



Appendix 1 of this report is Exempt/Confidential under Access to Information Procedure Rule 10.4 (3).

Report of the Acting Director of City Development

Executive Board

Date: 27th July 2011

Subject: Future Options for Design Services

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

The information contained in Appendix 1 is confidential as it relates to the financial or business affairs of the Council. It is considered that it is not in the public interest to disclose this information as it would be likely to prejudice the Council's current negotiations. It is therefore considered that Appendix 1 of the report should be treated as exempt under Access to Information Procedure Rule 10.4 (3).

EXECUTIVE SUMMARY

1. This report provides an update on the progress with the review of the Council's internal construction design service – Architectural Design Services (ADS). Executive Board agreed, on March 9th 2011, to cease and decommission the service in its current form and instructed officers to further investigate two options: 1) the establishment of a public sector Joint Venture with Norfolk Property Services (NPS) and 2) to separately procure design services through the use of existing frameworks where possible.
2. The report sets out how investigations into these options have concluded. Given the fact that the service is not sustainable, continues to underachieve on income targets and the urgent need to put into place a solution, the Council needs to make a final decision on the future of professional design services at the earliest opportunity.

3. The report recommends that the Council pursues the option to form a public sector Joint Venture with NPS as this better meets the Council's requirements, and will potentially safeguard a number of jobs that would otherwise be at risk. Approval is sought for the Acting Director of City Development to finalise contractual arrangements with NPS, with view of establishing the Joint Venture in Autumn 2011.

1.0 Purpose Of This Report

- 1.1 On the 9th March 2011, Executive Board received a report containing a number of options, conclusions and recommendations relating to the future provision of Architectural Design Services (ADS) for Leeds City Council (LCC).
- 1.2 This report sets out a summary of the current position in relation to the more detailed exploration of two options with conclusions and a recommendation about the future of ADS in the light of continuing and significant budget and sustainability issues.

2.0 Background Information

- 2.1 The Council faces significant challenges in light of the unprecedented budget situation and consequently needs to adapt by adopting new, sustainable ways of delivering more efficient services, with a shrinking workforce whilst simultaneously seeking to improve and modernise the services provided. In particular, the ADS service faces challenges in respect of an imbalance in capacity and capability, as well as a decreasing workload and income.
- 2.2 On March 9th 2011, a report was considered by Executive Board as to the future of the Council's internal design service, Architectural Design Services in light of major issues being encountered within the service. Members will recall that this report outlined how:
 - the current strategic design alliance with external partner Jacobs is due to expire on July 23rd 2011
 - the capacity of ADS to deliver a comprehensive service has diminished over the years, to the point that the service is unable to meet its income targets or offer a stable service
 - the service is unsustainable and had an actual shortfall of income for 2010/11 of approximately £450,000, with limited chances of the situation improving giving the pressing budgetary issues and a reducing capital programme. The situation is causing budget pressures.
 - a solution was required to provide a stable and sustainable basis for the delivery of the Council's design needs.
- 2.3 The report outlined a number of options that had been considered to resolve the issues, and confirmed that consultation with staff representatives and Trade Unions had taken place on these matters.
- 2.4 Executive Board considered the options and agreed to cease and decommission the service in its current form and for officers to explore two options in more detail with a report back to Executive Board in July 2011.

2.5 The two options were:-

- Option 1 - to explore to the establishment of a joint venture arrangement with Norfolk Property Services (NPS) as the preferred route, and
- Option 2 - to explore alongside this in more detail the option to separately procure design services using existing frameworks where appropriate e.g. Office of Government Commerce (OGC).

2.6 Option 1 would see the ADS service transferred to a joint venture company; a venture whereby the Council would be a shareholder, share 50% of profits and would have a degree of control over the running of the company. The majority of staff would transfer to the company. Design work would be undertaken by the company under a ten year agreement.

2.7 Option 2 would see the service closed down, all ADS staff enter managing workforce change and see practically all design work procured externally through competitive procurement exercises either individually or through use of existing design frameworks.

2.8 Officers have undertaken detailed investigation of the risks, issues and benefits of the two options. These have now been mostly completed with the exception of some final implementation details which are currently being considered with NPS in relation to Option 1. Investigations in respect of Option 2 have been concluded.

2.9 The option appraisal has included consulting with clients, other local authorities with experience of using the options, evaluating market data, and undertaking analysis of the costs required to implement the option amongst other areas. The specific factors considered were:

- nature of organisation(s) who could provide the service;
- the scope to provide multi-disciplinary services;
- timetable implications;
- cost implications (LCC cost to set up);
- outcome of market testing;
- benchmarking/ Value for Money outcomes;
- financial implications and risk;
- employment implications and risk;
- legal implications and risk;
- contract Management arrangements required;
- business continuity;
- client support;

2.10 Given the fact that the unsustainable service continues to have a significant shortfall on income targets as well as the urgent need to put into place a solution, the review is now at a stage whereby the Council needs to make its final decision on the future of professional design services. The appraisal concludes that Option 1 may be considered by Executive Board to be more suitable in the current circumstances particularly given the constraints in existence around the timetable; the need for business continuity, budget pressures, value for money and employment implications.

2.11 The outcome of the investigation and comparison of the two options is summarised below.

3.0 Main Issues

- 3.1 As previously reported to Executive Board, ADS has become unsustainable in its current form. Over time, the retirement of senior staff has resulted in an unbalanced structure, with a particular gap at the senior level. Inconsistencies in service quality have led to client dissatisfaction and some delivery problems with some projects. The service can not continue as it is. Executive Board agreed at its March meeting to explore two options in more detail with a view to agreeing a solution that gives the Council confidence that the situation can be improved.
- 3.2 Option 1 – Norfolk Property Services is one of the fastest growing design organisations in the country. NPS has a number of JVC arrangements already in place (such as in Wakefield and Barnsley) and advice has been obtained on the experience of implementing these arrangements from the authorities who have adopted this route. Feedback has been positive and any issues arising have been minor and are considered manageable.
- 3.3 In relation to the current standing of NPS, it was recently ranked by Building Magazine:
- 3.4
- 17th in the top 100 Architectural practices
 - 18th in the top 100 fastest growing companies,
 - 20th in the top 100 fee earners,
 - 22nd in the top 250 consultancies list.
- 3.5 NPS has recently won a number of RIBA design awards
- 3.6 NPS has outlined a detailed business proposal. Prior to contract they intend to carry out a full review and put forward an improvement plan. Agreement to this will be part of the final negotiations with NPS. NPS intend to put in place a new experienced management team. They will also seek to provide surplus work to the Leeds Joint Venture from other NPS Joint Ventures. A key part of the proposal to increase long term viability is to establish a centre for excellence in Leeds for design services relating to energy and sustainability and to develop NPS Leeds as a company specialising in sustainable design.
- 3.7 The Council would also retain influence over the company through representation on the Board of Directors which gives the Council a greater degree of involvement than would be possible in a more traditional outsourced contractual arrangement. Maintaining some control will help ensure the service meets requirements without direct responsibility for the day to day management. Additionally, any profits made will be shared equally.
- 3.8 In comparison, Option 2 offers greater flexibility for clients, in terms of the range of organisations available through frameworks or separate procurements. The 12 firms on the OGC buying solutions framework are very credible organisations with track records for delivery. However, there are no guarantees as to the level of capacity or capability that the organisations would be able to provide the Council at any one time. The Council would also have less contractual control and less control over pricing. With Option 2, the Council would be more open to market conditions and long term relationship development and management could prove more complicated than with Option 1.

The scope to provide multi-disciplinary services

- 3.9 The design work required by the Council includes services such as architecture, landscape architecture, quantity surveying, building surveyors, mechanical & structural engineers, interior designers, clerk of works and other design. The solution put forward must be able to provide these multi-disciplinary services to a high quality.
- 3.10 Contracts or arrangements are already in place for some design activities, for example the Local Education Partnership (LEP) relating to Education property and LIFT Co relating to Health Care property. The proposed arrangements must take full account of this. Similarly, the arrangements will need to enable the ability to exclude certain projects either because they are special or specialist, or where it makes sense for part of the service to be done independently e.g. cost consultancy. In addition, there are some activities that the Council will still want to do itself, but where the main discipline is with NPS. As an example, landscape design would sit with NPS, but some activity would need to continue within Parks & Countryside. Detailed exclusivity arrangements will need to be agreed by the Council as part of the legal and Business Plan documentation for the JVC.
- 3.11 Technical assessment has shown that NPS is one of a few firms which offers a full multi-disciplinary design service, with a good balance of resources across the key design disciplines. This provides flexibility to meet the diverse requirements of the Council for design services. If NPS Leeds lacks depth in a particular service area, NPS could draw resources from other NPS organisations.
- 3.12 Although Option 2 provides flexibility to procure services from a range of organisations, analysis has shown that the majority of the firms on OGC frameworks generally specialise in one or two specific design areas. There is a high probability that clients will need to procure services from multiple organisations or rely on sub-consultants for projects where more than one discipline is required. This could be challenging to manage, although in certain circumstances, it could be better for the Council to separate out some of the disciplines required (e.g. cost consultancy). However, Option 2 can provide the full range of services required.

Timetable implications

- 3.13 The SDA arrangement with Jacobs expires on July 23rd 2011. ADS is facing an ongoing budget deficit. In light of the overall budget pressures of the Council, a solution is required to be implemented during this financial year. Once the SDA expires, there will be instances where ADS does not have capacity to undertake work required or does not have the required skill sets for some design schemes. Work such as the schools Basic Needs Programme needs to progress and any delay in implementation of the replacement to the SDA could cause continuity problems for the Council. Interim arrangements will need to be in place whichever option is selected.
- 3.14 For Option 1, it is estimated that, from the date of the Executive Board decision, it would take a minimum of three months to establish the new arrangement. This timetable is mainly due to the fact that the Council does not need to undertake a

competitive procurement exercise, as the 'Teckal Exemption' from usual competition requirements in the Public Contracts Directive and regulations would apply.

- 3.15 There are a number of possible solutions to address any capacity or capability issues in the interim period; these include directing work through another JVC arrangement or employing additional agency staff. The most straightforward solution would be to enter into a 'call off' arrangement directly with NPS who would then provide the necessary professional support to ADS, at agreed rates, to enable the service to respond effectively to all client requirements. This approach would require seeking a waiver of Contract Procedure Rules and appointing NPS as consultants subject to a £150,000 fee limit. Additionally, should the Council require more extensive services which would exceed this fee limit there is the flexibility to then enter into the shareholders' agreement with NPS Leeds at an appropriate time, as an interim measure which could be terminated should the JV arrangement not proceed. NPS have indicated they would agree to these approaches subject to full details being agreed with LCC.
- 3.16 Should this prove to be the best interim arrangement after further examination, The Acting Director of City Development is able to seek waiver of contract procedure rules
- 3.17 This timetable would help safeguard live schemes (most of which would be transferred immediately to NPS), reduce risks for schemes requiring additional design input as an interim measure and so minimise the Council's losses. The subsequent inclusion of this work in the Leeds JV would increase its potential sustainability.
- 3.18 The main risk to the Council of using NPS during the interim is if the negotiations with NPS subsequently fail to produce a workable solution. In the circumstances, this arrangement can be easily dismantled.
- 3.19 With Option 2, frameworks can be accessed immediately for new schemes but it would take at least 12 months to implement the full detail of the option. This is because, to decommission the current service and procure all design work, there would a period where residual work is managed out and a period whereby the managing workforce change procedure was in place. With this option, Council budget deficit would continue over the next 12-24 months. The wind down of the service could take up to 3 years to cover defects liability period for design schemes, and many schemes are a long way from completion. The timetable for this option presents the Council with an ongoing problem which could potentially be avoided with Option 1.

Cost implications (LCC cost to set up)

- 3.20 There are cost implications for each of the options and to assist comparison, estimates have been set out in the table below for the main areas where additional cost areas have been identified. The estimates suggest that Option 1 is likely to be cheaper to establish for the Council than Option 2.

Estimated additional cost to establish (year 1)	Option 1 - £	Option 2 - £
Legal Costs (including Counsel advice)	7,500	5,000
ICT costs	10,000	0
MWC/redundancy/pension costs	110,000 ¹	830,000 ²
Contract Management and Client co-ordination costs	c125,000	c200,000
Unfunded schemes with remaining liability costs	20,000	20,000
Overhead charges to relocate	293,000	293,000
TOTAL	565,500	1,348,000
Potential costs should Council liability arise (risk cost)	c£230k	

- 3.21 Council set up costs for Option 1 include legal and ICT fees, with the majority of set-up costs borne by NPS Property Consultants Limited (the holding company). The Council could also be liable for any MWC or redundancy liabilities relating to staff who are not part of the transfer (estimate based on administrative staff from the business support unit) or those which occur within the first 3-4 year period when LCC retain liability on a reducing sliding scale. The worst case scenario for this liability would be a further c£230k costs for the Council. The Council would also be liable under this option, for schemes where there is a remaining liability which is not funded. Option 1 would help stem the losses that the Council is currently encountering as a consequence of ADS' unsustainable position. It is estimated that the total cost implication for option 1 is £565,000, or £795,500 should the redundancy risk be realised.
- 3.22 Under Option 2, in comparison, the Council would need to manage out the budget deficit as the existing design commitments phase out. There would also be much higher costs incurred as a result of most staff entering the Managing Workforce Change procedure. There is also a liability for schemes where there is work remaining to be completed but which is not funded. These estimates indicate that Option 2, could cost in the region of £1.3m.
- 3.23 The cost of appropriate contract management and client co-ordination to support either option is currently under consideration. Initial estimates have been added for comparison purposes based on initial investigations of the scope and role of any contract management and client co-ordination required. Costs are likely to be somewhat higher for Option 2 due to the added complexity of the arrangement.
- 3.24 For both options, there would be an overhead implication where a forecast annual fee of £293k will need funding from the City Development Directorate. This is an overhead cost the ADS service currently pays, through fee recovery, for services in City Development and corporate services such as HR, finance and ICT. This cost would need to be picked up by the Council.

¹ Includes 12 month MWC, redundancy payments and pension costs

² Includes staff working on current projects but no new schemes with 40% costs offset against current schemes

Outcome of market testing

- 3.25 Officers have carried out some soft market testing. Nine local authorities were approached with a view to sharing information and experiences in relation to the different arrangements they have in place; seven of which have an arrangement with NPS.
- 3.26 Overall the experience of other authorities has been positive in favour of establishing a JVC with NPS. In particular, all responses confirmed that they would set up a JVC with NPS if the same situation arose again although to the same extent, they urged greater care in relation to agreeing and negotiating details. Specifically this advice related to ensuring the legal documentation was clear and appropriate for Leeds' requirements and with relevant performance indicators included. On that basis specific clauses have been inserted into the legal documentation to provide the Council with additional risk protection. Overall the experience of other local authorities, all of whom encountered similar issues that LCC faces at present, provides some support to the advantages of Option 1.
- 3.27 Clients from these authorities who commission NPS directly were also approached to discuss their experience of the service provided. Views varied, although most responses indicated broad satisfaction with the service. In relation to contract management and client co-ordination requirements there was a general consensus that they play a key role which requires careful consideration, with most authorities advocating larger arrangements than they initially adopted.
- 3.28 This market testing has shown that the Joint Venture route is viable. The experience of other Councils alerts the Council to the issues which need to be resolved in advance and managed effectively once in operation.
- 3.29 Executive Board is advised to note that there are two alternative approaches which have been considered in relation to establishing the JVC arrangement; these are a single or Leeds only JVC, or a shared service arrangement with one or more other Local Authorities.
- 3.30 Although there are positives and negatives with both approaches, the over-riding financial pressure to address the deficit and to provide a more suitable and sustainable service means that an early solution is most beneficial and this can only be achieved by progressing initially the single Leeds approach. It is recognised however, that there are potentially many benefits to be gained through shared service provision, not just in terms of this JVC but on a broader city region basis. In order to fully investigate these possibilities and also to work towards the aspiration of a shared service arrangement it is proposed to insert a specific termination clause in the legal documentation to facilitate a review of this possibility in 2014 when the current NPS NE arrangement comes to an end.
- 3.31 Initial discussions have already been held with NPS NE (Wakefield), who are supportive of this approach, and also wish to continue the dialogue to investigate ways to maximise any future potential. Other Local Authorities from the Leeds City Region have also expressed support.
- 3.32 For Option 2, market testing identified the viability of potential frameworks such as OGC, and whether they could meet the Council's requirements. Market testing explored three potential frameworks:

- **OGC buying solutions** – this framework is live and the Council can access this immediately to procure design work. With 12 organisations on the framework, this should provide the range of design services the Council requires. The framework is due to expire in June 2013, although it is anticipated it will be replaced. There is a minimum construction value of £500k for this option per scheme and this would mean the Council would have to consider other ways to deliver schemes below this value. A limited residual design capacity remains at this stage in Corporate Property Management. However this will need reviewing in any case should the NPS JV be established.
- **Yorkshire Forward panels** – Yorkshire Forward has commissioned and contract manages a number of consultant panels for a range of disciplines, including frameworks providing services such as architects and landscape architects. Investigation has shown that these would not provide the multi-disciplinary services the Council requires. There is some uncertainty about future contract management arrangements of the panels due to the pending closure of Yorkshire Forward.
- **YorConsult** – this is a new multi-disciplinary framework that is proposed for procurement at some stage in 2011. Until procurement starts and documents available, it is not known if this would meet the Council's requirements, and timescales may not be suitable for the Council given the challenges faced.

3.33 With Option 2, care would need to be taken before transferring 'live' designs to a provider on the OGC framework. It may not be possible to mitigate all of the risks involved with this approach.

3.34 Overall, the market testing has indicated that Option 1 would better meet the Council's requirements than Option 2, although there are risks which will need to be managed in both options.

Benchmarking/ Value for Money outcomes

3.35 Proposed fee rates have been analysed and compared against fee levels offered for design services on the OGC framework, a further private sector multi-disciplinary organisation and the current SDA. In broad terms NPS' fee rates are lower than the external benchmarks as well as ADS and SDA currently. Confidential Appendix 1 contains a more detailed analysis of the fee comparison.

3.36 The fee rates for Option 1 are nearly always lower than those provided on the OGC framework in Option 2, where fees are seen as competitive. The potential benefit with Option 2 not present in Option 1 is that competition in the open market could drive better value each time design work is procured.

3.37 The Joint Venture Company would need the Council's permission to raise fee levels, as well as needing Council permission for each annual business plan, consequently there is less risk and more certainty for the Council with Option 1 in achieving Value for Money.

Financial implications and risk (once established)

- 3.38 With Option 1, the Council could benefit financially, as the Council is a shareholder who will share in the profits of the Joint Venture, through a flow of future discounts in fees paid. Formal advice from taxation specialists relating to corporation tax liability is awaited and will be taken into account in concluding whether the NPS proposal is viable. The Council also has a degree of control on the Joint Venture's fee rates and business plan, thus minimising risks that the arrangement could be more expensive for clients. Under terms negotiated so far, the Council would not have to make contributions to cover unforeseen losses nor would it be liable for financial losses after three years of operation, with these costs borne by NPS' holding company. The Council could also set NPS annual efficiency targets through the business plan.
- 3.39 However, against a difficult financial background, meeting the business plan forecasts on income will create challenges and should NPS Leeds fail to meet them the Council could have a liability that comes into force after any period of MWC in force in the Council. This would be on a sliding scale of 100%-66%-33% and would apply to any NPS Leeds staff that are transferred. There may also be MWC implications for staff not transferred to the JVC depending on whether alternative employment arrangements can be made. After three years, the Council would not share any liability for business performance.
- 3.40 Option 2 leaves the residual costs, including the ongoing deficit and additional MWC costs, with the Council.
- 3.41 Due to its fragmented nature, Option 2 is riskier in terms of securing best value for clients. It also, is more risky in terms of service continuity.
- 3.42 The table included at 3.23 provides an estimate of set up cost the Council would be likely to incur under each option. The total cost implication for Option 1 is £568,000 whereas under Option 2 it would be significantly more and be in the region of £1.3m, primarily due to the cost of managing workforce change.

Employment implications and risk

- 3.43 In the circumstance Option 1 offers a good solution for employees; this is because the majority of ADS staff will be transferred to the Joint Venture through a TUPE transfer with current Terms and Conditions for staff remaining unchanged and access to Local Government pensions being maintained.
- 3.44 **TUPE:** it is likely that a TUPE transfer to a JVC will provide better job-security for staff in comparison to Option2. However, it is clear from discussions with NPS that some reductions in staffing may be needed if business plan income targets cannot be met. Discussions about how this could be managed are being held, with view of minimising any potential job losses. NPS' business model is based on securing additional work, some through LCC and some through the public or private sector routes. Counsel advice has indicated that the maximum amount of work commissioned outside of LCC and the NPS Holding Company can be 10% of all income. On this basis, the NPS option allows staff the chance to work in an

organisation that has the potential to expand its business structures to reduce the redundancy risk.

- 3.45 **Pensions:** currently all staff have access to Local Government pensions through the WYPF. NPS proposes to apply for Admitted Body status for the proposed Leeds NPS which would allow staff transferred to continue with those pensions. The final cost implication of this arrangement requires a full actuarial assessment and this cannot be completed until the actual point of transfer. However, an estimate is currently being prepared based on the current staff profile.
- 3.46 Pension settlement costs would come into effect if a deficit in the pension fund exists at the end of the JVC agreement. The current risk assessment/cost estimate being prepared will be used to determine the appropriate level of contributions required to avoid such a deficit occurring. This will be regularly reviewed throughout the contract and contributions adjusted accordingly to keep it on track. Should a deficit still occur then the liability for this is a potential risk for LCC. The extent of this risk is part of the ongoing discussions with NPS to agree who will accept liability if it occurs, and in what proportions. It is likely that a bond payment will not be required for the JVC.
- 3.47 Option 2 would see all ADS staff placed into Managing Workforce Change, and could lead to the potential redundancy of all staff in ADS unless they are successfully redeployed. This option does not have the support of staff or Trade Unions and is likely see key design knowledge lost from the Council for good.

Legal implications and risk

- 3.48 For Option 1, legal advice gained has been positive and has provided the diligence officers were seeking when exploring the viability of the option. A full risk assessment has been carried out and is available on request; however the high risks areas include the ability to provide suitable interim arrangements, failure to meet income targets, MWC, redundancy and pension, and establishing appropriate client management arrangements.
- 3.49 In relation to Option 1, both internal legal advice and advice from counsel have confirmed the Council can enter into the proposed joint venture arrangements with NPS without any requirement for a standard competitive procurement exercise to be undertaken. In relation to the Council's powers to enter into the arrangements with NPS, counsel has advised that if the Council reasonably takes the view that these arrangements mean it is able to procure design etc services more efficiently or cheaply, then Section 3 of the Local Government Act 1999, and Section 111 of the Local Government Act 1972 can be relied upon as the proper basis for these arrangements.
- 3.50 The review has also considered challenge risk; the Council's mitigation of these risks; the application of TUPE and Managing Workforce Change procedures; and, the impact of the timing of the closure of ADS..
- 3.51 A number of contractual matters are under discussion with NPS as follows:-
- **Exclusivity:** NPS would have exclusivity on design work identified in the services specification and excluding any arrangement where there is an

arrangement in place already. This exclusivity relates to services noted in section 3.10. However, the Council will wish to exclude some types of design work from the exclusivity proposed for NPS. NPS could still be given this work but the Council would be able to select alternative providers through a different route if it requires. Examples include specialist or a key major project, and where a project funder requires work be procured externally, NPS has agreed in principle for these services to be procured externally, subject to NPS having the opportunity to bid for work. Discussion is ongoing to ensure cost consulting advice can be procured separately for major schemes where NPS is the design team to ensure added robustness for Council schemes. The detailed exclusivity is still subject to resolution with NPS.

- **Review, termination and performance management:** a range of KPIs are currently being discussed with NPS and these are initially based on those used to monitor the SDA. These will include outcome based measures and performance thresholds. They currently include customer satisfaction with service and product, predictability of time and cost both for the design and construction and Site Safety Standards. As they reflect industry standards they will enable both monitoring of performance and benchmarking with Core Cities and the Council can set its own performance targets for NPS. A list of the main KPIs measured and last full year results are included at Appendix 2.

There will be a review of performance by the Council at least annually, with a full review of the Company's performance against these performance indicators and any relevant best value indicators, after two, five and seven years. If the conclusion of the review is that the service has not provided best value the Council can exercise termination rights. These rights can also take effect in a number of specifically identified circumstances which include if the Company is in substantive breach of contract or if it encounters certain financial issues such as becoming bankrupt or insolvent. In these circumstances, the company would bear the majority of the associated losses, although there could be a financial liability for the Council during the first 3 years when the Council retains liability on a sliding scale for any redundancies.

- **Flexibility:** the Council could make a decision later to merge the Leeds NPS with one or more other NPS companies / councils in Yorkshire. The review period clause has been agreed in principle with an option to terminate the agreement, subject to review and by mutual consent, after 2 years to align with the end of the 10 year NPS NE Company. Additional related Council services can also be added into the arrangement at a future date and details of how this will operate are part of the commercial negotiations to be undertaken should Executive Board be minded to pursue this option.
- **Control:** In relation to the extent of control of the joint venture company, it is proposed that NPS would own 80% of shares (8 £1 shares) and the Council would own 20% of shares (2 £1 shares) and although this could be varied, legal advice is that this arrangement does not have adverse financial implications for the Council nor would there be any significant benefits from a larger shareholding. The level of the Council's participation in the company at shareholder and at board level will mean that the company is "subject to the influence" of the council and so could potentially be "regulated" if the Council exercised a dominant influence or if a company, would be required to prepare

group accounts for the company, under the provisions of the Local Government and Housing Act 1989. Resources directorate have confirmed that since we moved to the prudential framework there are no adverse implications for LCC of regulated companies entering into credit arrangements. In terms of other accounting issues this would be an associate and so would need to be included in our group accounts

The JV would be jointly owned and controlled by the Council and NPS acting collectively; There will be a Board established and made up of a jointly appointed managing director of the JV, 2 NPS representatives and 2 LCC representatives. As the company takes most of the financial liability for the JVC arrangements, the group consequently has to have a majority on the Board. Although on the face of it this suggests the Council will not have equal control, the draft articles outline how the Council has decisive influence over any significant decisions in a way that demonstrates the Council's control and a number of decisions cannot be taken unless 1 LCC representative approves the course of action. There is a statutory duty for a director to act in the best interest of the company. However, legal advice is that this is unlikely to cause conflict as there is also a much broader duty for directors to take into account which includes stakeholders, employers, customers, employees, and the environment. Day to day operational matters would be managed by NPS. The Council would maintain ownership of intellectual property rights and will seek to agree a service charge for use/ transfer of council assets.

- **Contracts:** the contract document would consist of three legal agreements: a shareholders' agreement; a services agreement; and, an articles of association. In broad terms the articles and shareholders' agreement are generally acceptable, subject to some final negotiation on detail. Detailed decision on the services agreement is ongoing with final details requiring finalisation.

3.52 Under Option 2, there are identified legal implications in relation to procurement. For future design services bought externally, the Council would need to make use of an existing framework or full tender exercise. The advice received is that it would not be possible to extend the Jacobs contract further without a procurement exercise, although works up to the EU procurement value (£156k) could be allocated to Jacobs before the SDA expires on 23rd July 2011.

Contract Management arrangements required

3.53 Both options would require arrangements for contract management – e.g. resources to manage and monitor the arrangement implemented. Both options would also require client co-ordination arrangements to provide support to clients when undertaking design work through the respected option (e.g. such as support during procurement of design services).

3.54 Initial review has indicated that this is likely to be more resource intensive for option 2 due to the nature of the arrangement, and potentially more costly. Discussions are ongoing about the future shape and role of a contract management and client co-ordination function, and it is proposed that, once Executive Board determines the course of action, the Acting Director of City Development finalise arrangements for contract management and client co-ordination prior to implementation.

Business continuity

- 3.55 A matter of key importance is the level of business continuity to be offered, and whether the solution can maintain live design schemes that ADS are currently undertaking. As noted earlier, it is critical that a solution is place in order for the council to progress new schemes without delay.
- 3.56 Option 1 provides by far the best solution as all work can be transferred immediately with the same resources with key knowledge undertaking the activity. This means all live work would see minimum business disruption. NPS Leeds staff would also be based in Council buildings for a short interim period to help manage the transition period. Interim arrangements can also be established for new schemes prior to the implementation of a new option.
- 3.57 Option 2 is more fragmented and lacks continuity and consistency. Staff will be placed into MWC. There is strong likelihood that key staff will leave and the schemes could face disruption

Client support

- 3.58 LCC clients have been consulted about the proposals. Clients accept the challenges facing the service and are generally supportive of Option 1. Although there is acknowledgement that Option 2 could have some benefits, it is generally accepted that the benefits of Option 1 in particular for timetable, cost and security for staff, outweigh the benefits of Option 2.

Outcome and Next Steps

- 3.59 The option appraisal supports Option 1 as providing the best solution. It is acknowledged however, that although this may not be the perfect solution and that there are still some risks identified and hard decisions to be concluded, it is the opinion of officers that it provides the best solution available. If Executive Board is inclined to support this option, the considerable uncertainty about future provision of this service will be best resolved.
- 3.60 Should Executive Board agree that Option 1 is the best solution, it is proposed that the Acting Director of City Development is given delegation to final negotiations with NPS with view to a Leeds JV being established and commencing activity in Autumn 2011.
- 3.61 The next steps will include finalising contract documentation with NPS; agreeing the services agreement with NPS; negotiating final terms on termination, exclusivity, fees, LCC Board representation, the services specification, TUPE requirements and pension liabilities; finalisation of the business plan; final due diligence checks as well as the final decision on the form of contract management and client co-ordination role required. Interim arrangements, as detailed in section 3.20, will also be implemented whilst negotiations with NPS are ongoing.

3.62 Option 2, although more challenging to deliver and offering fewer benefits than Option 1, still has some merit and can be delivered. It will therefore remain a fall back. If the Council is unable to satisfactorily conclude negotiations with NPS or if Executive Board is not minded to approve option, the Council can implement Option 2. Should this be the case, the next steps for this activity would include: placing all ADS staff into managing workforce change, putting into place interim arrangements for live design schemes and residual work, and establishment of client co-ordination and contract management arrangements.

4.0 Implications For Council Policy and Governance

4.1 The decision about which option to support rests with Executive Board. If Option 1 is supported the details can be finalised by the Acting Director of City Development delegated authority. At this point the Council could enter into a Joint Venture arrangement with NPS for the provision of design services, with the Council maintaining a degree of control over the service. Two representatives of LCC would become Board members and would help govern the joint venture. Internal and external Legal advice has indicated that this is legally robust.

4.2 Equality Impact Assessments have been completed in respect of both service delivery and staff related issues and these have not raised any potential adverse equality issues in respect of pursuing the recommendations. These assessments are available upon request.

5.0 Legal And Resource Implications

5.1 As noted in the report, internal and external legal advice has been sought with respect to the options and the implementation of the Joint Venture. The advice received has included advice on matters relating to the Teckal exemption; the degree of control the Council will have; TUPE transfer; employment law matters and whether the Council has the power to enter into the arrangements. Legal advice received has indicated that the arrangements are robust, subject to resolution of some minor issues, and that the Council can enter into the arrangements. The decision will have implications upon human resources in the ADS service which now comprises 36 council staff, 6 agency workers and 1 secondment from an external organisation. Option 1 is, in the officers' view, the best option for the council financially, although there may be future costs for the Council throughout the next three years if risks and liabilities noted in the report arise.

Risk

5.2 There are risks associated with the approach, and final negotiations with NPS will seek to eliminate some of these risks. A detailed risk assessment is available upon request. Key risks include:

- an appropriate agreement not being reached with NPS,
- the joint venture not being successful leading to future redundancies and cost liability, for the Council

- higher than expected costs and liabilities for the Council due unforeseen issues over the next three years, leading to additional budget pressures and further cost consequences
- failure to establish appropriate client management arrangements.

Consultation

5.3 Regular consultation has taken place with Trade Union and Staff representatives over the last 10 months, and both staff and TU are in favour of Option 1 and do not support Option 2. Consultation has also taken place with other local authorities in coming to a recommendation.

6.0 Conclusions

6.1 The current ADS service is currently unsustainable and the budget deficit is continuing to have significant impact on overall Council budget pressures. A decision is required on what will replace the ceased service at the earliest opportunity to allow a solution to be put into place this financial year. Of the two final options considered, it is clear that Option 1 is the best option given the difficulties faced, although Option 2 remains deliverable and is infact what would have to happen if Option 1 is not selected.

6.2 Option 1, will enable the Council to deliver efficiencies and plug an ongoing deficit to reduce budget pressures; safeguard a number of at risks jobs; modernise and improve the current design services provided to the Council; ensure business continuity and minimise disruption for all live design schemes. As such, officers are now in a position to finalise detailed commercial negotiations with NPS with view of establishing the Joint Venture by Autumn 2011.

7.0 Recommendations

7.1 Executive Board is recommended to:-

7.1.1 pursue Option 1 and support in principle the establishment of a Joint Venture Company with NPS;

7.1.2 subject to the agreement of detailed terms, to give delegated authority to the Acting Director of City Development to finalise contractual terms with NPS and to establish appropriate interim arrangements;

7.1.3 to agree that, should negotiations with NPS not be satisfactorily concluded, for Option 2 to be pursued, with a further report brought back to Executive Board should this situation arise.

8.0 Background Papers

- Options Appraisal Professional Design Services Review
- Comparison of matrix fee charges
- Key Performance Indicators
- Counsel Advice on NPS Leeds – Confidential

- Future Options for Design Services – Executive Board Report, dated 9th March 2011
- Risk Assessment: Future Options for Design Services
- Equality Impact Assessment – Future Options for Design Service

