

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Executive Lead Member for Children's Services
<b>Date:</b>	21 January 2015
<b>Title:</b>	Future management of Park Nursery and Trospacc Nursery
<b>Reference:</b>	6287
<b>Report From:</b>	Director of Children's Services

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### 1. Executive Summary

- 1.1. The purpose of this paper is to consider the future management of the two Hampshire operated nurseries, Trospacc and Park, which are based on Hampshire County Council (HCC) children's centre premises within school sites. HCC management of the nurseries was a temporary arrangement put into place when the children's centre service was outsourced in 2012. HCC now needs to consider releasing the provision for independent management so that the Local Authority fully complies with the Childcare Act (2009).
- 1.2. The two nurseries have been supported to ensure that their operations are financial viable. It is proposed that the management of the nurseries is outsourced on a premises lease basis, similar to other childcare settings on Hampshire premises, which will provide income to Childrens Services in the region of £26,000 to £30,000 per annum.
- 1.3. It is also proposed that staff currently employed transfer to the new organisation through TUPE arrangements. Staff and Unions have been informed of the possibility that these nurseries are outsourced.

### 2. Contextual information

- 2.1. Following the decision to commission the management of Children's Centre Services in Hampshire in April 2012, HCC retained responsibility for managing the three full day care nurseries; Aviary (Eastleigh), Park (Rushmoor) and Trospacc (Havant). These nurseries were originally managed by HCC as part of the children's centres in which they were located. The long term intention was that the management of the nurseries would be commissioned when a financial review had been undertaken and they were financially viable as individual nursery businesses.

- 2.2. The Aviary Nursery provides specialist provision for children with Special Educational Needs and is also a Hampshire SEN Hub. Due to current changes to SEN funding and policy, it is recommended that the Aviary be subject to a separate decision when funding streams for SEN are known. Consequently, this report relates only to Trospacc and Park.
- 2.3. The intention to commission the management of the nurseries ensures that the Local Authority complies with the Childcare Act 2006 that states “An English authority may not provide childcare for a particular child or group of children unless the local authority are satisfied (a) that no other person is willing to provide the childcare (b) if another person is willing to do so that in the circumstances it is appropriate for the local authority to provide the childcare”. At this time, the nurseries have not been market tested. With both nurseries located on school sites and adjacent to children’s centres, it is anticipated that there will be good interest in both provisions as they have excellent links with their children’s centre and primary school services.
- 2.4. In 2012, an operational review of the nurseries identified that there were key leadership and management issues which affected operational efficiency. Services for Young Children (SfYC), has provided leadership and management to the nurseries which has led to significant operational reorganisation together with the implementation of business and financial planning and monitoring. This has resulted in all three nurseries becoming independently financially viable. The nurseries are therefore likely to be of interest to the wider childcare market. Early interest has already been expressed by one school.

### **3. Finance**

- 3.1. Both Park and Trospacc Nurseries have been required to make changes to the management of their finances over the last five years, to separate their accounts from those of their associated children’s centre and fully apportion the shared premises charges. Initially, this placed financial pressure on both nurseries. Detailed work to address this, alongside other operational issues, has demonstrated their ability to change and cover the current charged costs of the service. Please see Appendix 2 for the financial outturn forecast for 2014/15.
- 3.2. Reviewing the employers’ pension liabilities for the nurseries has revealed that there are ‘past years’ employers’ contributions of 6%<sup>1</sup> that have not been charged direct to the nurseries but are within the Children’s Centre Business Unit structure. The three nurseries are the only remaining elements of this Business Unit. These costs will remain a county council responsibility and of

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<sup>1</sup> Extract from Hantsweb: <http://intranet.hants.gov.uk/ctdept/budgetmonitoring.htm> “Please note that like last year the 2013/14 Employers contribution to the local government pension scheme is 13.1% compared to 19.1% in 2010/11. The reason for the substantial lower rate (i.e. 6%) is because the 13.1% only relates to new pension salary benefits and not liabilities for past years. However, Hampshire County Council still has to contribute the 6% or £20.5m to Hampshire County Council's Pension Fund. This will be collected from services via a charge to schools and business units or a budget transfer (for other services which has already been built in).”

the LGPS past deficit contribution is consistent with the way in which the council managed the children’s centres outsourcing.

- 3.3. The summary of the financial position in Appendix 2 includes the direct costs charged for the employers’ contribution at 13.1% of salaries and is for the pensions of staff currently employed.
- 3.4. It should be noted that there are a number of additional costs that the nurseries will need to meet should the management be outsourced, such as rental charges, business rates and pension costs (see Appendix A which includes an assessment of the outturn including estimated additional costs).
- 3.5. To strengthen the 2014/15 financial outturn, the nursery managers are revising their business plans to update cost control measures and review income generation, as well as considering options for operational efficiencies. These are expected to demonstrate that they will be able to cover the full operational costs (with the exception of the past pension costs) of running the settings externally to HCC.

**4. Performance**

- 4.1. Table 1 below provides a description of the number of places for each provision together with the current Ofsted quality judgement. The nurseries have not been inspected under the new Ofsted framework which came into place in November 2013. Both nurseries would be subject to a full re-inspection under the management of a new out sourced organisation.
- 4.2. Currently, each nursery offers early years education for two, three and four year olds and fee paying hours for children who are younger or taking up additional hours. Park Nursery has a ‘satisfactory’ Ofsted judgement. The nursery has received targeted support from the SfYC Local Development Team as well as leadership support through the Children’s Centre Support Officer. The implementation of change in Park Nursery management, together with their self-evaluation and the commitment of the team to embed change, has enabled the provision to be considered of sufficient quality to offer early years education for two year old funded places. Park Nursery is in an area of high demand to families who meet the two year old eligibility criteria.
- 4.3. Trospacc Nursery has a ‘good’ Ofsted judgement.

**Table 1 Nursery Quality and Places**

<b>Name of setting</b>	<b>Latest Ofsted Outcome</b>	<b>Number of Registered Places</b>	<b>Number on roll Summer 2014</b>	<b>Number of fte staff*</b>
Park Nursery	March 2013 Satisfactory	69	56.8 (July) <b>22.8 (August)</b>	17.78

Trospacc	October 2013 –Good	48	47 (August)	13.24
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- (Including term time only staff)

## 5. Consultation

- 5.1. The nursery managers have been involved in discussions regarding the future of the nurseries. The Children’s Centre Team and the Children’s Centre Board have been consulted and have supported a decision.
- 5.2. Staff teams have been alerted to the proposal and decision making process and preliminary discussions with trades unions in July and November have taken place. Appendix B lists the questions raised by staff in July 2014 together with responses.
- 5.3. Parents and other stakeholders will be informed if the proposal to outsource the services is taken by the Lead Executive Member. It is expected that the nurseries will keep parents up-to-date with the next steps following a decision and it is proposed that a parent representative(s) be included in any provider selection process.
- 5.4. A range of advice has been sought to support this paper. The HR Business Adviser has provided advice on elements affecting employees and TUPE. Pension services have been consulted on pension options and an actuary has been requested to provide pension value. The Devolved Finance Unit has supported the financial section of the report. Property Services has supported a review of the current premises arrangements to consider any potential lease requirements. The IT Business Adviser has provided advice on IT and telephony equipment based at the premises. The Children’s Services Senior Procurement Officer has provided advice on outsourcing considerations and will continue to provide support.

### Other Key Issues: Tender and selection process

- 5.5. Should the proposal be approved, the tender for Park and Trospacc Nurseries will be advertised in the Official Journal of the European Union and in Nursery World online using an ‘Open’ tendering route. The tender is then scheduled to be advertised on 9th February with tender returns due back on 30th March. Additional time has been allowed for tender returns due to the complexity of the TUPE issues in relation to this tender. There is also additional time scheduled for the evaluation and if possible the contract award could be made earlier than scheduled (currently timetabled for the 13 July 2015), to allow the incoming providers more time to ensure the smooth transfer of staff. Appendix 1 contains full details of the proposed timeline.
- 5.6. It is intended to offer the opportunity as a lease only arrangement (rather than a contract) which is consistent with other Private Voluntary and Independent (PVI) provision on council sites. In this case, there are standard clauses within the lease associated with building occupation. The length of the lease will be for 10 years with break periods at years 5 and 8.

5.7. The evaluation for selection of a provider will be based upon demonstration of more than six years experience of delivery of childcare and early years at an Ofsted Good or Outstanding inspection grade together with an evaluation of Leadership and Management; Safeguarding; Quality of Delivery of Early Years Foundation Stage; Partnership Working; Technical ability; Business Plan and Financial assessment of the organisation. The process will also include an interview.

## **6. Legal implications**

6.1. As noted in section 2, the Childcare Act 2006 states “An English authority may not provide childcare for a particular child or group of children unless the local authority are satisfied (a) that no other person is willing to provide the childcare (b) if another person is willing to do so that in the circumstances it is appropriate for the local authority to provide the childcare.”

6.2. To date the provision has not been market tested and therefore HCC has not been able to confirm that no other person is willing to provide the childcare. It is anticipated that, due to the size and location of each of the nurseries, they will be of interest to the market and a tender process will confirm this.

6.3. The value of the contract requires Lead Executive Member approval as the annual current income value is Trospacc £309,000 and Park £423,000 (2013/14).

6.4. It is possible that the schools on the sites of the nurseries may consider taking on the management of the provision. The School Organisation guidance (January 2014) allows schools to change the age of their offer downwards by two years. However, as the service required is for children who are more than two years younger than the schools' current admission age, they would currently require separate registration with Ofsted for the nursery. We are anticipating that, during summer 2015, the legislation is likely to be changed and this separate registration may not be required.

6.5. There is an expectation that the nursery providers would offer free Early Years Education. They would be required to commit to meeting Hampshire County Council's Early Years Education funding payment terms and conditions. This enables Hampshire County Council to ensure quality of provision and financial compliance.

## **7. Personnel implications**

7.1. All staff at both nurseries have employment contracts with Hampshire County Council, see Appendix 3 for establishment details. There will be a Transfer of Undertakings Protection of Employment regulations (TUPE) consideration and support from the HCC HR team will need to ensure that staff communications and consultations are managed appropriately.

7.2. Subject to any decision to outsource, more formal discussions with staff and trades unions will take place. Detailed briefings and consultation with staff and trades unions would also be planned for when the future provider(s) are known (July 2015) and leading up to the transfer of employment, currently

anticipated as 1 January 2016. This detailed consultation will include discussion of any changes to staffing that are proposed by the new providers.

7.3. Support would be provided by SfYC to manage the HR processes and the timeline for support has been incorporated into the timeline for any contract tender, award and implementation process.

7.4. Pension Services have advised that Hampshire County Council has an obligation to ensure pension protection for the staff transferring. Pension considerations are further outlined in Appendix B. The Pension Actuary has provided a usual pass-through estimate for the Local Government Pension Scheme (LGPS) employers' cost to an incoming organisation which would attract an employers' contribution rate of 14.4%. This would result in a new employer funding an additional 1.3% above the current Hampshire County Council employers contribution.

## **8. Future direction**

8.1. The Aviary Nursery will be considered for outsourcing when confirmation of future SEN funding is confirmed.

## **9. Recommendation(s)**

### **1. Executive Lead Member agrees that Hampshire County Council:**

- a. Conducts a competitive process to outsource the management of two Hampshire County Council managed nurseries, namely, Park Nursery and Trospacc Nursery with a planned implementation from 1 January 2016
- b. That the tenancy arrangements for both Park Nursery and Trospacc Nursery are secured through a premises lease of 10 years, with break clauses at years 5, and 8
- c. That staff transfer through TUPE processes and are able to continue to access Local Government Pension Scheme through pension pass-through arrangements, subject to final pension actuary assessment.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes
<b>Maximising well-being:</b>	yes
<b>Enhancing our quality of place:</b>	yes

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
<b>Direct links to specific legislation or Government Directives</b>		
Childcare Act		<u>2006</u>

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**Due regard in this context involves having due regard in particular to:**

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### **2. Equalities Impact Assessment**

2.1. No adverse impact is anticipated and the proposals aim to improve outcomes for vulnerable children.

### **3. Impact on Crime and Disorder**

3.1. No adverse impact is anticipated.

### **4. Climate Change**

4.1. No adverse impact is anticipated.

## OUTSOURCING TIME LINE

Activity	Start Date	End Date
<b>Advertisement</b>		
Complete OJEU	09-Feb-15	09-Feb-15
Advertise Tender	09-Feb-15	09-Feb-15
<b>Documents Issued</b>		
Selection Questionnaire Open & Close	09-Feb-15	30-Mar-15
ITT published	09-Feb-15	30-Mar-15
Site visits	11-Mar-15	11-Mar-15
<b>Documents Returned</b>		
ITT returned	30-Mar-15	30-Mar-15
<b>Evaluation</b>		
Finance Checks	01-Apr-15	30-Apr-15
Evaluate PQQ responses	01-Apr-15	30-Apr-15
Panel Evaluation of ITT responses	03-Jun-15	04-Jun-15
Presentations/Interviews	09-Jun-15	09-Jun-15
Final Evaluation reported to Project Team/Board	23-Jun-15	27-Jun-15
<b>Award</b>		
Send Standstill Letters	30-Jun-15	10-Jul-15
Contract sent to Legal Services	13-Jul-15	17-Jul-15
OJEU Award Notice	13-Jul-15	13-Jul-15
Initial Meeting with Providers	20-Jul-15	24-Jul-15
Contract returned to Legal Services	04-Aug-15	29-Aug-15
<b>TUPE Transfer</b>		
Full staffing information for TUPE transfer to be available	25-Sep-15	29-Sep-15
TUPE Transfer	01-Oct-15	31-Dec-15
IT Regional Support to remove existing IT assets	01-Dec-15	31-Dec-15
<b>Service Start</b>		
Service Start	01-Jan-16	01-Jan-16

**Appendix 2: Financial position and cost consideration**

**CURRENT FINANCIAL POSITION**

<b>Trospacc Nursery</b>	<b>2011/2012</b>		<b>2012/2013</b>		<b>2013/2014</b>		<b>2014/2015</b>	
	<b>Actuals</b>		<b>Actuals</b>		<b>Actuals</b>		<b>Forecast</b>	
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
<b>Income</b>								
Fees and charges	109		93		100		116	
EYE funding	183		197		189		197	
Other grants	2		2		-		1	
		<b>294</b>		<b>292</b>		<b>289</b>		<b>314</b>
<b>Expenditure</b>								
Staff	234		252		271		278	
Premises (note 1)	6		9		18		22	
Supplies and Services	24		19		20		25	
		<b>264</b>		<b>280</b>		<b>309</b>		<b>325</b>
<b>Net</b>		<b>30</b>		<b>12</b>		<b>(20)</b>		<b>(11)</b>
<b>Reserves Carried Forward</b>		<b>30</b>		<b>60</b>		<b>72</b>		<b>52</b>
<b>Reserves Surplus/(Deficit) as at Year End</b>		<b>60</b>		<b>72</b>		<b>52</b>		<b>41</b>

<b>Park Nursery</b>	<b>2011/2012</b>		<b>2012/2013</b>		<b>2013/2014</b>		<b>2014/2015</b>	
	<b>Actuals</b>		<b>Actuals</b>		<b>Actuals</b>		<b>Forecast</b>	
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
<b>Income</b>								
Fees and charges	265		260		252		251	
EYE funding	157		158		171		190	
Other grants	6		1		1		3	
		<b>428</b>		<b>419</b>		<b>424</b>		<b>444</b>
<b>Expenditure</b>								
Staff	388		368		368		383	
Premises (note 1)	15		14		14		20	
Transport Related	-		1		1		1	
Supplies and	38		37		40		40	

Services	441	420	423	444
Net	(13)	(1)	1	
Reserves Carried Forward	13		(1)	
Reserves Surplus/(Deficit) as at Year End		(1)		

### Financial Outturn and 2014/15 Outturn Forecast (OTF)

The actual nursery income and expenditure for the last 3 years and projected 2014/15 outturn forecast is shown in the table (Table 2) below. This includes an assessment of costs not currently included in the budget outturn, as there are costs that will be incurred should the provision be outsourced.

**Table 2 OTF 2014/15 and business costs net yet included in budget**

<b>PARK NURSERY INCOME AND EXPENDITURE</b>				
	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15 OTF</b>
	£000	£000	£000	£000
Income	428	419	424	444
Expenditure	441	420	423	444
<b>Net in year position surplus/(deficit)</b>	<b>(13)</b>	<b>(1)</b>	<b>1</b>	<b>0</b>
Reserves c/f surplus/(deficit)	13	(0)	(1)	0
Reserves surplus/(deficit) at year end	0	(1)	0	0
<b>Park Nursery business costs not yet included in budget</b>				
rent 7% of income				31
Service Charge @ £17.53psm - say 200m2				3
Business rates estimate				10
Additional employers' contribution Pension pass-through (1.3%)				5
<b>Adjusted reserve surplus/(deficit)</b>				<b>(49)</b>

Past pension costs applicable but recommended to remain with HCC				12
<b>TROSPACC NURSERY INCOME AND EXPENDITURE</b>				
	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15 OTF</b>
	£000	£000	£000	£000
Income	294	292	289	314
Expenditure	264	280	309	325
<b>Net in year position surplus/(deficit)</b>	<b>30</b>	<b>12</b>	<b>(20)</b>	<b>(11)</b>
Reserves c/f (surplus)/deficit	30	60	72	52
Reserves surplus/(deficit) at year end	<b>60</b>	<b>72</b>	<b>52</b>	<b>41</b>
<b><i>Trospacc Nursery business costs not yet included in budget</i></b>				
rent 7% of income				22
Service Charge @ £17.53psm - say 200m2				3
Business rates				Included in OTF projection
Additional employers' contribution Pension pass-through (1.3%)				2
<b>Adjusted reserve surplus/(deficit)</b>				<b>14</b>
Past pension costs applicable but recommended to remain with HCC				10

Table 2 confirms that, with the current estimate of potential costs, both nurseries are financially viable.

### **Nursery Staff TUPE Considerations**

The staffing structure at Trospacc Nursery in October 2014 is as follows with a total of 13.24 fte staff. All staff will be part of a TUPE consideration:

- 1 Nursery Manager (37 hours / 52 weeks)
- 2 full-time Room Leaders (deputy posts) (37 hours / 52 weeks)
- 8 Early Years Practitioners (37 hours / 52 weeks) 1 post holder is term time only (37 hours / 40 weeks)
- Finance Officer (16 hours / 52 weeks)
- Cook (20 hours / 52 weeks)
- Cleaner (5 hours term time only)
- Caretaker (17 hours / 52 weeks)

The staffing structure at The Park Nursery in October 2014 is as follows with a total of 17.78 fte staff. All staff will be part of a TUPE consideration:

- 1 Nursery Manager (37 hours / 52 weeks)
- 2 full-time Room Leaders (deputy posts) (37 hours / 52 weeks)
- Finance Officer (15 hours / 52 weeks)
- Administrative Officer (34 hours / 52 weeks)
- 9 Early Years Practitioners (37 hours / 52 weeks)
- 2 Early Years Practitioners (32.5 hours, term time only)
- 1 Early Years Assistant (20 hours / 52 weeks)
- 2 Supervisory Assistants (30 and 17.5 hours / 52 weeks)
- 1 Supervisory Assistant (12.5 hours, term time only)
- 1 vacancy (20 hours)