

## **REPORT OF THE LEADER OF THE COUNTY COUNCIL**

### **PROPOSAL TO ACQUIRE SHARES IN VIA EAST MIDLANDS**

#### **Purpose of the Report**

1. To note the Council has an option to acquire Corserv's shares in Via East Midlands Ltd ('Via').
2. Subject to the S151 Officer (or his nominee, if appropriate) and the Monitoring Officer being satisfied with the final due diligence report, to obtain approval for the Council to acquire Corserv's shares in Via (the 'Shares') on terms that are no less favourable than outlined in the attached Exempt Appendix 2, either (a) by agreement or (b) failing agreement, for the Council (by serving notice of termination under the Services Contract) to exercise the option of purchasing the Shares.
3. To seek approval to the additional increase to the Capital Programme to acquire the Shares owned by Corserv set out in Exempt Appendix 2.
4. To provide delegated approval to the Corporate Director for Place, in consultation with the S151 Officer (or his nominee if appropriate) and the Monitoring Officer to negotiate and finalise the details of any terms negotiated with Corserv, if the acquisition of the Shares is by agreement, provided such terms are on no less favourable terms than outlined in the Exempt Appendix 2.
5. To seek approval for the Council to enter into any legal documentation that is necessary to give effect to these proposals, such terms to be in a form that is approved by the Group Manager for Legal, Democratic and Complaints (or her nominee).
6. For further work to be undertaken to review the future governance arrangements and the Services Contract for Via and report back to the appropriate committee for approval, as necessary.

#### **Information**

##### **Background**

7. Some information relating to this report is not for publication by virtue of Schedule 12A of the Local Government Act 1972 because the information relates to the financial business affairs of Via East Midlands Limited and the Council.

8. Having regard to all the circumstances, on balance the public interest in disclosing the information does not outweigh the reason for exemption because the information would add a limited amount to public understanding of the issues but would significantly prejudice and damage the commercial negotiations and commercial financial position of Via East Midlands Ltd and the Council. The exempt information is set out in the Exempt Appendix 2.
9. On 20 May 2015 Nottinghamshire County Council Policy Committee approved the establishment of a joint venture company to deliver highways and fleet management services. Via East Midlands Ltd (Via) commenced trading on 1 July 2016 as a joint venture between the Council and Corserv, a company wholly-owned by Cornwall Council. The majority of the former Highways Division staff transferred into Via which provides highways and transport maintenance services to the Council and externally. Corserv owns 51% of Via, the Council 49%. Dividends are shared equally. There are two Corserv representatives and two Nottinghamshire County Council senior officers on the company board.
10. The Council selected the public-public joint venture option over the other options (wholly-owned, public-private, outsource or status quo) because it was seen at the time to offer the best mix of control, financial reward and risk. The Council also expected to benefit from Cornwall Council's experience in converting its in-house road maintenance provider into an arms-length company in which public service ethos was allied with commercial edge.
11. To run Via the Highways Division group managers who transferred into the company were supplemented by a new Managing Director, Head of Finance, Head of HR and Communications Manager. Through a collaboration agreement Via currently buys support services, including finance, human resources, procurement and strategic management, from Corserv, and ICT and payroll services from the Council.
12. Via produced a pre-tax profit of £0.5m for the part year 2016-17 and £1.8m for 2017-18. In addition, Medium Term Financial Strategy (MTFS) savings already committed to by the old Highways Division were passed on to Via through budget adjustments of £0.1m in 2016-17, £0.55m in 2017-18 and £0.4m in 2018-19.

### **Reason for acquiring the shares**

13. By opting for a public-public joint venture company rather than a wholly-owned one, the Council de-risked the initial set-up of Via and benefitted from the partner's experience of running a limited liability highways company.
14. The collaboration to establish Via provided the Council with substantial guidance and challenge from CORMAC Solutions Ltd (CSL), Cornwall Council's highways maintenance company, which was the Council's joint venture partner before Corserv was established. Via was required to operate differently from the Council, as a profit-earning, tax-liable company with a profit and loss account and balance sheet. CSL engaged with Nottinghamshire County Council on rigorous work to clarify existing running costs, necessary to build the Company's opening accounts, and was largely responsible for the company's initial business plan. The Company also adopted the financial management system used by CSL. Corserv's cost control methodology and approach to risk were also instructive to NCC.

15. Via is now a functioning entity which has delivered profits in its first two years, against the backdrop of a commitment by the Council to make a £1m revenue saving. Via has also performed well against its key performance targets.
16. Since Via's core responsibility is to deliver services in Nottinghamshire, it is proposed that in the longer term its governance and ownership should sit in Nottinghamshire, notwithstanding the important role played by Cornwall based partners in establishing the company. This will enable Via services to be wholly focused upon delivering high quality highways provision for Nottinghamshire residents, and will allow the Council to ensure that the Company is able to maximise back office efficiencies. Under Nottinghamshire ownership, the Council would also ensure the delivery of a business growth strategy that would see future profits delivered through external business development, with Nottinghamshire commissioned services delivered in the most cost effective way. Under Nottinghamshire ownership all future profits would be retained in Nottinghamshire and would be utilised for the benefit of Nottinghamshire residents.
17. Following positive discussions with Cornwall Council and Corserv, it is anticipated that the Council is likely to be able to bring Via wholly under its ownership and provide governance solely in the interests of Nottinghamshire residents, by agreement.
18. Approval by Policy Committee to the terms outlined in the Exempt Appendix 2 will enable the legal process to proceed to completion. However, in the unlikely event that agreement cannot be finalised, approval is also sought to approve the non-consensual route to acquire the Corserv Shares. This route is described below:
- When Via was set up, a right was granted to the Council to buy Corserv's Shares (under a Call Option) under certain conditions. One of the Call Option conditions arises should the Council opt to terminate the Services Contract with Via. The option to terminate the Services Contract by notice is required to be served no later than three months before the end of financial year 3 (2018/19) or financial year 6 (2021/22), for termination to take effect at the end of financial year 5 (2020/21) or financial year 8 (2023/24).
  - The Council would award Via a new services contract with effect from termination of the current Services Contract.
  - If the Council serves notice to terminate the Services Contract (which would end on 31 March 2021) it has the right to exercise the Call Option during the ensuing two years (i.e. the period between giving notice to terminate the Services Contract and the contract ending), requiring Corserv to sell its Via Shares to the Council. The completion date for the Share transfer would be shortly following termination of the Services Contract.
  - Payment for the Shares would be made on the date of completion of the Call Option, the value having either been agreed between the two parties or determined by an independent valuer.
  - The contractual opportunity to begin the process of obtaining full control of Via will not arise after December 2018 for another two years, unless a company board deadlock or a company default occurs (neither of which is within the Council's control).

## **Via Support Services Transition**

19. A consequence of the Share transfer will be the legal requirement for Via to reprocure any support services that are currently provided by Corserv. There is likely to be a transitional period during which the Company may continue receiving services from Corserv. The transfer of shares has no implications for the ICT and payroll services currently provided to Via by the Council.

## **Due Diligence**

20. The Council is undertaking a due diligence exercise on Via East Midlands, appropriate to the Council's position as a 49% owner of the company with two senior officers on the Company board. This is to identify any risks associated with these proposals. Further details of the due diligence work undertaken is addressed in Appendix 1.

## **Future Governance**

21. Proposals for the future governance of Via and recommendations for any other beneficial changes will be taken to the appropriate committee in due course.

## **Other Options Considered**

22. The Council could do nothing and continue as a joint owner of Via, foregoing the opportunity to govern the company solely in the interest of Nottinghamshire and retain all future profits in Nottinghamshire.

## **Reason/s for Recommendation/s**

23. The reasons are specified in paragraphs 13-16 above.

## **Statutory and Policy Implications**

24. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

## **Equalities Impact Assessment**

25. An Equalities Impact Assessment was undertaken during the set up of Via. The need for a new EqIA has been considered and found to be unnecessary on the basis that the change of ownership of the company will not impact on issues of equality.

## **Data Protection and Information Governance**

26. Any data protection and information governance implications will be considered through the Council's data protection impact assessment process; none have been identified to date.

### **Financial Implications**

27. The financial implications are set out in the Exempt Appendix 2.

### **RECOMMENDATION/S**

That approval is given for the Council to :

28. Subject to the S151 Officer (or his nominee) and the Monitoring Officer being satisfied with the final due diligence report for acquisition of the Corserv Shares on no less favourable terms than set out in the Exempt Appendix 2, to either (a) acquire the Corserv Shares by agreement, or (b) failing such agreement, for the Council (by serving notice of termination under the Services Contract) to exercise the option of purchasing the Corserv Shares in Via.
29. Make an additional increase to the Capital Programme to acquire the Shares owned by Corserv set out in Exempt Appendix 2.
30. Provide delegated approval to the Corporate Director for Place, in consultation with the S151 Officer (or his nominee if appropriate) and the Monitoring Officer to negotiate and finalise the details of any terms which are no less favourable than set out in the Exempt Appendix 2, if the acquisition of the Shares is by agreement.
31. Enter into any legal documentation that is necessary to give effect to these proposals, such terms to be in a form that is approved by the Group Manager for Legal, Democratic and Complaints (or her nominee).
32. Undertake further work to review the future governance arrangements and the Services Contract for Via and report back to the appropriate committee for approval, as necessary.

**Councillor Mrs Kay Cutts MBE**  
**Leader of the Council**

**For any enquiries about this report please contact:** Gary Woodhouse, Programmes & Projects Team      Tel: 0115 97 73494

### **Constitutional Comments (SSR 19/10/2018))**

33. The recommendations for this report fall within the scope of decisions which may be approved by Policy Committee.

### **Financial Comments (KRP 23/10/2018)**

34. The financial implications of the proposed share purchase are set out in the Exempt Appendix 2. The cost of legal advice is estimated at £16,000 and a contingency allocation will be requested for this amount.

### **HR Comments (JP)**

35. There are no HR implications identified in this report. The Business Service Centre will continue to deliver payroll services to VIA.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

### **Electoral Division(s) and Member(s) Affected**

- All