN OF REPORT

1.1 This report is submitted to Cabinet upon the request of the Executive Director of Corporate Services and S151 Officer.

2. PURPOSE AND REASON FOR REPORT

- 2.1 This report is submitted to Cabinet to authorise bringing forward the termination date of the Council's Agreement with NPS Peterborough Limited to 31 January 2023, or as soon as possible thereafter, and the consequential actions required.
- 2.2 This report is for Cabinet to consider making the recommendations under paragraph 3.2.5 of Part 3, Section 3 of the Constitution '*To make decisions on actions relating to the awarding, assigning and termination of contracts over £500k, and waiving or granting exemptions to Contract Regulations where contracts are over £500k, with the exception any time-critical, operational, or routine decision, which may be determined by the relevant portfolio holder*' and additionally under paragraph 3.2.17, '*Cabinet will be responsible for the following functions in relation to the Council's companies, partnership and charities; (b) The decommissioning/ winding up of existing companies, partnerships and charities; (g) The determination of decisions reserved to the Council as shareholder or member of a company, partnership or charity*'.
- 2.3 There is an exempt annex attached to this report that is NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 because it contains information that relates to the financial or business affairs (past or present) of a particular person (including the Council). The public interest test has been applied to the information contained within this exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.

3. **TIMESCALES**

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

- 4.1 On 20 June 2022 Cabinet agreed to terminate its Agreement with NPS Peterborough Ltd ("NPSPL") in relation to property and estate management services by giving 12 months' notice of termination in accordance with the terms of the Agreement. The primary reason for termination was so that the Council has better corporate oversight and control of its property portfolio and asset management planning, including its disposals strategy. The termination notice was given and an end date of 30 June 2023 was agreed with NPSPL.
- 4.2 Following issuing the termination notice, there has been a period of further review to assess the extent to which and ensure that NPSPL's service delivery meets the Council's strategic priorities. During this period it has become clear that the Council would benefit from bringing forward the termination date and the transfer of these services from NPSPL, to give the Council control of the activity as soon as possible, greater certainty to the staff within NPSPL and the potential to achieve savings on this service provision going forward.
- 4.3 It is now proposed that the services will be transferred back to the Council on 1 February 2023 (with the last date of the contract being 31 January 2023) or as soon as reasonably possible thereafter, by bringing the termination date forward. Property and estate management services would be provided in-house by the Council from that date.
- 4.4 The change to the termination date requires the agreement of NPSPL and discussions are taking place with NPSPL to seek to confirm their agreement in this regard. It is envisaged that NPSPL will incur some unavoidable costs and expenses as a result of bringing the termination date forward and a financial payment may be required from the Council to NPSPL in this regard, in order to secure agreement to an earlier termination date. The amount of any such payment is currently under discussion. Cabinet is requested to delegate authority to the Executive Director of Corporate Services and S151 Officer, in consultation with the Director of Law and Governance and Monitoring Officer, to make such financial payment to NPSPL in accordance with recommendation 5.

- 4.5 The termination will require staff currently employed by NPSPL in relation to the service to transfer to the Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended, (“TUPE”). It is envisaged that 13 members of NPSPL staff will transfer under TUPE to the Council, on existing terms and conditions (in this case NPSPL contracts of employment). TUPE requires, ‘meaningful consultation’ with employees and the HR teams of the Council and NPSPL are in contact to ensure that the obligations under TUPE and pensions requirements are met. Staff who TUPE to the Council will be enrolled into the membership of the Local Government Pension Scheme (“LGPS”).
- 4.6 A cessation valuation will need to be carried out by the pensions administrator for those members of staff who originally transferred to NPS with continued membership of the LGPS to determine whether there is any surplus or deficit in relation to the pensions, however this process will not impact on the transfer timescales and is carried out after the staff have transferred.
- 4.7 Whilst the beginning of February is the preferred transfer date, there may need to be some flexibility in this date to ensure the parties meet the requirements of TUPE and complete all necessary legal documentation.
- 4.8 Following the transfer, the property service will be reviewed to provide a service delivery organisation which is better able to meet the requirements of the Council.
- 4.8 Although the services agreement with NPSPL will cease, the joint venture company NPSPL itself will continue to exist following the transfer of the property services to the Council and in due course the shareholders of NPSPL will determine whether it should be wound up and the Council, in accordance with recommendation 3 above, will agree to decommission and wind up NPS Peterborough Limited or dispose of its shareholding in accordance with the articles of NPS Peterborough, subject to appropriate due diligence taking place.

5. CORPORATE PRIORITIES

- 5.1 The recommendation links to the Council’s Corporate Priorities as follows:
1. *The Economy & Inclusive Growth*
 - A Carbon Impact Assessment has been completed. The proposal involves transferring a service delivery activity from a third-party organisation to the Council. The carbon emissions and environmental impact is the same in both organisations and therefore the impact is neutral in the short term because the staff already operate from a building within the Council’s scope of emissions (Eco Innovation Centre). In the medium and longer term the Council will have greater control over its property service and this will enable the Council to direct its property services to consider projects that contribute positively to the Council’s Carbon zero target, for example by closing buildings and improving the energy efficiency of buildings. The staff will also relocate to Sand Martin House, which will reduce the Council’s carbon emissions and environmental impact.
 2. *Sustainable Future City Council*
 - The proposal seeks to ensure that the Council is delivering value for money for the taxpayer both in respect of its property services and also in respect of the properties it utilises. An earlier and greater control of the property service enables both of these outcomes to be achieved more quickly. It will also help address the recruitment challenges currently being experienced by NPSPL.

6. CONSULTATION

- 6.1 As required under the TUPE regulations there is a requirement for meaningful consultation with employees. A formal programme of consultation will take place throughout January 2023. Prior to the formal process there has also been informal consultation and engagement with employees who are supportive of an earlier transfer date. The Council’s Human Resources department are involved to ensure that the statutory consultation required has been carried out.

6.2 This Cabinet report has been considered at Corporate Leadership Team on the 21 December 2022 and Cabinet Policy Forum on the 9 January 2023.

7. ANTICIPATED OUTCOMES OR IMPACT

7.1 The outcome will be an earlier termination of the contract and bringing the service in-house earlier. This will allow the Council to reorganise the way in which it manages its property portfolio and will ensure that the Council has the right level of corporate oversight in relation to property decisions and strategic asset management planning.

7.2 The NPSPL staff providing the service will transfer to the Council under TUPE.

8. REASON FOR THE RECOMMENDATION

8.1 The Cabinet's approval on 20 June 2022 to terminate the services contract with NPSPL was provided on the basis of gaining better corporate oversight and control of its property portfolio and asset management planning, including its disposals strategy. Since that decision, the Council has been running the services under the leadership of an Interim Property Services Lead, and this has led to the conclusion that the Council would realise financial and service benefits early, by bringing the transfer date forward. A number of staff have left NPSPL and because of the uncertainty surrounding the future of the joint venture, NPSPL is unable to recruit new employees, adversely impacting on the service NPSPL provides the Council. Bringing forward the transfer date, removes this uncertainty, allowing the Council to offer more certain employment to new starters and the existing staff. A full-time Service Director – Commercial Partnerships, property and Asset Management, has already been appointed to drive the service forward.

9. ALTERNATIVE OPTIONS CONSIDERED

9.1 Do not bring the termination date forward:
Leaving the termination and transfer date as the end of June 2023 was discounted because the earlier date provides the Council more immediate control of the service and the ability to better able tailor the service to meet the Council's requirements.

10. IMPLICATIONS

10.1 Financial Implications

10.1.1 The Council is not liable for any costs incurred by NPS relating to the period following the 12 months' notice of termination. However, as this period is to be shortened, any unavoidable costs claimed by NPS from the actual date of termination to the expiry of the period of notice 30 June 2023 are the subject of negotiation.

10.1.2 The Council will assume the employment costs and liabilities of the staff transferring as part of the TUPE arrangements described above. These costs will be funded from the budget agreed for the contractual payments to NPS which will cease on the date of termination.

10.1.3 As the termination negotiations progress with NPS it may become necessary for contracts to be novated to the Council, or for the Council to agree new contracts for the service provision which may commence before the contract has terminated. As described in the previous paragraph, these costs will be funded from the budget agreed for the contractual payment to NPS.

10.1.4 The closure of the joint venture company will incur costs, including the preparation and audit costs of the final accounts of the company. The Council will work with Norse/NPS to ensure these costs are kept to a minimum.

10.2 Legal Implications

- 10.2.1 Under the terms of the services agreement with NPSPL, 12 months' notice needs to be given to terminate. Therefore, the Council does not have the right to shorten this notice period (currently expiring at the end of June 2023) unless NPSPL agree. Although there is no contractual right for any settlement payment or payment of 'stranded costs' to NPSPL, there may be some unavoidable costs claimed by NPSPL as a result of bringing the termination date forward and which will be subject to negotiation between the parties.
- 10.2.2 The intention is to enter into a Commercial Transfer Agreement with NPSPL to document the agreed early termination, the payment of any costs mentioned above, and any other consequential items.
- 10.2.3 From an employment perspective, the legal implications to this decision are primarily in relation to the Transfer of Undertakings (Protection of Employment) (TUPE) transfer. TUPE is the mechanism by which such staff transfers are governed. As mentioned above, the affected staff will transfer on their current Terms & Conditions as these are protected by the TUPE Regulations. As the new employer of these employees, the Council will need to honour those terms and conditions. There are limited circumstances in which PCC can change these employees' terms and conditions. In brief this would require a change in the workforce and an Economical, Technical or Organisational reason (ETO). Staff will need to be properly consulted in the event and an explanation of the potential possibilities will need to be included in the measures letters.
- 10.2.3 Whilst the terms and conditions are protected, pensions for the majority of the staff will change because they will be enrolled into LGPS (there are employees already within the LGPS and who therefore will continue in that scheme).
- 10.2.4 The Council may also be required to consult with any of its own employees who may be affected by the transfer.
- 10.2.5 The transferring of employees also brings with it the on-going management of those employees, including dealing with any capability, disciplinary, or absence management proceedings, for example. Subject to any contractual provisions to the contrary contained within the services agreement with NPSPL or the proposed Commercial Transfer Agreement, the transfer automatically transfers all of the "rights, powers, duties and liabilities" of each transferring employee. Part of the TUPE Regulations requires certain information to be provided to the Council prior to the transfer date, in order that the Council can be properly prepared to deal with any such issues effectively and arrange for indemnities against such liabilities as appropriate.
- 10.2.6 If any restructure of the team is intended following the transfer, the proper consultations and procedures will need to be followed in that regard in due course.
- 10.2.7 NPSPL will continue to exist as a company, however, it is envisaged that the company will either be decommissioned and wound up in due course, or the Council will otherwise dispose of its shareholding in accordance with the shareholders agreement and the articles of association.

10.3 **Equalities Implications**

- 10.3.1 No specific implications arising from this report

11. **BACKGROUND DOCUMENTS**

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

- 11.1 Cabinet Report JUN22/CAB/07

12. **APPENDICES**

- 12.1 Exempt Appendix 1 – NPS Transfer Financial Information

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