

Natural England Board



Meeting: 14
Date: 10 December 2008

Paper No: **NEB PU14 03**

Title: **Transfer of Operational Control of Genesis**

Sponsor: **Dave Webster, Executive Director Corporate Services**

1. Purpose:

1.1 The purpose of this paper is to seek approval for the transfer of operational control of Genesis to Natural England and outline the proposals regarding a contract extension with Atos Origin.

2. Recommendations

2.1. It is recommended that the Board:

- agree the principle of the transfer of operational control of Genesis to Natural England and the contract extension with Atos Origin; and
- approve the Licence Agreement for transfer of control of Genesis to Natural England.

3 Background

3.1 At the December 2007 meeting (paper NEB PU08 04), the Board discussed the approach to negotiations with Defra over the transfer of Genesis, role of the Audit and Risk Committee in assessing the provisions of transfer and agreed the minimum acceptance criteria for Natural England to accept ownership of Genesis.

3.2 The original target date for the transfer of ownership of Genesis from Defra was delayed due to the Genesis data centre move. This involved migration to an updated version of Genesis hosted and supported by Atos Origin. This was not completed until early April 2008.

3.3 In addition there have been significant issues and complications arising from the valuation of the system. The current valuation of the system on Defra's books is circa £80M. This valuation includes benefits that Defra alone derive from the system and therefore any transfer to Natural England would involve a write down in value.

3.4 It has therefore been agreed that the asset will remain on Defra's books and that Defra will continue to own the system and be accountable to the NAO for its future asset valuation and depreciation profile against the Defra accounts. Natural England however, will still assume full operational control of Genesis, subject to suitable licensing arrangements being agreed between Defra and Natural England to codify the accountabilities and responsibilities of both parties. The key to this arrangement is the right of Natural England to manage directly and exclusively the hosting and production system support contracts with Atos Origin and thereby control the priorities for system

support and development and crucially the balance of resources deployed on day to day support and development.

- 3.5 To facilitate the commercial negotiations and minimise delays whilst drafting the terms of a licence agreement we adopted a two stage approach whereby Heads of Agreement would be agreed with Defra prior to the more detailed licence agreement being drafted. This approach allowed the key issues to be negotiated up front which in turn has facilitated the drafting of the licence agreement. A copy of the Heads of Agreement is attached at Annex 1.
- 3.6 Before accepting operational ownership of the system, Natural England's minimum requirements have been identified as:
- the transfer to Natural England of the Genesis operational budget (making the transfer cost neutral for us);
 - full delegated authority to manage the Atos Origin contracts;
 - Natural England to have primacy in relations with Atos Origin and full control over development and support activity, and how the Genesis transfer money is used; and
 - historic liabilities to remain with Defra to ensure that Natural England cannot be held responsible for illegal actions or activities that occurred prior to it taking formal control of the Genesis system.

These are all addressed in the Heads of Agreement. The licence agreement is currently being drafted and will be circulated as soon as it is available before the Board meeting.

4. Benefits

The key benefits for Natural England of taking operational ownership of the system are:

- It formalises the informal arrangement whereby Natural England has in effect, had full day to day responsibility for system support since April 2008.
- Natural England can manage the day to day relationship with Atos. The three way relationship between Defra, Natural England and Atos Origin has been confusing and increasingly frustrating to the company. This situation presents a real and increasing risk to us as we seek to ensure that Atos Origin works to our delivery priorities. This is probably the strongest reason to secure operational control.
- It will provide us with the opportunity to drive the way the new production support contract is taking shape and to incentivise Atos Origin to implement better ways of working and more development capability. The aim is to extend the current contract, which expires in June 2009, so that it terminates at the same time as the system hosting contract, in 2012. This is essential to support our ambitious plans for the evolution of Environmental Stewardship and cope with the demands of developing Uplands ELS, the changes required under Environmental Stewardship Review of Progress, ES2010 and increased geographical literacy.
- We will be in a powerful position to offer to the market the current IBM e-enabling contract, plus the hosting and production support contracts for Genesis, prior to their co-terminus expiry in 2012. This should create the opportunity to lever increased value for money and enhanced service standards, and the scale of

5 Management of Risks and Issues

5.1 Acceptance criteria

- 5.1.1 The risks of taking operational control have been addressed under detailed acceptance criteria. Progress on the criteria was reviewed by the Audit and Risk Committee in September and noted that the majority of risks and issues had been conclusively addressed or managed to an acceptable level. We have improved our performance under a number of criteria since that meeting and have no red or amber red ratings on any of the 48 acceptance criteria.
- 5.1.2 We also used a risk register as part of the management of this project in order to capture both the operational and commercial risks. All the risks identified on the register have either been addressed or are considered sufficiently low impact not to affect the transfer of control to Natural England. This paper together with the risk register and acceptance criteria will be reviewed by the Audit and Risk committee on 3rd December.

5.2 Funding

- 5.2.1 It is clearly important that Defra remain aware of their future funding obligations to support and maintain the value of the asset over the medium to long term and this will involve significant funding injections at major milestones. The finance team have regular liaison meetings to discuss these issues. We will need to ensure, in particular, that key funding requirements for Genesis are included in our CSR10 submission. A financial strategy will also be developed to support the operational strategy for Genesis and we will seek to get both endorsed by Defra.
- 5.2.2 The funding arrangements are fully in place and the funds for 2008/09 have already been transferred. On completion of the transfer we will ensure we get the funding for 2009/10 incorporated into our baseline GIA.

5.3 Future Defra involvement

- 5.3.1 One of the key concerns about the licensing arrangement has been Defra's future involvement in decision making on future Genesis development. It was identified that Natural England would only want to have Defra involved in issues that could significantly affect the value of the asset rather than them becoming involved in the day to day running of the system.
- 5.3.2 We have agreement in principle from Defra that our current arrangements under the Financial Scheme of Delegation whereby spend over £5M must be approved by Defra and the Board is acceptable and that below that level they would not wish to be involved in any decision making relating to Genesis. However, we are waiting for formal agreement to this approach from Defra finance.

5.4 NAO

- 5.4.1 We have agreed with Defra that the asset will remain on Defra's books and that it will continue to 'own' the system, and be accountable to the NAO for its future asset valuation and depreciation profile against the Defra accounts. We believe under the proposed arrangement that International Financial Reporting Standards (IFRS) will not require us to show Genesis as an asset in our balance sheet as we are not taking on the risks and rewards of ownership. The NAO have seen a copy of the Heads of Agreement and have not raised issue with it. The NAO will have the opportunity to raise any specific issues at the Audit and Risk Committee meeting on 3 December 2008.

5.5 Taking operational control of Genesis

- 5.5.1 Natural England has within Business Systems Improvement team a fully operational team in place to take over the running of the system and the management of Atos Origin. Indeed the team has in effect, taken full day to day responsibility for system support since the Data Centre Move and managed fully and successfully the most recent maintenance release for the system. Whilst there is still some critical reliance on Defra contractors, this issue was identified on the risk register and measures put in place to address this gap including job shadowing, expert resource bought in, and a capability improvement plan introduced.

6 Atos Origin Contract Extension

- 6.1 Alongside the licence agreement with Defra, we also want to extend the production support contract with Atos Origin. We cannot effect this extension until after the licence agreement has been put in place. In accordance with the Scheme of Delegation this is not a matter that requires Board approval, delegated authority resting with the Chief Executive. However, the Board need to be aware of this other important aspect of the transfer of control of Genesis to Natural England.
- 6.2 Atos have set a deadline for completion of the contract extension by the end of December 2008 as this is their accounting year end. This means we are now working to a very tight and challenging deadline bearing in mind the work that needs to be done before the contract extension can be signed off. We have a project plan which anticipates completion by the end of the year and both Atos and Natural England project teams are working to achieve the December deadline. We are currently on track against the project plan. However, the Department for Works and Pensions (DWP) also need to be involved in this process as the contract extension is in fact an extension of a contract between Atos Origin and the DWP under the Government Gateway contract. Defra currently have a concordat with DWP relating to the Atos contract. This will need to be surrendered and, assuming that DWP agree to the contract extension, Natural England will need to enter a similar concordat with DWP to that which existed with Defra. The approval of the concordat is an Executive Board matter and can be signed off, in accordance with the Scheme of Delegation, by the Chief Executive. We have opened a dialogue with Atos around how we manage DWP's involvement in order to achieve the December timeframe.
- 6.3 It is a priority for us to conclude the agreement in December so that we can direct Atos Origin over our delivery priorities for the releases of new and amended code that will implement the complex basket of changes required for the ES2010 programme including Uplands ELS.

7 Next Steps

- 7.1 If the Board approve the transfer of operational control of Genesis to Natural England there are a number of actions that need to happen.
- 7.2 In accordance with the Scheme of Delegation, the licence agreement as for more than three years must be signed by the Board. The licence agreement also has to be signed off by Defra and the Office of Public Sector Information (OPSi) as it is essentially a licence of Crown copyright. OPSi have been kept informed of the negotiations and have seen the draft Heads of Agreement.
- 7.3 There are also a number of other licences that will need to be novated to Natural England as part of the licence arrangements with Defra. However under the scheme of Delegation these can all be approved by the Chief Executive.
- 7.4 The contract extension with Atos Origin can only take place after the licence agreement has been signed off.

Annex 1

Heads of Agreement – DEFRA and Natural England re: Genesis License

The following sets out the main heads of agreement between DEFRA, Her Majesty's Stationary Office and Natural England with regards the ownership and licensing of the Genesis application. Once agreed by the parties it is intended that these heads inform the creation of formal documentation to effect the intentions set out herein:

Ownership

- It is agreed that DEFRA shall, on behalf of the Crown, retain ownership of the intellectual property in (IP) in Genesis, including the copyright in the source code);
- The Genesis asset has been valued by DEFRA and formally agreed between DEFRA and the National Audit Office. The asset shall remain an item in the accounts of DEFRA. Any queries or amendments to the asset value of the IP shall be referred to DEFRA to assess.
- Natural England acknowledges that any future development or abandonment of the Genesis application, either in full or in part, could impact the asset valuation.
- The Controller of Her Majesty's Stationery Office (the Controller) has responsibility for all copyrights and database rights owned by the Crown.
- It is agreed that all future IP specifically developed by Natural England as part of the Genesis application is assigned to the Crown.
- It is agreed that Defra accept all responsibility for historic liabilities.

Licence

- DEFRA and the Controller shall licence Natural England to use, develop and exploit the Genesis application.
- The Licence will specify that it::
 - shall be non-exclusive;
 - It will be perpetual and irrevocable (save for breach of term(s));
 - Permit Natural England to commercially exploit the genesis application provided that such exploitation does not harm or put at risk the security or integrity of the Genesis IPR, or the reputation of Defra and the Crown;
 - Any future IP developed specifically in respect of the Genesis Application by Natural England (or derived from its core code) shall be owned by DEFRA and shall be covered by the licence;
 - Natural England shall have full management, use and development rights in regards to Genesis including the right, if felt appropriate by Natural England, to offshore any or all of the Genesis application provided that any off-shoring activity does not harm or put at risk the security or integrity of the Genesis IPR or the reputation of Defra and the Crown;

Governance

- Given the original intention that the ownership of the Genesis application itself would transfer to Natural England it is accepted that no governance, over and above the

normal business governance already existing between Natural England and DEFRA is required with regards the licence.

- For clarity the existing governance regime is set out in the Natural England Financial Scheme of Delegation. This establishes the necessary approval processes between Natural England and DEFRA for both business case approval and contract commitment approval in respect of projects with expenditure above £5 million.

Budget

- DEFRA recognises the need to ensure Natural England has sufficient budget to operate and manage the Genesis Application and therefore the ATOS contracts for a minimum period ending in 2012 (end of ATOS hosting contract).
- Further to the above DEFRA and Natural England have agreed the transfer of operational funding. The agreed position to be incorporated into the Licence agreement.

ATOS Contracts

To effect the transfer of operational and management control to Natural England, DEFRA shall arrange for the transfer/novation of:

- the ATOS Application Support Contract;
- any third party contracts or software licences used in conjunction with the Genesis Application which are in the name of DEFRA
- any hardware or other items which are currently owned or leased by DEFRA and used in conjunction with the Genesis Application.

Any resource to undertake the above activities will be provided by Natural England save that DEFRA will assist in identifying the relevant asset and do all such things as Natural England shall reasonably require to effect such transfer/novation.

Further Natural England shall enter into a concordat allowing it to directly receive the Genesis hosting services via the Government Gateway contract. DEFRA and Natural England shall work together to ensure the current concordat held by DEFRA terminates at the date the new concordat becomes effective.

Transition

DEFRA recognises the need to assist Natural England in the smooth transfer of operational and contract management control from itself to Natural England. On this basis DEFRA agrees to provide the following resources during the transition phase:

- a. Rob Houldsworth: access to Rob for work on future Genesis transfer budget amounts + support from Defra Finance for agreeing mechanism by which NE receive the money. Access to Rob's work on licences and use of Rob, or other Defra resource, for any further work on licensing that is required
- b. Mark Poole: up to 5 days/month until end March 2009 for contract and transition work
- c. Alan Mather: up to 5 days/month until end March 2009 for contract and transition work

The purpose of this transition is anticipated to continue for a period of [x] months following formal novation of the ATOS contracts.