



## SHEFFIELD CITY COUNCIL

### Cabinet Report

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**Report of:** Simon Green, Eugene Walker

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**Report to:** Cabinet

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**Date:** 16 September 2015

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**Subject:** Future Options for SCC Property & Facilities  
Management Services

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**Author of Report:** Martin Wood, 273 4575

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**Key Decision:** YES

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**Reason Key Decision:** Expenditure/savings over £500,000  
Affects 2 or more wards

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#### Summary:

Property Management and Facilities Management services were outsourced to Kier Ltd in July 2009 as part of a wider exercise of market testing the delivery of former in-house services. They have been delivered by Kier Asset Partnership Services Ltd (KAPS) with a small ancillary cleaning contract for schools delivered by Norse. Whilst the current contract has delivered the expected savings the changing nature of the environment in which core Council services are delivered has prompted a review of future delivery options. The current KAPS contract expires in June 2016, as does the Norse contract.

A task and finish group has considered which future option for property and facilities management would deliver a first class service for internal service users and our customers whilst giving the Council much greater flexibility in terms of accountability and delivery of services in line with our corporate priorities.

Property and facilities management services can be split into five separate service blocks:

- Property Services
- Cleaning
- Security and Events
- Catering and
- FM Service Delivery

The future service delivery requirements for these services have been considered both individually and collectively and a decision now needs to be made on how service will be delivered following the ending of the contracts.

The options for future delivery of the above services are identified as:

- To extend the full contract with Kier Ltd based on the service improvements and savings offered within the contract renewal dialogue
- To offer to extend elements of the contract with Kier Ltd based on the service improvements and savings offered within the contract renewal dialogue
- To extend elements of the contract of sufficient duration to enable a specification for retender to be produced and evaluated
- To bring all or elements of the contract back in house
- To explore the opportunities for a joint venture delivery option
- To retender the services to the market

The decisions made on the two largest service blocks; property services and cleaning may limit the options available to the smaller service blocks if the decision made makes the existing contract not viable for extension.

A further option to do nothing at the end of the contact has been dismissed as the Council would be in breach of a number of statutory property duties and health and safety management requirements if the above services were no longer provided.

Service provision decisions are taken after a comprehensive evaluation of a strategic business case prepared for each service block. It is acknowledged that there are a range of potential benefits and dis-benefits to different types of arrangement and these have been considered carefully in coming to a view about the best model for future service delivery, particularly in the current context of requiring increasing service quality, flexibility to react to the long term requirements of increasing austerity and the Council's stance on fairness and tackling inequality.

It is recommended to follow an insourced option for:

- Property services
- FM Service Delivery and
- Security and Events

And to explore the options for a joint venture or retender of the contracts for:

- Cleaning and
- Catering

to provide the Council with the most flexible and beneficial option for future service delivery given the risks identified.

There will be initial one-off implementation costs involved in insourcing and retendering these services that will offset some initial savings identified. However, in the long-term this proposal demonstrates the most cost-effective option capable of achieving year-on-year sustainable savings and in some cases additional income generation.

There may be a small number of specialist elements of property management and events catering which may continue to be more effectively delivered by an external contractor, and more work will be done to define these. At the moment these services are generally subcontracted by KAPS to other organisations. These will be tendered under the Council's normal policies and procedures.

As with any major change, there are risks associated with insourcing and retendering services. Strong management of the transfer and contract evaluation processes and robust implementation plans will ensure that these risks are effectively mitigated.

A wide range of Council Officers have been involved in developing the proposals in this report, along with Members, and information has also been sought from other organisations to help inform the work.

Following approval of the proposals a detailed implementation plan will be designed to prepare for the transfer of services. This work will include working with employees and Trade Unions to ensure that the quality of service delivery is maintained during transition.

Alongside the work undertaken to assess the best options for service delivery, serious consideration has been given by Council Officers and Members on the design of services for the future, particularly where they are delivered directly to the people of Sheffield. This design work will lead to the development of a new 'Target Operating Model' (TOM) for customers and Members and service users will be closely involved in this work.

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### **Reasons for Recommendations:**

Each element of the proposed package has been considered on its merits. The proposals are being recommended as providing an appropriate balance between:

- Providing quality services, which meet the expectations of customers (both internal customers and the public)
- Making a considerable, and ongoing, contribution to the Council's savings target, over and above what was envisaged as part of the 2009 contract

- Maintaining risk (financial, legal, reputational and delivery) within acceptable limits
  - Being affordable and representing best value to the organisation within the short and long term
  - Supporting the organisation to transform its services and deliver flexibly and differently
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**Recommendations:**

Cabinet are recommended:

- a) To note the contents of this report including the principles and assumptions described and have regard to the risks and mitigations as set out in the report and Appendix A
- b) To give approval for the budget required to cover the one-off implementation and set-up costs, as described in Appendix A of this report
- c) To give approval for the identified insourcing of Property Services, FM Service Delivery and Security & Events
- d) To note the potential contracting-out of a small proportion of specialist property and catering services
- e) To give approval for the identified service retendering of Cleaning and Catering services
- f) To grant delegated authority to the Executive Director of Resources in consultation with the Cabinet Member for Finance & Resources
  - To carry out the appropriate contractual mechanisms to give notice to Kier Ltd to notify that the contract will not be extended and to carry out all necessary steps to identify and carry out the exit obligations
  - To undertake formal consultation with Trade Unions regarding the transfer of staff engaged on the Kier Ltd contract into the Council and other transfer and transition arrangements (in consultation with the Director of Human Resources as necessary)
  - In consultation with the Director of Human Resources to develop the future structures of insourced services within his portfolio
  - In consultation with the Director of Commercial Services, Director of Finance and the Director of Legal and Governance to approve a business case for the creation of joint venture arrangements for the Cleaning and Catering services
  - In consultation with the Director of Commercial Services, Director of Finance and the Director of Legal and Governance to approve the procurement strategy and subsequent, contract awards for the outsourced Cleaning and Catering services including where a business case has been approved a joint-venture

arrangement

- To make arrangements to monitor the performance and delivery of the new service arrangements
  - Any other actions he sees appropriate for the effective preparation for and implementation of the insourcing and future delivery of the identified service elements within his portfolio
- g) To grant delegated authority to the Executive Director of Place in consultation with the Cabinet Member for Finance & Resources
- In consultation with the Director of Human Resources to develop the future structures of insourced services within his portfolio
  - Approving the final procurement strategy, contract awards, joint-venture arrangements and agreeing contract terms and entering into the contracts for all necessary associated goods and services (in consultation with the Director of Commercial Services and the Director of Legal and Governance as necessary)
  - Any other actions he sees appropriate for the effective preparation for and implementation of the insourcing and future delivery of the identified service elements within his portfolio
  - Ensuring compliance with all relevant legislation to minimise the risk of disruption to the organisation or public
  - To make arrangements to monitor the performance and delivery of the new service arrangements

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**Background Papers:**

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**Category of Report:        OPEN with CLOSED appendix**

**Appendix A not for publication because it contains exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).**

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## Statutory and Council Policy Checklist

<b>Financial Implications</b>
YES/NO      Cleared by: Jayne Clarke
<b>Legal Implications</b>
YES/NO      Cleared by: David Hollis
<b>Equality of Opportunity Implications</b>
YES/NO      Cleared by: Michelle Hawley / Adele Robinson
<b>Tackling Health Inequalities Implications</b>
YES/NO      Cleared by:
<b>Human Rights Implications</b>
YES/NO      Cleared by:
<b>Environmental and Sustainability implications</b>
YES/NO      Cleared by:
<b>Economic Impact</b>
YES/NO      Cleared by:
<b>Community Safety Implications</b>
YES/NO      Cleared by:
<b>Human Resources Implications</b>
YES/NO      Cleared by: Julie Toner
<b>Property Implications</b>
YES/NO      Cleared by: David Wood
<b>Area(s) Affected</b>
All Wards
<b>Relevant Cabinet Portfolio Lead</b>
Cllr Ben Curran
<b>Relevant Scrutiny Committee</b>
Overview & Scrutiny Management Committee
<b>Is the item a matter which is reserved for approval by the City Council?</b>
YES/NO
<b>Press Release</b>
YES/NO

## **REPORT TO CABINET**

### **Future Options for SCC Property & Facilities Management Services**

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Martin Wood  
Assets Service Manager  
July 2015

## **1.0 Summary**

- 1.1** In 2008, Cabinet approved an ambitious programme to test a range of formerly in house provision of services to the external market through a comprehensive service tendering programme. The programme was arranged in two packages, one for Revenues and Benefits, Information and Communication Technology (ICT), transactional HR and Finance services with a second smaller package for Property & Facilities Management Services. The Property & FM services contract was awarded to Kier Ltd and the delivery undertaken by Kier Asset Partnership Services (KAPS). A small ancillary cleaning contract for 10 schools is delivered by Norse.
- 1.2** Whilst the Property & FM contract has delivered the required savings and efficiencies in some areas, the changing nature of the external property environment and the requirement to adapt to a period of prolonged austerity, have indicated the requirement for a focused rethink of what kind of a service Property and Facilities Management should present for the future.
- 1.3** The initial term of the agreement with Kier Ltd and Norse is due to come to an end on June 30th 2016 and the Council is required to make a decision about the future delivery of those services. Under the terms of the original agreement, there is an opportunity to extend and vary the current arrangements, should the Council so choose.
- 1.4** This report sets out a number of recommendations to Cabinet on the future provision of these services.

## **2.0 What does this mean for Sheffield people?**

- 2.1** In order to provide high quality, value for money public services, it is important that the Council has robust, efficient and effective property and facilities management ensuring that its stock of buildings are safe, clean and well maintained for both occupiers and service users. The Council's property portfolio also provides the social infrastructure for the people of Sheffield through schools, homes and parks and contributes directly to the wider social and economic regeneration of the City.
- 2.2** This report makes recommendations about the delivery of property functions and seeks to achieve significant service improvement together with ongoing savings in these areas for reinvestment in direct service delivery.

## **3.0 Outcome and Sustainability**

- 3.1** Supporting the Council's Strategic Outcomes:

Property and Facilities Management has a cross cutting support and regeneration function that provides the physical infrastructure for the Council's required outcomes, particularly;



### **An In-Touch Organisation**

- Make the best use of public money to have the greatest impact for Sheffield

### **Focussing on Jobs**

- Create local employment opportunities
- As part of our fairness agenda paying a Living Wage, wherever viable becomes a criteria for steering future service delivery

### **Business Friendly**

- Moving to the provision of a single uniformed presence across the City Centre to improve place management, user security and contribute to a vibrant City Centre
- Creating the conditions for local businesses to grow and making Sheffield an attractive location to start a business
- Using our asset base and covenant strength to lever economic growth and investment. Creating a physical environment and supporting infrastructure that attracts new employers and assists existing employers to grow
- Being connected and being responsive to a range of people and organisations. Finding opportunities to develop mutually beneficial long term relationships with the community, property developers and community entrepreneur organisations

**3.2** The proposals contained in this report provide a scalable, flexible and sustainable model for providing the property and facilities management functions required for the Council, both now and in a future where the ability to react quickly and flexibility to further austerity requirements will be a prime consideration.

**3.3** As important as our flexibility will be, our ability to innovate to use our asset base to lever additional economic growth and to use the powers granted under the Localism agenda to seek new opportunities to trade our services and to make better use of resources with our other public sector partners.

## **4.0 Introduction and Background**

**4.1** As part of the 'Outstanding Sheffield' programme, and following a competitive dialogue process in 2007 and 2008, Kier Ltd were appointed by the Council to become the organisation's strategic partner from July 2009. The contract was for the delivery of a range of property and facilities management services, including property and commercial estate management, together with a range of hard and soft facilities management services including cleaning, catering, security, Town Hall events and FM Service Delivery.

**4.2** Underpinning the Outstanding Sheffield programme was a belief that efficiencies and savings could be identified and delivered through the combination of service streams and that by bundling property functions together service redesign savings could be achieved. In reality, under the umbrella term of property sit a series of distinct functions where land and property surveying functions are more closely aligned with Planning & Regeneration and Facilities Management, with building construction and maintenance.

**4.3** Additionally, whilst the Kier contract has delivered both savings and efficiencies, a combination of changing external conditions in the local and global property markets and the format of the original contract have compromised a number of transformation and service redesign requirements envisaged under the original programme, with parts of the contract already returned to Council management.

**4.4** It is now appropriate to reconsider how the Council can best be supported to deliver the changing requirements of the next few years, given the indication that there will be no net increase in public sector spending for the next four to five years and that the future shape of the organisation could alter quite radically within a very short timescale.

## **5.0 Process**

**5.1** The contract with Kier Ltd was structured to provide a break point after 7 years (i.e. at July 2016). By mutual agreement but subject to procurement law, the contract can be renegotiated and extended past this point for further years.

**5.2** Since February 2015 Officers have been in dialogue with KAPS to explore the various elements of the contract and to consider KAPS outline and refined proposals for extending the current contract based on additional scope, savings, efficiencies and improvements.

**5.3** In parallel with this process Members have initiated a Member and Officer Task and Finish Group to identify the perceived weaknesses of the current Property and FM Contract and to evaluate if an alternative approach to extension of the contract provides a better solution to address future Council requirements. Officers have been requested to produce and have submitted strategic business cases for each of the contract service blocks:

- Property Services
- Cleaning
- Catering
- Security and Events
- FM Service Delivery e.g. Post

**5.4** A number of future options are available:

- To extend the full contract with Kier Ltd based on the service improvements and savings offered within the contract renewal dialogue
- To offer to extend elements of the contract with Kier Ltd based on the service improvements and savings offered within the contract renewal dialogue
- To extend elements of the contract of sufficient duration to enable a specification for retender to be produced and evaluated
- To bring all or elements of the contract back in house

- To explore the opportunities for a joint venture delivery option
- To retender the services to the market

**5.5** In evaluating these options Members have asked Officers to consider the following criteria:

- Whether the option is capable of providing a Living Wage to low paid workers
- How identified improvements to service delivery can be quantified
- Savings identified
- Future management arrangements
- Risks to the Council

**5.6** These options and issues have been extracted from the individual strategic business cases and are reproduced below.

**5.7** Following the dialogue with KAPS, on its future proposals for the contract, Officers were unable to determine a compelling commercial or operational reason to justify contract extension or renewal.

## **6.0 Property Services**

**6.1** Property Services are both a business critical function for the Council and a driver for the City's economic regeneration, ensuring that the Council's demand and supply of operational premises required for service delivery are balanced and that the City's growing demand for housing, schools, leisure facilities and other physical infrastructure can be met. The service also contributes directly to the economic regeneration of the City, assembling sites and making land available to encourage business relocation to the City, to support existing business growth and to aid new business start-ups.

**6.2** In this area the KAPS contract has delivered both savings and efficiencies on mainstream transactional property functions. However the expected innovation and ability to draw in specialist property expertise from within the umbrella of a larger property management organisation have not been strongly presented and the restrictive nature of the existing property contract has impacted on the flexibility required to function effectively in current operating conditions. Within the property services establishment all employees are paid above Living Wage levels.

**6.3** Evaluation of the strategic business case and commercial intelligence suggests that any standard contractual arrangement requiring the current and future flexibility requirements of the Council for property will be unaffordable as contractor's price in the uncertainty around future volumes of work and their associated rates.

- 6.4** Given these considerations extension of the existing contract would not present the best solution available to the Council.
- 6.5** The financial benefits of this approach are contained in Appendix A and arise primarily from the profit element of the core property contract, accommodation costs and other overheads, contractor mark up on externally procured specialist property services, removal of contract administration and some client functions costs, and removal of the bonus incentivising capital disposal of surplus assets.
- 6.6** Two major risks are identified. Firstly that unknown cross subsidies may exist between the Property and FM Service Delivery service blocks, however given that the main costs of the property element relate to wage costs there is confidence that the financial assumptions made on the cost of a straight lift and shift of service are robust. Secondary risks arise from the loss of local property knowledge should KAPS employees choose not to transfer and seek employment externally. It is believed that any issues arising as a result of this scenario can be addressed both in the short term and in the longer term through a dedicated retention and career development plan.
- 6.7** The organisational benefits of insourcing are identified within the strategic business case as improved performance and governance, greater cost efficiency, improved user satisfaction, stronger local economy supply chains, greater flexibility, agility & added value, improved service integration & quality, greater commitment to local sustainability requirements and improved innovation.
- 6.8** The changing role of property services requires a more active stake in property and economic development transactions than has been the case historically, as evidenced by Sheffield's active role in bringing forward the Sheffield Retail Quarter and promoting the Sheffield Investment Fund. The skill sets to bring forward similar and unique innovation are not naturally found within the Council, are expensive and are not always required to be on stream. It should therefore be noted that the procurement of specialist property services that fall outside the scope of the mainstream contract may still need to be undertaken under the Council's normal policies and procedures. It is therefore recommended that the property services element of the contract is insourced as this represents the most flexible and lowest risk option available to the Council.

## **7.0 Cleaning Services**

- 7.1** Cleaning constitutes one of the most significant parts of the existing KAPS contract and the quality of the service has a direct impact on both building and service users. Within SCC contract cleaning has two main elements, a mainstream cleaning function delivered by KAPS to Council buildings by 240 staff to around 170 sites and a smaller cleaning contract to 10 schools delivered by 33 staff awarded to Norse.

- 7.2** Due to successive cost reductions on the cleaning element of the KAPS contract the performance measures have been relaxed against the original contract specification. This has resulted in a significant increase in the resources required by the Council to monitor the contract and a mismatch in standards and performance management. The Norse element of cleaning is evaluated as being more successful both in terms of quality and value in that unlike KAPS it pays all operatives a Living Wage, yet delivers to the same output quality of cleaning specification.
- 7.3** The Council's ability to adapt to future service delivery requirements will need an adaptable and flexible future cleaning service, an improved performance management framework to ensure continuous improvement, and an ability to bring innovation into a core support service. Cleaning services are also an employment sector characterised by poor levels of pay where the Council's fairness agenda supports the promotion of a Living Wage for employees. The requirements of balancing quality and pay are not incompatible as the Norse element of the contract has demonstrated. The current situation of running two cleaning contracts is also an inefficient use of resources, best addressed by the future delivery of a single contract providing schools with the option to opt in.
- 7.4** Again, given these considerations extension of the existing KAPS contract would not represent the best solution available to the Council.
- 7.5** The feasibility of entering into a joint venture, under a Norse type arrangement, as a number of other public sector organisations have done or procuring a bespoke joint venture with the private sector, is actively being explored and will be subject of a business case.
- 7.6** The strategic business case for cleaning identifies different benefits for different delivery options, the key benefits of the recommended option being delivery of a more effective cleaning service, which should produce estimated savings detailed in Appendix A of the report. Additional benefits include delivery of Living Wage subject to affordability criteria, delivery of a more robust specification and performance management framework and client savings associated with the streamlining arising from the management of a single contract. Should entering into a joint venture be possible within the existing Teckal exemptions then an additional saving on procurement costs should be deliverable.
- 7.7** The risks associated with entering into a public sector joint venture and seeking a Teckal exemption together with the relative benefits of this option, against going to full external procurement either for a public/private joint vehicle or more straightforward contracting arrangement, need to be examined in depth in a further business case. It is therefore recommended that this further business case be developed and a delegation made for its approval.
- 7.8** Should the Council be required to go into procurement then there are risks arising from the market not being able to meet the pay and output specifications required by the Council at a competitive price. Additionally the cashable savings identified in Appendix A may be lost.

## **8.0 Security Services and Events**

- 8.1** The Council's security services play an increasingly important role in safeguarding services and service users. Whilst the primary function of security officers is to gather information, control access to, guide and maintain order on the property where they work, they are often present as the first point of contact to the Council and provide first impressions of how the Council engages with its customers, together with the role of protecting people and property against hazards that may affect the facilities they attend.
- 8.2** There are a number of issues arising from the security component of the current KAPS contract and its operation. Primarily there is currently little or no connectivity between the security function and other front of house services and little provision within the contract for flexibility of deployment.
- 8.3** Once again the Council's need to be able to benefit from a more agile and flexible service is a primary requirement for future service delivery. The Council has an aspiration in this service area to be able to move towards an integrated front of house/first point of contact service across the City over time, to improve the public experience for the still significant numbers of customers who prefer to engage face to face to access their Council services.
- 8.4** Analysis of the strategic business case for security services suggests that the greatest combined benefit of savings, flexibility and future income generation capacity, together with the ability to pay employees a Living Wage in this sector will arise from insourcing the service rather than extending the existing service or by an external procurement.
- 8.5** Risks arising from this approach arise from the level of detail currently held around employment issues within the existing contract that could transfer additional burdens on the Council. Whilst there is certainty that the financial model supporting the insourcing option is robust, other risks arising from the possibility of cross subsidy and the importing of multiple terms and conditions (as detailed in the HR Implications section of this report) could affect current assumptions on savings deliverable.
- 8.6** Events in the Town Hall are marketed and managed by KAPS. The Council receives income from each event to cover facilities running costs. KAPS retain a profit element on each booking.
- 8.7** Currently the use of bookable Council resources to raise revenue is underused. Insourcing of the Events Service would generate additional income as well as making better public use of Council assets.
- 8.8** Risks associated with insourcing the Events Service are related to the catering element of the service. Given the high public profile of external events the Council is exposed to highly visible reputational risk when things go wrong.
- 8.9** The benefits deliverable through insourcing are evaluated as outweighing risks identified making insourcing the preferred option for this service block.

## **9.0 FM Service Delivery**

- 9.1** FM Service Delivery contains several small but discreet elements of the Kier contract including internal mail, confidential waste disposal and Civic Attendants that ensure the smooth running and functionality of Council Buildings.
- 9.2** Whilst it would be feasible to consider the elements as separate functions, in practice it would prove difficult or impractical to separate these small delivery areas of work and procure them individually, particularly as some services currently provide pathways to work and training opportunities making their operation as a stand-alone service unprofitable.
- 9.3** As related in 7.2 the performance standards across a range of services have been diluted as a direct consequence of contract fee reduction. The contract has therefore not performed as originally envisaged and the strategic business case has identified significant areas of duplication of work and other areas where resources have not been appropriately deployed. An alternative form of provision is therefore evaluated as delivering improving performance and productivity.
- 9.4** It is desirable that the pathways to work and training elements of these services are maintained, as the requirement still allows significant improvements to flexibility of service delivery and better use of existing resources to be realised.
- 9.5** Again analysis of the strategic business case for this bundle of services suggests that the greatest combined benefit of savings, flexibility and future income generation capacity, together with the ability to maintain training & employment opportunities and pay eligible employees a Living Wage can best be delivered by insourcing the service. Whilst there are identified risks arising with regard to future equal pay claims as outlined in the HR section of this report insourcing of FM Service Delivery remains the recommended option.

## **10.0 Catering Services**

- 10.1** Catering services are currently split between FM Service Delivery providing catering for SCC building occupiers at Moorfoot and the Town Hall and event catering providing bespoke catering arrangement for Council and external functions hosted by the Council such as wedding catering.
- 10.2** Over the life of the contract, performance has been evaluated as variable and as with other elements of the overall contract has been unresponsive to the increasing requirements for flexibility. The inflexible nature of the contract also impacts on the ability to join up SCC service delivery which in turn limits the Council's ability to generate additional income in areas like Wedding Planning.
- 10.3** Catering is also an employment area where much of the workforce is paid below Living Wage levels. The strategic business case has considered a number of options on how to resolve the issues identified including partnering with an external partner to further develop both the training and commercial possibilities of this service area.

- 10.4** Evaluation of the strategic business case suggests that whilst a case for insourcing this service can be made, the Council lacks the entrepreneurial and technical skills required to fully exploit this service area without bringing in additional expertise and would benefit from partnering with an organisation with the required skill set. Additionally, the Council's requirement for payment of a Living Wage and to maintain training and work experience posts, places pressure on the ability to deliver a flexible and responsive core service.
- 10.5** It is therefore recommended that the feasibility of entering into a joint venture arrangement on catering in conjunction the cleaning services contract be explored as part of the business case analysis outlined in paragraph 7.6.

## **11.0 HR Implications**

- 11.1** There are human resources implications arising from this report, notably in the proposal to transfer management of the Property Services, Security and Events, and FM Service Delivery service blocks back to the Council together with a desire to transfer the Cleaning and Catering service blocks into a Council joint venture undertaking.
- 11.2** At this stage it is not possible to provide a complete assessment on all HR implications that could result from the proposals in this paper. However, the immediate implications include:
- TUPE transfer: the requirement to engage in the TUPE transfer process, transferring into SCC relevant employees and any existing employee liabilities, i.e. outstanding claims, actions of KAPS prior to transfer,
  - Risks arising through breach of Immigration and Asylum regulations and TUPE legislation
  - Potential equal pay risks outlined at 11.3, and
  - Living Wage implementation

A number of less immediate, though relevant risks are contained in Appendix A

- 11.3** KAPS employees and employees of subcontractors that may also be eligible to TUPE transfer into SCC, will currently be employed on a variety of terms and conditions and subject to different collective agreements depending on where they were initially employed.

Some staff that initially TUPE transferred to KAPS from SCC will have transferred on historic SCC terms and conditions however it is not known whether these still apply. There will also be KAPS employees employed on KAPS terms and conditions which are as yet unknown.

As TUPE protects whatever terms and conditions and collective agreements apply at the point of transfer, insourcing these staff will increase the number of different arrangements within SCC. SCC will be required to maintain multiple pay structures and apply different HR policies which could reintroduce equal pay risks. This will add complexity to, and increase the risks arising from the TUPE transfer process.



Detailed comparisons of the relevant terms and conditions and collective agreements is required to establish areas of potential risk to SCC; however, this information will not be available until formal consultation and due diligence is able to commence following the Cabinet decision. There is however a formal exit strategy in place within the contract which should prove supportive to this process and therefore any information requested following a decision is made available to the Council in a timely manner. The TUPE regulations will provide SCC with some protection from equal pay challenge in the shorter term; however, this may not be defensible over time. Early engagement with the trade unions will be key to explore whether agreement can be obtained in relation to any measures that may mitigate this risk. Further discussion with KAPS would also be required to explore potential indemnities for SCC for actions occurring prior to transfer.

- 11.4** The Council will need to have reasonable and sufficient time in the implementation period to establish where TUPE should apply, undertake a full assessment of due diligence and employee liability information and mitigate against any risks. Where TUPE does apply, the Council will need to undertake meaningful consultation on the TUPE transfer with affected staff and their representatives in line with all relevant legislation and the Council's agreed policies in this area. Failure to do so would leave SCC open to challenge at employment tribunal.
- 11.5** Some aspects of the KAPS workforce include areas of predominantly low paid, direct labour roles which may present an increased risk in relation to transferring in employees that may not have the right to work in the UK. Liability for any breaches of Asylum and Immigration employment legislation and associated penalties would transfer to SCC therefore, full due diligence and analysis on employee liability information is necessary.
- 11.6** Where TUPE does apply, implementation of a Living Wage, where required, can only take place during the second year of transfer and would require additional staff consultation with those affected by the proposal. This requires a decision to be taken regarding whether payment of the Living Wage supplement should be backdated to the point of transfer; however, the cost of this will not be known until we have access to employee information. Information currently available suggests the Living Wage will only be an issue in subcontracted security elements, Cleaning and Catering.

## **12.0 Legal Implications**

- 12.1** The Council has an overarching duty to secure Best Value which is to *"make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."* This applies to all services whether out sourced or delivered in-house.
- 12.2** Any procurement for a service must comply with the Public Contract Regulations 2015 and the EU principle of transparency. For the Cleaning and Catering services outlined in this report that would require a procurement exercise advertised in OJEU.

- 12.3** There is an exception where a contract is awarded to an organisation that is owned and controlled by the public bodies to which it provides services. This is known as the Teckal exemption. The circumstances in which the Teckal exemption applies are limited and any proposed arrangements seeking to rely on it will need to be examined to avoid the risk of legal challenge.
- 12.4** The Council has various powers under which it can set up a joint venture company, either with other public bodies or with the private sector. Any contract awarded to a public/private joint venture company would have to be subject to a Public Contract Regulations 2015 compliant procurement.
- 12.5** Where it is intended a joint venture company will provide services in the market it is likely to be a local authority trading company and the legal requirements for setting up such an entity will need to be followed, including approval of a business case prior to formation.
- 12.6** TUPE is likely to apply where services are insourced and reference should be had to the HR implications section above.

### **13.0 Financial & Commercial Implications**

- 13.1** A project team has been created to evaluate and deliver this project. An estimate of the required resource is set out in Appendix A to this report. It is proposed that these costs be funded on an invest to save basis and that they will be repaid to reserves within a five year period, with the actual repayment being dependant on the level of saving achieved.
- 13.2** The price of the Property and FM contract was £8.5m for 2014/15.
- 13.3** The financial implications of future arrangements for the delivery of the relevant services have been compared against this baseline price after taking into account the following factors:
- The assumed cost of the current contract
  - The cost of the alternatively provided service arrangements
  - The cost of service transfer and transformation
  - Savings arising from the service transfer, both one off and continuing
  - Repayment of Project Costs to Invest to Save reserve
  - Future work to quantify potential additional income generation opportunities
- 13.4** At this stage of the project the figures are based on reasonable estimates of the resource currently employed to deliver the services. However, these figures will be refined and assumptions and proposals re-tested as the data is firmed up with access to detailed TUPE and assets information.
- 13.5** The detail of the future cost assumptions for each service, are contained in Appendix A to this report.

### **14.0 Equalities Implications**

- 14.1** There are no identified negative equalities implications arising as a result of the TUPE transfer of Kier Services Ltd staff into the Council or Council joint-venture.
- 14.2** The Council has a wide range of policies and procedures already in place to support employees and reduce potential inequalities in the workplace. Access to these policies and procedures will be available to all transferred staff to support their integration into the Council. A full Equalities Impact Assessment has been prepared in conjunction with this report and as a live document will be updated as required.
- 14.3** There is a small risk that some transferring staff may not be fully included in the consultation process due to their characteristics - in particular those staff on pregnancy/maternity/paternity leave or those absent from work due to illness or disability. This risk is covered in the post approval action plan and managers will be expected to ensure that these staff are involved wherever possible in consultation arrangements in a manner appropriate to their needs.
- 14.4** It is important to ensure that staff transferring into the Council are given an appropriate induction to the Council so that they are aware of the support offered to all staff with protected characteristics.
- 14.5** The known workforce profile, currently within KAPS, presents a balanced workforce. Should further due diligence identify an under-representation of staff then the Council will seek to address, through involvement of existing staff groups, in identifying barriers to potential new entrants to the service and promoting positive employment policies to encourage interest in any vacancies from all staff and sections of the community.
- 14.6** There is not expected to be any negative impact on customers as a result of these proposals and the intention is that the service will deliver positive service changes over the longer-term. Any proposals to change services will be developed in partnership with customers and will take account of the diverse needs of customers.

## **15.0 Property Implications**

- 15.1** The property implications contained within this report arise from the current accommodation requirements of the Kier contract. KAPS currently lease a floor of Cathedral Court and pass the charge for occupation on to SCC as a service delivery overhead.
- 15.2** Following contract expiry, accommodation requirements for TUPE'd staff become the responsibility of SCC and if appropriate its joint venture partner.
- 15.3** SCC has identified sufficient surplus accommodation within its freehold estate to remove the requirement to require to source additional accommodation as a result of this report. Savings associated with the accommodation changes have been incorporated into the overall savings assumptions of the corporate accommodation strategy and are not factored into this report.

## **16.0 Reasons for the Recommendations**

**16.1** Each element of the proposed package has been considered on its merits. The proposals are being recommended as providing an appropriate balance between:

- Providing quality services, which meet the expectations of customers (both internal customers and the public)
- Making a considerable, and ongoing contribution to the Council's savings target, over and above what was envisaged as part of the 2008 contract
- Maintaining risk (financial, legal, reputational and delivery) within acceptable limits
- Being affordable and representing best value to the organisation within the short and long term
- Supporting the organisation to transform its services and deliver differently

## **17.0 Recommendations**

Cabinet are recommended:

- a) To note the contents of this report including the principles and assumptions described and have regard to the risks and mitigations as set out in the report and Appendix A
- b) To give approval for the budget required to cover the one-off implementation and set-up costs, as described in Appendix A of this report
- c) To give approval for the identified insourcing of Property Management, FM Service Delivery and Security & Events
- d) To note the potential contracting-out of a small proportion of specialist property and catering services
- e) To give approval for the identified service retendering of Cleaning and Catering services
- f) To grant delegated authority to the Executive Director of Resources in consultation with the Cabinet Member for Finance & Resources
  - To carry out the appropriate contractual mechanisms to give notice to Kier Ltd to notify that the contract will not be extended and to carry out all necessary steps to identify and carry out the exit obligations
  - To undertake formal consultation with Trade Unions regarding the transfer of staff engaged on the Kier Ltd contract into the Council and other transfer and transition arrangements (in consultation with the Director of Human Resources as necessary)

- In consultation with the Director of Human Resources to develop the future structures of in sourced services within his portfolio
  - In consultation with the Director of Commercial Services, Director of Finance and the Director of Legal and Governance to approve a business case for the creation of joint venture arrangements for the Cleaning and Catering services
  - In consultation with the Director of Commercial Services, Director of Finance and the Director of Legal and Governance to approve the procurement strategy and subsequent, contract awards for the outsourced Cleaning and Catering services including where a business case has been approved a joint-venture arrangement
  - To make arrangements to monitor the performance and delivery of the new service arrangements.
  - Any other actions he sees appropriate for the effective preparation for and implementation of the insourcing and future delivery of the identified service elements within his portfolio
- g) To grant delegated authority to the Executive Director of Place in consultation with the Cabinet Member for Finance & Resources
- In consultation with the Director of Human Resources to develop the future structures of in sourced services within his portfolio
  - Approving the final procurement strategy, contract awards, joint-venture arrangements and agreeing contract terms and entering into the contracts for all necessary associated goods and services (in consultation with the Director of Commercial Services and the Director of Legal and Governance as necessary)
  - Any other actions he sees appropriate for the effective preparation for and implementation of the insourcing and future delivery of the identified service elements within his portfolio
  - Ensuring compliance with all relevant legislation to minimise the risk of disruption to the organisation or public
  - To make arrangements to monitor the performance and delivery of the new service arrangements

Martin Wood  
July 2015

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