

DERBYSHIRE COUNTY COUNCIL**CABINET****8 October 2020****Report of the Executive Director for Commissioning, Communities & Policy****CORPORATE PROPERTY DELIVERY – GROUNDS MAINTENANCE****(Corporate Services)****1. Purpose of the report**

To advise Cabinet approval on proposals to externalise part of the Grounds Maintenance services in accordance with the implementation of a new operating model for the Corporate Property division.

A further report, titled 'Corporate Property Delivery - Grounds Maintenance, Full Business Case' containing information not for publication is to be considered separately by Cabinet in the exempt part of this meeting.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 approved a new operating model for the Council's Corporate Property service and which is now being implemented through a programme called Corporate Property 2020. In September 2019, Cabinet approved an Outline Business Case ('**OBC**') for the externalisation, in principle of certain services delivered by Corporate Property. In March 2020 Cabinet approved a Full Business Case ('**FBC**') in respect of the externalisation of two areas of work; Caretaking and Cleaning services and Design services by establishing two joint venture Companies: Vertas (Derbyshire) Limited and Concertus (Derbyshire) Limited. This report informs the FBC relating to the externalisation of a third area of work, Grounds Maintenance and for which an in principle decision has previously been approved.

2.2. Full Business Case

The new operating model for Corporate Property is based on a retained service delivering 'core' property services and procuring from a supply chain 'non-core' property services. To determine how and from whom the non-core services are delivered, business cases are being prepared in accordance with best practice HM Treasury Guidance. These business cases are developed in three iterations:

- i. Strategic Outline Case ('**SOC**') also known as the Preliminary Business Case;
- ii. Outline Business Case, and
- iii. Full Business Case.

Each iteration of the business case has the same five sections within it, however, as the business case develops through these three stages the level of detail increases. The five sections of the business case address the following:

- **Strategic Fit** - Description of the business need and its contribution to the organisation's business strategy and the compelling case for change, in terms of the existing and future operational needs of the organisation.
- **Options Appraisal** - documents the wide range of options that have been considered within the broad scope identified in response to the organisation's existing and future business needs. It aims to arrive at the optimum balance of cost, benefit and risk.
- **Affordability (Financial Case)** – This provides an assessment of affordability and available funding, linking proposed expenditure to available budget and existing commitments.
- **Commercial Appraisal** - Where there is an external procurement, this section outlines the potential commercial arrangement including proposed sourcing option, with rationale for its selection and the key features of the proposed commercial arrangements.
- **Achievability (The Project Management Case)** - This section addresses the 'achievability' aspects of the project. Its primary purpose is to set out the project organisation and actions which will be undertaken to support the achievement of intended outcomes including procurement activity (where applicable) or detailed study with existing providers and workforce matters.

This report informs the FBC for one of the non-core property services work areas, Grounds Maintenance. On completion of the legal agreements referred

to in this report, the FBC will be updated to provide a complete report for audit purposes.

2.2.1. Strategic Fit

The Council instructed Ernst Young (EY) to undertake a review of Corporate Property (the '**review**'). The review made the following recommendation with respect to the non-core property services, including Grounds Maintenance.

EY Ref	Ernst Young: Observations & Recommendations
4.2	Facilities Delivery: Qualitative evidence has indicated that this service does not compete in the market. In a highly price-elastic market, and a well-established market for the services, efficiencies and management focus could be achieved through a form of outsourcing. The analysis suggests Corporate Property should look to divest itself of Facilities Delivery to enable a greater focus on core operations. This is, however, subject to further consideration.

On the 1st September, the Teckal Joint Venture ('**JV**') Company, Vertas (Derbyshire) Limited ('**VDL**') became operational with the transfer of the council's caretaking and cleaning employees. The Council's JV partner in VDL is the Vertas Group which is a multidisciplinary Facilities Management ('**FM**') organisation. In addition to caretaking and cleaning it also manages the parks and grounds of over 550 schools, churches, sports clubs, leisure centres, care homes and children's centres.

Extending the services provided by VDL was envisaged when the OBC was considered and grounds maintenance is within the expertise of the Vertas Group. It is also a complementary activity to caretaking and cleaning for example for schools where a 'one-stop' FM offer can be offered.

Notwithstanding this, part of the service has previously been approved by Cabinet (July 2020) to be out of scope. The reason for which is that there are similar services in the ETE department to the hard landscaping and tree service within Corporate Property, and it is intended that the Council reviews how all these services are managed and provided by the Council before considering a Business Case for possible externalisation of those services currently within Corporate Property.

2.2.2. Options Appraisal – Grounds Maintenance services

At the OBC stage, two options appraisals were prepared. The first evaluated a variety of service delivery options for the future delivery of non-core property services. The second, made a recommendation on the identity of the preferred service delivery partner. A further options appraisal has been prepared specifically relating to the Grounds Maintenance service to determine which is the preferred option for the delivery of the service.

Option Appraisal – Service Delivery

Five service delivery options have been considered including a base case ‘do-nothing’ option, as summarised below:

- **Option 1 Base Case, Maintain Status Quo:** The Council continue to operate as now, with a mixed economy of in-house expertise and capacity and the use of an ad-hoc external supply chain.
- **Option 2 Single Contractor:** The Council procure a single organisation to deliver the grounds maintenance service.
- **Option 3 Several Contractors:** The Council procure 'best in class' (specialist) organisations to the grounds maintenance service.
- **Option 4 Framework of Contractors:** The Council procure a framework of organisations to provide the grounds maintenance service.
- **Option 5 Teckal Joint Venture (JV) Company(s):** The Council extends the scope of services of Vertas (Derbyshire) Limited to provide the grounds maintenance service.

A “Teckal” company is the common name for 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.

A qualitative assessment was undertaken by representatives of the Corporate Property 2020 programme team, based on 21 criteria in three subject areas based on the Council’s key policies and objectives. The weighted scores from the qualitative analysis are:

Ranking	Service Delivery Option	Weighted Score (%)
1	Option 5 – Vertas (Derbyshire) Limited	89.62%
2	Option 4 - Framework of Contractors	63.33%
3	Option 3 - Several Contractors	61.92%
4	Option 2 - Single Contractor	56.54%
5	Option 1 – Base Case ‘Status Quo’	29.10%

The Teckal JV Company, Vertas (Derbyshire) Limited is the highest scoring option.

2.2.3. Affordability (Financial Case)

Affordability or the Financial Case assesses funding and links proposed expenditure to the available budget, to deliver property services. Along with the Commercial case these are the key stages in the FBC.

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.

No additional costs have been included as part of this business case for the resource effort required to manage the ongoing service and contractual arrangements within the Council. The expectation is that these will be managed within current departmental operating budgets. Examples include additional work within the Finance function to annually consolidate the JV's accounts, additional invoice processing, etc. and resource required within the retained Corporate Property organisation to perform contractual management and validation procedures, etc.

Vertas (Derbyshire) Limited – Grounds Maintenance

The September 2019 Cabinet approval of the OBC did not include any financial analysis for the Grounds Maintenance operation. The scope of what element of services are to be transferred to the JV, and therefore which employees are to form part of the transfer, was finalised during August 2020.

Financial viability

An exercise has taken place to extract just the Soft Grounds Maintenance income and expenditure performance from the financial ledgers in order to be able to establish a baseline financial performance position.

The Council's Finance Team have been working with the Vertas Finance & Operational teams in order to develop a joint understanding of what efficiencies and improvement opportunities could be realised through the formation of the Joint Venture.

Financial modelling has been undertaken by the Council and Vertas to help understand any efficiencies and new business opportunities that Vertas intend to bring to the JV. The financial benefit to the Council would be reflected in a

reduced service cost for the Soft Grounds Maintenance operation and through the receipt of annual dividend payments from the JV back to the Council. Dividends will be split 50:50 between the Council and Vertas Group Limited. No dividends will be payable by the JV in Year 1.

Financial modelling has been completed to forecast the future operational cost to the Council over 10 years if it were to remain in-house. Various assumptions have been reflected to show any growth/decline in operational activity and inflationary effects of labour rates and material costs. This has then been compared with the Vertas modelling which factors in their assumptions around growth in business and efficiency savings from the JV perspective.

The Council would benefit from the receipt of dividends on profits generated by the Joint Venture, which would be achieved by generating new and additional commercial sales opportunities to schools and external clients and through operational efficiencies and cost control.

Equipment & Asset Transfer and Buildings

The Soft Grounds Maintenance function makes use of a wide range of assets and equipment to undertake the service, some of which are material in valuation. These include; tractors, mowers and hedge trimmers etc.

There is scope for a number of these assets and equipment to be transferred to the JV, by way of the JV purchasing the assets from the Council outright or the Council leasing the assets to the JV. Both of these options are being discussed further with the JV.

The Grounds Maintenance service uses numerous locations and buildings. The intention is to review these locations with the desire to reduce the number, and therefore the associated costs, of the accommodation. Any buildings that are not required for the Grounds Maintenance service will be considered for alternative use or disposal.

Other Financial Considerations

For employees transferring from the Council to the JV, the working assumption is that the JV will contribute an agreed pension contribution equal to the Council contribution rate. A cost neutral impact from a Council perspective for the employees transferring into the JV has therefore been assumed.

It's worth noting that no potential reductions in Council building locations have been factored into the calculations. Therefore, any future projects which

assess the feasibility of site rationalisations or disposals should include the associated facilities management savings within their respective Business Cases.

Benchmarking of services delivered by the JV will be undertaken as part of services agreement in order to demonstrate to the Council that costs being incurred are in line/lower than industry standard.

Pensions

VDL has admitted body status to the Local Government Pension Scheme ('**LGPS**'), which for employees who TUPE from the Council will mean they will remain within the LGPS. Current Council employees who transfer and are not in the LGPS, will be automatically joined at the point of transfer and will need to opt out if they do not want to be a member of the scheme.

The pension scheme will be closed for new members and VDL has made separate arrangements for new employees. The employers' contribution rate has been agreed with the Derbyshire Pension Fund through an Admitted Body agreement.

Apprenticeship Levy

The Council, typical of many local authorities, has unspent funds in its apprenticeship levy account, which after twenty-four months are recouped by the Government. VDL has a comprehensive training programme for staff. The Council are currently exploring levy regulations to establish how VDL can access the Council's levy funding in particular for those apprentices who are transferring if required.

Risk

There is a risk that after transfer with greater scrutiny of both cost and income, some activities may be required which are currently not budgeted for, albeit they should be. This would result in an increase in costs to the Council.

VDL will be seeking to make efficiencies in the delivery of services to reduce costs and secure new clients as well as safeguard existing clients. This will lead to both a reduction in cost to the Council and with potential increased profits in the JV, a potential increase in future dividend to the Council from any distributed profits.

The Corporate Property 2020 programme maintains a risk and issues register and this has been updated and managed as part of the transformation programme.

For completeness, the risks of not proceeding with the proposals should also be noted. Whilst these in themselves do not justify proceeding with an unproven business case, they should be recognised. The key risks of not proceeding are:

- A primary driver of Corporate Property 2020 is improved Asset Management to drive efficiency and savings out of the Council's property portfolio. Retaining non-core property services will dilute this.
- VDL has been established to address a skills deficit within the Council and a need to be more commercial and customer focused with internally delivered property services. The Council would have to secure new skills if these services continued to be retained.
- As the Council's portfolio will reduce in size as a consequence of improved Asset Management, opportunity for Council staff including the number of employees would reduce.
- The JV model is designed to provide on-going financial benefits to the Council through dividend payments which would be lost.
- Whilst it was always made clear to staff that the final decision to proceed is for Cabinet, there would be uncertainty to the workforce following a stop or pause decision.
- For customers and other stakeholders who have bought into the concept, there may be reputational damage to the Council.

2.2.4. Commercial Appraisal

This section of the FBC details the proposed sourcing options and the key features of the proposed commercial arrangements.

Corporate Structure

In September 2020, the Council established Vertas (Derbyshire) Limited, trading as Vertas. VDL has the option for expansion and for the Council to transfer in further services, subject to the completion and approval of appropriate business case(s). The company has 4 executive directors, two from each shareholder, which means decision making is 50/50, notwithstanding the 49/51 ownership split. There will also be a non-executive chair. Any profits distributed through dividends are also distributed 50/50.

The proposal is that the services provided by VDL are extended to include Grounds Maintenance, which means the same corporate structure and governance arrangements will cover all services delivered by VDL.

TUPE and the transfer of Council employees

The Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended, ('**TUPE**'), applies to approximately 41 Council employees who will transfer into VDL. Formal consultation with the affected employees and trade unions commenced in August 2020 with the Trade Unions, and presentations to affected staff in September in accordance with the TUPE requirements. A measures letters dated 1 August 2020 has been issued to the trade unions and the measures have subsequently been communicated by the Council to affected staff. Measures are defined as those areas in which there is a proposal to make changes to the transferor's (the Council's) terms and conditions such as alterations to pay dates, new procedures for recording time and attendance, sickness reporting, etc. The key proposed measures to be noted are:

Vertas (Derbyshire) Limited

- Post transfer NJC agreed pay awards will not be applied, but rather VDL will review salaries annually with increases being effective from the 1st April each year.
- VDL has admitted body status to the Local Government Pension Scheme and all employees who transfer will continue with the same pension arrangements. This is a closed fund and therefore new employees and Council transferees who voluntarily apply for new positions in VDL will not be able to join the scheme and separate pension arrangements will be put in place.
- VDL will undertake a review of mileage and transport methods to support a more sustainable way of working.
- New electronic procedures are to be introduced for recording time and attendance, sickness and booking holiday.
- VDL intend to review the service which may lead to changes in the workforce for economic, technical or organisational reasons.

Trade Unions

Although the Council does not have written Recognition Agreements with the joint Trade Unions, the custom and practice is that recognition has been in place for many years for the purposes of consultation, negotiation and engagement. The relationship is demonstrated and defined within records of regular engagement with the Trade Unions. From a Corporate Property perspective, the relevant trade unions are Unison, GMB and Unite.

When VDL was established on 1 September 2020, a Partnership Agreement was agreed with the above three Trade Unions and which sets out the working relationship with the Trade Unions. This Partnership Agreement will apply to the employees transferring as part of these proposals.

Schools

Schools are an important customer for all services delivered by Corporate Property. As schools have delegated budgets, grounds maintenance that is delivered to schools will, in future, be undertaken (subject to contract) by VDL under contract between VDL and the schools. In year one, VDL will mirror the Council's current SLA with the schools and during the first year VDL intends to meet with the schools individually who currently receive a service, with a view to providing a more tailored service to each school.

Schools have been kept informed of the changes within Corporate Property through notifications on the S4S website, and these will continue.

VDL will also seek new school customers and seek to reverse the current trend which is for schools to move away from Corporate Property. The Vertas Group operate nationally for several Multi-Academy Trusts as well as Academies and schools throughout East Anglia. This expertise and track record will be used to grow the customer base in Derbyshire and Nottinghamshire.

2.2.5. 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 throughout implementation.

In the table below are the next milestone dates for this activity within the Corporate Property 2020 programme. A separate detailed programme plan has been prepared for the other workstreams within the overall programme.

Date	Activity
1 st September 2020	<ul style="list-style-type: none"> Go live date for Vertas (Derbyshire) Limited, this included, the transfer of staff in accordance with the TUPE regulations
October 2020	<ul style="list-style-type: none"> Cabinet approval to the Full Business Case to extend the services of Vertas (Derbyshire) Limited to include Grounds Maintenance
1 st November 2020	<ul style="list-style-type: none"> The transfer of approximately 43 grounds maintenance staff in accordance with the TUPE regulations

Communications

As part of the overall Corporate Property 2020 programme, monthly newsletters have been issued to Corporate Property staff and in November/December 2019 all staff were invited to one of 24 briefing sessions across the county, led by the Director of Corporate Property. A website has also been set up with further information on relevant topic areas, such as TUPE.

There are monthly meetings with the Trade Unions and at key milestones opposition Members have been engaged. In addition, there have been targeted communications with schools and other stakeholders to appraise them of the proposals.

As indicated above, TUPE requires formal consultation with affected staff and Trade Unions, and this commenced in August 2020 with the Trade Unions, and presentations to affected staff in September, with representatives from Vertas also present.

3. Financial Considerations

These are included in Section 2.2.3 Affordability (Financial Case).

4. Legal Considerations

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.

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 Joint Venture companies (the '**JV**') as described in this report and carry out activities for a commercial purpose through such JV companies.

The JV will comply with public law, and in particular, the Public Contracts Regulations 2015. In this regard, VDL, for the purposes of Grounds Maintenance is set up as a 'Teckal' company.

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.

Accordingly, the arrangements with VDL for the inclusion of Grounds Maintenance satisfy these requirements and allow the Council to comply with the Public Contracts Regulations 2015 (PCR) regulation 12. Procurements carried out by VDL are governed by PCR2015.

Furthermore, the transfer of employees will be undertaken in accordance with the requirements of the Transfer of Undertakings (Protection of Employment Regulations (TUPE) 2006 as amended. The staff transferring from the Council will transfer on their existing terms and conditions of employment save for the amendments contained within the measures letter. Changes to terms and conditions can only be made in limited circumstances, including where there is an economic, technical or organisational (ETO) reason which entails changes in the workforce.

5. Human Resources Considerations

As stated above the transfer of employees to VDL is being carried out in accordance with the TUPE Regulations, with formal consultation with transferees and the joint trade unions having taken place.

Work is well underway to support the JVs with payroll development, the continuation of Apprenticeship commitments for transferring staff and other key HR activities. Due diligence information and final lists of transferees will be provided to the JVs no later than 28 days prior to the transfer date.

Activities prior to and following the transfer of the council’s caretaking and cleaning employees to VDL and design employees to CDL on the 1st September have been continually reviewed. Feedback from transferring employees, both positive and negative, has been captured and, where appropriate, processes have been updated and improved for the transfer of Grounds Maintenance staff. This will ensure a smooth transition for those employees to VDL.

There are a number of examples where improvements have been made:

HR resources have been deployed in sufficient time and capacity with the benefit of previous experience to ensure employee data is available, and presented accurately to VDL.

Enquiries about the accuracy of employee data have resulted in repeated checks of all employee data. In turn the VDL payroll for the first transfer was

run in shadow form twice, for surety, prior to the first pay period to ensure that it matched the existing payroll. On both occasions the test runs were accurate. For the second transfer there are on-going discussions with VDL to understand their payroll requirements.

VDL uniforms were previously ordered prior to the Covid-19 lockdown resulting and therefore prior to the deferral of the JV transfer arrangements from 1 April until 1 September. The elapsed period resulted in difficulties with the uniforms which were subsequently resolved. VDL uniforms for Grounds Maintenance employees will be ordered at a time closer to the transfer, thus preventing any problems arising from undue time elapsed between ordering and provision to employees.

The training requirement for employee operation of mobile telephones, that are provided for HR management and communication purposes, was underestimated but issues were resolved with the provision of additional training. This included the retention and use of passwords when logging on. There will be revised training commitments to increase contact with transferring Grounds Maintenance employees to help them access and use their mobile HR and IT solutions operated by VDL.

The preparation of Health and Safety induction is complete and plans are in place to communicate to staff allowing sufficient time to assist with any follow up enquiries following this process.

On 1 September 2020, a Partnership Agreement was agreed with the three Trade Unions. Unlike the previous staff transfers the Partnership Agreement will be understood and available to the employees transferring as part of these proposals. This will give greater surety of the availability of support from the Trade Unions during the transfer.

6. Equality Considerations

An equality impact analysis was completed as part of the OBC and this has been updated. The proposals have been reviewed to consider and reduce any disproportionate impact on protected groups. Monitoring of ongoing adherence to equality policies and procedures will be undertaken through governance/management of the new providers. In addition, ongoing monitoring of impact will be carried out throughout the Corporate Property 2020 programme 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