

CABINET

2 SEPTEMBER 2014

GATEWAY 3 CONTRACT AWARD: RE-PROVISION OF THE NAPIER AND ENHANCED CARE UNIT (ECU)

Portfolio Holder: Councillor David Brake, Adult Services
Report from: Barbara Peacock, Director of Children and Adult Services
Author: Preeya Madhoo, Head of Category Management People

SUMMARY

It has been the Council's long standing intention to re-provide the Napier Unit and the ECU onto one site. These services are inextricably linked with staff working across both services and an overlap of service users who attend both. The Council is proposing to take forward the re-provision of the Napier Unit and ECU with Agincare (Rochester Care Home Ltd).

The Council has explored a range of options for the re-provision of these services including alternative sites, but given the costs, interdependencies and other issues it is felt that bringing both services onto the Robert Bean Lodge site is the best option for these services.

1 Budget and Policy Framework

- 1.1 Full Council approved the sale of Robert Bean Lodge to Agincare on 21 February 2013, following initial consideration by Cabinet on 12 February 2013. This was in accord with the Council decision to outsource the Linked Service Centres.
- 1.2 Located within the Robert Bean Lodge building is the Napier Unit, which is a discrete 8 bedded unit providing respite services for working age adults with enhanced care needs. The negotiation of the sale of Robert Bean Lodge with Agincare was based on the purchase of the whole building, including the area in which the Napier Unit is currently located. On completion of the sale, the Napier Unit was leased back to the Council.
- 1.3 A further paper was brought to Cabinet on the 16 April 2013 to agree the re-provision of the Napier Unit and ECU. At that meeting, Cabinet resolved to delegate authority to the Assistant Director Adult Social Care, in consultation with Portfolio Holders for Finance and Adult Services,

Assistant Director Legal and Corporate Services and the Chief Finance Officer to look at the options for re-provision of the services at the Napier Unit and ECU, over the next 2 years, and requested that a paper with the options be brought back to Cabinet for approval. The identification of suitable accommodation was a challenge for officers and it was at this time the Council received a proposal from Agincare for the re-provision of the Napier Unit and ECU.

- 1.4 On the 8 April 2014, Cabinet agreed that officers could enter into negotiations with Agincare in respect of the re-provision of the Napier Unit and ECU onto one site. This would support the Council's long standing intention to re-provide the services onto one site, as well as ensure a smooth transition for the re-provision of this service.
- 1.5 The Council has a range of statutory duties and powers to provide services to vulnerable adults such as older people, people with learning disabilities, physically disabled people, people with mental health needs and carers. Duties and powers are contained within the National Assistance Act 1948, the Chronically Sick and Disabled Persons Act 1970, together with other statutes and regulations. These services include residential care, respite care and day care.
- 1.6 Care Homes are subject to Section 23(1) of the Health and Social Care Act 2008, which requires the Care Quality Commission (CQC) to produce guidance for providers of health and adult social care to help them comply with the regulations within the Act which governs their activities. The guidance is used to decide whether to register individual providers, and also when monitoring their services to check that they are continuing to comply with the regulations. CQC also refers to this guidance when using its powers of enforcement. The Napier Unit is registered with the CQC.

2 Background

- 2.1 The sale of Robert Bean Lodge to Agincare transferred ownership of the whole building, including the area in which the Napier Unit is located. Part of the original contract award for Robert Bean Lodge included the Council leasing back the Napier Unit while the Council undertook a review of suitable alternative premises. The challenge however for the Council was that in exploring opportunities for the re-provision, only a small number of possible sites were identified and the costs were considerable.
- 2.2 The Napier Unit is situated on the site of Rochester Care Home (Robert Bean Lodge Care Centre) owned by Agincare. The ECU is situated to the rear of the Balfour Centre site on the same road in Pattens Lane Rochester. These services are inextricably linked as the services support the same group of service users, and staff work across the two services.
- 2.3 The Napier Unit provides overnight, long and short-term care to service users over the age of 16 years who have profound and complex learning and physical disabilities and who may have a sensory need and who live in Medway in their family homes, and those within the Shared Lives Service (Adult Placement). The ECU service provides day care and supports

families / carers by allowing them to have a break from their caring responsibilities – the care is delivered by highly trained support staff. The day service due to the nature of those using the services has close and strong links with Health services and professionals.

- 2.4 The need to provide day service support is not only of benefit to the carers in supporting them to continue in their caring role, but is also important in providing care and support to the service users through meaningful activities and opportunities that support their emotional and physical wellbeing. This support enables these individuals to remain with their families in their communities preventing or reducing the need for higher cost care and support interventions.
- 2.5 In order for Agincare to be able to provide the services, it will need to have use of the Napier Unit, which it currently leases to the Council. This can be done by the Council either granting a sub-lease to Agincare of the unit, or the Council surrendering its lease of the unit back to Agincare. Agincare will also need temporary use of the ECU premises and it is proposed that the Council leases these to Agincare on a short term, basis outside the statutory security of tenure regime.

3. Procurement Process

- 3.1 The procurement was by way of an invitation to negotiate procedure. A tender was submitted by Agincare, outlining all the specification and detailed information regarding the service. The evaluation criteria used within the tender is outlined within section 4 below.

4. Evaluation Criteria

- 4.1 Evaluation criteria of 70% quality and 30% price were included in the tender. The Council usually requires organisation to comply with 60% quality but due to the 15 quality evaluations questions a higher quality weighting was given to this tender.
- 4.2 Quality evaluation
 - 4.2.1 15 quality questions were evaluated. These questions evaluated Agincare's ability to deliver both the Napier Unit and ECU services. Questions ranged from staffing, policies and procedures, transport, safeguarding, links with health and importantly family involvement/communication in the service delivery. The detail of this scoring for these questions is provided in the exempt appendix that accompanies this report but overall Agincare have scored well across all these areas.
- 4.3 Price evaluation
 - 4.3.1 Three pricing options were outlined within the tender. 30% weighting was applied to the pricing for the service going forward, and the number of beds and day care placements within the service.

5. Business Case

5.1 Delivery of Procurement Project Outputs / Outcomes

The following procurement outcomes/outputs identified as important at Gateway 1 and from stakeholder consultation to the delivery of this procurement requirement have been appraised in the table below to demonstrate how the recommended procurement contract award will deliver said outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended procurement contract award deliver outputs/outcomes?
1. Service users receive a service that is individually tailored and is flexible to meet their specific and distinct needs based on an individualised care and support plan and risk assessment	As set out within the Key Performance Indicators (KPIs) for contract monitoring	Partnership commissioning will conduct performance and compliance visits.	At least annually as set out in the contract.	The service specification outlined the outcomes for service users and information to be achieved within the service user care plans.
2. Quality and service improvements – Napier and ECU are co-located onto one site.	As set out within the Key Performance Indicators (KPIs) for contract monitoring	Partnership Commissioning Team, closely working with Performance and Intelligence colleagues	At least quarterly intervals as set out in the contract	The quality evaluation questions specifically covered the service development and how the two services will work going forward co-located onto one site.
3. Service user satisfaction	As set out within the Key Performance Indicators (KPIs) for contract monitoring	Partnership Commissioning Team, closely working with Performance and Intelligence colleagues	At least quarterly intervals as set out in the contract	The evaluation process has ensured that Agincare will involve service users and family carers in the development of the service and use this feedback in any changes in policy or service

				delivery
4. Retaining and recruiting high quality staff	As set out within the Key Performance Indicators (KPIs) for contract monitoring	Partnership Commissioning Team, closely working with Performance and Intelligence colleagues	At least quarterly intervals as set out in the contract	The evaluation process has ensured that the recommended supplier demonstrates that they can deliver this outcome/output
5. Achieving Best Value	Review of the price submissions in accordance with the evaluation criteria set out in the ITT	Finance/ Category management	As part of the tender evaluation process	The price submitted within the tender was within the current service cost envelope.

6. Risk Management

6.1 Risk Categorisation

1. Risk Category: Service delivery	Likelihood: C	Impact: II
Outline Description: The current satisfaction with the service levels may not be maintained if the contract monitoring is not sufficiently robust.		
Plans to Mitigate: Regular reporting of key performance indicators, regular contract monitoring meetings and (unannounced) compliance visits.		
2. Risk Category: Financial	Likelihood: C	Impact: II
Outline Description: The council must maintain best value in terms of managing the contract. An overall price for the provision has been agreed.		

Plans to Mitigate: Council will give due regard to the costs of care and shall be limited to any price increase permitted by the Council to all other service providers in the same category of care as the Service Provider for the relevant Financial Year

3. Risk Category: Political

Likelihood: C

Impact: II

Outline Description: As part of approving the decision to re-provide these services externally, the Cabinet agreed that service user feedback should be taken into account as part of the tender specification.

Plans to Mitigate: Service users (in particular via family carers) have been engaged in the process and have highlighted areas within the specification that are important to them and the service specification reflects these.

7. Diversity and Equality

7.1 The council is required to comply with the Equalities Act 2010 (the Act). Section 149 of the Act requires the council to have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.2 The Council has carried out an diversity impact analysis, a copy of which is annexed to this report. This identifies both the negative and positive impacts of the proposals and considers that, overall; the positive impacts outweigh the negative. In addition, it identifies how any negative impacts might be mitigated and any positive impacts ensured through the delivery of the project.

8. Service Comments

8.1 Financial Comments

8.1.1 The procurement requirement and its associated delivery (as per the recommendations at Section 11), will be funded from existing revenue budgets.

8.1.2 Further detail is contained within Section 1.1 Financial Analysis of the Exempt Appendix that accompanies this report.

8.2 Legal Comments

8.2.1 The services which are under consideration in this report are Part B services and so the requirement to comply with the formal publication procedures set out in the Public Contracts Regulations 2006 (“the 2006 Regulations”) does not strictly apply.

8.2.2 However, the 2006 Regulations do require that procurement exercises to which the formal procedures do not apply should still follow the principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality. As a matter of good practice, Medway Council follows the procedures set out in the 2006 Regulations even where this is not strictly necessary.

8.2.3 Under the 2006 Regulations, the Council may award a contract by use of the negotiated procedure without publication of a contract notice, if the proposed contract meets certain criteria.

- 8.2.4 The Regulations relevant to the services covered in this Report are Regulations 14 (1) (a) (iii) and 14 (1) (d) (i) (aa).
- 8.2.5 Regulation 14 (1) (a) (iii) provides that the negotiated procedure without prior publication of a contract notice may be used when, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator.
- 8.2.6 Regulation 14, (1) (d) (i) (aa) provides that the negotiated procedure without publication of a contract notice may be used where the services are:
- in addition to services previously procured; and
 - which were not included in the initial procurement; and
 - through unforeseen circumstances have become necessary; and
 - for economic reasons cannot be provided separately without major inconvenience to the contracting authority.
- 8.2.7 It is considered that the grounds set out in 8.2.5 and 8.2.6 above apply to the provision of the services covered in this Report.
- 8.2.8 In addition to the above, the Council's Contract Procedure Rules permit an exception to the Rules (in this case, by entering into negotiations without prior publication) where the procurement is not subject to European or UK legislation (Rule 1.8.1.1) and when for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator (Rule 1.8.1.2).
- 8.2.9 The Council has power under section 123 Local Government Act 1972 to dispose of land and buildings, which would permit the surrender of the Council's lease of the Napier Unit, and the grant of a sublease to the service provider. The Council has a statutory duty to obtain the best consideration reasonably obtainable when it disposes of property, unless the disposal is by way of a lease for a term of 7 years or less or consent is obtained from the Secretary of State.

8.3 TUPE Comments

- 8.3.1 The Transfer of Undertakings Protection of Employment Regulations will apply to the award of this contract on the grounds that there has been a transfer of an undertaking and a service provision change under the regulations. This is because services which were previously carried out by the Council are to be provided by a contractor on the Council's behalf.
- 8.3.2 Where there is a continuation of the same service following a transfer and employees are assigned to the service, the employee's contracts of employment will automatically transfer from the existing provider to the new contractor.

8.3.3 It is important that the respective obligations of both the transferor and transferee are undertaken in order to minimise legal challenges.

8.4 Procurement Comments

8.4.1 Tender documentation was completed by Agincare as the Council has a duty to evidence quality and value for money within all contracts. Additional procurement comments are outlined in the legal comments above.

8.5 ICT Comments

8.5.1 ICT still has equipment located at Robert Bean Lodge and the Balfour Centre, together with two Virgin Media circuits. A 'Request for Change' has been received to remove one circuit, and to remove associated ICT equipment from both sites, and so time must be allowed for ICT to complete this work before the service is transferred to external service providers, whilst ensuring that the existing service is not disrupted prior to the termination date.

9. Procurement Board

9.1 The Procurement Board considered this report on 13 August 2014 and supported the recommendation set out below.

10. Other Information

10.1 This contract impacts on the original contract with Agincare for Robert Bean Lodge and Nelson Court. The current level of services within this contract remains the same, but there some changes will be required to the contract to give effect to the proposals in this report.

11. Recommendations

11.1 That Cabinet agrees to delegate authority to the Assistant Director of Legal and Corporate Services in Consultation with the Portfolio Holder for Finance to:

- a) Finalise a contract or contracts for the provision of the ECU and Napier Unit service.
- b) Vary, terminate, replace or renew the existing care contracts in respect of Robert Bean Lodge and Nelson Court.
- c) Vary, terminate, surrender/ renew the existing lease of the Napier unit.
- d) Grant a sublease of the Napier Unit.
- e) Grant a temporary lease of the ECU.

12. Suggested Reasons for the Decision

12.1 To ensure that options to secure the best provision possible for services users and family carers and ensure these services are provided in a premises that is fit for purpose for the needs of those service users now and in the future.

12.2 This delegation ensures the Assistant Director of Legal and Corporate Services, in Consultation with the Portfolio Holder have sight of the final contracts before the Council enters any final agreement.

Lead Officer Contact

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Background Papers

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

Description of Document	Location	Date
Cabinet report http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=2767		8 April 2014

Diversity impact assessment

TITLE

Name/description of the issue being assessed

Napier Unit and Enhanced Care Unit (ECU)

The Council is transferring the provision of the services delivered at the Napier Unit and the ECU, to Agincare.

DATE

Date the DIA is completed

14 August 2014

LEAD OFFICER

Name of person responsible for carrying out the DIA.

Preeya Madhoo, Denise Watkins

1 Summary description of the proposed change

- *What is the change to policy/service/new project that is being proposed?*
- *How does it compare with the current situation?*

The Napier Unit provides overnight, long and short-term care to service users over the age of 16 years who have profound and complex learning and physical disabilities and who may have a sensory loss.

The ECU service provides day care and supports families / carers to have a break from their caring responsibilities.

Highly trained support staff at both services deliver the care.

The services provided at the Napier Unit and the ECU will not change. The organisation, Agincare, will invest in the Napier Unit site to deliver specialist learning disability provision within Medway. The services delivered will be enhanced by these more appropriate premises.

A further change to these services is that the staff and home will no longer be managed directly by Medway Council. The Council has secured a number of places at both the Napier Unit and ECU and clear quality standards to be delivered going forward. Whilst these services will not be managed directly by the Council, the Council will manage this contract closely and ensure there are compliances with a list of key performance indicators.

2 Summary of evidence used to support this assessment

- *Eg: Feedback from consultation, performance information, service user records etc.*
- *Eg: Comparison of service user profile with Medway Community Profile*

Meetings were held with families of the service users to discuss the areas of importance, which has fed into the specification. The evaluation questions in the tender, again reflected the areas of importance raised by families, to ensure this was

Diversity impact assessment

the quality assessment of the tender.

3 What is the likely impact of the proposed change?

This contract is likely to Foster good relations with service users with a disability and complex learning disability needs

Protected characteristic groups	Adverse impact	Advance equality	Foster good relations
Age			
Disability			✓
Gender reassignment			
Marriage/civil partnership			
Pregnancy/maternity			
Race			
Religion/belief			
Sex			
Sexual orientation			
Other (eg low income groups)			

4 Summary of the likely impacts

- *Who will be affected?*
- *How will they be affected?*

Service users who attend the Napier Uni and ECU are likely to be impacted but this is likely to foster good relations, as it is continuation and enhancement of a key service to these service users and their family carers.

The ECU accommodation does not lend itself to the future development of the service to meet the current need for the service and future expected demand. At the Napier Unit site, the day facility will be developed so that services users can attend the day care provision whilst staying at Napier Uni.

The Napier Unit provides overnight, long and short-term care to service users over the age of 16 years who have profound and complex learning and physical disabilities and who may have a sensory loss. There will be further developed to increase the

Diversity impact assessment

provision at this site, from 8 beds up to 10 beds.

The new co-located service will continue to be delivered from the Napier Unit site, Pattens Lane. Retaining these services in the current Rochester location has a positive impact, as it is a good location for carers and staff to get to, good transport links. It is also important as the day care service users need transport to attend the centre. Some families transport the service users, others come on the Council transport, the location is central to Medway with easy access from across Medway.

5 What actions can be taken to mitigate likely adverse impacts, improve equality of opportunity or foster good relations?

- Are there alternative providers?
- What alternative ways can the Council provide the service?
- Can demand for services be managed differently?

The Council has explored the option of re-providing the Napier Unit and ECU onto one site, but there were a number of challenges with finding a suitable building that was the right size, in a good location. The recommendation to continue the services on the Napier Unit site, ensure continuation of service with a site families are familiar with and in a good location across Medway.

6 Action plan

- Actions to mitigate adverse impact, improve equality of opportunity or foster good relations and/or obtain new evidence

Action	Lead	Deadline or review date
The services provided at the Napier Unit and ECU will be monitored through key performance indicators set out in the contract.	Partnership Commissioning	Annually

7 Recommendation

The recommendation by the lead officer should be stated below. This may be:

- to proceed with the change implementing action plan if appropriate
- consider alternatives
- gather further evidence

If the recommendation is to proceed with the change and there are no actions that can be taken to mitigate likely adverse impact, it is important to state why.

Recommendation is for the Council to proceed with the transfer of the provisions of services provided at the Napier Unit and ECU to Agincare. These services will be re-provided onto one site, specifically designed to meet the needs of service users with complex learning and physical disabilities, and for some associated sensory needs.

Diversity impact assessment

8 Authorisation

The authorising officer is consenting that:

- *the recommendation can be implemented*
- *sufficient evidence has been obtained and appropriate mitigation is planned*
- *the Action Plan will be incorporated into service plan and monitored*

Deputy Director

Date

Contact your Performance and Intelligence hub for advice on completing this assessment

RCC: phone 2443 email: annamarie.lawrence@medway.gov.uk

C&A: phone 1031 email: paul.clarke@medway.gov.uk

BSD: phone 2472 or 1490 email: corppi@medway.gov.uk

PH: phone 2636 email: david.whiting@medway.gov.uk

Send completed assessment to the Corporate Performance & Intelligence Hub (CPI) for web publication