



Agenda Item

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**THURSDAY, 18 NOVEMBER 2021**

**Report of the Managing Executive Director  
Project Management within Corporate Property  
Cabinet Member for Corporate Services & Budget**

**1. Divisions Affected**

1.1 County Wide

**2. Key Decision**

2.1 This is a key decision because it is likely to result in the Council incurring expenditure which is, or savings which are significant having regard to the budget for the service or function concerned and it is likely to be significant in terms of its effect on communities living or working in an area comprising two or more electoral areas in the County.

**3. Purpose**

3.1 The purpose of this report is for Cabinet to note proposals to change how property related programmes and projects are managed by Corporate Property and Concertus Derbyshire Limited.

3.2 A further report titled, 'Project Management within Corporate Property and Business Case', containing information not for publication is to be considered separately in the exempt part of this meeting.

## 4. Information and Analysis

### 4.1 Background

In 2018, a review of Corporate Property was undertaken by Ernst Young as part of the Authority's plans to become an Enterprising Council. The review recommended that a new operating model was required for Corporate Property and in September 2019, as part of the change Cabinet approved the creation of two joint venture companies, Vertas Derbyshire Limited ('VDL') and Concertus Derbyshire Limited. Each company is a joint venture ('JV') owned by the Council and a company owned by Suffolk County Council.

CDL delivers capital project design related services and VDL delivers facilities management services including caretaking, cleaning and grounds maintenance.

In September 2020, the Council's joint venture CDL went live. At that time, the Council's design team was transferred to the JV, with all the existing and proposed capital projects. These projects are referred to as the pipeline of work. Although all projects were included in the pipeline, and the Council made available as much information as it had about these projects it was not possible for Concertus, the Council's JV partner, to undertake the level of due diligence it would have anticipated, as the information was not held by the Council. For example, the time, cost and budget to complete the 'work in progress' projects; the resource to complete these projects and the programme dates to receive new projects.

Also, when CDL went live, a client team was established within the Council with the project and programme managers remaining in house. This client team was larger than ordinarily would be required but reflected the level of understanding of the pipeline, in particular the high volume of low value projects and their different stages of completeness.

Between September 2020 and March 2021, CDL and the Council largely continued to operate in the same way as the Council had prior to transfer. In particular the existing arrangements with respect to project management, project design and delivery, and the procurement of contractors including the Council's internal construction/maintenance teams. This continuation allowed CDL to fully understand the services it had taken over from the Council.

Between January and May 2021, a joint steering group was established with representation from CDL, the Council's Projects and finance teams

and the CDL JV Board. This steering group reviewed processes and procedures and working arrangements between the parties and made some improvements, although, it became apparent to this group that more significant changes were required. Accordingly, CDL was asked by the Council to prepare a more comprehensive Service Improvement Plan.

The CDL Board, which includes the Director of Corporate Property and Assistant Director of Finance from the Council, alongside two other directors and the Chairman subsequently developed a Service Improvement Plan. This is now presented in this report for consideration and approval by the Council. It is important that this is separately considered by the Council, in order that the Council can be satisfied that this Service Improvement Plan meets the Council's needs, both as a customer and as a shareholder and does not simply address those of the CDL company.

References in this report to Programme and Project Management refer to this activity within Corporate Property rather than elsewhere in the Council.

#### 4.2 Current ways of working

Corporate Property and CDL have identified a number of opportunities to improve the effective delivery of projects, these include:

- Swifter decision making in the commissioning of projects and programmes. This can occur in several places, including:
  - Departments finalising a brief and budget to proceed;
  - Projects commissioning CDL; and
  - CDL securing instructions and clarifications back from the Projects team and departments.
- Revised procedures and processes, including in the procurement of contractors. The Council does not regularly use frameworks to appoint contractors or package together multiple projects, both of which speed up delivery and can reduce costs.
- Clarify roles and responsibilities of Corporate Property, CDL and how CDL engage with the Council's two-tier client.
- A need to work directly with end clients to speed up decision making.
- The procurement of the Council's internal construction/maintenance services.
- The procurement of third-party contractors.
- Closer alignment with the asset management of the portfolio.

### 4.3 Council Value For Money

Aligning the available resource within the Council and CDL to the pipeline of capital projects will improve value for money for the Council as a customer and as a shareholder in CDL. Introducing more efficient processes will also contribute to improved value for money.

As a result of establishing CDL, there is greater transparency and therefore a better understanding of the costs and operation of the service and the opportunity to generate savings. For example, with CDL responsible for project management and design, total fees will be reduced. The benefit of which all comes to the Council.

If CDL is to continue with the current ways of working, then it will be required to reflect this in its resource and change its method of operation. For example, with an irregular pipeline of work, CDL would reduce its capacity and in times of increased demand would supplement its resource from a third-party supply chain. This will have adverse cost implications for the Council as a shareholder in contributing to the reorganisation within CDL and also as a customer in the procurement of a larger supply chain. The irregular pipeline also has implications for the Council's own construction/maintenance teams with under-utilisation of that resource as there are insufficient projects being passed to the construction/maintenance teams to deliver.

It would be better for all parties if projects were moved more quickly through the design phase into construction. It would also be better if there was a longer term visibility of the future pipeline to provide more work and certainty of work to CDL and the internal construction team. The latter in particular will help to smooth out peak and troughs in the programme of work.

### 4.4 Service Improvement Plan

Corporate Property has considered the Service Improvement Plan to improve the delivery of projects and proposes the following changes:

- 1) Part of the Council's Projects team will be transferred to CDL (Programme Managers, Project Managers, CDM (Construction Health & Safety), and Quantity Surveying. This will place responsibility in CDL for the full lifecycle of a project. By having project management responsibility for the full lifecycle of a project it is easier for CDL to assist with bringing forward projects more quickly and thus, this increases utilisation for the existing staff. It also enables the fees that are charged to projects to be reduced, a capital expenditure saving that will in its entirety come to the Council.

- 2) CDL will establish direct relationships with the Council departments for commissioning of programmes and projects. This direct relationship with the customer will enable CDL to deliver against the time, cost and quality priorities determined by the end user. In addition, it is proposed that up to two additional Property Business Partners will be recruited and based within the Asset Management team within Corporate Property. These positions will be responsible for addressing the technical aspects in relation to a project commission to CDL. By sitting alongside the other Property Business Partners this will provide a further safeguard for the Council, ensuring that department projects are still in line with all other Council priorities including budget and the Asset Management Framework.
- 3) CDL will take over responsibility for Corporate Property's construction related procurement role. This will initially include reviewing:
  - a. The procurement of subconsultants to support the development and delivery of projects;
  - b. The procurement of construction contractors for all Council construction related projects with the intention that CDL are appointed as Procurement agent for the Council;
  - c. Existing procurement practices including the relationship/governance of the internal construction teams;
  - d. Establishing a 5-year forward programme required to inform the Asset Management Framework;
  - e. How the Council's SCAPE relationship could operate where the Council is a shareholder; and
  - f. Developing the proposals in collaboration with the Council's corporate procurement team and establishing procurement processes and policies with the appropriate level of governance and control for the Council.

A benefit for the Council from CDL taking over these procurement responsibilities will be CDL being able to assist the Council to reduce construction costs per square metre ('psm'), a capital expenditure saving that will in its entirety come to the Council. Such savings are possible as CDL will have visibility over a longer term programme and each project from start to completion. This will enable economies of scale to be secured with contractors and value engineering efficiencies in design and delivery.

- 4) CDL will establish direct relationships with Corporate Property's Asset Management Business Partners. These Business Partners ensure departments receive property expertise and also work with departments to ensure department's service delivery objectives are reflected in Corporate Property's asset management plans.

- 5) Corporate Property's Head of Estates and Head of Maintenance will engage CDL directly. In addition to removing a level of interface this 'closer to the customer' approach will operate across the Council.
- 6) Corporate Property's Governance, Compliance and Performance team will become the key contact for the CDL contract, overseeing KPI's, budgets, JV compliance and performance management. This team is already transforming how Corporate Property improves against these metrics in its own service and is improving processes and procedures throughout the division.
- 7) CDL will have closer engagement with the Council's five-year financial plan supporting the Asset Management team and providing greater visibility of new pipeline of work.
- 8) The Council has a disability design team supporting ASC&H, CS and the district councils to deliver projects primarily funded by Disabilities Facility Grant. This service will continue to be managed by the Projects team within the Council.

#### 4.5 Service Improvement Benefits

The following benefits will be achieved by implementing these changes:

- 1) Savings of between 5-20% in the overall cost of a construction project. Concertus has achieved similar savings for Suffolk County Council. As indicated above these capital expenditure savings will in their entirety come to the Council. It should be noted that there is currently upward pressure on construction costs per square metre, primarily because of greater environmental efficiency requirements in new buildings. The savings referred to here may therefore be used to offset against the additional construction costs, minimising the further call on the Council's capital budgets.
- 2) Creating better communication between all teams and speaking direct to the client and end users.
- 3) Simplifying client support functions. Currently departments have three touch points with respect to the delivery of capital projects. Asset Management who ensure projects are 'corporate' and support a multiplicity of Council objectives; the projects team who act as an intermediary between the department and CDL and thirdly CDL. Moving to two touch points, simplifies communication for departments and removes cost.
- 4) Standardisation in design and adapting industry best practice / modern methods of construction, to reduce construction costs.
- 5) Reduction in the programmes and projects fees to allow procurement services to be offered cost neutral. CDL will receive a share of the fee currently collected by Corporate Property Projects team for

programme and project management, with a target to reduce this by reducing complexity and handovers.

- 6) By taking control from start to end of project delivery, projects will be delivered more quickly.
- 7) CDL will be responsible for supporting the Council in the procurement of contractors, bringing Concertus' greater industry awareness and relationship management working with construction partners to the JV.

CDL was established by the Council to improve the delivery of capital projects. The changes detailed above fall within the category of continuous improvements and are exactly the kind of improvement the Council was seeking when the JV was created. It is also worth noting that in addition to the benefits for the Council as a customer, the changes are forecast to improve the Joint Venture's profitability to the benefit of both the Council and Concertus as shareholders.

#### 4.6 Service Improvement Financial Implications

Having regard to the service improvement benefits detailed above, a comparison has been undertaken to show the potential savings from the proposal. This has been prepared with the involvement of Concertus. The key variables are:

- A reduction in construction costs;
- A reduction in Project Management costs; and
- A reduction in design fees.

These savings are possible because CDL would have responsibility for the whole design process including project management and therefore able to achieve economies of scope. CDL would become responsible for managing the procurement of contractors and move to a more structured arrangement where economies of scale can be achieved.

Based on an annual capital programme of £30m forecasted capital expenditure savings that would be realised in construction costs, design fees and project management fees of £13.944m over the five-year period 2022-2027. If the capital programme increases or decreases the savings also change. Additional sensitivities have therefore been modelled, based on a 50% reduction in the annual capital programme to £15m and a 50% increase in the annual capital programme to £45m. The total forecasted capital expenditure savings over the period 2022-2027 for these sensitivities would be £6.972m and £20.916m respectively. These capital expenditure savings are significant and all accrue to the Council. Longer programmes of work, packing of projects, use of frameworks, value engineering projects with integrated projects

teams are some of the activities required to drive down construction costs psm.

In addition to reductions in construction costs, the fees to deliver projects will also reduce.

The above savings all fall to the Council, in addition, as this proposal improves the profitability of the JV, the Council as a shareholder in CDL will also receive a 50% share of any dividend.

#### 4.7 Risks associated with the Service Improvement Plan

Whilst the qualitative and quantitative analysis demonstrate the potential benefits from transferring programme and project management responsibility to CDL, the Council has a continuing role to ensure these benefits are realised.

The proposals are predicated on integrated project teams, i.e. the sponsor or budget holder for a project, the design team and contractor all collaborating in project delivery. Through effective collaboration, project issues and risks are addressed to ensure time, cost and quality objectives continue to be achieved. In addition, it is not simply the case of transferring responsibility to CDL, but rather good project management controls are essential, such as good communication, curtailing project scope expansion and careful preparation. These project management controls will be monitored by the Governance, Compliance & Performance team within Corporate Property, for example, client feedback and accuracy of budget estimate to final cost. The latter helps control project scope creep.

Corporate Property's Asset Management team will also play an important part. This team, both support departments with their operational plans, and are instrumental in reviewing the portfolio. Greater collaboration with this team and the Property Business Partners by CDL ensures that the projects delivered for the Council by CDL contribute to the Council's Asset Management Framework.

To mitigate these risks, CDL and the Council have regular mobilisation project meetings that are addressing issues including:

- Key account management – client department engagement;
- Cashflow and invoicing procedures;
- Contractor procurement;
- PR, Marketing & Comms;
- Data transfer and management;
- Staff engagement;

- Value for money demonstration; and
- Performance Management. Within the Services Contract with CDL are performance indicators, best value review requirements. These will need extending to include the additional activities being taken over by CDL.

#### 4.8 Next Steps

A detailed programme has been prepared with the following milestone dates to be noted:

| Activity  | By Whom   | Date                    |
|---|-----------|-------------------------|
| Approval of CDL Service Improvement Plan  | CDL Board | 27 May 2021             |
| Staff and trade unions engagement   | DCC & CDL | July - October 2021     |
| Complete draft of Full Business Case for Service Improvement Plan and staff transfers | DCC       | September 2021          |
| Approval of CDL Service Improvement Plan  | Cabinet   | November 2021           |
| Develop and Implement revised processes & procedures                                  | DCC & CDL | October – November 2021 |
| Commence TUPE Consultation period   | DCC       | November 2021           |
| New structure implemented and staff transferred                                       | DCC & CDL | 1 February 2022         |

In addition to the transfer of the activity to CDL, it will be necessary for the Council to revise a number of its other processes, including billing and performance management around CDL.

## 5. Consultation

- 5.1 Should the proposals set out in the report be approved by the Council, the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended (TUPE) will apply to affected employees. Formal consultation will take place at the appropriate point in time with the affected employees and trade unions in accordance with the provisions of the TUPE Regulations.

## **6. Alternative Options Considered**

- 6.1 Alternative Option 1 Do Nothing – Since CDL went live on the 1 September 2020, the Council and CDL have been continuing to operate the processes and procedures that existed within the Council prior to transfer. The Council could continue to operate in the same way. However, this is not recommended, as CDL was established to improve the delivery of services and continuing as is, would not do so, and would not deliver the operational and financial benefits described in the Business Case.
- 6.2 Alternative Option 2 Improve on the current way of working – The Council and CDL could persevere with the current arrangement (Option 1) but seek to introduce some improvements albeit keeping the split of responsibility between the Council's projects team and CDL for project delivery. This arrangement would not enable the reduction in fees that are being proposed for both design and project management which are achieved by combining the activities under CDL. More significantly it would not address the opportunity to reduce construction costs. Best practice recommends integrated project teams as the best way to reduce construction costs, by combining project management with design and with responsibility for contractor engagement, the proposal moves towards this best practice recommendation.
- 6.3 Alternative Option 3 Do Something Different – The Council could transfer responsibility of programme and project management to client departments. This is not recommended, as the Council has previously approved adopting public sector best practice with respect to the management of land and buildings in accordance with a corporate asset management strategy. This leads to centralisation and coordination of property activities, rather than, devolved responsibility which would be the case if department led solutions were adopted. In addition, capital project delivery best practice is for integrated project teams which include the client, and the design and construction supply chains. It is integrated project teams with clear roles and responsibilities that will deliver the operational and financial benefits

## **7. Implications**

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

- 8.1 Report to Cabinet – Review of the Corporate Property Division. 28 February 2019.
- 8.2 Report to Cabinet – Property Asset Management Framework. 21 March 2019.
- 8.3 Report to Cabinet – Corporate Property Future delivery. 11 September 2019.
- 8.4 Report to Cabinet – Implementation and Rebranding of Asset Optimisation through Corporate Landlord Policy. 14 January 2021.

## **9. Appendices**

- 9.1 Appendix 1 – Implications.

## **10. Recommendation(s)**

- 10.1 That Cabinet notes the content of this report.

## **11. Reasons for Recommendation(s)**

- 11.1 Cabinet is being asked to note this report as a further report in the same meeting is being asked to approve the proposals.

## **12. Is it necessary to waive the call-in period?**

- 12.1 No

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**Implications****a) Financial**

- 1.1 The financial implications of the proposal as referenced in section 4.6 of this report are detailed in the Business Case.
- 1.2 Under the new operating model, capital expenditure fees will be billed directly to projects from CDL as outlined in Section 4.6 above. Therefore, there are no implications on operational expenditure spend as part of this proposal and no additional funding requirements. The Council has consulted with its external taxation advisors and there are no taxation implications from these changes.
- 1.3 As a consequence of the proposed outsourcing, it is envisaged that a maximum of two additional Asset Management Business Partner posts will be required to help manage the relationship with CDL. These will be funded by an 'asset management fee', being a share of overall project management fees that are currently charged to capital projects.

**b) Legal**

- 2.1 Section 1 of the Localism Act 2011 provides the Council with the power to do anything that individuals generally may do. This power can be used for commercial purposes or otherwise but when it is exercised for a commercial purpose, this must be done through a company. The Council may exercise this power for the benefit of the authority, its area, or persons resident or present in its area.
- 2.2 Accordingly, subject to its Financial Regulations and public law considerations (set out below) the Council has the power to enter into arrangements such as the creation and operation of a Joint Venture company CDL (the 'JV') as described in this report and carry out activities for a commercial purpose through such a JV company.
- 2.3 The JV company will comply with public law, and in particular, the Public Contracts Regulations 2015. In this regard, CDL, for the purposes of this report, has been set up as a 'Teckal' company.
- 2.4 A "Teckal" company is the common name for a company to which a contracting authority or authorities who control it are able to award contracts for works, services or supply without being subject to the

requirements of the Public Contracts Regulations 2015. The “Teckal” exemption from the application of public procurement legislation originated in case law, but is now codified within Regulation 12 of the Public Contracts Regulations 2015.

- 2.5 Accordingly, the arrangements with CDL satisfy these requirements and allow the Council to comply with the Public Contracts Regulations 2015 (PCR) Regulation 12.
- 2.6 Regulation 11 of the Transfer of Undertaking (Protection of Employment) Regulations 2006 requires employers to identify transferring employees and provide specified personal information to the new employer. Personal employee information provided in compliance with the provisions of Regulation 11 will be lawfully processed in accordance with UK General Data Protection Regulation (UK GDPR) Article 6(1)(c) as the processing is necessary in order for the Council to comply with a legal obligation. In the event that additional employee information is requested by the JV as part of its due diligence, which is beyond that set out in Regulation 11, usual data protection principles will apply and consideration should be given to the anonymising of such data in order to ensure continued compliance with Data Protection Act 2018 and UK GDPR.
- 2.7 Any confidential information, including personal data, as determined by the Data Protection Act 2018, that is to be transferred to CDL as a result of TUPE (as detailed below) will be protected in accordance with the JV Services Agreement dated 1st of September 2020. The transfer of the services envisaged by this report will be undertaken by a variation to the JV Services Agreement
- 2.8 The current contract terms that are set out in the JV Services Agreement enable the benefits set out in this report to be delivered to the Council. In particular, the JV Services Agreement sets out what can be charged by the JV for the duration of the agreement and there are measures contained within it to address any changes in those costs, including a Best Value obligation. Furthermore, the legal obligations concerning the transfer under this report shall be reflected as a variation to the JV Services Agreement and the Council shall seek additional external legal support as required to facilitate this transfer.
- 2.9 The pensions entitlement of any transferring employees to CDL are covered under the existing JV Services Agreement. The agreement states that eligible TUPE employees shall be offered membership of the Derbyshire Pension Fund upon TUPE transfer and the relevant

Admission Agreement shall be varied accordingly to reflect those admissions.

- 2.10 On this basis, the Director of Legal Services is satisfied that the proposals set out in this report are in accordance with the Council's Constitution and Financial Regulations therein.

### **c) Human Resources**

- 3.1 Should the proposals set out in the report be approved by the Council, the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended (TUPE) will apply to affected employees. This transfer would be classed under the 'service provisions changes' umbrella and an organised grouping of employees, who are dedicated to project and programme management, are in scope to transfer. Formal consultation will take place at the appropriate point in time with the affected employees and trade unions in accordance with the provisions of the TUPE Regulations.
- 3.2 In accordance with the Constitution, Cabinet approval is required to the transfer of the service. Subject to the recommendations in the report being approved, a number of associated staffing decisions are required for which the Managing Executive Director has delegated authority in conjunction with the Director of Organisation Development and Policy, Director of Legal Services and Director of Finance and ICT, and for which a separate report will be prepared.
- 3.3 Corporate Property's Governance, Compliance and Performance team and Asset Management Team will become the key contacts for the CDL, a maximum of two new Property Business partners to support council departments with their property requirements. These additional roles will be graded and resourced in line with Council policies.

### **d) Equalities Impact Analysis**

- 4.1 The proposals have been reviewed to consider and reduce any disproportionate impact on protected groups and an Equality Impact Analysis (EIA) has been completed. The outcome of the assessment is that there is unlikely to be any impact on the service users or workforce following the reorganisation, as the service provision will remain the same, although will be delivered in part through an alternative provider. The policies of Concertus have been considered with respect to protected and non-statutory groups as identified in the

EIA, and the joint venture company will be monitored for compliance during the contract term.

**e) Information Technology**

- 5.1 Building Information Modelling ('BIM') is a process for creating and managing information on a construction project. One of the key outputs is the Building Information Model, which is a digital description of every aspect of the built asset. The model draws on information assembled collaboratively by the design team and contractors and updated at key stages of a project. BIM Level 2 is a minimum requirement for all government projects and Concertus is BIM Level 2 accredited with the appropriate investment in software, hardware and training for its employees.
- 5.2 The Council does not have this accreditation, however through its joint venture with Concertus this level of expertise and the benefits it brings is now available.

**f) Corporate objectives and priorities for change**

- 6.1 The primary purpose of CDL is to support the Council in the improved delivery of the Council's capital programme. Bringing projects forward more quickly, with greater certainty of cost and at an overall reduced cost enables the Council to deliver more projects in support of its corporate objectives and delivers value for money.