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Meeting	Cabinet Resources Committee
Date	2nd April 2014
<b>Subject</b>	<b>Termination of the Fleet Procurement with Maintenance Services contract (Go Plant Ltd) &amp; Procurement of Streetscene Vehicles</b>
Report of	<b>Cabinet Member for Resources and Performance and Cabinet Member for Environment</b>
Summary of Report	This report updates the 'Waste Collections for the Future' Report to include the purchase of Street Scene vehicles and requests approval to terminate the current Fleet Procurement with Maintenance Services contract by mutual agreement.

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Officer Contributors	Lynn Bishop Street Scene Director, Bernard McGreevy Environmental Services Manager - Transport
Status (public or exempt)	Public (with separate exempt report)
Wards Affected	All
Key Decision	Yes
Reason for urgency / exemption from call-in	None
Function of	Executive
Enclosures	Appendix A
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## **1. RECOMMENDATION**

That Cabinet Resources Committee:

- 1.1 Agree to terminate the existing Fleet Procurement with Maintenance Services contract (FPWMS) with Go Plant Ltd (GPL) by mutual agreement based on Option 3, as outlined in the options appraisal in paragraph 9.17 to this report.
- 1.2 Give approval to transfer the service and staff in-house.
- 1.3 Approve waiver of Contract Procedure Rules (CRC) for a period up to 12 months, to regularise and continue arrangements with existing suppliers which enables and provides business continuity whilst a procurement process is undertaken.
- 1.4 Give approval to procure GPL's Transport IT Software (Chevin Fleetwave) and hardware necessary to support the system.
- 1.5 Approve the remaining capital budget allocation be used to fund purchase of required vehicles to deliver Street Scene services, with the detail of the purchase to be approved by delegated authority of the Street Scene Director.

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Cabinet Resources Committee, 25 March 2008, Decision Item 20 and 31 resolved that:
  - the Fleet Procurement with Maintenance Services Contract be awarded for a period of 10 years with the option at the Council's discretion to extend it for a further five years as indicated within the body of the report.
  - That the Fleet Procurement with Maintenance Services Contract be awarded to Go Plant Limited (GPL), on terms to be agreed based on their bid made on 4 February 2008 and subject to the completion of legal documentation.
  - That any minor variations required in concluding contract terms be agreed by the Director of Environment and Transport in consultation with the Cabinet Member for Environment and Transport
- 2.2 Cabinet Resources Committee, 4 April 2012, Decision Item 11, approved Waste Collection Options for the Future.
- 2.3 Cabinet Resources Committee, 7 November 2012, Decision Item 5, approved the Outline Business Case and Options Appraisal for Waste and Street Scene Services.
- 2.4 Cabinet Resources Committee, 18 April 2013, Decision Item 13, authorised the carrying out of tender processes for the procurement of the Waste and Recycling fleet and approved the addition to the Capital Programme of up to £8.5m funded by Revenue Contribution from the Streetscene Budget over five years.

### **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

3.1 The Corporate Plan, 2013/14-2015/16 includes the following strategic objectives:

- To create the right environment to promote responsible growth, development and success across the borough.
- To support families and individuals that need it – promoting independence, learning and well-being.
- To improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study.

3.2 The strands of the Corporate Plan (2013/14) that relate to this work are 'To create the right environment to promote responsible growth, development and success across the borough'. The option proposed to terminate the fleet procurement and maintenance contract is designed to deliver better services and cost savings when compared with a 'do nothing' scenario.

3.3 This option seeks to deliver value for money by enhancing fleet maintenance efficiency for the new fleet, whilst allowing Streetscene Services to optimise service delivery and business continuity.

### **4. RISK MANAGEMENT ISSUES**

4.1 As a consequence of the revised model promoted in the waste and recycling Cabinet Resources Committee report in April 2013, to promote cost efficiencies, the original model for the fleet procurement with maintenance contract has now changed significantly. In order to manage this risk, discussions were held with Go Plant Ltd to assess the viability of the contract.

4.2 A signed deed of variation of the service that is full and final allows the mutual termination of the GPL contract, and the contractor will not be able to come back to the Council for any losses it has incurred as a result of termination and / or the decision by the Council to purchase certain fleet vehicles rather than a lease via the Go Plant contract. This minimises the continuing risk of this contract.

4.3 To ensure business continuity and best value for money, Transport Services have considered options for the existing lease arrangements where the current lessor (GPL) is unable or unwilling to novate the existing vehicle leases that extend beyond 30th April 2014; this has been dealt with in the report.

4.4 Failure to achieve the timetable of restructure, procurement of the fleet management IT system, supplies and services, in addition to the recruitment of a new post will affect the management and costs of the future transport service.

4.5 The proposed termination of the Fleet Procurement with Maintenance Services contract with GPL will enable the Council to review the method of delivery of Streetscene Services in the future, without the restriction of an existing contractor limiting the council's decisions process.

4.6 Subject to full identification of risks and liabilities through the full provision of

ELI data from the contractor, the Council should be in a position to mitigate any potential risk and maintain a low risk rating for the transfer of these employees into the Council.

- 4.7 Subject to the approval of the transfer of vehicle maintenance service in-house, Transport Services will have necessary management and administration support, with the addition of the staff that will transfer their employment to the Council under TUPE and recruitment of a Workshop Controller, to effectively manage the delivery of the service going forward.
- 4.8 There is a low risk that the staff whose employment will transfer to the Council under TUPE do not have the experience to undertake the necessary maintenance of the fleet; this has been addressed through the provision of extended warranties and securing the support of the vehicle and equipment manufactures.
- 4.9 The waiving of Contract Procedure Rules for 12 months to enable necessary service providers and suppliers to be procured will minimise the risk of failure to attain necessary goods or services to support the delivery of the maintenance service.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The Council's transport fleet provided by the Fleet Procurement and Maintenance Services Contract underpins the refuse, street cleansing, grounds maintenance, children and adult social care and health services. These are key services used and appreciated by all residents, businesses and visitors in Barnet.
- 5.2 The proposals in this Report will not lead to any significant change in the services currently being provided by GPL and so there are no equalities implications arising from implementing the recommendations contained in this Report

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 The estimated cost of the fleet maintenance services managed by Transport Services achieves a cost reduction in overhead costs of approximately £125k annually and operational cost reduction of £280k over the retention period when compared to the existing fleet maintenance services operated by GPL. This has been allowed for in determining the total budget requirement under Transport Services which forms part of the 2014/15 budget.
- 6.2 In relation to property issues, the Lease which was entered into between the parties dated 3<sup>rd</sup> September 2008 relating to the Mill Hill depot will also terminate at the same time as the Fleet Procurement and Maintenance Services contract

## **7. LEGAL ISSUES**

- 7.1 The Fleet Procurement with Maintenance Services Contract was procured in full compliance with both European public procurement rules and the Council's

Contract Procedure Rules. Cabinet Resources Committee awarded the Contract on 25 March 2008.

- 7.2 The Council must comply with its obligations under TUPE in respect of those staff currently employed in the provisions of the FPWMS Contract who will have the right to transfer their employment to the Council if recommendation 3 is approved
- 7.3 Legal Services has advised on the legal implications of exercising the various options throughout.
- 7.4 The Council has statutory powers to provide these services in house or through contractual arrangements.
- 7.5 The Council and GPL can agree arrangements to terminate the FPWMS Contract by mutual agreement. The terms of this agreement should be documented formally and Legal Services can advise as required.
- 7.6 Legal Services confirm that the deed of variation and termination of the service will be full and final, and that the contractor will not be able to come back to the Council for any losses it has incurred as a result of termination and / or the decision by the Council to purchase certain fleet vehicles rather than a lease via the Go Plant contract (Clause 13 of the Deed of Variation).
- 7.7 The Mill Hill depot lease is co-terminus with the main contract.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

- 8.1 Constitution, Part 3 - Responsibility for Functions, paragraph 4.6 specifies the terms of reference of the Cabinet Resources Committee.
- 8.2 Constitution, Contract Procedure Rules (CPR), paragraph 14.2 provides that:  
“Contracts may only be extended or varied if all of the following conditions have been met:

- the initial contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;

- the value of the extension or variation added to the value of the original contract does not exceed the original Authorisation threshold as defined in Appendix 1, Table A;”

CPR 14.3 provides that: “In the event that any of the conditions at 14.1 or 14.2 cannot be met, then either a waiver must be sought in accordance with Section 15 (Waivers) or a new procurement commenced”.

CPR 14.4 provides that: “Where a variation or extension moves the total value of the Contract into a higher threshold, then either a waiver must be sought in accordance with Section 15 (Waivers) or a new procurement commenced”.

- 8.3 Contract Procedure Rules, paragraph 15.1, provides that: “In the event that the application of these rules prevents or inhibits the delivery or continuity of service, Directors or Assistant Directors, Lead Commissioners and Heads of Service may apply for a waiver. All applications for a waiver of these Contract

Procedure Rules must be submitted to Cabinet Resources Committee specifically identifying the reason for which a waiver is sought, including justification and risk”.

- 8.4 The Council Constitution, Contract Procedure Rules – Appendix I, Table A details the Acceptance thresholds in relation to contract extensions and variations.
- 8.5 Waiver of Contract Procedure Rules is being sought, herein, on the basis of exceptional circumstances, in view of the time which it would take to carry out a full procurement process;

## **9. BACKGROUND INFORMATION**

- 9.1 Cabinet Resources Committee decisions listed below impacted on the Fleet Procurement With Maintenance Services Contract with GPL:
  - 9.1.1 25 March 2008, awarded the Fleet Procurement with Maintenance Services Contract to GPL for a period of 10 years with the option at the Council’s discretion to extend it for a further five years as indicated within the body of the report.
  - 9.1.2 4 April 2012, approved Waste Collection Options for the Future.
  - 9.1.3 7 November 2012, approved the Outline Business Case and Options Appraisal for Waste and Street Scene Services. The business case to retain the refuse and recycling service in-house in and to re model collection methods to reflect the latest legislative and environmental demands. The remodelled service required a re-profiled collection fleet.
  - 9.1.4 18 April 2013, authorised a tender process for the procurement of the Waste and Recycling fleet and approved an addition to the Capital Programme of up to £8.5m to be funded by Revenue Contribution from the Streetscene Budget over five years.
- 9.2 As a result of 9.1.4, Transport Services in conjunction with Corporate Procurement carried out a detailed market testing exercise and GPL were asked to review their fleet replacement costings; this resulted in no significant change. Thus the Streetscene Service project team reviewed the procurement of the waste and recycling fleet using preferential borrowing, alternative procurement frameworks and maintenance methods.
- 9.3 The Streetscene Services project team option analysis concluded there was significant cost benefit to the council for maintenance on a ‘Pay as You Go’ (PAYG) basis with vehicles on extended manufacturer’s warranties to minimise risk.
- 9.4 The Waste and Recycling fleet was subsequently ordered through GPL (acting - as purchasing agents only) for delivery mid October 2013, to coincide with the exit of the May Gurney contract for the Recycling Service and the commencement of the new Waste and Recycling Service.
- 9.5 As a consequence of the above, in June 2013 Transport Services entered into discussions with GPL to review how GPL would provide maintenance services

for the whole vehicle fleet for the remaining 5 years of the contract. GPL raised concerns that as a result of Barnet's capital purchase of the Waste and Recycling fleet they will experience a significant loss of income, due to the change in the council's method of fleet procurement and provision of maintenances changing the status of the Fleet Procurement with Maintenance Services contract.

- 9.6 In October 2013 GPL entered into discussions with the council's legal team to explore the possibility of mutually terminating the Fleet Procurement with Maintenance Services contract from the 30<sup>th</sup> April 2014.
- 9.7 GPL are seeking to terminate the provision of fleet maintenance services from 30<sup>th</sup> April 2014, whilst maintaining the existing contract hire leases and hired fleet vehicles from 1<sup>st</sup> May 2014, for their remaining contracted term under the Master Lease Agreement to provide business continuity.
- 9.8 There are 12 employees expected to transfer as a result of the decision to bring services back in house. The staff are protected by the Transfer Undertaking Protection of Rights (TUPE) legislation and regulations. Due diligence will be undertaken as part of the Council's standard procedure to identify any potential liabilities, establish the transfer terms and identify risks associated with the transfer. The due diligence will cover the terms of employment, associate payments and working practises and potential pension liabilities. Through the tripartite consultations, the Council will set out any measures required post transfer to mitigate any potential risks or harmonisation into the Council's workforce. Contractual discussions will cover indemnities and liabilities for potential claims prior to the transfer date and post transfer date of any employees.
- 9.9 Subject to the approval of the proposal; the Transport Service Fleet Management team will change from a contract management to a Transport Maintenance management role. This will include the direct supervision of the TUPE'd staff, with the; Fleet Management Operations Manager; FM Controller and Administrator providing operational support of the in sourced staff, and reporting to the Environmental Services Manager - Transport. This will allow a comprehensive internal transformation of the Streetscene Service provision (including Transport Management) and provides the opportunity to rationalise efficiencies in accordance with the recommendations of the 7 November 2012, CRC report 'Outline Business Case and Options Appraisal for Waste and Street Scene Services' (within the 2 years of the report).
- 9.10 It is proposed that the council approves the retention of 164 existing GPL contract hire vehicles on finance lease or spot hire basis from the 1<sup>st</sup> May 2014. (See Appendix A below). This will allow Streetscene services to continue providing the services in a seamless transition whilst a comprehensive service review is undertaken.
- 9.11 It is further proposed the £1m approved capital funding remaining for the procurement of the Waste and Recycling fleet is amended to include the procurement of vehicles necessary to support the Streetscene Service post 1<sup>st</sup> May 2014, see Appendix C (exempt report), following the robust process below.
- 9.12 Streetscene Heads of Service and Transport Services have undertaken a joint fleet review to identify the GPL vehicles suitable for capital procurement. This

was undertaken on a value for money basis and allows the Streetscene Director to be flexible in the longer term strategic decisions regarding the resourcing of the service in the future.

9.13 The joint fleet review considered the following evaluation criteria of the current GPL's contract hire vehicles

- Streetscene Service future fleet requirements
- duration of the existing GPL contract hire term and the planned service requirement per vehicle
- GPL's contract hire fleet condition and market value, through CAPS (Market Traders Retail Pricing Index against current market resale value)
- GPL's resale valuation to the council
- cost benefit, vehicle by vehicle, between contract hire and capital procurement giving appropriate consideration to maintenance regimes and vehicle history

9.14 The implementation of the new Transport Workshop and Fleet Management IT system enables Transport Services to improve the efficiency of the transport maintenance services and management reporting, utilising web based functionality. Whilst enabling the restructuring of maintenance staffing to be reviewed to meet the services needs going forward, with any reductions being achieved through planned natural wastage.

9.15 To ensure business continuity and minimal disruption to the existing services on the termination of the Fleet Procurement with Maintenance Services contract with GPL, Transport Services will procure the necessary vehicles from GPL on the 30<sup>th</sup> April 2014 subject to the outcomes of the joint GPL fleet review and cabinet resources committee approval.

9.16 GPL has identified that its' core business going forward is concentrated on the provision of contract hire vehicles within the highways maintenance sector. Resulting in a different business model and are seeking to mutually terminate none core business including LB Barnet's FPWMS contract.

9.17 Options Appraisal

1. Do nothing

- GPL to continue to provide the Fleet Maintenance Services for remaining contract term until October 2018.
- Contract subject to variation increases GPL workshop charges due to loss of income (GPL have exclusivity of provision) from the fleet procurement element of the contract.
- Restricts future plans for outsourcing Streetscene service due to the inclusion of GPL fleet provider.
- GPL revised business model places existing contract at financial and operational risk.

2. Terminate FPWMS (GPL) Contract and in source

- Provides on-going cost reduction within fleet maintenance
- Enables fleet maintenance to be reviewed to meet council's service requirements



- Mutual termination of the Contract on 30<sup>th</sup> April 2014 reduces the risk to the council
- Enables alternative delivery models of Streetscene service with fleet maintenance
- Option 2 does not meet the CRC decision 7 November 2012 report 'Outline Business Case and Options Appraisal for Waste and Street Scene Services' (within the 2 years of the report).

**.3. Terminate FPWMS (GPL) Contract and temporarily in source, enabling a Streetscene internal transformation**

- All of .2 items apply:
- A signed deed of variation of the service that is full and final allows the mutual termination of the GPL contract
- Subject to the internal transformation will enable the council to review the method of delivery of Streetscene Services in the future, without the restriction of an existing contractor limiting the council's decisions process.

**.4 Terminate FPWMS (GPL) Contract and outsource, post Streetscene internal transformation.**

- All of .2 and .3 items apply:
- To outsource services will take a minimum of 18 months post review.

## **10. LIST OF BACKGROUND PAPERS**

10.1 The minutes of the consultation meetings between GPL and council officers.

10.2 Any person wishing to inspect the background papers listed above should telephone Bernard McGreevy on 020 8359 5100.

<b>Cleared by Finance (Officer's initials)</b>	<b>AD</b>
<b>Cleared by Legal (Officer's initials)</b>	<b>SD</b>