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**A separate report is submitted in the private part of the agenda in respect of this item in accordance with Schedule 12A of the Local Government Act 1972 as amended. The grounds for privacy are that it contains information relating to the financial and business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.**

Cabinet

09 April 2019

**Name of Cabinet Member:**

Cabinet Member for Strategic Finance and Resources – Councillor J Mutton

**Director Approving Submission of the report:**

Deputy Chief Executive (People)

**Ward(s) affected:**

All

**Title:**

Network Lease Agreement Extension – Digital Strategy

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**Is this a key decision?**

Yes - This decision has financial implications exceeding £0.5m.

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**Executive Summary:**

Prior to 2014 the Council had developed and installed a 140km Metropolitan Area Network (MAN) of fibre across the city. This was to connect council sites and schools to the council's core network and provide services such as internet connectivity. In 2014 the MAN was sold to City Fibre following approval at Council on 10th April 2014 (minute 162/13 refers). The Council received a capital receipt for the sale as well as retaining a right of use ("the Network Lease Agreement") over the network for the term of agreement ending in June 2029.

In 2018 City Fibre announced an investment of £60m into the City to provide Fibre to the Home in a partnership with Vodafone – providing internet connectivity for residents.

Due to the economy of scale derived from the Fibre to the Home partnership with Vodafone, City Fibre have also submitted a proposal to the Council for an expansion and extension of the council's existing lease agreement for the network.

A fibre network is important to the council for many reasons. As an organisation it is a fundamental part of our computer network, connecting all our buildings to the relevant systems, files and the internet. Having a high speed, resilient fibre network for the organisation is a building block for the digital transformation of the council which directly supports the aims and objectives of the One Coventry programme.

As stated in the council's Digital Coventry strategy - having access to high speed internet is now often described as the fourth utility – and is an important consideration for residents and businesses when considering living, working or investing in a city. In supporting the City Fibre Fibre to the Home programme residents will have the potential to access very high quality and speed internet connections. This has onwards benefit to us as an organisation as it opens up more possibilities for greater digital engagement with our citizens.

**Recommendations:**

Cabinet are requested to:

- 1) Approve that the terms of the current Network Lease Agreement with City Fibre are amended as detailed in the private report.
- 2) Delegate authority to the Deputy Chief Executive (People), following consultation with the Director of Finance and Corporate Services, to undertake the necessary due diligence and to enter into the necessary legal agreement to secure the amendments to the Network Lease Agreement with City Fibre.

**List of Appendices included:**

None

**Background papers:**

None

**Other useful documents**

Cabinet and Full Council report dated 10<sup>th</sup> April 2014 – Metropolitan Area Network (MAN) Disposal

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## **Report title: Network Lease Agreement Extension – Digital Strategy**

### **1. Context (or background)**

- 1.1 Prior to 2014 the Council had developed and installed a 140km Metropolitan Area Network (MAN) of fibre across the city. This was to connect council sites and schools to the council's core network and provide services such as internet connectivity. In 2014 the MAN was sold to City Fibre following approval at Council on 10th April 2014 (minute 162/13 refers). The Council received a capital receipt for the sale as well as retaining a right of use ("the Network Lease Agreement") over the network for the term of agreement ending in June 2029.
- 1.2 When the network was sold, City Fibre's business model was focused on business connections. The aspiration was for City Fibre to expand the network further to businesses. The terms of the current lease are set out in the private section of the report.
- 1.3 In 2018, City Fibre announced an investment of £60m into the City to provide Fibre to the Home in a partnership with Vodafone – providing internet connectivity for residents.
- 1.4 Details regarding the financial aspects of the current lease agreement are contained in the associated private report due to its commercial sensitivity.
- 1.5 The council's current lease includes a right of use of 330 connections (largely these are the connections that were sold to City Fibre but does include new sites like One Friargate).
- 1.6 At the end of the current lease agreement, the council's network connections with City Fibre will be charged at the commercial/market rate at that time. At present this is £350 per month per connection. Therefore, for the council's current 330 connections, the authority would need to pay circa £1.4m a year to use the network at its current size.
- 1.7 Due to the economy of scale derived from the Fibre to Home partnership with Vodafone, City Fibre have also submitted a proposal to the Council for an expansion and extension of the council's existing lease agreement for the network.

### **2. Options considered and recommended proposal**

#### **2.1 Option 1: Do nothing (Not recommended)**

- 2.2 The council could consider the option of not proceeding with the proposed extension and expansion. At the end of the current lease agreement, the council's network connections with City Fibre will be charged at £350 per month per connection. Therefore, for the council's current 330 connections, the authority would need to pay circa £1.4m a year to use the network at its current size.

#### **2.3 Option 2: Proceed with proposed extension and expansion (This is the recommended option)**

- 2.4 The council could consider the network lease extension and expansion proposal that has been presented by City Fibre.
- 2.5 Full details regarding the proposal are contained in the associated private report due to its commercial sensitivity however a summary of the proposal includes:
  - The council's lease will be extended for an additional 16 years to run until 2045.

- The council currently pay a surcharge of between 25% - 50% for any moves, adds or changes to any connections on the network – this was part of the original lease agreement. As part of this new proposal the surcharge is reduced to a flat rate of 10% for any moves add or changes. This means that any changes or moves required to fibre as part of any of the ongoing development of the city will attract a lower cost.

2.6 The resourcing for this can be met from currently approved resources. Further details of the financial aspect relating to the lease extension are set out in the private section of this report.

### **3. Results of consultation undertaken**

3.1 Not required

### **4. Timetable for implementing this decision**

4.1 If approved by Cabinet, the current City Fibre network lease agreement will be amended to include the details of the extension and expansion by the end of April 2019.

4.2 The work to provide all of the additional connections to the City Council will be complete by the end of the City Fibre Fibre to the Home programme which is currently scheduled for completion Quarter 3 of 2021.

### **5. Comments from the Director of Finance and Corporate Services**

#### **5.1 Financial implications**

The resourcing for this proposal can be met from currently approved resources. The detailed financial implications are included in the private section of the report.

#### **5.2 Legal implications**

##### **State Aid**

- 5.2.1 Article 107 (1) of the Treaty on the Functioning of the European Union ("Treaty") states "...any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."
- 5.2.2 The Treaty does not define in any more detail what constitutes state aid. However, the term has been interpreted to include the provision of grants, loans on favourable terms, the transfer of assets at less than the market rate, and tax advantages. Not all state aid is unlawful, and it is possible to justify some types of financial assistance under pre - approved mechanisms.
- 5.2.3 It is possible that a third party (and/or European Commission) who has not received state aid could bring legal proceedings in the UK courts for damages. Such a claim could, for example, be brought by a competitor who feels it has suffered loss because it has not been given aid.
- 5.2.4 A recipient can be ordered to repay all aid received over a ten-year period if the European Commission finds it has been provided unlawfully. It is no defence that repayment may force the recipient into insolvency.

- 5.2.5 Market Economy Investor Principle ("MEIP") can provide an appropriate mechanism to potentially justify aid to any third party following the Council's investment into the proposal by City Fibre. The investment does not automatically constitute state aid if the Council carries out prior due diligence that demonstrates that investments are likely to generate sufficiently high returns and that a private prudent investor would have made the same investment. i.e. the Council can invest in the proposal in return for an appropriate commercial return which would satisfy the expectations of a private prudent investor.
- 5.2.6 The risk of state aid is not dependent upon whether the financial return is actually ever achieved by the Council, as whether state aid exists or not is assessed at the time of the funding advanced, but there must be a realistic prospect of the financial return being achieved by the Council.
- 5.2.7 The Council has undertaken external specialist state aid advice which in summary concludes that the commercial transaction proposed by City Fibre does satisfy the MEIP test as the proposal shows an appropriate commercial return which would satisfy the expectations of a private prudent investor.

### **Procurement**

- 5.2.8 As this is relation to fibre there are specific exclusions under Regulation (8) of the Public Contracts Regulations 2015 and Regulation (11) of the Concession Contracts Regulations 2016 which states it does not apply to public contracts, or design contests, for the principal purpose of permitting contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications services.
- 5.2.9 In addition, the City Fibre proposal is a property transaction as it only relates to the extension of the current Network Lease Agreement. The procurement rules do not apply to grant of a lease where building obligations do not arise, since nothing is being procured.

## **6. Other implications**

### **6.1 How will this contribute to the Council Plan ([www.coventry.gov.uk/councilplan/](http://www.coventry.gov.uk/councilplan/))?**

Expanding and extending the lease of a full fibre network supports the Council Plan, in particular the "Globally Connected" and "Making the most of our assets" themes.

### **6.2 How is risk being managed?**

The Council has incorporated a risk management strategy in its governance procedures. The Council will follow this strategy in order to identify and manage the risks associated with this proposal.

### **6.3 What is the impact on the organisation?**

This proposal provides longer term certainty with regards to the organisations core ICT network. This network enables all of the council building to access the essential and relevant digital resources such as systems, computer files and the internet.

### **6.4 Equalities / EIA**

No equality impact assessment has been carried out as the recommendations do not constitute a change in service or policy.

## 6.5 Implications for (or impact on) the environment

None

## 6.6 Implications for partner organisations?

None

### Report author(s):

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