

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO CABINET

15 MAY 2018

REPORT OF THE CORPORATE DIRECTOR COMMUNITIES

CAPITA GLAMORGAN CONSULTANCY LIMITED

1. Purpose of Report

1.1 The purpose of this report is to seek Cabinet approval to:

1.1.1 appoint the post holder of Head of Service for Adult Social Care to replace the Corporate Director of Communities as Director of the Company, to be confirmed at the next Board meeting of the Company.

1.1.2 delegate to the Chief Executive Officer the powers to agree and execute the proposed amendments to the Articles of Association of the Company in consultation with the Head of Finance on behalf of the Council and to enter into the Variation Agreement to amend the Joint Venture Agreement and Services Agreement.

1.1.3 delegates to the Chief Executive Officer the powers to agree and execute any future amendments to the Articles of Association of the Company in consultation with the Head of Finance on behalf of the Council and to enter into any future Variation Agreements to amend the provisions of the legal documentation entered into by the Council regarding the establishment of the Joint Venture Company and where the Chief Executive Officer deems it necessary, the Chief Executive Officer shall report to Cabinet on such amendments to the Articles of Association or such Variation Agreements.

1.1.4 delegate any shareholder rights (including voting rights) of the Council and other powers of control available to the Council as a shareholder in the Company as specified in the Joint Venture Agreement and (Articles of Association) where they are not specified in the agreement as being exercisable by the Council's appointed Director, to the Chief Executive Officer in consultation with the Head of Finance, including those shareholder rights referred to as Shareholder Protection rights in the Joint Venture Agreement.

1.1.5 delegate authority to the Chief Executive Officer in consultation with the Head of Finance where any such consents will have any financial ramifications for the Council to give any consents required from the Council to ensure any statutory compliance by the Company.

2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

2.1 The report links to the Council's priority of making better use of resources by utilising a joint venture company to provide services that the Council can no longer provide wholly on its own. The Capita Joint Venture (JV) demonstrates collaborative partnership working between local authorities and the private sector in developing and delivering services. It also supports the Council's priority of supporting a

successful economy by retaining quality jobs in the area and having the expertise available locally to tackle highway, transportation and regeneration projects in the region.

3. Background

3.1 Capita Glamorgan Consultancy is a Joint Venture Company between Capita Symonds Ltd (who changed its name to Capita Property and Infrastructure Limited by a change of name registered on 1st October 2013), Rhondda Cynon Taf, Merthyr Tydfil and Bridgend County Borough Councils. Cabinet previously approved the formation of the Joint Venture Company following a European compliant procurement exercise. The purpose of setting up the Joint Venture Company was to establish, operate and enable the three Local Authorities to purchase services from the Joint Venture Company. Its business (unless otherwise agreed in accordance with the terms of the Joint Venture Agreement) is the provision of engineering design and consultancy services, including in the fields of highways and transportation engineering, project management and construction management. Capita Glamorgan Consultancy Limited commenced trading with effect from 1st September 2008 and was appointed on a 15 year contract that ends on 31st August 2023. The Joint Venture Company now trades under the brand name 'Redstart' following changes made in 2017.

3.2 A significant number of staff transferred from each local authority to the new Joint Venture Company in 2008 through TUPE arrangements. A suite of legal documentation was entered into which set out the basis for how the Joint Venture Company would operate including a Joint Venture Agreement, Asset Transfer Agreement, Service Agreement and a Pensions Admissions Agreement all dated or took effect on 1st September 2008. In addition, there were also Articles of Association which set out the shareholdings in the Joint Venture Company. Cabinet gave authority to the Corporate Director of Operational and Partnership Services to enter into the above Agreements, along with the Memorandum and Articles, Memorandum of Agreement and any other related agreements to enable the Company to be established.

3.3 Its ownership structure is: 51% of shares are owned by Capita, 28% by Rhondda Cynon Taf, 15% by Bridgend and 6% by Merthyr, based on the relative sizes of the three authorities. The key outputs of the Joint Venture Company were proposed to be:

- Creation of an imaginative, innovative and dynamic new organisation
- Positive and productive collaboration between the parties and the introduction of recognised industry best practice
- Shared vision and design to achieve the aims and objectives of the participating authorities
- Retention of high quality technical jobs and the associated skills and experience within the area and available to authorities
- Potential for subsequent expansion of the organisation

3.4 The Board of the Company is made up of up to seven Directors. Capita are entitled to appoint four persons as Directors. Any person appointed by Capita is designated as an 'A' Director. Each Local Authority is entitled to appoint a Director each and

any person appointed by the Local authorities is designated as a 'B' Director. An operational service delivery group sits below the Board dealing with project and operational business matters. Again each local authority is represented on the operational service delivery group. At elected member level a Joint Committee was established known as the Capita Glamorgan Limited Joint Committee to review the progress of the JV Company. This consists of 6 elected members from RCT, 5 from Bridgend and 4 from Merthyr and is scheduled to meet twice per municipal year.

- 3.5 Under legislation, Directors have a number of duties which include: a duty to exercise reasonable care, skill and diligence, duty to avoid conflicts of interests and duty to act within powers.
- 3.6 Historically the role of the Council's Director on the Joint Venture Board for Bridgend has been held by either the Director of Communities or the Head of Street Scene/ Neighbourhood Services. The role is currently held by the Corporate Director of Communities. However, over recent years both Rhondda Cynon Taf and Merthyr Councils have taken the view that the Director should be someone divorced from the day to day operation and procurement of highway, property and engineering type services, and therefore appointed officers with no direct connection with those services.

4. Current Situation / Proposal

- 4.1 In February 2016, it was agreed that the Articles of Association need to be amended. The amendments to the Articles of Association have now been negotiated and agreed which has also led to amendments to the Joint Venture Agreement and Services Agreement. A Variation Agreement has been agreed and now needs to be entered into by all parties which deals with the amendments to the aforementioned documentation. It is proposed that Cabinet delegates to the Chief Executive Officer the power to enter into this Variation Agreement.
- 4.2 The Corporate Director of Communities has been the Council's nominated Director on the Joint Venture Board for the last 4 to 5 years. The Communities Directorate is primarily the one that would commission highways, engineering and property type consultancy services. In view of this potential conflict of interest (as discussed in Paragraph 3.6 of this report), it is proposed that an appropriate senior officer with less direct involvement in these services should be nominated as the Council's Director on the Joint Venture Board moving forward. It is proposed that the Head of Adult Social Care is approved by Cabinet as the nominated Director and replaces the Corporate Director of Communities, subject to ratification at the next Joint Venture Board meeting.
- 4.3 Capita has proposed various amendments to the legal documentation which established the Joint Venture Company. As that documentation was approved by Cabinet then in order to agree the necessary amendments, Cabinet approval is required. It would seem more sensible moving forward that if any further changes were required that authority was delegated to the Chief Executive Officer, in consultation with the Head of Finance, to approve them. This is justified because generally the type of changes likely to be proposed to the agreement are minor and small in impact and relate to changes in procedures or circumstances. If however there was anything more fundamental or significant impacting on the Council, or the

future of the JV Company, the Chief Executive would as a matter of course report that matter separately to Cabinet for approval.

- 4.4 Similarly it is proposed that the Council's shareholder rights (including voting rights) and other powers of control available to the Council as shareholder in the company are delegated to the Chief Executive Officer in consultation with the Head of Finance, where they are not specified in the Joint Venture Agreement and Articles of Association as being exercisable by the Council's nominated Director.
- 4.5 Finally, any consents required from the Council to ensure statutory compliance by the company be delegated to the Chief Executive Officer, in consultation with the Head of Finance where there may be any financial ramifications for the Council.

5. Effect upon Policy Framework & Procedure Rules

- 5.1 There is no impact on the Council's policy framework and procedure rules.

6. Equality Impact Assessment

- 6.1 There are no EIA implications as a result of this report.

7. Financial Implications

- 7.1 There are no direct financial implications as a result of this report

8. Recommendations

- 8.1 It is recommended that Cabinet:
 - 8.1.1 approves the appointment of the post holder of Head of Service for Adult Social Care to replace the Corporate Director of Communities as Director of the Company, to be confirmed at the next Board meeting of the Company.
 - 8.1.2 delegates to the Chief Executive Officer the powers to agree and execute the proposed amendments to the Articles of Association of the Company in consultation with the Head of Finance on behalf of the Council and to enter into the Variation Agreement to amend the Joint Venture Agreement and Services Agreement.
 - 8.1.3 delegates to the Chief Executive Officer the powers to agree and execute any future amendments to the Articles of Association of the Company in consultation with the Head of Finance on behalf of the Council and to enter into any future Variation Agreements to amend the provisions of the legal documentation entered into by the Council regarding the establishment of the Joint Venture Company and where the Chief Executive Officer deems it necessary, the Chief Executive Officer shall report to Cabinet on such amendments to the Articles of Association or such Variation Agreements.
 - 8.1.4 delegates any shareholder rights (including voting rights) of the Council and other powers of control available to the Council as a shareholder in the Company as specified in the Joint Venture Agreement and (Articles of Association) where they are not specified in the agreement as being exercisable by the Council's appointed Director, to the Chief Executive Officer in consultation with the Head of Finance,

including those shareholder rights referred to as Shareholder Protection rights in the Joint Venture Agreement.

8.1.5 delegate authority to the Chief Executive Officer in consultation with the Head of Finance where any such consents will have any financial ramifications for the Council to give any consents required from the Council to ensure any statutory compliance by the Company.

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May 2018

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Background documents: None