

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

Reference Number:

2406

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Department:

Communities

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Subject:

Derby City Council - Transport Services for Older People and People With Learning Disabilities

Total Value:

£440,510 (Type: Revenue)

Decision Being Taken:

To delegate authority to the Director of Neighbourhood Services to enter into a contract with Derby City Council (DCC) to provide transport services for older people and people with learning disabilities on their behalf for a minimum period of 12 months, including authority to commence the process of hiring 9 vehicles through our corporate framework to provide sufficient capacity to deliver the existing routes and passenger numbers with contingency. It would also require approval to TUPE across 21 staff from the incumbent provider on their existing terms and conditions to fulfill the contract.

**Reasons for the Decision(s)**

Derby City Council (DCC) has a range of transport requirements that support the delivery of services to the residents of Derby. The existing contracts for the transport services required by their People Services Directorate are due to expire 26 March 2016. DCC has failed to source a suitable alternative supplier through the formal tendering process and is currently in negotiations with Nottingham City Council (NCC) to provide these services on a Council to Council basis.

Nottingham City Council provides transport to its most vulnerable citizens to enable them to access mainstream services and schools for them to have a more inclusive role within the community. Since 2012, the service has undergone a substantial commercial transformation improving quality as well as efficiency, which has resulted in internal savings to Adult Services of £750,000 and an improved net position of the service by £1.1m.

By growing commercially the service has been able to subsidise its internal customers allowing for Nottingham's most vulnerable citizens to continue to access a great transport service when it's really needed most. Growing the service also means we can provide Nottingham jobs for Nottingham people at the living wage and not the minimum wage.

Under the commercialism agenda, Passenger Transport Services has proposed to increase external income opportunities in the 2016/17 financial year, initially through partnership working with the University of Nottingham and Nottingham Trent University.

NCC are putting forward a proposal to manage the transport services on behalf of DCC as it would promote partnership working to the benefit of both Councils and would provide an additional source of external income, which would support the commercialism aspirations. This would also present an opportunity for future joint ventures, which would support the proposal to create a single Combined Authority and would help the D2N2 to realise its vision of a more prosperous, better connected, and increasingly resilient and competitive economy.

**Other Options Considered:**

Consideration was given towards not submitting a proposal to manage these services on DCC's behalf due to the potential risks involved with the tight timescales. However, this option was discounted, as bidding for this service has the potential to create further joint working opportunities between NCC and DCC including reviewing the transport arrangements for other services, such as Children's SEN transport, which could provide significant financial savings to DCC as well as commercial expansion and additional income opportunities to NCC.

**Background Papers:**

Business case - Derby City Council - Transport Services for Older People and People with Learning Disabilities

**Unpublished background papers:**

050416-V0.5-DCC Business Case-GB-Derby.doc

**Published Works:**

None.

**Affected Wards:**

Citywide

**Colleague / Councillor Interests:**

None.

<b>Consultations:</b>	<b>Those not consulted are not directly affected by the decision.</b>
<b>Crime and Disorder Implications:</b>	<b>There are no crime and disorder implications relating to this decision.</b>
<b>Equality:</b>	<b>EIA not required. Reasons: NCC is providing the transport services on behalf of DCC. This service has been operational for a number of years and the same level of service will be provided to the Derby citizens as before.</b>
<b>Social Value Considerations:</b>	<b>None.</b>
<b>Relates to staffing:</b>	<b>Yes</b>
<b>Decision Type:</b>	<b>Portfolio Holder</b>
<b>Subject to Call In:</b>	<b>No</b>
	<b>The call-in procedure does not apply to the proposed decision because the delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The Chair of the Overview and Scrutiny Committee (or Vice-Chair) in his/her absence has been consulted and agreed both that the decision proposed is reasonable in all circumstances and that it should be treated as a matter of urgency.</b>
	<b>Person Consulted: Councillor Gul Khan</b>
	<b>Consultation Date: 23/03/2016</b>
	<b>Derby City Council's incumbant supplier is pulling out of the passenger transport service market in Derby and the Council have been unable to appoint an alternative provider through the tender process. Nottingham City Council is required to take over this service on the 3rd May 2016 to provide continuity of service which is vital as the customers are vulnerable and disabled adults.</b>
<b>Advice Sought:</b>	<b>Legal, Finance, Procurement, Human Resources</b>

Nottingham City Council has power to contract to provide these services to Derby CC in accordance with the Local Authorities (Goods and Services) Act 1970. To operate the vehicles which are necessary to provide the transport services Nottingham CC must be licensed in accordance with the Transport Act 1985. Nottingham CC is considering applying for a Transport Operators Licence. In the interim it must obtain a s19 Permit to operate the vehicles. Nottingham CC is a designated body under the Transport Act 1985 and is able to issue its own s19 Permits. However to ensure the permits are issued lawfully the authorisation process for issuing the permits needs to be set out in Nottingham CC's constitution. This would require approval of full Council. The alternative is to seek approval from the Traffic Commissioner responsible for the Derby CC area. To obtain the s19 Permit Nottingham CC must demonstrate that the transport services are not for the general public but for a defined class of citizens. It can do this by identifying the services are to be provided for the disabled and seriously ill and for those other citizens whose needs have been assessed and cannot use public transport to attend the day care centre.

A contract must be put in place between Nottingham CC and Derby CC for the provision of the services. The contract proposed by Derby CC has been amended to provide financial protection for Nottingham CC in the event the contract is not extended beyond the one year initial term. Provisions have also been included to enable Nottingham CC to claim additional costs if the service demands change or if the costs of providing the service increase in consequence of the living wage. The contract will include provisions setting out that Derby CC will provide the depot site for the vehicles and facilities for the staff. As Nottingham CC has had limited opportunity to assess the capability of the staff and its ability to meet Derby CC's service requirements a provision has been proposed to give it an opportunity to undertake a review and identify whether any remedial actions are necessary (such as staff training or DBS certification) together with the right to recover any additional costs.

Advice Provided by Andrew James (Contracts & Commercial) 31/03/2016

#### Employment-related advice

Liaison should take place with the current service provider to obtain sufficient information in order to identify whether there is a service provision change for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') and which employees of the current provider may be assigned to an organised grouping of employees for the purposes of TUPE. Any such assigned employees will transfer by operation of TUPE to the Council.

The current provider will be required to inform representatives of affected employees of the fact, date and legal, economic and social consequences of TUPE transfer and to consult with regard to envisaged measures as a result of the transfer. The Council's required role in the information and consultation process is to inform the current provider of envisaged measures (changes) so that these can form part of the required consultation process.

Appropriate indemnities should be sought from the Derby City Council with regard matters arising from TUPE including, in the light of the short-term nature of the contract, the costs that would be incurred in the event that Derby City Council opt not to maintain the provision of the services provided under the contractual arrangement beyond the termination date of the contract (whether to be provided by Derby City Council themselves (in-house), Nottingham City Council or another third party provider).

Advice provided by John Bernard-Carlin (Team Leader) on 01/04/2016.

**Finance Advice:**

The proposal to provide passenger transport services to Derby City Council will generate additional income to the Council of up to £86,000. The final figure will be dependent upon the incidence or otherwise of a number of potential risks included in the contingency figure within the costings for the proposal.

The cost of providing services for an initial 12 month period is estimated at £0.440m, it is proposed to charge Derby City Council £0.526m for the provision of this service - generating a net income to the Council of £0.086m. These expenditures and income are summarised in table 1 (attached)

The staffing costs are based on the staff from the current provided transferring into Nottingham City Council on their existing terms and conditions updated to reflect the increase in the National Minimum Wage under TUPE arrangements.

Due to the short term nature of the arrangement it is proposed to hire the vehicles rather than purchase them, if the arrangement were to be extended to a longer term arrangement then costs could be reduced by purchasing vehicles rather than hiring them.

Within the costing model is a contingency equating to 10% of the cost of providing the service, included within this are elements for . Increased vehicle costs due to potential increases in fuel prices and costs for accidental damage to vehicles or to bring them back to the required condition for return.

. Additional staff costs arising from any new staff required for the provision of this service being recruited onto Nottingham City Council terms and conditions.

There are currently no savings targets associated with the Passenger Transport service within the 2016/17 Medium Term Financial Plan (MTFP), therefore the additional income arising from this proposal will contribute towards the Council's budgetary position for 2016/17.

Advice provided by Gary Robbins (Finance Analyst) on 01/04/2016. Advice provided by Gary Robbins (Finance Analyst) on 05/04/2016.

Advice documents: Derby Passenger Transport Table.docx

**Procurement Advice:**

The proposal would bring an additional £86k income to Nottingham City Council and the additional vehicles can be hired via the Council's corporate framework.

Advice provided by Paul Ritchie (Procurement Category Manager) on 29/03/2016.

**HR Advice:**

The proposal relates to Nottingham City Council winning a 1 year contract to deliver Passenger Transport Services on behalf of Derby City Council. As the service is currently provided by Essential Fleet Services, this will create a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), therefore the following should be considered.

Any employee of Essential Fleet Services who is assigned to the organised grouping of employees" whose "principal purpose" is carrying out the Passenger Transport services to Derby City Council will be in scope to transfer under TUPE to Nottingham City Council unless s/he formally objects to transfer.

It will be the responsibility of Essential Fleet Services to carry out the relevant information and consultation process under TUPE and any objection to the transfer would be communicated by individual employees to Essential Fleet Services TUPE places an obligation on Nottingham City Council to provide information to the current employee around any potential measures that we are looking to introduce post the transfer to enable the company to undertake meaningful consultation with affected employees and trade unions. Therefore it is important for Nottingham City Council to obtain information on incoming employee's terms and conditions in order to identify where potential measures may need to be proposed.

It is not currently envisaged that there will be any proposed changes to the terms of employees' contracts of employment. Should any changes be proposed in the future these must be for an economic, technical or organisational ('ETO') reason and this must be consulted on with affected parties. Nottingham City Council cannot change terms and conditions unless it is for an ETO reason which involves changes to the workforce.

The proposed transfer date presents a short timescale in which to facilitate a transfer. Consultation with affected Essential Fleet Services staff and colleagues who may be impacted within Nottingham City Council should be started at the earliest possible opportunity and a decision needs to be whether any indemnity is sought in relation to any failure to consult under TUPE given timescales.

If the transfer will lead to a restructure or potential redundancies, this should be fed into the consultation process and costs and relevant legal requirements in relation to this should be considered. It is further recommended that given the short length of the contract that indemnities are obtained in relation to the cost associated with any redundancies at the termination of contract including any potential pension costs.

Consideration needs to be taken of the proposed management arrangements of these colleagues and how that will be facilitated within NCC current staff and whether any consultation will need to take place in relation to this.

An appropriate induction must also be planned to ensure individuals feel welcomed into the organisation and the transition is successful and continuity is provided for service users.

Advice provided by Faye Truong (Service Redesign Consultant) on 29/03/2016.

**Nick McDonald (Portfolio Holder for Jobs, Growth and Transport)**

**SIGNED and Dated: 06/04/2016**

**Signatures**

**Andrew Vaughan (Corporate Director Commercial and Operations)**

**SIGNED and Dated: 05/04/2016**