



PROVISION OF REGULATORY TREE FUNCTION BY NEW FOREST NATIONAL PARK AUTHORITY ON BEHALF OF NEW FOREST DISTRICT COUNCIL

1. INTRODUCTION

- 1.1 Executive Management Team (EMT) have considered reports on the principle of the Council's regulatory tree functions being carried out by the New Forest National Park Authority (NPA) on the basis of the transfer of staff under the Transfer of Undertakings (Protection of Employees) Regulations 2006 (TUPE) and governed by a Service Level Agreement (SLA) whereby the National Park would carry out certain 'tree' functions on behalf of NFDC.
- 1.2 Where efficiencies can be achieved whilst ensuring the continuing provision of high quality services, it is appropriate to consider working with partners to deliver services.
- 1.3 There has been consultation with the employees involved and the employee side and their comments are included in this report. If the proposal proceeds, existing employees will be transferred to the NPA under TUPE. Further details are given in Section 3 of this report. There have also been detailed discussions with the NPA to finalise the performance specification which would be included in the SLA and clarification of the likely financial benefits for both parties.
- 1.4 A decision is now required to give effect to the arrangements set out in this report.

2. THE SERVICE LEVEL AGREEMENT

- 2.1 Under Section 101 Local Government Act 1972, a local authority can arrange for another local authority to discharge their functions. The NPA are recognised in law as a 'local authority' for the purposes of S101. The main provisions of a draft service level agreement relating to the proposed transfer of the function are attached as
Appendix 1. It includes a detailed and agreed performance specification which defines all of the functions it is proposed that the NPA will carry out on the Council's behalf, as well as the appropriate standards.
- 2.2 The intention is that in all of the respects set out in the SLA, NFDC will cease to provide the service and pass any applications for consent, enquiries or related matters to the NPA for attention or determination. The only exception to this is where there is an unresolved objection to a new Tree Preservation Order when a panel of NFDC Councillors will determine whether it is confirmed or not. NFDC staff will monitor performance against the SLA.

- 2.3 There are a small number of inputs to other corporate projects, currently carried out by the NFDC planning tree staff which will not be covered by the NPA. These tasks will need to be carried out by employing external contractors or reorganising work elsewhere in the Council.
- 2.4 The standards set out in the SLA are broadly the same as those currently required of the in-house team. The SLA will initially run for 3 years but there are early termination clauses.

3. STAFF CONSULTATION

- 3.1 Three staff work within the tree service and the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to the proposed transfer. Therefore, these staff would transfer to the NPA with all their current terms and conditions, including NFDC pay scales and membership of the LGPS. Following transfer their current terms and conditions can only be varied by agreement. There is no requirement under TUPE to pay relocation expenses to staff who transfer.
- 3.2 UNISON has been formally notified of the proposed transfer.
- 3.3 As part of the formal consultation process a meeting was held with the affected staff on 19th June and followed up in writing, to discuss the proposal and potential impact on their posts. Staff were invited to submit comments on the proposal which they did. The staff comments were fully considered at an EMT meeting on 21st August 2012 and staff will receive a formal response on each of their concerns shortly.
- 3.4 The New Forest National Park Authority envisages that a review of the staffing structure within the Tree service will take place following the transfer. In accordance with TUPE regulations both NFDC and NPA will meet and consult on these proposed measures immediately when/if the transfer of the Tree service is agreed by the Council. All the necessary consultation/information provision will take place as required by TUPE.

4. EMPLOYEE SIDE COMMENTS

- 4.1 A letter from staff detailing their concerns was submitted to the Head of Planning in respect of TUPE, protection of their terms and conditions and the structure of the team following transfer. Staff also raised practical questions on ICT, telephones and administrative resources. The staff had concerns that the service to the public would not be maintained under the SLA. The staff also felt that NFDC could provide this service for the NPA with savings for both parties.

5. FINANCIAL IMPLICATIONS

- 5.1 The NFDC tree service currently costs £120k per annum to provide.

- 5.2 The NPA propose that they set up a new single team to deal with the regulatory tree works of both authorities. It is proposed that the cost of this new team should be split 50/50 between NFDC/NPA in the first year. This reflects initial work carried out which suggests that the regulatory tree work of both authorities is about equal. In future years this will be adjusted by agreement if time recording shows that this balance has changed.
- 5.3 It is anticipated that the tree service provided by the NPA will cost in the region of £95k, giving a saving of about £25k per annum. In the first year some set up costs will be shared jointly between the authorities but this will be less than the annual saving to NFDC.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 There will be no environmental implications because the standard of service and level of tree protection is similar in the SLA to that currently given by NFDC.

7. PORTFOLIO HOLDERS' COMMENTS

- 7.1 Cllr Paul Vickers, the Planning and Transportation Portfolio Holder, comments that he is satisfied that the level of tree protection offered by these arrangements is very similar to that currently offered by the in-house service.
- 7.2 Cllr Colin Wise, the Finance and Efficiency Portfolio Holder, is pleased to note that a substantial financial saving can be made under these arrangements whilst standards of service to the public will be maintained.

8. CONCLUSION

- 8.1 The level of savings being proposed is significant. The standard of service proposed in the SLA is very similar to that currently being provided at NFDC.
- 8.2 There will be some inconvenience to NFDC customers when they are redirected to the NPA but the new arrangements should settle down and become familiar to regular users. There is a fair amount of detail which has to be finalised in terms of the legal provisions of the SLA, IT systems and the keeping of records. None of these are major or insurmountable and there is no reason why they cannot be resolved before a transfer takes place in the autumn of 2012.
- 8.3 EMT has considered the issues in detail and supports what is proposed in this paper.

9. RECOMMENDATIONS

It is recommended that:-

- 9.1 Cabinet recommend to Council that the Council enters into an agreement under S101 Local Government Act 1972 to enable the NPA to discharge the Council's tree function as outlined in the attached draft Service Level Agreement.
- 9.2 The Head of Planning and Transportation be authorised, in consultation with the Planning and Transportation Portfolio Holder, to finalise the terms of the aforementioned agreement, the financial provisions and the terms under which the NPA will be discharging the Council's functions in respect of tree matters.

Further Information:

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Background Papers:

None

Tree Service – Main Provisions of Draft Service Level Agreement between New Forest National Park Authority and New Forest District Council

1. The agreement is for 3 years. It can be terminated by either side giving 6 months notice.
2. It covers all of the statutory, regulatory tree functions of NFDC and is made pursuant to Section 101 of the Local Government Act 1972. NFDC will arrange all of the delegations necessary for this to come into effect.
3. NFDC staff, eligible to transfer, will be transferred to the NPA under the TUPE regulations when the SLA comes into effect.
4. In the first year the NPA/NFDC will share (50/50) the cost of providing the joint tree service. In the year one the estimated cost of NFDC will be in the region of £95,000. In subsequent years the costs will increase in line with inflation but may also be adjusted, by agreement, to reflect any changing balance between the workload of the two authorities.
5. The service will be provided from the NPA offices at Lymington Town Hall. All callers and correspondents will be advised to contact the NPA on any matters relating to this tree service.
6. The NPA will maintain sufficiently qualified and experienced staff to provide the service.
7. All complaints about the delivery of the service will be dealt with by the NPA. The NPA will indemnify NFDC for all actions and claims arising from negligent performance, failure or delay in the performance of the agreement.
8. The NPA will respond to all consultations in respect of planning applications and related matters within 20 working days of their receipt. NPA officers will attend the NFDC Planning Development Control Committee when required by prior agreement (normally identified at the Chairman's briefing).
9. The NPA will respond to the identification of, or complaints about, breaches of legislation in respect of trees within 2 working days, when they are urgent.
10. The NPA will make new Tree Preservation Orders (and modifying existing ones) when required in the NFDC area and will maintain all of the records of this being done so as to be available to the public.
11. Where objections are received to new TPO's, which cannot be resolved by negotiation, the NPA will ask NFDC to convene a TPO Objection Panel to hear the case and make the final decision.

12. The NPA will deal with all Tree Work applications submitted in the NFDC area. They will make 95% of these decisions within 8 weeks of submission. Where the applications are for works to trees in Conservation Areas they will respond to 100% of these within 6 weeks of submission.
13. The NPA will deal with all appeals arising from consent processes described above.
14. The NPA will offer informal advice to all callers and correspondents on the tree matters within 20 working days of receipt.
15. The NPA will deal with all matters relating to the Hedgerow Regulations on NFDC's behalf.
16. The NPA will provide advice to NFDC's Planning Policy team in connection with planning policies, Supplementary Planning Documents or Development Briefs they are preparing.
17. The NPA will provide training/education on matters relating to trees to the general public, NFDC members and staff when required.