PUBLIC

Agenda item No: 6(m)

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**11 September 2019**

**Report of the Executive Director for Commissioning, Communities & Policy**

# CORPORATE PROPERTY FUTURE DELIVERY

**(Corporate Services)**

## 1. Purpose of the report

To seek Cabinet approval on proposals to commence the next stages in respect of the implementation of a new operating model for the Corporate Property division.

A further report, titled 'Corporate Property Future Delivery and Outline Business Case' containing information not for publication is to be considered separately by Cabinet in the exempt part of this meeting.

## 2. Information and Analysis

### 2.1. Background

In February 2019, Cabinet considered a review undertaken by Ernst Young in respect of the Corporate Property division within the Commissioning, Communities & Policy department. Having considered the review, Cabinet agreed to redesign the service delivered by Corporate Property and in particular with respect to non-core property services:

- to approve in principle the externalisation of the Facilities Delivery service;
- to approve in principle the externalisation of the Design & Build service; and
- the redesign of the Repairs & Maintenance service and the externalisation of the balance of the service.

This report addresses the above three recommendations and follows a Cabinet report in July 2019 which established a new structure for the senior management and extended management teams within the division, as well as a new operating model. The new operating model has six new sections with clear areas of responsibility and a certain and stable supply chain to deliver non-core property services is now required. This report addresses the supply chain and when complete will:

- ensure Corporate Property has capacity and expertise to support the Enterprising Council programme;
- strengthen the Corporate Property function to better meet the service delivery requirements of the operational departments; and
- provide a basis to secure revenue and capital savings from future realignment of the property portfolio, including the necessary capacity and expertise.

### 2.2. Outline Business Case

As there are a number of options for externalisation available to the Council a Business Case has been prepared in accordance with best practice HM Treasury Guidance. The Business Case, attached to the exempt report has five sections within it, and each will be updated as the next stages of implementation are progressed. The five sections are:

- **Strategic Fit** - Description of the Council's requirement and its contribution to the Council Plan 2019-2021, 'Working for Derbyshire';
- **Options Appraisal** – an assessment of the options available to the Council, having regard to cost, benefit and risk;
- **Affordability** – a consideration of the financial issues arising from the preferred option(s);
- **Commerciality** - this sets out the potential commercial arrangement with any third parties; and
- **Achievability** - this addresses the 'how' of undertaking the next stages including procurement.

### 2.3. The externalisation of the Facilities Delivery services

There are a number of options for externalising the Facilities Delivery services. Accordingly, an options appraisal has been prepared that considers five options, including a base case 'do-nothing' option, as briefly summarised below. The options appraisal is a structured qualitative assessment that considers strategic, financial and deliverability issues.

- **Option 1 Base Case, Maintain Status Quo**: The Council continues to operate as now, with a mixed economy of in-house expertise and capacity and the use of an ad-hoc external supply chain of consultants and contractors.
- **Option 2 Single Contractor:** The Council procures a single organisation to deliver all or the majority of externalised property services delivery.

- **Option 3 Several Contractors:** The Council procure 'best in class' (specialist) organisations to provide all or the majority of externalised property services delivery.
- **Option 4 Framework of Contractors:** The Council procures a framework of organisations to provide all or the majority of externalised property services delivery. Mini-competitions would be undertaken when individual commissions are required.
- **Option 5 ‘Teckal’ Joint Venture (JV) Company:** A ‘Teckal’ company is a company which benefits from contracts for works, services or supply from its controlling Contracting Authority (or Authorities) without having to go through a competitive tender process and is codified within the Public Contracts Regulations 2015. The Council establishes a JV company between itself and a qualifying organisation for all, or the majority of externalised property services delivery. Alternatively, the Council could establish its own ‘arm’s length’ arrangement.

Having identified the range of options to be modelled, a qualitative assessment has been undertaken, based on 21 criteria in three subject areas: Strategic Objectives; Economy & Efficiency; and Deliverability. The subject areas and criteria are based on the Council’s key policies and objectives and for the purpose of the analysis, are weighted.

The weighted % scores from the qualitative analysis are:

| Ranking | Service Delivery Option | Subject Area | | | |
|---|---|---|---|---|---|
| | | **Strategic Objectives** | **Economy & Efficiency** | **Deliverability** | **Total** |
| | **Overall Weighting** | **20%** | **30%** | **50%** | **100%** |
| **5** | **Option 1** Status Quo | 5.71% | 6.43% | 16.07% | 28.21% |
| **4** | **Option 2** Single Contractor | 14.29% | 15.00% | 30.36% | 59.65% |
| **3** | **Option 3** Several Contractors | 13.57% | 17.14% | 32.14% | 62.85% |
| **2** | **Option 4** Framework of Contractors | 15.71% | 21.43% | 30.36% | 67.50% |
| **1** | **Option 5** ‘Teckal’ JV Company | 17.86% | 23.57% | 41.07% | 82.50% |

The ‘Teckal’ JV Company is the highest scoring option. The Council is able to establish such an organisation without formal procurement, subject to satisfying its own financial and procurement regulations. There are a number of ways in which a ‘Teckal’ JV company could be established and a further options appraisal has been undertaken to identify a preferred structure for the company. This options appraisal is similar to the qualitative evaluation that would be undertaken under a conventional procurement exercise, having regard to financial standing, capability and the Council’s strategic objectives.

- **Option 1 A Council Arm’s-Length organisation:** The Council establish its own arm’s length property organisation.
- **Option 2 A Council JV with Partner A**. A local authority ‘Teckal’ company comprising a FM organisation and property consultancy.
- **Option 3 A Council JV with Partner B**. A local authority ‘Teckal’ company comprising FM, property consultancy and recruitment agency.
- **Option 4 A Council JV with Partner C**. A partnership comprised of a number of public authorities providing strategic asset management, property management, project management and FM services

The weighted % scores from the qualitative analysis are:

| Ranking | Service Delivery Option | Subject Area | | | |
|---|---|---|---|---|---|
| | | Financial Standing | Capability | Council Strategic Objectives | Total |
| | **Overall Weighting** | **30%** | **30%** | **40%** | **100%** |
| **4** | **Option 1** Council’s own Organisation | 15.00% | 12.5% | 20.00% | 47.50% |
| **2** | **Option 2** Partner A | 15.00% | 28.75% | 37.14% | 80.89% |
| **1** | **Option 3** Partner B | 24.00% | 28.75% | 40.00% | 92.75% |
| **3** | **Option 4** Partner C | 16.50% | 26.25% | 28.57% | 71.32% |

This second qualitative options appraisal concludes that establishing a Teckal Company with an existing provider is the preferred option and an arrangement with Partner B is preferred.

Partner B is Suffolk County Council. Suffolk County Council owns Suffolk Group Holdings Ltd which has three subsidiaries Vertas Group, Concertus

Group and OPUS. Vertas provides FM services, Concertus provides multi-disciplinary design and property consultancy and Opus is a recruitment agency. Vertas employs 3000 people and provides cleaning, caretaking, property management, professional services for schools and academies, commercial catering, energy consultancy, grounds landscaping and maintenance, waste and recycling, design and print and reception services.

Concertus specialise in the delivery of architectural and interior design, building design, quantity surveying structural and civil engineering. It has secured Building Information Modelling (BIM) Level 2 accreditation, as well as ISO and Investors in People Silver award.

Accordingly, it is recommended that a period of exclusivity is offered to Suffolk County Council and its subsidiaries with a view to finalising the terms of a 'Teckal' company(s) in partnership with Derbyshire County Council. This would see a company(s) owned by the public sector with operational and financial control in the public sector. Initially the focus would be in respect of cleaning and caretaking with other facilities delivery services to follow.

### 2.4. Construction Delivery

The Council currently undertakes some construction delivery itself, as well as procuring contractors. The latter is undertaken using a mix of frameworks and project specific tenders. This approach to construction delivery is complex. It also means the Council is not maximising the value of its capital spend by having to consider internal delivery rather than the cost-time-scope of the project itself.

The new operating model does not envisage the Council undertaking any construction delivery, with the exception of low value (circa. less than £10,000) property maintenance. Larger projects up to circa £50,000 and including the delivery of adaptations under the Disability Facility Grant regime would continue to be designed and managed by the Council and delivered by small local contractors. For the procurement of the small contractors, the Council would establish a new Dynamic Purchasing System (DPS)/framework agreement system. This is particularly suited to small contractors and will enable more local Derbyshire contractors to benefit from the Council's capital spend.

For larger projects, in excess of £50,000, the design element would be undertaken by a second 'Teckal' company joint venture with Suffolk County Council (Concertus), similar to facilities delivery services. For the construction element, local authority 'Teckal' companies do not undertake construction work and a framework of contractors would not be an option for TUPE to apply. Therefore, it is proposed to appoint a lead contractor in lieu of the existing in-house construction delivery and to which TUPE will apply. Appointment of a single contractor is Option 2 in the first options appraisal and scores more highly than the alternative of retaining the work in-house. The procurement of this contractor would commence following consideration of the Outline Business Case.

In respect of construction work that is currently *not* undertaken internally the Council would utilise existing external frameworks, enabling the Council to take the benefit of the greater buying power of these frameworks and contractor initiatives, such as pro-bono work that are only available from the larger frameworks. Such frameworks would include SCAPE of which the Council is a shareholder, therefore recovering part of the framework fee though its shareholder dividend.

Corporate Property will also produce a procurement plan as part of the department’s service plan to expedite procurement, enabling the Executive Director to award contracts from both the minor works DPS/Framework Agreement and external frameworks.

### 2.5. Property Disposal & Development

A key driver for establishing the new operating model is to secure greater value and benefit as well as speeding up the process of declaring assets surplus to the requirements of the Council and then disposing of them. In part this will be achieved through a greater Asset Management focus. It will also require identifying new methods of delivery to complement or replace existing arrangements.

There are in effect two stages to the disposal of property; firstly the identification of property that is surplus and secondly the disposal itself. The Council’s current approach to the first of these stages is, officers undertaking an internal due-diligence exercise, i.e. what are the Council’s requirements; and then undertaking external due-diligence, what are the market opportunities for the surplus asset. The approach to the second stage is to add value where possible, for example secure planning permission, undertake demolition, resolve title queries, etc., and then use informal tender, auction, or private treaty as a disposal process. The rationale for undertaking added value activities is to reduce the ‘risk’ to a subsequent purchaser/developer and therefore increase development certainty and disposal price. Not all added value activities necessarily increase sale price and this is where market intelligence is essential. It should also be noted that ‘disposal’ is not simply about receiving a capital receipt, it is also using Council property to secure greater benefits such as regeneration, economic development, new housing, etc.

To undertake more disposals or speed up the disposal process this will require more effective resource. There are several ways in which this could be achieved which are briefly considered below.

- Increase the size of the internal teams.
- Appoint third party consultants.
- Dispose of property directly to an end user / developer subject to an overage payment, where greater value is created than recognised in the initial sale price.
- Establish a joint venture / partnership whereby a third party undertakes the due-diligence and added value activities at their expense and shares in the upside in land value with the Council.

Whilst each of the above options have merits, there is one organisation whose trading name is Public Sector Plc who have developed a JV model specifically for local authorities and who currently work with 19 Councils. Their model called Relational Partnering is discussed below and is the recommended approach to the Council.

The Relational Partnering Model is a delivery option that can be used to complement existing arrangements. This will involve the creation of a Limited Liability Partnership (**LLP**) between the Council and PSP Facilitating Ltd (**PSPF**), and would be called PSP Derbyshire LLP under the provisions of the Limited Liability Partnership Act 2000. In this partnership, PSPF provide resources, expertise and funding to the Council to unlock value in the Council land and property assets to deliver regeneration, new housing, and employment.

The PSPF Relational Partnering Model works by establishing a jointly owned (50% the Council partner and 50% the PSPF partner) LLP. Decisions are made collectively and must be unanimous. Once the relationship has been established the partners in the LLP then work through an agreed project by project process designed to ensure statutory compliance, for example; by ensuring that any disposal of land complies with Section 123 of the Local Government Act 1972 and/or the Public Contract Regulations 2015. Only when due diligence is concluded, will a project proceed on an agreed basis.

The Relational Partnering Model is one which works by using a “conversation before contract” approach and requires no prior commitment or guarantee of project opportunities by the Council to the LLP. Through the LLP governance processes, the Council has the assurance that it will receive the market value of its property assets, as confirmed by CIPFA, whether this is in terms of revenue income from improved asset management or a capital receipt from a disposal of land with planning permission for development by a third-party buyer. Any additional revenue income or capital value generated by the specific LLP project over and above the market value is shared between the Council and the PSPF Partners. Whilst the Council may make profit by virtue of the land transaction, it is the wider regeneration objectives and the expediting of property disposals to reduce running costs which are the primary drivers.

In addition, the LLP project driven property initiatives must be able to objectively demonstrate that they deliver at least as good an outcome as the Council's traditional approaches. An independent report is produced by CIPFA (property) to confirm this, and a further independent legal report from Anthony Collins Solicitors to confirm statutory compliance with Section 123 and PCR 2015.

### 2.6. Affordability (Financial Case)

Affordability or the Financial Case assesses funding and links proposed expenditure to the available budget, to deliver property services. At this stage a high level financial model has been prepared that considers the financial implications of externalising the cleaning and caretaking services only. Future externalisations will be considered at the appropriate time using the same financial modelling approach.

Although the driver for the Corporate Property 2020 programme is not initially to specifically deliver operational cost savings, it is important that the project demonstrates that a future operating model does not result in an increased operational cost for the Council.

The cleaning and caretaking functions deliver services to schools and external organisations as well as Council occupied buildings. As at July 2019, there are 344 individual sites at which Council cleaners and caretakers deliver services. Approximately 65% of the current workload relates to revenue generating activity delivered to schools and external/non Council buildings. Vertas and Concertus are owned by the public sector and have experience of delivering services to schools and other public bodies. The Teckal options as described would wish to continue to deliver services to schools and other external bodies. As operational and financial control continues in the public sector, it is hoped that schools will continue to be an important customer. The external service would continue similar to now, save that it would be undertaken by an organisation whose sole purpose is delivering 'core' facilities services to customers.

## 2.7. Commercial Appraisal

This section of the Business Case details further the proposed sourcing options and the key features of the proposed commercial arrangements (e.g. contract terms, contract length and payment mechanisms). The procurement approach/strategy is also set out with supporting rationale and informed from a 'soft-market' testing exercise.

The Options Appraisal and Financial Model illustrate the benefits in progressing with the realignment of Corporate Property and in particular:

- Establishing a JV company for the externalisation of cleaning and caretaking services and design services;
- Creating a LLP with PSP Facilitating Ltd;
- Procuring a lead contractor to deliver the future capital programme in part;
- Utilising a number of established frameworks for the future programme of consultants and contractors to further support the delivery of property services; and
- Establishing a Council DPS for the appointment of contractors to deliver minor works.

Following consideration by Cabinet of the Outline Business Case attached to the report in Part 2 of the agenda for this meeting, it is proposed that a period of exclusivity is offered to Suffolk County Council and its subsidiary Suffolk Group Holdings to allow detailed terms to be negotiated for subsequent recommendation to the Council in respect of the establishment of a JV company(s). At the same time the Director of Legal Services will proceed with the establishment of a LLP with PSP Facilitating Limited.

The procurement of a lead contractor for capital works will follow the competitive dialogue procedure as set out in The Public Contracts Regulations 2015 (PCR). The reason for using this procurement route is because of the need for TUPE transfer of employees, different options for contract length, value and scope. Within the PCR this is provided for within Regulation 26(4)(a)(iii), whereby contracting authorities may apply a competitive procedure with negotiation or a competitive dialogue, where "the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them."

As the changes proposed are significant, a communication with Members, staff, contractors, schools and other stakeholders is being issued to appraise them of the proposals.

## 2.8. Achievability (The Project Management Case)

To date a structured programme management arrangement has been adopted with regular Cabinet Member engagement; a Programme Board, chaired by the Executive - Director Commissioning, Communities & Policy; and a Programme Team led by Corporate Property with HR, Legal, Finance, Procurement and Communications support. This structured arrangement will continue through the next stages of the programme.

In addition a detailed programme plan has been prepared with the following milestone dates to be noted.

| Date | Activity |
|---|---|
| September 2019 | • Outline Business Case approved<br>• Commence exclusivity negotiations and financial due diligence with Suffolk County Council (JV Company(s)<br>• Commence legal negotiations and financial due diligence with PSPF to establish PSP Derbyshire LLP<br>• Programme of Communications for staff, Members, schools and other third parties |
| November 2019 | • Commence Competitive Dialogue Procurement for a Lead Contractor<br>• Commence procurement of a Council DPS for minor Works<br>• Finalise commercial due-diligence with PSPF, establish PSP Derbyshire LLP |
| December 2019 | • Finalise commercial due diligence with Suffolk County Council. Prepare Full Business Case including affordability statement for design services<br>• Commence preparation of Business Cases for using external framework contractors |
| January 2020 | • Cabinet report on terms of new JV company(s)<br>• New management team for Corporate Property appointed<br>• Commence ‘hand-over’ to new JV company(s) |
| February 2020 | • Prepare financial model for next stage of transfer of non-core property services to the JV Company(s) (grounds maintenance). |

| Date | Activity |
|---|---|
| March 2020 | • Establish new JV company(s) and TUPE transfer of cleaning, caretaking and design services employees |
| July 2020 | • Prepare financial model for next stage of transfer of non-core property services to JV Company(s) (roofing and joiners shop). |
| December 2020 | • Finalise procurement of lead contractor and TUPE transfer of employees<br>• Cabinet report on the terms of the lead contractor appointment |

## 3. Financial Considerations

The Full Business Case which will be developed to support the final Cabinet approval paper scheduled for January 2020 will articulate and quantify the financial implications of the future proposed operating model. Finance and ICT services will continue to have a significant input into both the development and approval of the final approval processes.

## 4. Legal Considerations

The Director of Legal & Democratic Services will advise the Council on the legal elements of the recommendations set out in this report, in particular, concerning the use of the LLP and creation of any JV company taking external legal advice where necessary and ensuring that the recommendations, prior to implementation, comply with the Council's Financial Regulations and applicable procurement law.

Where it is proposed that employees transfer to the new joint ventures then the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) as amended will apply to protect the terms and conditions of employment. The employees transferring will transfer on their existing terms and conditions of employment, save for such amendments to procedures as are necessary given that they will be working for a new employer.

Should potential redundancies arise as a result of the proposals within this report, consultation will be undertaken with Trade Unions and affected employees, suitable alternative employment and opportunities for redeployment will be considered in accordance with legislation and the Council's policies and procedures, namely the Redundancy, Redeployment, Protection of Earnings and Buy Out of Hours Policy.

Legal advice will continue to be sought from the Director of Legal & Democratic Services throughout the duration of the project.

## 5. Human Resources Considerations

Should the proposals to commence the procurement process, set out in the report be approved by Cabinet, it is anticipated that the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended (TUPE) will apply to affected employees within Facilities Management, Design Services and Construction Services where appropriate. Formal consultation will take place at the appropriate time with the affected employees and trade unions in accordance with the provisions of the TUPE Regulations. Those employees who are not affected by the transfer will be retained within Corporate Property and may be subject to further staff realignments and reviews within Corporate Property.

The transfer of services set out in the report are likely to impact on the posts retained by the Council in Corporate Property requiring a further realignment of the structure. Engagement will take place with affected employees and trade unions at the appropriate time. Any new or changed jobs resulting from the revised service delivery model will be subject to job evaluation and grading levels in line with the HAY job evaluation scheme.

Should potential redundancies arise from the subsequent realignment of structures retained within Corporate Property, the Council will make every effort to avoid job losses as a result of the changes, however in the circumstances that this is not possible, proposals will be subject to formal consultation and managed in line with the Council's Redundancy, Redeployment, Protection of Earnings and Buy Out of Hours Policy. In those circumstances, approval is sought to make the Council's voluntary release schemes available to affected employees as appropriate.

Any such changes will be approved by the Executive Director for Commissioning, Communities & Policy in conjunction with the Director of OD & Policy, Director of Finance & ICT and Director of Legal & Democratic Services.

## 6. Equality Considerations

The proposals have been reviewed to consider and reduce any disproportionate impact on protected groups and an Equality Impact Analysis (EIA) has been completed. Ongoing monitoring of impact will be carried out throughout the project with the EIA being reviewed and updated as necessary

## 7. Other considerations

In preparing this report the relevance of the following factors has been considered: Human rights, health, environmental, transport, and social value.

## 8. Key decision

Yes.

## 9. Is it required that the Call-in period be waived in respect of the decisions being proposed within this report?

No.

## 10. Officer's Recommendations

That Cabinet notes the content of this report.

**Emma Alexander**
**Executive Director – Commissioning, Communities & Policy**