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**PART EXEMPT**

# **HAVANT BOROUGH COUNCIL**

**CABINET 21<sup>st</sup> September 2022**

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## **ENVIRONMENTAL SERVICES ARRANGMENTS – PROPOSAL TO END THE DELEGATION AGREEMENT WITH EAST HAMPSHIRE DISTRICT COUNCIL**

**FOR RECOMMENDATION TO COUNCIL**

**Portfolio Holder: Cllr L Bowerman, Cabinet Lead for Environmental Services  
Executive Head of Service for Commercial: Chris Bradley**

**Report Number: HBC/078/2022**

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### **1. Purpose**

This report sets out the present challenges within the existing environmental service arrangements, whereby Havant Borough Council (HBC), through its joint venture with Norse Commercial Services (NCS) (the joint venture being Norse South East Limited (NSE)), deliver environmental services to East Hampshire District Council (EHDC) and proposals to change these arrangements.

### **2. Recommendation**

Cabinet recommends to Full Council THAT:

- a. The Council withdraw from the existing delegation arrangements regarding delivery of environmental services on behalf of EHDC.
- b. The Chief Executive (acting in consultation with the Leader, Cabinet Lead for Environmental Services, S151 Officer, Monitoring Officer and Executive Head of Commercial) be delegated the authority to facilitate the withdrawal (on or before the end of December 2022 where possible) from the delegation arrangements around environmental services and in particular be delegated the authority to:

- i. agree an early termination of the Delegation Agreement dated 27 September 2019 with EHDC for the delivery of environmental services functions; and
  - ii. agree the negotiation and novation of the existing Supplemental Agreement dated 23 September 2019 between HBC and NSE, so that EHDC might make its own separate arrangements for delivery of this service
- c. The Chief Executive in consultation with the S151 Officer, Monitoring Officer and Executive Head of Commercial will arrange for a quarterly report to be presented to Cabinet by way of progress report on the environmental services arrangements.
- d. Council approves an uplift of remuneration for Drivers and Loaders as detailed in Appendix1.
- e. Council approves previously unexpected expenditure (as per paragraph 4.4. below) relating to the hiring of a specialist skip vehicle and driver to cover the period up to the anticipated termination of the Delegation Agreement

### **3. Executive Summary**

- 3.1. In April 2016 HBC and NCS established Norse South East Limited (NSE), a JV for the delivery of environmental services which, amongst other services, included domestic waste collection. The original Service Agreement between HBC and NSE was signed in March 2016. This agreement ends on the 31st of March 2026, unless extended.
- 3.2. On 27 September 2019 HBC sealed a Delegation Agreement with EHDC relating to the delegation of environmental services, which in turn are provided with their JV partner NCS, through a JV company named Norse South East Limited (NSE). The delegation agreement sets out the arrangements relating to the exercise of the delegated functions.
- 3.3. The above services are set out in a Supplemental Agreement dated 23 September 2019, between HBC, NCS and NSE. As EHDC have delegated the functions in relation to these services, it is not a party to the Supplemental Agreement. This agreement ends on the 31<sup>st</sup> March 2026, unless extended.
- 3.4. In the event of an early termination of the Delegation Agreement HBC's current JV delivery model with NCS and NSE would remain in place, as per pre-2019.

- 3.5. Environmental services concern key front-line services and whilst the arrangement worked when HBC and EHDC had a shared management structure, Council's earlier decision to stand alone from EHDC means that the present arrangements are, operationally, less than desirable from the perspective of both councils
- 3.6. To coincide with the ending of the agreement which underpins both councils' shared management arrangements (known as the JMTA) the proposed anticipated date for the ending of the delegation and provision of services to EHDC would be no later than 16 December 2022.

#### **4. Additional Budgetary Implications**

- 4.1. There will be financial implications upon any withdrawal from the Delegation Agreement. Overheads and contract management elements of the contract will see an increase. The anticipated cost of this is set out in Appendix 1 of this Report. Appendix 1 contains commercially sensitive information and is therefore Exempt.
- 4.2. Detailed figures are yet to be provided by NCS but will be examined and reported upon in detail once these materialise. Increases in costs will be partially offset by reviewing contractual arrangements along with a short-term increase in revenue.
- 4.3. Nationally, the recruitment and retention of drivers and loaders continues to be dynamic and challenging. To reduce the risk of losing key staff and maintain service levels during this significant period of change, an uplift of remuneration for Drivers and Loaders is recommended. Details may be found in Appendix 1.
- 4.4. The Skip Bulk Glass Collection is the only significant shared resident facing service between HBC and EHDC. The specialist skip vehicle is shared with EHDC on a 50:50 basis. Immediate separation of these collections will significantly simplify the termination of the Delegation Agreement in operational terms. It is therefore proposed that HBC secure its own specialist skip vehicle and driver to cover the period leading up to EHDC providing its own environmental services. Reference to this cost is included in Appendix 1.
- 4.5. Other than the anticipated cost of separation of the existing arrangements with EHDC, the Norse contract has faced a number of budget pressures over recent months including steep increases in fuel prices, National Joint Council, (NJC), pay uplifts and required local increases in Driver and Loader pay through delegated urgent decision. Overall, the on-going financial pressure for HBC could be as much as £500k in a full year. We will continue to work with Norse to explore options for cost reduction and / or income generation to partially mitigate these costs over the coming months.

**5. Background and relationship to Corporate Strategy, Climate & Environment Strategy and/or Business Plans, if any.**

- 5.1. The existing termination provisions within The Delegation Agreement provide that either council may terminate on 18 months' notice; any earlier date for termination would need to be by mutual agreement of both councils.
- 5.2. At the time when EHDC and HBC were operating under a shared management team, the JMTA set a clear structure of joint senior management, including a joint chief executive, joint directors and their direct reports. This included a joint client liaison team which acted on behalf of both councils, when liaising and managing the relationship with NCS, and the NSE JV. However, in early 2022, EHDC and HBC resolved to withdraw from the JMTA and to proceed with a program of transition to a stand-alone council. It now therefore seems an appropriate time to review the current service delivery arrangements. Following this decision, the current delegation arrangements with EHDC are no longer fit for purpose.
- 5.3. Under the existing arrangements, EHDC has no direct contractual relationship with NCS or NSE meaning that any issues in relation to contract management and performance delivery have to be dealt with via HBC which has proved to be a bigger than anticipated draw on officer time and resource. This has led to the conclusion that a new service delivery model is required to allow each Council to shape and manage environmental services independently.
- 5.4. The current Joint Venture delivery model with Norse South East (NSE) will remain in place for the Borough, as per pre-2019. In any event, the new Environment Act will require a new service delivery model. Ending the Delegation Agreement will allow HBC to shape and manage environmental services independently for the sole benefit of the Borough, its environment and residents.
- 5.5. As a consequence of this, EHDC will likely seek to establish an independent contractual arrangement with the Norse Group. In order to end the existing arrangements as proposed above, a process of negotiation with NCS to agree the variation, and novation of the Supplemental Agreement, and approval from EHDC to an early termination of the Delegation Agreement will be required.

## 6. Options considered

6.1. The options available are as follows:

### *Option 1 – Do Nothing*

HBC continues with the existing Delegation Agreement for the delivery of environmental services to EHDC through NSE until 31 March 2026.

This option is not recommended. The ending of the JMTA between HBC and EHDC has, inadvertently, created additional bureaucracy, governance and communication challenges. This has resulted in inefficiencies and additional management costs as well as serving as a distraction for the new Environmental Services Contract Management Team from focussing on delivery for the Borough's residents.

6.2. *Option 2 – Early Termination to enable EHDC to deliver environmental services through its own stand-alone joint venture directly with NCS*

**\*\*\*This option is recommended\*\*\***

HBC negotiates an early termination of the Delegation Agreement, aimed for by the 16 December 2022. This option entails the following sequence of actions:

- a. HBC and EHDC agree terms for the premature ending of the Delegation Agreement prior to formal withdrawal; then
- b. EHDC form a new and separate JV directly with NCS assuming it is able to agree service delivery terms within its affordability envelope; then
- c. EHDC, HBC and NSE vary and novate the Supplemental Agreement such that EHDC is the service recipient; the new standalone JV between EHDC and NCS being the new service provider.

The anticipated timeline for the new JV to commence service delivery would be end of December 2022 or very soon thereafter.

This early termination of the Delegation Agreement will provide HBC's new Environmental Services Team with the freedom and agility to:

- address longstanding governance, contract, process, and performance monitoring concerns in a timely manner.
- design and build a new service delivery model to meet the anticipated requirements emerging from the Environment Act 2021.
- focus on shaping and managing environmental services for the benefit of the Borough, its residents and the environment.

- simplify the Options Review for the delivery of environmental services post 2026.

## **7. Other Options**

- 7.1. A change of service provider at this time is considered unnecessary for HBC. The current service agreement between HBC and NSE is due to expire in 2026 and the Environment Act is expected to be implemented shortly. An additional programme of change in service provider at this time would be highly disruptive, expensive and time consuming.
- 7.2. The simplest, cheapest and most stable option for the delivery of HBC's environmental services currently is to maintain its service arrangements with NSE and NCS.

## **8. Evaluation of options**

- 8.1. Option 1 would not address the front line service issues seen in this area historically. It offers no effective routes to improvement for residents of the Borough. For this reason it is not therefore recommended.
- 8.2. Option 2 provides the freedom, time and space for officers to further address and remedy the historical service failures. This would be possible since, post termination, the focus would be entirely on service delivery within the Borough. This option is the only solution that provides a rapid timescale for service improvement. On this basis, Option 2 is the recommended course of action.

## **9. Resource Implications**

### **9.1. Financial Implications**

- i. There are expected to be significant cost increases in the contract in 2022/23 and beyond due to the current economic climate.
- ii. As discussed in detail above there are the following options:

Do nothing. This can usually be seen as a baseline option and has been considered. Doing nothing would have no additional financial impact on the Council. However due to the JMTA ending and the Environment Act as explained above this option is not viable.

Fully separate joint service arrangements and maintain a separate HBC and EHDC contract directly with NSE. This is the recommended approach. Although this will have cost implications for the Council, other options are not strategically, or operationally, viable.

Fully withdraw from the Norse contract arrangements and reprocur the service. Changing service provider at this time will be extremely time consuming and costly, more so than the above options as it is highly disruptive and the most considerable change to the current operations. This is also strategically and operationally unnecessary.

- iii. Termination of the Delegation Agreement will increase the cost of the service with the loss of economies of scale in shared overheads and contract management costs. These costs may be offset by realising opportunities to reduce overheads, drive efficiencies and generate revenue from EHDC's continued use of the vehicle workshop at the Penner Road Depot. If EHDC choose another option, this will generate spare capacity which can be sold on the open market.
- iv. An initial analysis of the likely costs is contained in Appendix 1. As the negotiations progress, the financial implications will be considered in more detail. Further business cases and decisions to proceed will be presented to Council or Cabinet for further approval as appropriate.

**Section 151 Officer comments**

Date: 12 September 2022

The affordability of the existing contract with Norse South East has been kept under constant review since the budget was approved in February 2022. There will be a requirement to increase the 2022/23 revenue base budget due to well known national pressures on the recruitment and retention of front line staff along with significantly higher than budgeted fuel prices.

The HBC Section 151 has been kept fully involved in negotiations regarding the rising costs of the Norse contract and anticipated costs of the contract novation from the current arrangements with EHDC. The recommendations within this report, although creating a financial pressure, are affordable within the Council's Medium Term Financial Strategy which will be updated accordingly and reported back to Committee on 2 November 2022.

9.2. Human Resources Implications

The Contract Management Team has been reduced in size and the restructure and recruitment is complete. No staff were placed on the redeployment register and there were no redundancies.

### 9.3. Information Governance Implications

There are no Information Governance implications for the HBC services. Relevant and appropriate information will be transferred to EHDC in accordance with the agreed Exit Plan.

### 9.4. Other resource implications

- a. Additional mandatory professional training is being provided to the Contract Management Team, at no cost to the Council.
- b. There are no other resource implications for HBC.

## 10. Legal Implications

- 10.1. The recommendation to withdraw from the existing delegation arrangements can be lawfully achieved via the variation of the Supplemental Agreement, followed by a novation of the varied Supplemental Agreement and then a termination of the Delegation Agreement itself.
- 10.2. The Council may rely upon the General Power of Competence (“general power”) provided for in Section 1 of the Localism Act 2011. The general power is a wide power, which allows the Council to do anything that an individual may do, subject to public law principles and certain statutory limitations.

### **Monitoring Officer comments**

Date: 12<sup>th</sup> September 2022

HBC is a waste collection authority under the Environmental Protection Act 1990 and must meet relevant standards and requirements.

These are both consistent with that statutory obligation whilst also being consistent with the need to review how certain shared or delegated services are delivered following the ending of the shared management arrangements between the two councils.

## 11. Risks

The key risks identified are:

- 11.1. There is a risk that EHDC do not follow through and terminate the Delegation Agreement early or at all if the costs consequent on doing so prove to be above and beyond that which they have budgeted for.



- 11.2. Creating an exposure to HBC of a liability, loss or damage from any agreements with NSE and NCS during the transition period. Mitigation includes securing legal advice and careful planning until the termination becomes legally binding.
- 11.3. There is a risk that the costs of separation increase unexpectedly. Mitigation includes the robust challenging of these costs throughout

## **12. Climate & Environment Implications**

The withdrawal from the Delegation Agreement will enable HBC's Environmental Services to align closely to the Council's Climate and Environment strategy and to adapt to meet the Council's obligations under the Environment Act.

## **13. Consultation**

- 13.1. Consultations have taken place between the Portfolio Holder and Cabinet.
- 13.2. Consultations have taken place between the Leaders, Head of Paid Service/ Chief Executives and Cabinet Portfolio holders of HBC and EHDC.
- 13.3. Consultations are ongoing between Monitoring Officers/Head of legal, Section 151 Officers and Director / Executive Head and for both councils.
- 13.4. HBC are in consultation with its JV service provider, NSE and fellow shareholder Norse Commercial Services.
- 13.5. HBC are aware that EHDC are in consultation with Norse Commercial Services about their respective future service provision.

## **14. Communication**

- 14.1. Any decision by Council will be communicated to all councillors in the usual way. In addition, an all members briefing will be held.
- 14.2. Briefings to partners, the Management Team and relevant staff have already taken place.
- 14.3. This decision will not affect the day-to-day delivery of services to Havant Borough residents.

**15. Appendices**

**Exempt Appendix 1 – Financial and Commercial Analysis**

**16. Background papers**

16.1. None

Agreed and signed off by:

Portfolio Holder: Cllr Lulu Bowerman - 12th September 2022

Executive Head: Chris Bradley - 12<sup>th</sup> September 2022

Monitoring Officer: Mark Watkins - 12<sup>th</sup> September 2022

Section 151 Officer: Malcolm Coe - 12th September 2022

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