

## **CABINET**

**11 FEBRUARY 2014**

### **SPECIAL EDUCATIONAL NEEDS HOME TO SCHOOL TRANSPORT – TRANSFER TO MEDWAY NORSE**

Portfolio Holders: Councillor Mike O'Brien - Children's Services (Lead Member)  
Councillor Phil Filmer - Front Line Services

Report from: Barbara Peacock - Director of Children and Adults Services  
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#### **Summary:**

This report details the proposed transfer of management of all existing SEN transport contracts from Medway Council's Transport Procurement Unit (TPU) to Medway Norse, including the secondment and subsequent TUPE transfer of appropriate TPU staff.

The transfer will include set objectives for Medway Norse to extend the savings achieved on the three school sites they will commence in April across additional school sites.

The report also proposes the re-procurement of 'Write Trak' (pupil to home tutor transport), respite and spot purchased SEN transport requirements.

#### **1. Budget and Policy Framework**

- 1.1 This proposal is to address the current budget constraints and is consistent with the Policy Framework. The proposal also supports Council's priorities set out within the Medway Council Plan, specifically by supporting the improvement of quality of life for Medway residents, and assisting individuals maintain their health and independence by helping them travel more easily and safely. The service will also support the individual to maintain their schooling in Medway by providing reliable transport to and from their chosen institution.

## **2. Background**

- 2.1 A tender exercise took place for a single operator to work with three schools to arrange transport for their pupils. During the tender process, Medway Norse approached officers with a proposal to manage and operate transport for all three school sites to the budgets set out in the tender documentation. Medway Norse also offered an additional corporate saving under the profit share arrangement between Medway Norse and Medway Council. Cabinet approved the recommendation that Medway Norse, under the *Teckal exemption*, would deliver this requirement.

## **3. Proposal**

### **3.1 Management of Remaining Route Contracts**

Warren Wood, Brompton Academy, and Rivermead currently have a total of 31 route contracts. These route contracts will finish in April 2014 and will be reduced to one operating contract for the three sites. Medway Norse will commence delivering, 22 April 2014, when the schools return from the Easter holidays. Medway Norse is able to achieve a saving of between 15%-20% on the current cost of the route contracts to Warren Wood, Brompton Academy and Rivermead.

This leaves 240 route contracts with external transport operators to other school sites that Medway Council's Transport Procurement Unit (TPU) currently manages. Officers have identified further school sites, in addition to the 3 mentioned, that the one operator per school site strategy may deliver savings.

Having reviewed all the remaining school sites, both in and out of Medway, (a list of these sites and current costs is set out in the Exempt Appendix) it is clear that some school sites will be better suited to the new methodology than others. Where route contracts do not have a sufficient number of passengers to benefit from consolidating to a one operator per school site approach, these routes can be retendered via the new spot purchase Framework referred to in point 3.3 to ensure greater transparency of price.

The majority of route contracts to school sites have end dates of July 2015. This will allow Norse the time to put in place the necessary resources to operate the school sites themselves or subcontract them as single site contracts to external operators. In order to realise savings across the remaining sites, it is proposed that agreement be reached with Norse in advance of the transfer, on the reductions that the Council is expecting by reviewing each school site for savings on the current cost.

There are a number of route contracts in place with end dates of July 2019. These eight-year route contracts are all with one operator and commenced in September 2011 following a competitive tender process. The operator has already confirmed that they will contend any early notice served upon them for termination due to the resources invested in operating these routes for the

full eight-year term. The contract in place also states that termination upon serving early notice must be by the mutual agreement of both parties.

The transfer to Medway Norse will be subject to existing external operators agreeing to novate their route contracts (the terms and conditions of the contracts allow for this) or assigning the contract, where agreement cannot be achieved.

Children's Services have confirmed that due to the increase in school leaving age the number of SEN transport passengers is set to increase over the next two years (anticipated increase from current 1,050 to 1,400 approximately by 2015/2016). Both these issues may affect the amount of savings Norse will be able to achieve on the current annual spend.

Medway Norse is putting a management structure in place to operate their service. Medway Council made a request to Medway Norse to take on the management of the remaining route contracts. This will include Secondment and then TUPE transfer of TPU staff who are responsible for the day-to-day operation of the current service. Consultation with staff is taking place.

The proposal is to redirect the funding provided by Children's Service to Integrated Transport for the Transport Contracts Co-ordinator and the Transport Contracts Assistant to Medway Norse. The Exempt Appendix provides further details regarding TPU staff who will initially be seconded to Medway Norse and then transferred under the TUPE regulations and those that will remain with the Council's TPU.

Medway Norse has confirmed that they are willing to undertake the management of the remaining route contracts.

The benefit of placing the operation and management of SEN transport with one organisation is to ensure that the service does not become disparate, and day-to-day operational issues can be more easily addressed.

### **3.2 'Write Trak' and Respite Transport**

Following further consultation, Medway Norse has confirmed that as Write Trak and Respite transport can only be operated by taxi due to the required single passenger journeys to different addresses, they would not be able to carry out the transport themselves. However, Medway Norse has confirmed that they will be able to oversee the management of Write Trak and Respite transport via a sub-contracting arrangement with external taxi operators.

In order to ensure greater market participation officers propose to split the services into two separate Lots, one contract for Write Trak transport, and one contract for Respite transport. As the Write Trak service requires a very quick turnaround of passenger timetables and transport implementation, the service needs to be one contract awarded to one operator to manage, as is done currently.

### **3.3 Spot Purchased Transport Requirements**

Spot purchased transport is required to cover changes that occur during the school year in passenger requirements, for example, a change of passenger address or a new passenger moving into Medway. As the current Framework for tendering spot purchased SEN transport requirements finishes in August 2015 the proposal is to procure for a replacement spot purchase Framework. Unlike the previous Framework, which relied upon operators submitting simple daily rates, this Framework will calculate the cost of spot purchased routes using price per vehicle and price per mile costs submitted by operators as part of their tender submission. This new pricing strategy will provide Norse and the Council with more surety of pricing, and will hold operators accountability for the pricing put forward.

Operators will need to achieve a set quality level to achieve a place on the Framework. Successful operators will then be ranked by price in order to ensure the most cost effective operator is approached to carry out spot purchased transport requirements.

## **4. Alternative Options**

### **4.1 Management of SEN route contracts to remain with TPU**

The TPU have the capacity to continue managing the operation of the remaining route contracts. However, with Medway Norse commencing transport for Warren Wood, Rivermead and Brompton there will be a division between organisations that parents would need to contact regarding their child's transport (either Medway Norse or the Council). By transferring the management of all route contracts to Medway Norse it ensures that there is one organisation responsible for all SEN transport, whether through direct operation or through managing external operators. Allowing Medway Norse to manage the remaining route contracts will also allow for smoother transition to a one operator per school service delivery.

### **4.2 Management of SEN Route Contracts by an alternative organisation / operator**

As part of the work preceding the tender process officers consulted with the market to ascertain whether there were any operators who could potentially take on the management of the entirety of SEN transport. The two largest local transport operators approached both stated that they would be unable to take this on.

## **5. Business Case**

### **5.1 Delivery of Project Outputs / Outcomes**

The following outcomes/outputs have been identified for this proposal (in addition to those identified in the Gateway 3 Report for the award of transport to Warren Wood, Rivermead and Brompton Academy) and have been

appraised in the table below to demonstrate how the recommendation will deliver said outcomes/outputs.

<b>Outputs / Outcomes</b>	<b>How will success be measured?</b>	<b>Who will measure success of outputs/ outcomes</b>	<b>When will success be measured?</b>	<b>How will recommended proposal option deliver outputs/outcomes?</b>
<b>1.</b> Consolidated management and operation of SEN transport	The ongoing management and operation of SEN transport by Norse will be closely monitored by Medway Council officers	- Children's Services - Category Management Team - Medway Norse	Ongoing	By transferring the management of SEN routes to Norse, it allows the operation of all SEN transport to be carried out by one organisation.
<b>2.</b> Award of contracts for the operation of Write Trak and Respite Transport	Delivery of successful tender process and contract award	- Integrated Transport Team - Category Management Team	April – June 2014	By allowing officers to commence the retender of the Write Trak and Respite transport services as separate Lots, the Council and Norse can engage with the market to obtain cost effective and quality assessed service providers.
<b>3.</b> More transparent costs for the provision of spot purchased SEN transport	Continued budget monitoring by Norse following transfer of SEN transport management to Norse.	- Children's Services - Category Management Team - Medway Norse	Ongoing	Establishing a new Framework for spot purchased SEN transport requirements with set operator costs for vehicle, staff and mileage will provide a much more transparent costings base for ongoing spot purchased changes to the SEN transport requirement.
<b>4.</b> Continued implementation of the one operator per school approach and realisation of potential cost savings	Officers will work with Norse and monitor changes to service delivery when current route contracts end.	- Children's Services - Category Management Team - Medway Norse	Ongoing	Transferring the management of all route contracts to Norse will allow Norse to better plan for the transition of school sites to a one operator approach and work towards additional potential savings.

## 6. Risk Management

The following risks have been identified for the proposed award, with plans to mitigate these risks also set out below.

Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
Procurement process / Legal	Legal challenge from operator	F	III	Under the Teckal Principle authorities are permitted to directly award contracts to "in house" organisations such as Norse.
Contractual delivery	Inadequate service delivery from operator	D	II	Norse have undergone a significant process of due diligence checks prior to the Council entering into the current partnership arrangement, which included checks as to their viability concerning contract delivery.
Financial	Inability of operator to carry out service to agreed budget	D	II	Officers will work closely with Norse in order that they fully understand the specific service delivery requirements for this service, including the transportation of passengers to the set budget
Political / Reputational	Negative response from local taxi / minibus operators regarding decision to award contracts	A	III	It is likely that Norse will engage with the local taxi and minibus market in order to continue the delivery of this service. In addition officers will consider the legal requirements of terminating existing contracts if required.
Service delivery	Operation of TPU functions that will not transfer to Norse.	C	II	Officers are currently examining all functions of the TPU and are working with colleagues in Children's Service to ascertain which functions will transfer to Norse, and which will remain with the Council. For the latter the remaining functions will either be retained by remaining TPU staff or will need to be reallocated accordingly.

## **7. Financial, Legal, Procurement and ICT Comments**

### **7.1 Financial Comments**

- 7.1.1 This proposal and associated delivery will be funded from existing revenue budgets. The current SEN transport budget is significantly overspent; however, this approach will contribute towards bringing overall expenditure back within budget.
- 7.1.2 Medway Norse will achieve a saving between 15%-20% on the current cost of all routes to Warren Wood, Brompton Academy and Rivermead when Medway Norse commence service operation in April 2014. If Medway Norse is able to extend this saving across the other school sites that have been identified as viable, this could achieve a significant saving across the entire SEN transport budget. In addition, operating these school sites to a set annual budget will greatly reduce fluctuations in costs across the year and allow for much greater surety in budget setting. However, it should be noted that Children's Services have indicated an increase in passenger numbers over the next two to three years, which may offset savings achieved.
- 7.1.3 The majority of parents whose children are eligible for SEN transport have been contacted in the recent weeks to see if they would prefer a cash payment to make their own arrangements to transport their child to school. A number of parents have indicated that they would prefer this option or would like to see further details. These are currently being worked on and is likely to reduce the actual number of children that are required to be directly transported to school by NORSE. The contract with NORSE will allow us to remove children from the NORSE contract if that is an option preferred by the parent and the Council is satisfied with the cost and arrangements being made. It is emphasised that at no time will transport for eligible children be withdrawn as it is a legal entitlement that parents are provided with free SEN transport if that is their preference

### **7.2 Legal Comments**

- 7.2.1 Section 508B of the Education Act 1996 requires local authorities to provide free school transport to "eligible children" in certain circumstances. The definition of "eligible children" includes (but is not limited to) children registered at a school within walking distance of their home who, by reason of their special educational needs (SEN), disability or mobility problems, cannot reasonably be expected to walk there, and no suitable arrangements have been made for them to attend a nearer school.
- 7.2.2 Framework arrangements are expressly permitted under the Public Contracts Regulations 2006. They provide the Council with a facility for procurement without creating an obligation either to purchase exclusively from a single supplier or to purchase a minimum quantity of services. The advantages of framework arrangements are that they permit the Council to undertake a single procurement exercise for the supply of a service or group of services and make a saving in the time, cost and resources that would be spent by the

parties to the arrangement if multiple discrete competitive tendering exercises were conducted.

### **7.3 TUPE Comments**

- 7.3.1 Further to guidance from Legal Services and Human Resources, it has been identified that TUPE (the Transfer of Undertakings Protection of Employment Regulations) 2006 could apply to this proposal.
- 7.3.2 TUPE would apply on the transfer of the staff to Medway Norse and there is also a risk that a secondment in advance of such a transfer could be deemed to amount to a TUPE transfer. This risk can be mitigated by (1) ensuring that the respective obligations of the Council and Norse are detailed in the agreement between the parties (2) that the secondment satisfies the criteria for a secondment arrangement and (3) that the agreement between the Council and Norse contains appropriate warranties and indemnities to cover any potential claims arising as a result of this arrangement.
- 7.3.3 The SEN Transportation company will be set up as a separate legal entity as they need operators' permits. As a result staff may need to join a separate pension scheme rather than the open scheme. Therefore a secondment will allow service to commence on 1 April 2014 but also allow a TUPE Transfer when everything is in place.

### **7.4 Procurement Comments**

- 7.4.1 Due to value of the proposed tender exercise being in excess of the European Thresholds for goods and services (Currently £172,514), the Council and Medway Norse will be required to undertake a European Level tender exercise in order to set up a framework to supply the requirements.
- 7.4.2 The transfer of existing routes to Medway Norse for management is permissible utilising the Teckal exemption which allows work to be transferred to what are in effect "in-house" teams.

### **7.5 ICT Comments**

- 7.5.1 Consideration needs to be given to what technology / database Medway Norse will be utilising to deliver the service. The TPU currently utilise an Access database for the management of the SEN transport routes which is no longer fit for purpose and requires updating. Officers will need to work closely with Norse to ensure a secure transfer of data from the existing database to whatever system Norse intend to utilise.
- 7.5.2 ICT do not support the Access transport database but suspect that there will be issues when the version of MS Office is upgraded later in 2014. However, ICT do provide support for the main SEN system, which has a transport module which is not used, and so the use of this existing module should be investigated to ensure application rationalisation where appropriate to do so.



7.5.3 There are risks relating to the ICT element of this project, and to manage these risks, ICT recommend that an ICT Project manager might need to be appointed to manage the ICT element of the transfer which is estimated to cost an additional £5,000. Medway Norse may be able to support this requirement.

## 8. Recommendations

8.1 That Cabinet agrees to:

- Transfer SEN transport route management and notes the initial secondment and subsequent transfer of associated TPU staff to Medway Norse with effect from 1 April 2014.
- The novation or assignment to Medway Norse of existing contracts for SEN Transport
- The commencement of a procurement for Write Trak transport, Respite transport and a new Spot Purchase Transport Framework.

## 9. Suggested reasons for decision

9.1 Transferring the management of all SEN route contracts to Medway Norse will ensure that the SEN transport service remains with one organisation. It will also allow Medway Norse to effectively mobilise the extension of the one operator per school approach and any additional savings this may achieve. Retendering the Write Trak, Respite and spot purchased transport requirements will ensure that the most cost effective operators is secured for the service.

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## Background papers

The following documents have been relied upon in the preparation of this report:

Description of Document	Location	Date
Gateway 1 Cabinet Report	<a href="http://democracy.medway.gov.uk/mgIssueHistoryHome.aspx?IId=10536">http://democracy.medway.gov.uk/mgIssueHistoryHome.aspx?IId=10536</a>	June 2013
Gateway 3 Cabinet Report	<a href="http://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=22114">http://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=22114</a>	December 2013