

EAST AYRSHIRE COUNCIL

COUNCIL MEETING - 10th MARCH 2016

AYRSHIRE CIVIL CONTINGENCIES TEAM – SHARED SERVICES AGREEMENT

Report by Chief Governance Officer

PURPOSE

1. The purpose of this report is to provide Members with details of the proposed shared service arrangements with South and North Ayrshire Councils in respect of the Ayrshire Civil Contingencies Team and to present the draft Service Agreement for consideration and approval.

BACKGROUND

2. On 10th December 2015 a report was submitted to Council in respect of a proposal for the delegation of specific functions relating to the Ayrshire Civil Contingencies Team to the Ayrshire Shared Services Joint Committee on the basis that South Ayrshire Council would be acting as Lead Authority and also seeking approval for the development of the related Service Agreement for the service.
3. Having considered the report Council agreed:-
 - (i) To approve in principle the proposal to delegate all necessary functions related to the Ayrshire Civil Contingencies Team to the Ayrshire Shared Services Joint Committee and to the carrying out of those functions by South Ayrshire Council as lead authority with effect from 1 April 2016; and
 - (ii) To remit to the Chief Governance Officer to work in conjunction with the other two Councils to develop the proposed Service Agreement and bring this back to Council for approval prior to 31 March 2016.
4. On that basis work has been ongoing since December 2015 and the detail of draft Service Agreement has now been agreed between the three Authorities. In terms of the earlier report the Service Agreement is therefore presented to Council for consideration and approval. It can also be confirmed that both South and North Ayrshire Councils are currently in the process of approving the terms of the Service Agreement.

PROPOSALS

5. The terms of the Service Agreement set out the functions which are pursuant to the effective delivery of a civil contingencies service within the respective local authority area of each Council. As such it includes provisions in respect of the obligations which will be incumbent upon all three Councils with specific

emphasis on South Ayrshire Council as the lead authority. Members will note that it also includes provisions in relation to budget, property and staff.

COMMUNITY PLANNING/POLICY IMPLICATIONS

6. The Council remains committed to Shared Services in appropriate circumstances to secure continuing compliance with our twin statutory duties of delivering both best value and continuous improvement, against a background of a reducing budget, but only where a Shared Service would clearly deliver demonstrable improvements to service delivery and/or financial efficiencies. That is considered to be the case in the present instance.

LEGAL IMPLICATIONS

7. In approving the terms of the Service Agreement East Ayrshire Council will be delegating a number of functions relating to Civil Contingencies to the Joint Committee and agreeing that these be carried out by South Ayrshire Council as lead authority.

FINANCIAL/RISK IMPLICATIONS

8. None arising directly from this report as the proposed budgetary provisions of the Service Agreement have been drafted on the basis that there will be equal financial contribution from the three Authorities. Agreement will also be sought from all three Authorities to the annual proposed budget for the operation of the service.

RECOMMENDATIONS

Council is invited to:-

- (i) agree the terms of the proposed Service Agreement and approve East Ayrshire Council's participation in the shared service on the basis that all necessary functions related to the Ayrshire Civil Contingencies Team be delegated to the Ayrshire Shared Services Joint Committee;
- (ii) agree that South Ayrshire Council carry out those functions as lead authority with effect from 1 April 2016; and
- (iii) otherwise note the contents of the report.

David Mitchell
Chief Governance Officer
29 February 2016
DM/CMcT

BACKGROUND PAPERS: Nil

Any person wishing further information on this report should contact David Mitchell, Chief Governance Officer on (01563) 576061.

Implementation Officer: David Mitchell, Chief Governance Officer

SERVICE AGREEMENT

among

EAST AYRSHIRE COUNCIL

and

NORTH AYRSHIRE COUNCIL

and

SOUTH AYRSHIRE COUNCIL

relative to the

AYRSHIRE CIVIL CONTINGENCIES TEAM

SERVICE AGREEMENT among:

EAST AYRSHIRE COUNCIL, a local authority established under the Local Government etc. (Scotland) Act 1994 and having its principal offices at Council Headquarters, London Road, Kilmarnock, KA3 7BU ("**EAC**");

NORTH AYRSHIRE COUNCIL, a local authority established under the Local Government etc. (Scotland) Act 1994 and having its principal offices at Cunninghame House, Friars Croft, Irvine, KA12 8EE ("**NAC**"); and

SOUTH AYRSHIRE COUNCIL, a local authority established under the Local Government etc. (Scotland) Act 1994 and having its principal offices at County Buildings, Wellington Square, Ayr KA7 1DR ("**SAC**").

WHEREAS:

- (A) EAC, NAC and SAC are parties to a Minute of Agreement dated on or around 10 October 2013 (the "**Minute of Agreement**") that (i) establishes the Ayrshire Shared Service Joint Committee (the "**Joint Committee**") and (ii) makes arrangements for the joint discharge of statutory functions in terms of sections 56 and 57 of the Local Government (Scotland) Act 1973 and section 15 of the Local Government in Scotland Act 2003.
- (B) EAC, NAC and SAC are also parties to an agreement dated 1st and 2nd December 2008 and amended by a minute of agreement dated 17th August and 4th and 16th September 2009 (the "**2008 Agreement**") governing certain aspects of the shared management and operation of the Ayrshire Civil Contingencies Team (the "**ACCT**").
- (C) Having recognised that it is in the interests of persons within their respective areas for the functions of ACCT to be provided on a pan-Ayrshire basis ("the

Shared Service") EAC, NAC and SAC have delegated decision making functions and scrutiny of the Shared Service to the Joint Committee.

- (D) The Joint Committee has in turn arranged for the discharge of the Shared Service by SAC as lead authority. The Parties have taken appropriate steps in relation to the TUPE Regulations (as defined below) regarding the staff that were formerly employees of EAC and NAC and who are now employees of SAC.
- (E) The Minute of Agreement anticipates that the Parties will enter into appropriate further agreements to regulate their relationship in respect of the Shared Service.
- (F) EAC, NAC and SAC have agreed to enter into this Service Agreement for the purposes of (i) updating and recording certain key understandings that will govern their relationship going forward, and (ii) bringing to an end, by mutual agreement, the 2008 Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Service Agreement, unless the context requires otherwise, the following terms shall have the following meanings:-

"24/7" means a continuous service provided for twenty four hours per day, seven days per week and throughout the year.

"Budget" means the annual budget agreed by the Parties on the recommendation of the Joint Committee from time to time;

“Civil Contingencies Response & Recovery Plan” means agreed procedures to prevent, reduce, control and mitigate and take other actions in the event of an Emergency;

“Contingency Plans” means plans for the purpose of ensuring that if an emergency occurs or is likely to occur the Parties are able to perform their functions in relation to civil emergencies;

“Council Incident Officer” means a person employed by the Parties and not the ACCT duty officer.

“Duty Officer” means the person responsible for dealing with and co-ordinating response after first notification of an incident from external partners within a designated period on a rota system until it is passed to a Council Incident Officer or resolved;

“Emergency” shall have the meaning ascribed to it in the Civil Contingencies Act 2004;

“Emergency Control Centre” means the emergency control centres maintained by each of the parties within the areas served by their respective Councils;

“Care for People Guidelines” means plans for the provision of care to those people affected by emergencies; which may include the provision and running of premises used for temporary accommodation of evacuees from an incident;

“Head of Property and Risk” means the officer appointed to this post by SAC;

“Incident Response Officer” means any officer designated to respond to emergencies on behalf of the Parties at local level and is often referred to as the Incident Response Team member or Council Incident Officer;

“Lease” means the lease for the premises at Glasgow Prestwick International Airport, Prestwick, South Ayrshire entered into between NAC and Prestwick Airport Limited, Aviation House, Prestwick KA9 2PL;

“Non-site Specific Risk” means a significant potential event not limited to any one location;

"Operational Matters" means the day to day operational activities in relation to the Shared Service;

“Emergency Contact Directory” means a list of personnel and organisations with information and contact details for use outwith normal office hours;

"Parties" means EAC, NAC and SAC and

"Party" shall be construed accordingly;

"Shared Service" means the functions of ACCT, namely the planning by the Parties of their duties as local authorities in relation to civil emergencies, and first responder and support services in relation thereto;

"Service Agreement" means this agreement, which shall be a relevant Service Agreement in terms of the Minute of Agreement and for the purposes of any provisions contained therein; and

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment (TUPE) Regulations 2006 and the Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2009.

2. JOINT COMMITTEE

2.1 The Parties acknowledge that each of them has delegated the Shared Service to the Joint Committee, and undertake to proceed on the basis that the Joint

Committee has arranged for SAC to deliver the Shared Service as lead authority. The Parties acknowledge that they may from time to time make such further delegations to the Joint Committee or vary those delegations already made.

- 2.2 The Parties recognise that each of them remains responsible to fulfil its duties as a Category 1 responder under the Civil Contingencies Act 2004, its associated regulations, and other civil contingencies related legislation and retains its functions and powers under all such relevant legislation.
- 2.3 The Parties recognise that the Joint Committee will direct the policy and strategy in relation to the Shared Service and the Parties agree to act in accordance with those directions.
- 2.4 The Parties agree that SAC shall be the budget holder in respect of the Budget and that the Joint Committee shall oversee how the Budget is spent.
- 2.5 The Parties recognise that the Joint Committee is responsible for decision making in relation to the Shared Service not otherwise delegated to officers, for approval of the annual Service Plan of the Shared Service and for monitoring the performance of SAC in relation to the Shared Service. The Joint Committee shall act in accordance with such reporting and review procedures as may be notified to it by the Parties from time to time.
- 2.6 SAC shall comply with directions of the Joint Committee issued from time to time, and shall procure that the Head of Property and Risk shall comply with such directions as are made to him/her.

3. SAC OBLIGATIONS

3.1 SAC shall deliver the Shared Service in accordance with the terms of:-

- (i) the directions of the Joint Committee issued from time to time;
- (ii) the Minute of Agreement;
- (iii) this Service Agreement;
- (iv) agreed practices and protocols from time to time; and
- (v) such further service and other agreements as are entered into by the Parties.

3.2 SAC shall delegate Operational Matters to the Head of Property and Risk. In directing the Head of Property and Risk, SAC shall have due regard to any concerns raised by EAC and / or NAC in connection with the previous performance of Operational Matters or general delivery of the Shared Service.

3.3 SAC shall ensure that:

3.3.1 it operates an on-call service to provide 24/7 response to any emergency as the Duty Officer(s) on behalf of any of the affected Councils;

3.3.2 each Council has a generic Civil Contingencies Response & Recovery Plan in place;

3.3.3 each Council has in its possession an accurate, up to date and comprehensive Emergency Contact Directory;

3.3.4 it maintains an accurate rota of Duty Officer staff;

- 3.3.5 it develops a training programme to ensure key staff within each Council know and understand their emergency roles and are prepared to respond to major incidents and civil emergencies;
- 3.3.6 it prepares and maintains Contingency Plans for specific sites, which will be tested on a multi-agency basis (ie fire, police, ambulance and other services as the Parties may agree) at three-yearly intervals;
- 3.3.7 it maintains a range of plans to cover the response to emergencies of non-site specific risk;
- 3.3.8 each Council's Emergency Control Centre is kept in an appropriate state of readiness and is able to operate at short notice;
- 3.3.9 it conducts an annual review of the Care for People Guidelines
- 3.3.10 it achieves such other preparedness as may be required from time to time;
- 3.3.11 it fully supports the West of Scotland Regional Resilience Partnership at all levels;
- 3.3.12 it liaises with and trains such other organisations, and supports the development of community resilience, including training and resilience of the voluntary sector, as the Parties may consider appropriate.
- 3.3.13 unless otherwise agreed by the Parties, the staffing and other resources of ACCT will only be used for the purposes of the Shared Service.

4. EAC AND NAC OBLIGATIONS

- 4.1 EAC and NAC shall co-operate with SAC to enable SAC to deliver the Shared Service and shall do so in accordance with the terms of:-

- (i) the directions of the Joint Committee issued from time to time;
- (ii) the Minute of Agreement;
- (iii) this Service Agreement;
- (iv) agreed practices and protocols from time to time; and
- (v) such further service and other agreements as are entered into by the Parties.

4.2 EAC and NAC shall provide to SAC all such information, documentation and assistance as SAC shall reasonably require to enable it to fulfil its obligations under this Service Agreement.

4.3 EAC and NAC shall maintain in place all necessary and appropriate consents and approvals relative to them that may be required in order to enable SAC to fulfil its obligations under this Service Agreement.

5. MUTUAL OBLIGATIONS

5.1 The Parties shall fulfil their obligations in terms of this Service Agreement with all reasonable skill and care, in accordance with all relevant generally accepted standards and practices, and in a proper, diligent, expeditious and professional manner.

6. Budget

6.1 Each Party shall contribute equally to the net annual costs (ie net of any revenue) of the Shared Service, to include all relevant insurance premiums and excesses and all liabilities howsoever arising in respect of the Lease including the maintenance, dilapidations and repair costs associated with it. For the avoidance of doubt this does not include any liability to contribute towards the cost of dealing with any specific emergency.

- 6.2 Each year SAC shall develop the funding requirements for the Shared Service based on the Service Plan and present it to the Parties for consideration as part of the annual budget setting process. The draft budget should be evidence based with transparency on its assumptions. As detailed in 6.1, each Party shall contribute equally to the budget of ACCT and all reasonable endeavours shall be made by the Parties to ensure that each Party allocates the same budget. Following determination of the payment to be made by each Party, SAC will if necessary, present to the Joint Committee a refined Service Plan to take account of the totality of resources available.
- 6.3 SAC will deliver the Shared Service within the total delegated resources and where there is a forecast overspend against an element of the operational budget, the Head of Property and Risk and relevant Depute Chief Executive/ Executive Director within EAC, NAC and and the appropriate finance officers of the Parties must agree a recovery plan to balance the overspending budget, which recovery plan shall be subject to the approval of the Joint Committee. If the recovery plan is not successful the Parties will consider making interim funds available based on an equal contribution, with repayment in future years on the basis of a revised recovery plan agreed by the Parties and the Joint Committee. If the revised plan cannot be agreed by the Parties; or is not approved by the Joint Committee, resolution will require to take place in line with clause 17.
- 6.4 Where an underspend, in an element of the operational budget arises from specific management action, or from income received or otherwise, the Parties will agree to either (a) retain this in the Shared Service and carry it forward to help reduce the cost of the next year's budget or (b) return any underspend to the Parties in equal proportions.
- 6.5 No Party may reduce the payment in-year to the Shared Service to meet exceptional unplanned costs within the Parties without the express consent of the other Parties.

7. LEASE

- 7.1 NAC shall procure that the Lease is novated to SAC with effect from 1 April 2016. Any new lease shall be with SAC as tenant, subject to the obligation in terms of clause 6.2 that the Parties contribute equally to the cost thereof.

8. STAFF

- 8.1 The ACCT will be fully subsumed into the structure of the Head of Property and Risk under the management responsibility of his Risk and Safety Manager. The proposed structure and gradings relating to the ACCT are as shown in the Schedule.

9. GRANTS AND EXTERNAL FUNDING

- 9.1 The Parties agree that SAC shall co-ordinate and prepare on behalf of either Party any application required for grant or source of external funding for which they may be eligible, which is offered for purposes relevant to the Shared Service. Applications shall be submitted by the Party eligible.
- 9.2 The Parties agree that SAC shall comply with and meet any conditions imposed by a grantor in respect of grant or external funding secured after application under clause 9.1, including for the avoidance of doubt evidence of spend and provision of all information required.

10. REVIEW

- 10.1 The Parties shall procure that their respective Depute Chief Executive/ Executive Directors (or other officers as agreed) shall meet quarterly, and SAC shall procure that the Head of Property and Risk also attends these meetings, to review the performance of the Parties and to discuss relevant matters.

10.2 Meetings between the Head of Property and Risk and relevant Depute Chief Executive/Executive Directors within EAC, NAC and SAC shall be convened on not less than 5 business days' notice, except in an emergency (in which case as much notice as is reasonably practicable shall be given); and shall (except in the case of an emergency) be accompanied by an agenda of items to be discussed at the meeting.

11 REPORTS

11.1 SAC shall procure that the Head of Property and Risk shall provide EAC, NAC and the Joint Committee with reports, at such intervals and in such form as EAC, NAC and the Joint Committee may reasonably require from time to time, relating to the Shared Service, the performance of the Parties, the Budget and other relevant matters.

12 COMPLIANCE

12.1 The Parties will agree, and amend as required, appropriate protocols in relation to health and safety, data protection, freedom of information, confidentiality and other relevant compliance matters.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 Each Party hereby grants to the other a perpetual, non-exclusive, worldwide, royalty-free licence to use all such intellectual property rights it acquires in connection with the Shared Service to enable the other Party to discharge its normal operations.

14 PUBLICITY

14.1 The Parties will agree, and amend as required, appropriate protocols in relation to media relations and publicity.

15 AUDIT

15.1 Each Party shall keep or cause to be kept full and accurate records of its activities in connection with the Shared Service.

15.2 Each Party shall grant to the other, and its statutory auditors and their respective authorised agents, reasonable access to any records and/or any premises and/or materials used in the connection with the Shared Service.

16 INSURANCE

16.1 SAC shall obtain and keep in place appropriate insurances in relation to the Operational Matters and the Lease.

16.2 SAC will use its best endeavours to mitigate the cost to the Parties of providing insurance cover in terms of this clause 16.

16.3 South Ayrshire Council shall exhibit copies of all relevant insurance policies on request to the other Parties, and shall use reasonable endeavours to procure that the interests of the other Parties are noted thereon.

17 DISPUTE RESOLUTION

17.1 If a dispute arises out of or in connection with this Agreement (a "**Dispute**") then the Parties shall follow the procedure set out in this Clause 17.

17.2 Following a Dispute arising, either Party shall be entitled to give to the other notice in writing of the Dispute (the "Dispute Notice") setting out the nature of

the Dispute in reasonable detail. The Parties shall then seek in good faith to resolve the Dispute.

17.3 If the Dispute is not resolved within thirty days of receipt of the Dispute Notice, or by another date agreed in writing between the Parties, the Dispute shall be referred to the Chief Executives of EAC, NAC and SAC who shall attempt in good faith to resolve the Dispute as soon as reasonably practicable.

17.4 Neither Party may commence any court proceedings in relation to any Dispute until 45 days after receipt of the Dispute Notice.

18 WITHDRAWAL AND DISAGGREGATION

18.1 Any Party shall be entitled at any time to withdraw any or all of the delegations made by it to the Joint Committee in relation to the Shared Service.

18.2 Following such withdrawal, the Parties shall take such steps as are required to achieve an orderly disaggregation of the Shared Service, with a view to substantially completing such disaggregation within 6 months.

18.3 When considering the financial consequences of disaggregation in light of the circumstances prevailing at the time, the Parties agree to work together in the interests of persons in their respective areas.

19 COSTS

19.1 Each of the Parties shall meet its own costs in connection with the preparation, adjustment and completion of this Agreement.

20 COMMENCEMENT AND 2008 AGREEMENT

20.1 This agreement shall be deemed to take effect on 1 April 2016 notwithstanding the dates hereof.

20.2 The Parties agree that the 2008 Agreement shall be of no further effect with effect from 1 April 2016.

20.3 The Parties agree that the termination of the 2008 Agreement shall be without prejudice to any outstanding rights and claims of the Parties.

IN WITNESS WHEREOF these presents consisting of this and the preceding [] pages are executed by the Parties as follows:

This is the schedule to the foregoing agreement between East Ayrshire Council, North Ayrshire Council and South Ayrshire Council in relation to the Ayrshire Civil Contingencies Team