

REPORT OF CORPORATE DIRECTOR, PLACE VIA GOVERNANCE REVIEW AND APPOINTMENT OF DIRECTORS

Purpose of the Report

1. The purpose of this report is to seek approval to replace the current nominated directors of Via East Midlands Ltd with the new nominated directors as set out in paragraph 7 of the report and to update members on the review of governance arrangements.

Information

2. 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 owned 51% of Via, the Council 49%. Dividends were shared equally. There were two Corserv representatives and two Nottinghamshire County Council senior officers on the company board.
3. At Policy Committee on 14th November 2018 approval was given for the Council to acquire Corserv's shares in Via (subject to conditions) and also for further work to be undertaken to review the future governance arrangements and to then report back to the appropriate committee for approval, as necessary.
4. The purchase of the Corserv shares in Via was completed on 29th March 2019. At that time the two Corserv representatives left the board and the board is currently made up of two Nottinghamshire County Council senior officers and an independent director acting as chairman of the board. The company adopted new interim articles of association from 14th May 2019.

Review of Governance

5. Legal advice has been sought around the future Governance model and the composition of the board, with key factors being the exercise of adequate control of the Company and care needed in avoiding potential conflict of interests of appointees from within the Council as officers or County Councillors. As a minimum, any structure agreed will need to ensure that NCC maintains sufficient control for the purposes of regulation 12 of the Public Contract Regulations 2015, so that the company model remains legally valid.

6. Mindful of the legal advice, the proposed structure of company directors is to have two senior County Council officer representatives, two County Councillor representatives, the Managing Director of Via and an Independent Chair, making the total number of directors six. It is proposed that the new board structure is implemented from 1st October 2019, or as soon after as possible.
7. The specific nominees for board membership from the County Council are: Councillor Reg Adair (Deputy Leader), Councillor John Ogle (Vice Chair of Finance and Major Projects Committee), Derek Highton (Service Director Place) and Keith Palframan (Group Manager Finance). The Company has the power to make these appointments by virtue of article 18.1 of its current articles of association. This article provides that the Council may at any time appoint any person to be a director or remove a director from office by the nominated representative of the Council giving written notice to the Company.
8. The board will look to appoint sub groups to the main board and these are envisaged to be Finance, Risk, Audit and Performance (FRAP) and Innovation and Environment. The nature of the sub-groups and appointments to them will be a matter for the main company board.
9. It is proposed that Via lead on the recruitment of the Independent Chair of the Board, with NCC company board members being part of the panel for the recruitment process.
10. It is envisaged that the new company board will, in conjunction with the County Council, review the company articles of association as one of the early tasks with a view to having new articles in place by 1st December 2019. The company board and the Council will also seek to agree a sole shareholder agreement by the same date, which will govern elements of the relationship that are commercially sensitive and should not be included in the articles of association. This sole shareholder agreement will contain a list of matters reserved for Council approval together with a delegation matrix, which will be a key document governing the levels at which various decisions in relation to the company are made.

Contract Management and Review of Contract Arrangements

11. Management of the highways and fleet services provided by Via to the County Council will continue to take place through the existing contract management arrangements within the Place Department with monthly contract management meetings, regular performance reporting and reports to Communities and Place Committee. This activity sits within the remit of the Group Manager Highways and Transport.
12. A review of the contract and service delivery arrangements is taking place, in line with the approval from the 14th November 2018 Policy Committee, with the outcomes of this review intended to be reported to and considered by October's Communities and Place Committee.

Other Options Considered

13. The option to continue with the board structure at present was considered, but this is not recommended as the board capacity needs to be increased following the purchase of the Corserv shares and the departure of the Corserv influence on the company board.

Reasons for Recommendations

14. The recommendations accord with the decision on the 14th November 2018 Policy Committee meeting and the proposals provide a fit for purpose governance structure which meet the legal requirements for County Council control of the Company in line with the Public Contract Regulations.

Statutory and Policy Implications

15. The proposed board structure fulfils the legal requirements for a company of this nature under the Public Contract Regulations.

Financial Implications

16. There are no financial implications for the County Council. The cost of the independent chair will continue to be met by Via East Midlands Ltd.

RECOMMENDATION/S

1. It is **recommended** that Committee approves the replacement of the current Council nominated directors of Via East Midlands Ltd with the new nominated directors as set out in paragraph 7 of the report

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Constitutional Comments (SSR – 22/08/2019)

17. This decision falls within the scope of decisions which may be approved by Policy Committee

Financial Comments [DJK – 19/08/2019]

18. There is no impact on NCC revenue or capital from the decisions reached in this report. The current invoicing arrangements with VIA will continue unabated.

Background Papers

Nottinghamshire County Council Policy Committee 14th November 2018 – “Proposal to acquire shares in Via East Midlands”