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Special Cabinet

Agenda

Date:	**Monday, 24th March, 2014**
Time:	**11.30 am**
Venue:	**Committee Suite 1, 2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ**

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

   To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

   In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the meeting. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

   Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

Contact: Paul Mountford, Democratic Services Officer
Tel: 01270 686472
E-Mail: paul.mountford@cheshireeast.gov.uk

4. **Questions to Cabinet Members**

A period of 20 minutes is allocated for questions to be put to Cabinet Members by members of the Council. Notice of questions need not be given in advance of the meeting. Questions must relate to the powers, duties or responsibilities of the Cabinet. Questions put to Cabinet Members must relate to their portfolio responsibilities.

The Leader will determine how Cabinet question time should be allocated where there are a number of Members wishing to ask questions. Where a question relates to a matter which appears on the agenda, the Leader may allow the question to be asked at the beginning of consideration of that item.

5. **Minutes of Previous Meeting** (Pages 1 - 12)

To approve the minutes of the meeting held on 4th March 2014.

6. **Options Appraisal on the future of Alderley Park** (Pages 13 - 40)

To note a decision for the Council to invest in Alderley Park to enable the Council to take an active role in shaping the future development of this strategic asset.

7. **Cheshire East Ltd - Group Structure and Governance Arrangements** (Pages 41 - 54)

To consider a report setting out the proposed structure and mandate for creating a new wholly-owned Council company – Cheshire East Ltd; and to seek approval for the governance structures under which the group will operate.

8. **Decisions for Alternative Service Delivery Vehicles** (Pages 55 - 74)

To consider a report seeking approval of a number of operational decisions regarding the new Alternative Service Delivery Vehicles.

THERE ARE NO PART 2 REPORTS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Cabinet**
held on Tuesday, 4th March, 2014 at Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Jones (Chairman)
Councillor D Brown (Vice-Chairman)

Councillors Rachel Bailey, J Clowes, J P Findlow, L Gilbert, B Moran, P Raynes and D Topping

Members in Attendance
Councillors Rhoda Bailey, D Brickhill, K Edwards, R Fletcher, M Grant, P Groves, S Hogben, W Livesley, R Menlove, D Newton, L Smetham and A Thwaite

Officers in Attendance
Mike Suarez, Peter Bates, Lorraine Butcher, Anita Bradley, Caroline Simpson, Heather Grimbaldeston, and Paul Mountford

Apologies
Councillors D Stockton and L Brown (absent due to Council business)

134 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

135 **PUBLIC SPEAKING TIME/OPEN SESSION**

There were no members of the public wishing to speak.

136 **QUESTIONS TO CABINET MEMBERS**

Councillor K Edwards asked where the local plan policies dealt specifically with the issues of linking green belt to strengthen communities and the use of CIL and S106 agreements to strengthen community infrastructure. The Deputy Leader of the Council responded that both issues were dealt with on page 161 of the Council papers and page 91 of the Local Plan. Councillor L Gilbert, Portfolio Holder for Communities and Regulatory Services, added that, independently of the Local Plan, the Council had an energetic localism agenda and would be bringing forward a range of proposals for strengthening local communities.

Councillor D Brickhill referred to the poor quality of the food provided at the last Council meeting compared to that provided at a recent ASPIRE event at Crewe Hall. He also expressed concern that the food had been left out all day, which had implications for health and hygiene. The Leader acknowledged the concerns and gave an assurance that the catering arrangements for Council meetings would be reviewed.

Councillor W Livesley sought assurances that the Council would give no further financial support to Macclesfield Town Football Club in the event that the Club decided not to become a community interest company, as appeared to be the case. The Leader responded that the Council had saved the Club and he was disappointed with the Club's decision. The Council would continue to support sport throughout the Borough, but would not use its financial resources or its assets to support private sports clubs.

Councillor Livesley also referred to the problems schools in the Bollington area were having with their banking arrangements following the Council's recent change of Bank from the Co-op to Barclays. The Finance Portfolio Holder invited Councillor Livesley to discuss the matter with him after the meeting.

137 **MINUTES OF PREVIOUS MEETING**

RESOLVED

That the minutes of the meeting held on 4th February 2014 be approved as a correct record.

138 **MACCLESFIELD TOWN CENTRE REGENERATION: THE CHESHIRE EAST BOROUGH COUNCIL (CHURCHILL WAY, MACCLESFIELD) COMPULSORY PURCHASE ORDER 2014 (FORWARD PLAN REF. CE 13/14-41)**

Cabinet considered a report on the proposed acquisition of land to facilitate the regeneration of Macclesfield Town Centre.

The proposed redevelopment provided an opportunity to enhance the attractiveness of the town centre as a retail and leisure destination. The scheme included a department store, cinema, retail units, office and community space, residential, new town square and a multi-storey car park.

The redevelopment required both Council land and land/properties in private ownership. To facilitate the delivery of the scheme, land not in the Council's ownership needed to be acquired. The report therefore sought authority to make a compulsory purchase order if necessary in order to expedite the land acquisition. Negotiations were continuing with private landowners.

The Finance Portfolio Holder advised that agreement had already been reached in respect of 95% of the land required for the scheme and that the compulsory purchase order would apply to a relatively small area. The land acquired under the CPO would be valued independently.

As part of the process, an equality impact assessment had been carried out details of which had been circulated in a supplementary paper.

RESOLVED

That Cabinet

1. approves the making of a CPO pursuant to section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) to acquire land and interests in respect of the land edged red and shaded pink on the plan attached to the report and pursuant to Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 in respect of the acquisition of new rights within the land edged red and shaded blue on the plan for the purpose of facilitating the development, redevelopment and improvement of the land by way of a mixed use scheme comprising retail, leisure and office, community uses, residential dwellings, car parking, town squares and associated highway and public realm works;

2. approves the submission of the CPO to the Secretary of State for confirmation;

3. gives authority to the Chief Executive and the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder to take all appropriate actions in this matter including:

   (a) the making, publication and service of notice of making of the CPO;

   (b) the submission of the CPO to the Secretary of State for confirmation;

   (c) taking all necessary steps to secure the confirmation of the CPO, including promoting the Council's case at any public local inquiry should one be required;

   (d) proceeding with the negotiation, agreement and execution (if appropriate) of legal agreements which are required to secure the land including the acquisition by agreement of interests in advance of, and subsequent to, the making of the CPO and payment of appropriate compensation;

   (e) in consultation with the Assets Manager, negotiating the acquisition of all interests and rights within the CPO and rights and interests affected by the CPO either by agreement or compulsorily and, where appropriate, to agree terms for relocation;

   (f) approving agreements and undertakings with the owners of any interest in the CPO and any objectors to the confirmation of the

CPO setting out the terms for the withdrawal of objections to the CPO.

(g) subject to confirmation of the CPO, acquiring title and/or taking possession of the land to be acquired under the CPO including, as appropriate, by:

- serving Notice of Intention to Execute a General Vesting Declaration under the provisions of Section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- executing a General Vesting Declaration (or General Vesting Declarations) in respect of the land to be acquired under the CPO; and
- serving Notice to Treat and Notice of Entry in respect of any interest comprised within the CPO; and
- publishing and serving all necessary notices in connection therewith as appropriate;

(h) in the event that the question of compensation is referred to the Upper Tribunal (Lands Chamber), taking all the necessary steps in relation thereto; and

(i) appointing appropriate consultants if necessary to assist and advise in regard the above.

4. delegates to the Director of Prosperity and Economic Growth the power to:

(a) propose the making of amendment orders to remove the Churchill Way car park, Duke Street car park and Exchange Street car park from the list of parking places within Macclesfield as set out in the Schedule to the Macclesfield Borough Council (Off Street Parking Places) (Civil Enforcement and Consolidation) Order 2008 or any replacement order to enable development to proceed in accordance with the developer's approved programme;

(b) advertise the proposed orders and to invite consultation responses in accordance with statutory requirements;

(c) consider consultation responses and to determine whether to make the orders;

5. approves the making of an application pursuant to section 19 of the Acquisition of Land Act 1981 to the Secretary of State for a certificate which authorises the compulsory acquisition of land that comprises public open space and to take all necessary steps to procure such a certificate, including promoting the Council's case at a public inquiry should one be necessary; and

6. approves, as a matter of principle, the appropriation of land at Churchill Way to planning purposes in order to facilitate the proposed redevelopment of the land for a mixed use scheme comprising retail, leisure and office, community uses, residential dwellings, car parking, town squares and associated highway and public realm works, and with the intention that Section 237 of the Town and Country Planning Act 1990 may be relied upon to override all covenants, easements and other relevant rights benefitting third parties which affect the land, in the event that such interests cannot be acquired by negotiation.

139 **NOTICE OF MOTION - GARDEN WASTE**

Cabinet considered the following motion which had been moved by Councillor D Brickhill and seconded by Councillor A Moran at the Council meeting on 13th October 2013 and referred to Cabinet for consideration:

> "This Council is critical of the recent decisions made concerning the collection of recyclable garden waste."

A review of options surrounding efficiencies within the garden waste service had identified that the Council could either extend the suspension period or introduce a chargeable garden waste service. Extending the suspension period enabled reduced agency costs and lower fleet costs. The Council was not in favour of introducing charges for the collection of garden waste.

Councillor D Brickhill attended the meeting and was afforded the opportunity to speak in relation to the motion. In response to comments made by Councillor Brickhill, the Leader undertook to look into the cost of the leaflet advising households of the change in service, as well as the temperatures in Council offices.

RESOLVED

That Cabinet refutes the motion presented on the basis that this was a strategic decision based on alternative delivery options that avoided the need to introduce charges for the collection of green waste.

140 **CHESHIRE EAST WASTE STRATEGY 2030**

Cabinet considered a report on the development of a waste strategy for Cheshire East.

The strategy would drive change in the treatment of waste, utilising it as a resource, delivering leading environmental performance and innovation for the residents of Cheshire East. The strategy would aim to utilise waste for energy production, removing the need for landfill and helping to alleviate fuel poverty.

As part of the authority's transition to providing services through alternative service delivery vehicles the Council would deliver its strategy through the creation of ANSA Environmental Services Ltd, a wholly-owned company of the Council.

RESOLVED

That

1. the appended high level Waste Strategy Objectives set out in Appendix 1 to the report be approved;

2. delegated authority be given to the Head of Environmental Protection and Enhancement acting in consultation with the Head of Legal Services, the Monitoring Officer and the Portfolio Holder for Environment, to develop a waste strategy for Cheshire East, based on the high level objectives in Appendix 1 and developed into a waste strategy document for Cheshire East;

3. delegated authority be given to the Head of Environmental Protection and Enhancement acting in consultation with the Head of Legal Services, the Monitoring Officer and the Portfolio Holder for Environment, to procure technical advisors and, in parallel with the development of the waste strategy, to scope and carry out a Strategic Environmental Assessment (SEA), including carrying out a public consultation on the waste strategy and the SEA utilising electronic media, the citizens' panel and public road shows;

4. Cabinet consider the adoption of the waste strategy in Spring/Summer 2014.

141 **ALL CHANGE FOR CREWE - HIGH GROWTH CITY - CREWE GREEN LINK ROAD SOUTH PHASE 2 (FORWARD PLAN REF. CE 13/14-61)**

Cabinet considered a report seeking approval to submit the Final Funding application to the Department of Transport to release funding towards the construction of the Crewe Green Link Road South scheme.

Crewe Green Link Road South was a key project within the Council's major programme of new strategic infrastructure across the Borough. It would enable draw down of Department for Transport investment of £15.7m and would deliver benefits in terms of unlocking economic growth, delivering highway network efficiency improvements and providing environmental benefits. The road would also facilitate the delivery of employment and housing at the Basford sites and deliver wide-reaching transport benefits to the local highway network, including improved access to Crewe railway station.

The Deputy Leader and Portfolio Holder for Strategic Communities advised that there was a shortfall of £8.8m in the funding for the scheme which would be met from other sources. He added that the Council was committed to completing the scheme by November 2015.

RESOLVED

That

1. the Target Cost for Phase 2: Detailed Design and Construction of the Scheme of £16.640m, which was agreed by the Project Steering Group on 30th January 2014, be approved;

2. the DfT Final Funding application, which is based on the Target Cost and Scheme Outturn Forecast of £26.5m developed and agreed by the Project Steering Group, be approved and submitted to the DfT;

3. subject to confirmation of DfT approval of the Final Funding application, and the prior endorsement of the business case from the Executive Monitoring Board, the Council issue a Notice to Proceed to Construction which would mark the start of Phase 2 of the existing Contract with Morgan Sindall, comprising the Detailed Design and Construction of the Crewe Green Link Road South;

4. the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder for Assets and The Head of Legal Services be authorised to exercise the Council's existing agreements in respect of the land agreements in place with the Duchy of Lancaster and Network Rail, including payment of any outstanding option fees. If necessitated by the programme for start of works, notices be served in advance of the DfT Final Funding confirmation being received;

5. delegated authority be given to the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder for Assets and the Head of Legal Services to negotiate and finalise legal and financial terms for legal agreements allowing early access to Crown land and instruct completion of such legal agreements for the purpose of carrying out advance environmental mitigation measures, including limited low level vegetation clearance and erection of newt fencing and subsequently newt trapping and relocation, erection of tree protection fencing, and installation of bird and bat boxes;

6. delegated authority be given to the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder for Assets and the Head of Legal Services to negotiate and finalise legal and financial terms and instruct completion of a legal agreement or agreements for the acquisition of additional land to accommodate

great crested newt mitigation habitat to satisfy Natural England requirements to grant a European Protected Species Licence;

7. authority be given to the undertaking of advance environmental mitigation works in advance of the final funding approval from DfT, as is required in order to meet the programme for construction of the Scheme. And that delegated authority be given to the Director of Economic Growth and Prosperity to approve the advance works which will include, but may not be limited to: erecting newt fencing across the site including localised vegetation clearance to facilitate it, trapping great crested newts (GCN), and relocating them in accordance with an EPSL for which an application has been prepared ready for submission; installation of bird and bat boxes on land adjacent to the scheme, subject to agreement with landowners; and, erection of tree protection fencing;

8. Cabinet approves a revised estimate of Network Rail's professional fees associated with the development and delivery of the Scheme, including fees incurred before the DfT Final Funding approval stage, reviews of submitted information and technical approvals, track access, and (some limited) post-completion monitoring, and formal approval of such is provided to Network Rail;

9. if required for commercial or programme reasons, the Council enter into Contract direct with Network Rail Works Delivery Unit (WDU) to deliver specialist elements of the underbridge construction. This may require amendment to the existing contract with Network Rail or new contract to transfer liabilities for the NR works to the Contractor for the Scheme, Morgan Sindall, agreement of the terms and conditions of each agreement to be delegated to the Director of Economic Growth and Prosperity and the Head of Legal Services;

10. authority be delegated to the Director of Economic Growth and Prosperity and the Head of Legal Services in consultation with the Portfolio Holder, if required, to make any changes to the DfT Final Funding Application, Target Cost, NR fees estimate, scope of advance environmental mitigation works, terms and conditions of land agreements/undertakings and any other agreements required to facilitate the advance works or construction;

11. Cabinet approves a revised funding profile for the Scheme, including a possible increase to the Council's Local Transport Plan contribution and, pursuant to the Cabinet decision of May 2013, Cabinet re-affirms its commitment to provide a maximum of £8.8m of funding to cover the expected, but contingent, developer contributions to the scheme and that the risks and alternative reimbursement options be noted;

12. Cabinet notes that the Compulsory Purchase Order for the Scheme has been confirmed by the Secretary of State and is now

free from challenge, and that in accordance with the Cabinet decision of 20th August 2012, land acquisition is to be progressed using a combination of General Vesting Declaration and Notice to Treat / Notice of Entry;

13. further to the Cabinet decision of 20th August 2012, where approval was granted Cabinet authorises the appointment of appropriate consultants to assist and advise in the preparation and presentation of the Council's case in the event that the question of compensation is referred to the Upper Tribunal (Lands Chamber).

142 **SKILLS DEVELOPMENT FOR COMMUNITIES AND THE UNEMPLOYED THROUGH RE-PROCUREMENT OF THE SFAS COMMUNITY LEARNING AND ADULT SKILLS BUDGET (FORWARD PLAN REF. CE 13/14-77)**

Cabinet considered a report on the re-procurement of community learning and accredited adult skills provision services.

The Cheshire East Lifelong Learning service sought to enable communities, families and individuals in Cheshire East to flourish and be self-reliant through excellent lifelong learning. The services were targeted towards those within communities who were the hardest to reach and others who lived in areas of high deprivation. The provision aimed to increase confidence and provide skills to overcome barriers to learning and progress to further education and employment opportunities.

The service was fully funded through income from the Skills Funding Agency, with the provision being delivered by 16 commissioned local partners. Existing contracts were due to expire at the end of July 2014. The proposed contract term would run from 1st August 2014 for one year with the option to extend for a further 12 month period.

RESOLVED

That

1. the re-procurement process be supported in order to:
   (a) support and develop the capacity of individuals, community groups and training organisations within Cheshire East;
   (b) enable the most disadvantaged in Cheshire East to gain the skills required to obtain employment; and
   (c) support the local economy through sub-contracting with local partners

2. the Council invite competitive tenders for the provision of these services and award contracts to the winning bidders.

143 **DISPOSAL OF LAND OFF EARL ROAD, HANDFORTH (FORWARD PLAN REF. CE 13/14-79)**

Cabinet considered the disposal of the Council's landholding at Earl Road, Handforth.

The land had been held as a strategic employment site for a number of years and comprised approximately 14 acres. Engine of the North had been instructed to bring the site forward on behalf of the Council as a strategic priority to maximise jobs growth and capital receipts. The suggested delivery strategy was to promote the site as a high-quality mixed use development with retail and other uses in order to facilitate significant new employment opportunities and generate substantial capital receipts.

RESOLVED

That

1. the Chief Executive or his identified nominee be authorised, in consultation with the Portfolio Holder for Finance, to take all necessary action to dispose of the Council's landholding at Earl Road, Handforth, as shown edged red on the plan attached to the report, to maximise capital receipts and deliver jobs on an accelerated timescale;

2. disposal be approved for potential land uses, including employment, retail, leisure and sui generis use such as car showrooms; and

3. all action necessary be taken, funded from within existing identified budgets, to bring the site forward for development, including potentially creating site infrastructure such as spine roads and appropriate utility servicing.

144 **AWARD OF CONTRACT FOR SUPPORTED LOCAL BUS SERVICE 88 ALTRINCHAM TO KNUTSFORD (FORWARD PLAN REF. CE 13/14-80)**

Cabinet considered a proposal to award the contract for bus service 88 between Knutsford and Altrincham until 31st March 2019.

The full contract value of £550,000 would be fully funded from within the current Public Transport Budget and the Bus Service Operator Grant which had been devolved to the Council from January 2014.

RESOLVED

That Cabinet approves the award of, and subsequently entering into a contract for, local bus service 88 Knutsford to Altrincham to the successful tenderer at a total cost of £550,000.

The meeting commenced at 2.00 pm and concluded at 3.28 pm

M Jones (Chairman)

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CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	24th March 2014
Report of:	Caroline Simpson, Director for Economic Growth and Prosperity and Peter Bates, Chief Operating Officer
Subject/Title:	Options Appraisal on the future of Alderley Park
Portfolio Holder:	Cllr Michael Jones, Leader of the Council/ Cllr Peter Raynes, Finance

1.0 Report Summary

1.1 Following an announcement in March 2013, AstraZeneca announced their intention to begin a sale process for Alderley Park. Through negotiations with the Chancellor and the Leader of the Council, AstraZeneca agreed to retain 700 jobs on site, but to move 2300 R&D staff to a new site in Cambridge.

1.2 The purpose of the report is to update Cabinet on the decision made using special urgency powers for the Council to invest in Alderley Park as part of AstraZeneca's sale process, and purchase a 10% stake in the Special Purpose Vehicle (SPV) for Alderley Park, and in addition to this, purchase a 3% stake in MSP, a partner to the Alderley Park SPV. This will provide a series of benefits and enable the Council to take an active role in shaping the future development of this key strategic asset.

1.3 This once in a lifetime opportunity has arisen as part of the preferred bidder's negotiations with AstraZeneca. The Council has been engaged via the preferred bidder (MSP) to explore how it may assist in ensuring that the future success of Alderley Park is realised. The private sale of the site by AstraZeneca to MSP is set to conclude by the 31st of March 2014, with both companies currently finalising legal and financial arrangements. The Council was required to confirm its intentions before the 11th March 2014 in order to be included within the wider deal.

1.4 The proposed investment in Alderley Park will complement MSP's growing portfolio in the Corridor Manchester area and it is recognised that the linking of strategy for both sites will be a critical factor in their combined success. With this in mind it is deemed beneficial for the Council to invest in both the company acquiring Alderley Park and directly in MSP itself.

1.5 Due to the urgency of this opportunity arising, the internal project management processes for Technical Enabling Group and Executive Monitoring Board have not been followed. In addition to this, due to the highly commercial nature of the opportunity, and its potential impact on the stock market position of a global firm, it was agreed by the Leader of the Council, in consultation with the Leaders of the Opposition Parties and Chairman of the Corporate Scrutiny Committee that an urgency decision would be more appropriate than a Cabinet decision. However, a senior project team including officers from legal, finance, and major projects has managed the process led by the Director for Economic Growth and Prosperity, and Chief Operating Officer, with independent specialist advice sought from GVA Land and Property and Weightmans LLP. This process has been carried out fully in line with Cabinet Procedure Rule 53 in the Constitution.

1.6 Alderley Park is AstraZeneca's global lead centre for cancer research, and is a major asset of international quality and reputation. As a major strategic employment site within Cheshire East, Alderley Park is of paramount importance to the local economy. Under its current ownership, it contributes approximately £315m per annum to the Cheshire East economy through direct and indirect contributions, contributing in the region of £4m per annum in business rates alone. In addition to this, the site is a significant employer, and currently directly supports over 3000 highly skilled jobs. The significance of Alderley Park to both the local and sub-regional economies cannot be underestimated

1.7 Following independent advice, the Council has identified three different investment options. The risks and benefits of each option are investigated in detail in Schedule 1 and a clear independent recommendation is given that the Council invests in both MSP and the SPV for Alderley Park.

2.0 Recommendations

2.1 The following recommendations are submitted for approval:

i. To note that an urgent decision was taken in line with Cabinet Procedure Rule 53 in the Constitution by the Leader, Deputy Leader, and Portfolio Holder for Finance in consultation with the Chief Executive, Chief Operating Officer and Section 151 Officer, Head of Legal Services and Monitoring Officer, and Strategic Director for Economic Growth and Portfolio Holder.

ii. To note that the urgent decision gave approval for the Council to invest in Alderley Park as part of AstraZeneca's sale process to purchase a 10% stake in the SPV for Alderley Park, in addition to a 3% stake in MSP, a partner to the Alderley Park SPV.

3.0 Reasons for Recommendations

3.1 The project relates directly to the Council's key priority: *A growing and resilient local economy.* It is also prioritised in the Council's Three Year Plan:

- Outcome 2: *Cheshire East has a strong and resilient economy*,
- Priority 1 (*Local Economic Development*), and
- Change Project 1.3 (*Investment to support business growth*).

3.2 Alderley Park is of significant importance to both the Cheshire East and North West economies. The sale of this world-class site represents a once in a generation opportunity for the Council to invest in its future.

4.0 Wards Affected

4.1 The site is located part within Chelford ward, part within Prestbury ward. However, ensuring a sustainable future for this site has potential implications for a wider area.

5.0 Local Ward Members

5.1 Councillor George Walton (Chelford), and Councillor J Paul Findlow (Prestbury).

6.0 Policy Implications

6.1 The proposals put forward in this report are considered to be aligned to the Government's stated intention that the UK becomes a global hub for life sciences, capable of attracting and nurturing world-leading talent.

6.2 This proposal also accords with, and is complementary to the following:

Ambition for All: Sustainable Communities Strategy 2010-2025: Priority 2 Create conditions for business growth

- Harness emerging growth opportunities;
- Create a climate attractive to business investment.

Cheshire East Corporate Plan 2011-2013

Objective 2: Grow and develop a sustainable Cheshire East:

- Foster economic growth and regeneration through providing the right environment for businesses to grow.

Cheshire East Economic Development Strategy

- Ensure that Cheshire East maintains and enhances its role as a 'knowledge economy';
- Facilitate economic growth through progressing schemes that will create jobs and improve the attractiveness of the area as a place to invest, live and visit;
- Macclesfield and its hinterland sustain their current position as one of the most successful parts of the regional economy.

7.0 Financial Implications

7.1 Land and development consultancy GVA has been employed by the Council to undertake an options appraisal and assess the benefits and risks on the Council's potential involvement in Alderley Park.

7.2 Manchester Science Parks Ltd (MSP) has been identified as preferred bidder for the purchase of the Alderley Park site from Astra Zeneca. It is proposed that the site is acquired, managed and developed by a special purpose vehicle (SPV) formed by MSP, Bruntwood Corridor Company Ltd and Cheshire East Council. The investment proposal for the site describes and presents cash flow estimates over the period 2014–2025, with regard to: capital development; lettings of office, laboratory, light industrial and conference space; and the disposal of land for residential development.

7.3 GVA has reviewed the investment proposal; supported the Council in reaching agreement with MSP on "Day 1 cost valuation" (purchase price, stamp duty, associated professional fees and bid development expenditure); assisted with the determination of an exit strategy for the Council (should it wish to withdraw from the SPV at some point); and has prepared a report on the business plan assumptions and options for consideration, including the advantages and risks of financial involvement.

7.4 The recommended options in this report include the Council securing a 10% stake in the SPV for Alderley Park; and also to acquire a 3% share in MSP itself. Approved budget resources will be required to fund the Council's contributions to this value.

7.5 The GVA report includes commentary on MSP's proposals, to provide further understanding of the sensitivities in the business plan to changes in extent of residential and/ or commercial development and the effects on returns for investors, including the Council. They conclude that in a range of alternative scenarios reviewed (e.g. higher capital and running costs; lower lettings and residential receipts), a positive return on investment should still be expected.

8.0 Legal Implications

8.1 These provisional legal implications are prepared following a meeting with GVA on 26th February and having had sight of the draft options appraisal report prepared by GVA, the Manchester Science Park (MSP) Shareholder Agreement, Articles of Association; the draft Subscription Agreement, Shareholders Agreement and Articles of Association; Working Capital Facility Agreement and the term sheet in relation to the Alderley Park SPV.

8.2 <u>Shareholder Agreement, Articles of Association; Working Capital Facility and Term sheet (Alderley Park SPV)</u>

- In summary the Council as a minor shareholder Alderley Park SPV will have limited powers. For example The Council will only have 1 Director out of 6, shareholder meetings can be called and concluded without the Council consenting or being present, there whilst there are certain pre-emption rights, effectively the Council's stake can be diluted. Whilst the Council can sell its shares to a third party the Council cannot require the other shareholders to buy it out. If 75% of the holders of the shares in the SPV accept an offer from a bona fide third party, there is a right for the Council to "tag" along and sell their shares to the third party on the same terms. However, if Bruntwood or MSP (the other shareholder in the SPV) wish to sell their shares to a bona fide third party, then if the sale of those shares would result in the third party acquiring a 35% interest or greater in the SPV, then the Council has the right to "tag" along and sell its shares to the third party on the same terms. This allows the Council the flexibility of leaving the Company if either of the other two shareholders sell out. Alongside this right, if any shareholder wishes to sell their shares, they much first offer them to the remaining shareholders but the Council may not wish to invest further at that time.

- Further, in relation to Reserved matters the only matter which requires the consent of all Shareholders , including the Council, is a change in the agreed business strategy i.e. owing, managing and developing Alderley Park. If the SPV wants to make any changes to the Business Plan (including increasing any management charges payable to Bruntwood) the Council's consent is not required. However, before any reserved matter can be put to the Shareholders for approval, it must first be discussed at a meeting of the Board of Directors. This meeting cannot be held unless the Council's nominated director (or his alternate) being present.

- In relation to the Working Capital Facility, 50% of the Facility is being drawn down day 1. Whilst there is an aspiration that once land is sold off for development, the Loan may be repaid in whole or in part, there is no obligation on the SPV to do so. The Facility will remain in place indefinitely and the monies can be reborrowed by the Company. There is nothing to stop the SPV for drawing down the second tranche of the Facility at any time following completion.

- <u>Any contracts between Bruntwood and the Company must be on the basis of an arm's length agreement with a third party.</u>

- Conflict of Interest: A standard provision in the articles of association is that a conflicted director cannot vote on any matter on which there is a conflict. Therefore the Council nominated director can recuse himself from any decisions that involve planning.

8.3 <u>Shareholder Agreement, Articles of Association (Manchester Science Park or "MSP")</u>

- The Council has subscribed for shares alongside the Manchester universities and other public bodies based in and around Manchester. As a 3% minority shareholder, the Council has very little power (which is normal in an investment of this size). The Council has the right to appoint one director to the Board.

- The objects of the Company is to manage and develop land and buildings for the purpose of providing facilities for use in *inter alia* advanced technologies, science, R&D, innovation and IT on the site at Pencroft Way, Manchester or in the Oxford Road Area. It further has the right to invest in opportunities in Greater Manchester or Cheshire East.

- The Council has the right to appoint a director to the Board of MSP but Directors meetings can be called and held without his consent. The management of the Company is delegated to a Management Comittee

- Reserved matters can be approved by the holders of not less than 80% of the share capital of the Company. This means that at least 3 shareholders must approve any reserved matter.

- If any new investments are proposed, the Council may be asked to invest further. If it chooses not to invest further, its shareholding may be diluted by further investment from the existing or third party investors.

- The only way the Council can sell its shares in MSP is to find a third party buyer. It must offer the shares to the existing shareholders at the price offered by the third party buyer and if the shares are not taken up by the existing shareholders, then it can sell its shares.

8.4 <u>State Aid</u>

- As part of the negotiations in relation to the funding structure of any share purchase and Shareholders' Loan, the Council will have to have due regard to state aid to ensure its compliance with the Treaty on the Functioning of the European Union and EU Regulations on state aid. In this regard advice has been sought from Weightmans LLP. The Council will have to be satisfied that the Market Economy Investor Principle applies for the following reasons:

- The value of the investment in the SPV has been objectively assessed.

- Other parties are investing in the SPV on similar terms.

- The Council is taking a commercial decision that is in its interests to have a financial stake in MSP as it considers that that strengthens its commercial position in the SPV and the Council's commercial interests regarding science parks generally.

8.5 Procurement issues

- In addition the Council will also have to pay due regard to its own Finance and Contract Procedure Rules and the Public Contracts Regulations 2006 in relation to any procurement implications and further advice may well have to be sought as negotiations with the Company progress.

8.6 Planning

- The Council will have to be mindful that any planning and development control matters relating to the Park are managed appropriately given that the Council may consider that it is conflicted in its dual role as investor in the site and as the local Planning Authority.

9.0 Risk Management

9.1 There is a significant risk that by not investing in the site itself, the Council sends out a clear message that public sector investment is not required. This could result in negative funding decisions by central government, which would severely impact on the business plan of the preferred bidder and the subsequent future viability of the site.

9.2 As a commercial venture, there is a risk that the aims and objectives of the preferred bidder might diverge from those of the Council. At this point, there is a risk that the Council is co-investing in activities at Alderley Park which it does not support for wider strategic or practical local reasons. The clear alignment of the preferred bidder's business case with the vision of the Council and the Alderley Park Taskforce over both the immediate and long terms means that this is not of significant concern. However, as part of the due diligence phase the Council will investigate a suitable exit strategy, should a divergence of objectives make its continued investment untenable.

9.3 Part of the funding proposal includes recycling some of the receipts of land disposal for residential development to support the growth of the science cluster at Mereside. As with any development, the delivery of residential units at Alderley Park will be subject to a full planning approval process and must fit within existing planning policy framework for the site. As the local Planning Authority, the Council may chose to refer a decision to the Planning Inspectorate if it feels conflicted in its dual role as investor in the site (and subsequently a potential financial beneficiary), and as the local Planning Authority. Also given that the site is within the Green Belt any future application may well be referred to the Secretary of State in any event depending on the scale of the development by the 2009 Direction.

9.4 As a shareholder, the Council will declare an interest and veto its rights to comment in any discussions around potential residential uses for the site.

9.5 As with any commercial investment, there is a risk that the business plan for the site is not realised, and the Council does not receive an adequate return on its investment.

10.0 Background and Options

10.1 Alderley Park is AstraZeneca's global lead centre for cancer research, and is a major asset of international quality and reputation. As a major strategic employment site within Cheshire East, Alderley Park is of paramount importance to the local economy. Under its current ownership, it contributes approximately £315m per annum to the Cheshire East economy through direct and indirect contributions. In addition to this, the site is a significant employer, and currently directly supports over 3000 highly skilled jobs.

10.2 As well as being of considerable importance to the local economy, Alderley Park also plays a pivotal role in the wider North West science ecosystem. Indeed, its comprehensive infrastructure offering are strong differentiators from competitor science parks, and much of the facilities and assets on site are unique in Europe. This makes it of significant importance to maintaining and building the reputation and subsequent attractiveness to investment of the North West science landscape.

10.3 Following AstraZeneca's announcement of their planned withdrawal of R&D activities from Alderley Park by 2016, a Taskforce was established to consider how best to secure sustainable high value employment and investment on this major employment site. The Alderley Park Taskforce, chaired jointly by the Vice President of AstraZeneca and the Government's Life Sciences Business Advisor, comprises representatives of key stakeholder groups including Cheshire East Council (represented by Councillor Michael Jones, Leader), Cheshire and Warrington LEP, Manchester City Council and the University of Manchester.

10.4 A clear vision for the site was developed to secure a vibrant and prosperous future for Alderley Park through its transformation to an independent, self sustaining, world-class hub for life sciences, acting as an anchor for the sector in the North West. The role of Alderley Park as an anchor for the region is essential in addressing the current investment imbalance which currently exists between life science facilities in the South East, and the rest of the UK.

10.5 In line with this vision, the Taskforce aims to secure a sustainable future for the site that:

- Ensures that full advantage is taken of the opportunities the facilities on site offer;
- Retains highly skilled professional employment in the region;
- Supports existing supply chains and related businesses to minimise negative impacts from the scaling back of operations by AstraZeneca; and
- Ensures that future development on the site is of an appropriate high quality, encouraging investment and employment opportunities in a manner which maximise benefits for the North West region as a whole.

10.6 Having regard to the existing world class facilities on site and the ongoing evolution of the life sciences/biomedical sector, the emerging vision for the future of the site is for it to become a life science park, transforming from a single occupier to a cluster of life science businesses which complement and support existing and planned science facilities across the wider region, as part of a North West science ecosystem. In order to ensure that the site continues to be an asset of world-class quality it is essential that the right type of future investment is secured so as to avoid the depreciation or loss of strategically important assets. The significance of Alderley Park to both the local and sub-regional economies cannot be underestimated.

10.8 There continues to be a high level of market interest from companies wishing to locate to the BioHub already established on site, and an independent Demand Assessment carried out on behalf of the Taskforce identified that there will be demand for 3700m^2 of specialist lab and office space per year, if the right conditions for growth are established at the site and the offer at Alderley Park is differentiated as part of a wider North West Life Science Cluster.

10.9 Twenty companies are currently located at the BioHub, with a growing pipeline of companies showing interest. In light of this success, the BioHub has now filled its allocated space at Alderley Park, and AstraZeneca have agreed to release an additional 50,000sqft to meet demand. However, it should be noted that the BioHub is currently only taking up about 10% of the available lab facilities on site. Whilst all stakeholders agree that a successful future of the BioHub will be paramount for the overall sustainability of the site and in delivering the future vision, this clearly demonstrates the scale of the challenge of creating a fully viable site, and the need for additional complimentary and necessary activities to be located at Alderley Park.

10.10 In order to clearly present the Taskforce's vision for the site, a Development Prospectus was produced and endorsed by the Cabinet of Cheshire East Council on the 7th January 2014. In line with the emerging Core Strategy, the Development Prospectus aimed to summarise the unique opportunities of the site, set out the clear vision for the site and demonstrate the commitment of major stakeholders to this vision, map out the intended planning process, and set out some high level principles to indicate how the vision might be realised in spatial terms.

10.11 The Development Prospectus reiterates the vision for the site, as set out in draft policy CS29 (Alderley Park Opportunity Site) of the emerging Core Strategy of the Local Plan. The draft policy supports the development of a life science cluster at Alderley Park but, acknowledges that the demand may not exist to support a life science centre of a scale comparable with the existing quantum of development on site. As such, the policy supports other uses where they are either demonstrated to be 'necessary' for the delivery of life science activities, or where they are 'complementary' to that core use. In addition, the policy requires that those uses accord with a Planning Brief/Site Masterplan to be produced and adopted as Supplementary Planning Document to support draft policy CS29.

10.12 Whilst the current planning position for Alderley Park is clearly linked to the Taskforce's future vision for the site, and does give some control over the future of the site, the Council has a considerable interest in ensuring that this vision is delivered due to both the economic, social, and environmental significance of the site for both the immediate local, and wider area.

10.14 As part of the preferred bidder's (MSP) negotiations with AstraZeneca, Cheshire East Council has been approached with a once in a lifetime opportunity to invest directly in the future of Alderley Park and to ensure that the future success of the site is realised. The private sale of the site by AstraZeneca to MSP is set to conclude by the 31st of March 2014, with both companies currently finalising legal and financial arrangements. The Council was required to confirm its intentions before the 11th March 2014 in order to be included within the wider deal.

10.15 As a stakeholder in the Taskforce the Council has had a leading role in developing the vision for the site. In order to continue this influence following the sale of the site by AstraZeneca, the Council has investigated the potential for its investment in Alderley Park. Any potential investment by the Council is based on the following rationale:

- To maintain the regionally significant skills and employment base at Alderley Park.
- To safeguard economic growth in the area.
- To ensure delivery of the business plan proposed for the site.
- To give the Council a long term interest in the site, not a quick return.
- To secure best value for the Council's investment.

10.16 The proposed investment in Alderley Park will complement MSP's growing portfolio in the Corridor Manchester area and it is recognised that the linking of strategy for both sites will be a critical factor in their combined success. With this in mind it is deemed beneficial for the Council to invest in both the company acquiring Alderley Park and directly in MSP itself as the link with MSP will be of paramount importance to the economic viability of Alderley Park in the medium to long term. The existing contacts and relationships of MSP will enable Alderley Park to be more closely aligned with the academic and health science assets in Manchester, thereby creating a more powerful and robust commercial proposition for the benefit of both Alderley Park, and the wider sub-regional economy.

10.17 In addition to this, there is a clear message from Government that local authorities are expected to play a lead role in providing their own assets to support sites of this nature, in addition to any potential funding from central government. By investing its own resources in the site, the Council will send a clear message to Government that it fully supports Alderley Park and this could help to secure additional public sector funding in the medium to long term, which will be of significant value to the future viability of the site. By investing alongside key public sector partners such as Manchester City Council and Manchester University, Cheshire East Council also sends out a clear message to Government that it puts collaboration at the heart of its economic development approach.

10.18 Following independent advice, the Council has identified three different investment options. The risks, benefits, and costs of each option are investigated in detail in Schedule 1 and a clear independent recommendation is given that the Council invests in both MSP and the SPV for Alderley Park.

10.19 As evaluated in the Independent Options Appraisal in Schedule 1, investing in the SPV for Alderley Park alongside MSP will mean that the Council has a greater likelihood of having some influence over the form and direction of the business plan for Alderley Park. Alongside having a greater awareness of events and progress at the site, the Council will have a seat at the table in ensuring that employment and wider economic benefits of the site can be maximised.

10.20 In addition to investing in Alderley Park itself, the Council has also been approached with the opportunity to invest in Manchester Science Parks (MSP) alongside Bruntwood, Manchester City Council, the University of Manchester and other shareholders, as a result of a wider reallocation of shareholdings. As a result of such an investment, the Council may benefit from greater influence over the business plan for Alderley Park, and will be able to develop links with a wider range of institutions which may bring direct benefit to Alderley Park.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Alderley Park Options Appraisal

Executive Summary

Cheshire East Council

March 2014

CONTENTS

1. Introduction

Alderley Park is presently home to Astra Zeneca (AZ), a global biopharmaceutical research company. In 2013, AZ announced its intention to consolidate its UK operations in Cambridge, with a phased withdrawal from the site in Alderley Park.

Further to AZ's announcement, the Alderley Park site was marketed for sale and in January 2014 the preferred bidder was announced to be Manchester Science Parks (MSP). AZ and MSP have committed to a deadline of 31st March 2014 for completion of the sale and both parties are currently finalising legal and financial arrangements.

MSP are engaged in an ongoing process of forming a business plan for Alderley Park, which incorporates life science industries and biopharmaceutical research, office development, light industrial accommodation and the sale of a portion of the site for residential development to cross subsidise further investment into the employment-led uses at Alderley Park.

The site is a key regional strategic location and it is for this reason that the Council wishes to support the successful delivery of MSP's business plan. Initial discussions have taken place between MSP and the Council as to the nature of the Council's role at the site.

The purpose of this report is to assess the advantages and risks to the Council of various options for involvement at Alderley Park.

2. Background

The site is presently occupied by AZ which announced in 2013 the decision to concentrate its UK operations in Cambridge, which will host AZ's global research centre and corporate HQ. The site at Alderley Park will therefore become surplus to AZ's requirements.

Alderley Park is currently home to around 3,000 employees and 1.7 million sq ft of accommodation in an overall site area of 400 acres. Alderley Park has a highly skilled workforce, world-class buildings and equipment and is therefore an extremely valuable contributor to the economy in Cheshire East and in the north west of England.

Since 1997, over £300 million has been invested in new facilities at this site. An additional £250 million has been invested over the same period in upgrading existing assets and infrastructure. The standard of facility in unparalleled in the north west.

The site has the potential to become a destination location for businesses. Complementing the scientific facilities, the site also includes;

- High specification offices
- Conference facilities
- Sports and leisure facilities
- Gymnasium
- Two restaurants with seating for a total of 650 people
- Car parking for 4,000 vehicles
- Significant infrastructure and utilities capacity

Alderley Park is at a tipping point in its future. A focussed business plan and targeted investment will capitalise on the existing high quality assets and will enable smaller businesses and start-ups to benefit from class leading facilities which would otherwise be beyond reach. This is essential to Alderley Park's ongoing status as a knowledge economy hub.

The acquisition of Alderley Park is therefore a once in a lifetime opportunity to capitalise on a unique proposition;

- Established, in-situ, highly skilled workforce
- World class buildings and equipment
- Existing infrastructure and capacity for expansion
- Broader value creation to cross subsidise investment into the employment base

In January 2014, AZ announced MSP as the preferred bidder for the site.

MSP is an established operator in the science and research sector. It has a clear strategic interest in the north west of England – its major shareholder is Bruntwood, a north west property company with assets of approx. £950m and net assets of approx. £280m. Other shareholders include Manchester City Council, the University of Manchester, Manchester Metropolitan University and the City of Salford.

MSP and AZ have committed to a deadline of 31st March 2014 for the completion of the sale of Alderley Park. In advance of this date, both parties are finalising legal and financial arrangements.

Throughout the period of bidding for the site, MSP have been refining a business plan for Alderley Park. The plan places the retention of skilled jobs at its core, providing a platform for those AZ employees who do not relocate the Cambridge.

The predicted end product of the business plan is;

- 1 million square feet of employment space
- In excess of 4,500 full time employees on site
- Over £18 million of capital investment
- An internationally important bioscience campus

The Council has a clear desire to secure the successful delivery of MSP's business plan at Alderley Park – it will maintain the skills base in the borough, secure jobs and help to deliver broader economic benefits.

3. Proposed MSP Business Plan

Overview

The business plan proposes a 'bioscience campus' as the core of a strategically important business community with around 4,500 employees in 1 million sq ft of business space.

Wider employment uses including a conference centre, high quality office space and light industrial space will be provided in the parkland setting, with a proposed investment of £18 million over a 10 year period to improve public realm, infrastructure and to decommission redundant facilities.

Part of the funding proposal includes recycling some of the receipts of land disposals for residential development. The delivery of residential development on the site is subject to a formal planning process and the grant of planning consent. This has yet to be achieved.

Investment

The expected £18 million of capital expenditure over a 10 year period will deliver the following;

- Demolition or mothballing of circa 700,000 sq ft of outdated buildings
- New public realm and investment in infrastructure to allow the site to be multi-occupied
- Refurbishment of retained buildings

The business plan produced by MSP contains a number of aspects which are clearly aligned with the aspirations of the Council. We envisage that the Council will require a role in Alderley Park going forward in order to have an influence in ensuring its delivery.

4. The Role of the Council

The Council's role in Alderley Park is to be confirmed, but is based on the following key objectives:

- To maintain the skills and employment base at Alderley Park
- To safeguard economic growth in the area
- To deliver the proposed business plan for the site
- To give a long term interest in the site, rather than a quick return
- To gain some ability to influence events and the direction of the Alderley Park Business Plan
- To secure best value for the Council's investment

The strategic importance of the site for both the local and regional economies means that there is a clear opportunity to implement the Council's wishes and to deliver a successful redevelopment of this key site.

The site currently employs over 3,000 highly skilled staff, and the MSP business plan indicates that in excess of 4,500 jobs will be located on site.

In addition to the economic benefits of the anticipated job creation levels, a successful Alderley Park brings a wide raft of broader benefits for the Borough by:

- Reaffirming the Borough's reputation, and indeed that of the North West region, as an attractive location for investment.
- Sending out a clear message that Cheshire East is 'open for business'.
- Increasing the overall market opportunity for the life science ecosystem in both the Cheshire and Warrington sub-region and wider North West region.
- Addressing the £315m per annum economic impact of AstraZeneca's disinvestment in the site.
- Retaining a number of the highly skilled, world-class scientists already employed in the region.
- Catalysing already successful collaborations with other public bodies, including Manchester City Council.

The Council's interest in Alderley Park must be long term and the business plan must be offered every opportunity to succeed. The Council has clear objectives for the successful delivery of new employment and its role in the site will revolve around this rather than the short term realisation of capital receipts from site disposals.

The ability of the Council to influence this strategy in a meaningful manner is fundamental to its involvement in Alderley Park.

Underlying all of this, any investment from the Council must demonstrate best value. MSP's business plan has the potential to generate financial returns, but also exposes the Council to financial risk, should it invest in Alderley Park.

The Council has considered a number of options to achieve its objectives at Alderley Park.

- A non-financial interest in Alderley Park eg forming part of the JV board for the site
  - A role on the board of Alderley Park, with the Council's voting rights and ability to influence the business plan to be confirmed. No financial contribution from the Council and no financial returns to the Council
  - The Council exercises control over the nature of development and on the extent of land sales to cross-subsidise employment uses by acting in its capacity as planning authority
- A financial stake in either the JV for Alderley Park, or in MSP, or in both
  - A 10% stake in the SPV for Alderley Park. Timing and value of returns to the Council in line with the business plan for the development
  - A 3% stake in MSP, a partner to the Alderley Park SPV. Timing and value of returns to the Council to be confirmed

5. Options Analysis

General Considerations – Business Plan

Although the Council is joining the proceedings at a relatively late stage, it has had an opportunity to consider the degree to which the business plan meets its objectives on investment and employment generation.

Given that there is limited scope for the Council to negotiate or effect any changes to the plan in advance of the deadline date for completion of 31March 2014, the focus has been on verification and assessment of the business plan and identification of those aspects which do not meet the Council's requirements

The Council is satisfied that the current business plan allocates appropriate investment to employment creation and that MSP possesses the skill set for delivery. It is engaged with MSP's proposals and wishes to see implementation of the business plan proposals.

General Considerations – Due Diligence

MSP have spent significant time and cost in verifying and understanding the site information and the cost implications.

In contrast, the Council has had limited time to satisfy itself as to the risks and costs arising from the information provided. We have listed below key areas for consideration;

- Mix of uses, rents and voids
- Land disposals
- Building and site areas
- Structural survey
- Asset schedule
- Rating liability

- Expected utility costs and suitability of the site for subdivision
- Staff and running costs requirements
- Demolition and mothballing costs
- Site access and highway proposals
- Ground conditions
- Legal and title

The Council has undertaken an initial review of MSP's due diligence, which is satisfactory. We recommend that the Council verifies MSP's work in greater detail in advance of the proposed completion date of 31st March 2014. Where due diligence has been undertaken by 3rd parties it may be possible to secure a duty of care and reliance from the relevant consultant. Alternatively, the Council may review reports produced by MSP's consultants.

General Considerations – Robustness of the business plan assumptions

On the same principles as described above in due diligence, the Council must build upon its initial review of the information provided to satisfy itself that the business plan assumptions are solid and realistic. There are two key consequences of this;

1. The financial viability of the development and the risk to the Council's potential financial return
2. The likelihood of the business plan being delivered and whether there is sufficient market demand and value to justify the investment proposals which will deliver in excess of 4,000 jobs.

We have below assessed specific merits and risks of the options open to the Council.

A non-financial role on the Alderley Park board

This option has not been proposed by MSP to the Council. It is being considered as a route to gain influence at Alderley Park, without financial investment and therefore without the corresponding financial risks.

The Council has already taken a steering role as part of the Alderley Park Task Force since the announcement of AZ's vacation of the site. A number of organisations have been party to such discussions, with the collective aim of safeguarding employment and skills in the region. The proposed non-financial role would be an extension of this, maintaining dialogue with MSP to ensure that the economic and political requirements of the development are represented.

We expect that a non-financial role would enable the Council to act in an advisory capacity, making representations, but without direct influence on the business plan or the allocation of resources.

The main route of influence open to the Council would be in its capacity as planning authority.

Advantages

- A 'seat at the table', direct involvement and an awareness of overall strategy for Alderley Park.
- The ability to establish and maintain links with other interested parties such as the region's universities and the life science and research communities.
- A lower chance of 'vested interest' implications (for example the granting of valuable planning consents) as the Council has no direct financial interest in the site.
- Limited financial risk to the Council.
- There remains the potential for indirect financial benefit to the Council from the economic regeneration of Alderley Park.

Risks

- As-yet undefined role and influence on the board. Our discussions with MSP indicate that little influence would be afforded to the Council.

- The failure of the Council to invest in the site does not send a positive message to other potential public sector investors who may be considering allocating funding to Alderley Park.
- Reliance on planning authority powers to influence the overall direction and extent of development may be insufficient to address the Council's objectives.

10% stake in the Alderley Park SPV

MSP have proposed that the Council secures a 10% stake in the Alderley Park with an ongoing commitment to invest at 10% of the overall equity requirement.

The Newco is proposed to be a JV, to which the Council will be a party. Our discussions with MSP indicate that the majority of decision making will lie with the majority shareholder ie MSP. Nonetheless, the Council will maintain the right to a detailed understanding of proposals for development and the progress of the business plan, via its financial investment and its place on the board of the JV.

Advantages

- The Council will have a seat at the table and first-hand experience of the evolution of occupier interest and how the JV can maximise the employment benefits.
- Investment by the Council may enhance the prospects of further public sector funding to support the employment creation aims of the development.
- A greater involvement in the site for the Council offers a greater likelihood of it having some influence over the form and direction of the business plan.
- There is potential for Council input to the evolution of the business plan and the ongoing management of the site, post-acquisition by the JV.
- The Council may share directly in the financial benefits of the economic regeneration of Alderley Park.

Risks

- The Council will have minimal formal decision making powers or rights under the terms of the JV

- The Council will not be able to materially influence how the JV safeguards employment and investment in changing market conditions. The Council has however negotiated an exit arrangement from the JV if commercial development falls below a certain level.
- A suitable mitigation strategy for the Council in dealing with a planning application on the site will be to refer it to the Secretary of State for determination. This will remove the Council from the decision making process and provide impartiality.
- If the business plan fails to perform as expected, there may be a requirement for increased equity inputs from the Council.

3% stake in MSP, a partner to the Alderley Park SPV

MSP have made an offer for the Council to acquire a 3% share in MSP. Bruntwood is the current majority shareholder in MSP (51%). This is proposed to increase to 63.9% as part of the Alderley Park acquisition, as Bruntwood invest further into MSP.

Other shareholders include Manchester City Council, the University of Manchester, Manchester Metropolitan University, and the City of Salford. It is proposed that the Council and Central Manchester NHS Foundation Trust both become shareholders.

The Council will become party to a wider forum of life science, research and related institutions through its holding in MSP. It may also provide another layer of influence in the site at Alderley Park.

Advantages

- The investment in MSP may give greater influence over the business plan for Alderley Park.
- More of a partnering approach with MSP.
- The Council will develop links with a wider range of institutions which may bring direct benefit to Alderley Park.

Risks

- The Council must undertake due diligence to satisfy itself as to the risks and returns of investment into MSP.
- The ability to influence the direction of Alderley Park is limited – MSP has a number of stakeholders with greater equity shares than the Council.
- In isolation, investment in MSP provides an opportunity to become involved in Alderley Park, but this is one step removed from direct involvement.

6. Recommendations

We recommend that the Council invests in MSP and the Alderley Park JV on the basis of the following facts and subject to the following provisos;

1. From a property perspective, MSP's business plan for Alderley Park combines commercial development activity and acceptable financial returns. The business plan assumptions are reasonable and are based upon examples from MSP and from on-site occupiers such as BioCity.

   The costs of entry to the Council are reasonable and reflect the requirements of the site acquisition process, the vendor's requirements for assurances and the advanced nature of the opportunity which is being offered to the Council.

   Subject to the due diligence recommendations below, the overall proposition for Alderley Park provides an acceptable balance of risk and return for the Council's financial investment.

2. Financial investment by the Council increases the likelihood of it having influence in the direction the JV

   The non-financial role affords more of an arm's length relationship with the Alderley Park JV partners. It promises a lower level of Council involvement, a lesser likelihood of the Council being party to occupier negotiations and the Council being informed of investment and strategic decisions by the JV, after the decisions have been made.

   The financial role demonstrates the Council's commitment to continued investment in employment at Alderley Park.

   The key reason for the Council considering any form of involvement in Alderley Park is to maximise the chances of success in retaining and creating employment opportunities. It is clear that a financial stake for the Council gives it;

   - A seat on the JV board
   - Greater contact with influential partners and stakeholders

- An understanding of progress and challenges at an early stage

Compared with a non-financial role, the above affords the Council greater influence and a more informed position from which to achieve its objectives.

3. Confirm and finalise the due diligence process prior to the site acquisition on 31st March 2014

The Council must be satisfied that the building blocks of the business plan are accurate. We have highlighted below our comments on aspects of due diligence;

- Business plan assumptions and letting strategy – in the time available, there is little value for the Council to add by undertaking additional due diligence in areas such as rental values, assumed void periods, the mix of uses, residential land sale assumptions, planning strategy, delivery structure and financial return for the Council's investment. We consider the due diligence for these aspects to be satisfactory.

- Site information and running costs – this is an area of due diligence which is ongoing and MSP continue to investigate this in the run up to completion on March 31st.

  In order to meet the project timetable and as a means of managing costs, the Council should not aim to duplicate MSP's work. It should obtain a warranty and duty of care from MSP's consultants in favour of the Council, or should review and verify:

  - Building and site areas
  - Structural survey
  - Asset schedule
  - Rating liability
  - Expected utility costs and suitability of the site for subdivision
  - Staff and running costs requirements
  - Demolition and mothballing costs

- Site access and highway proposals
- Ground conditions
- Legal and title

- Terms of the senior loan from Bruntwood Group Ltd to the JV – financial advice should be sought on the acceptability of the terms of the senior debt to be provided by Bruntwood Group Ltd to the JV.
- The terms of the JV and the Council's rights – the draft documents have been provided for the Council's review. The full legal and cost implications of these documents and the JV arrangements are to be confirmed. The conditions precedent for the Council to exit the JV and the mechanics of this are to be formally agreed and documented. Confirmation is required that state aid regulations have been complied with. Legal advice is required on all of these matters.
- Investment in MSP – MSP have provided company financial accounts and detail of the range of the company's activities. Financial advice is required by the Council to assess the value of the opportunity.

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CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	24th March 2014
Report of:	Chief Operating Officer
Subject/Title:	Cheshire East Ltd – Group Structure and Governance Arrangements
Portfolio Holder:	Cllr Michael Jones, Leader of the Council

1.0 Purpose of the report

1.1 In February 2013 the Council set out its three year plan to becoming a strategic commissioning council. The strategic commissioning model ensures a measured approach to achieving the Council's ambitions alongside the required financial savings. It also provides a platform to redefine and reinvent services and to sustain quality services to Cheshire East residents and businesses. The role of elected members is also strengthened - beginning and ending with councillors' democratic relationship with local residents, who should have a stronger voice and input into commissioning decisions in the future.

1.2 This new approach requires robust corporate leadership, innovation and for the Council and its partners to deliver more with less. In summary it requires a clear focus on identifying and prioritising local needs. Cheshire East Council then concentrates on meeting those needs in a cost-effective way by stimulating and managing a diverse local market of high quality local providers.

1.3 This report:

- sets out the proposed structure and mandate for creating a new wholly owned Council company – Cheshire East Ltd. This company will act as parent company to all other companies set up by the Council. Cheshire East Ltd will hold 80% of the shares in its subsidiaries with the Council holding the remaining 20%; and
- seeks approval for the governance structures under which the group will operate.

2.0 **Recommendations**

2.1 Cabinet is asked to approve:

i) The establishment of the wholly owned local authority parent company Cheshire East Ltd.

ii) The general principles of governance of the parent company and its subsidiaries and operation as set out in this report. This includes the appointment of the Deputy Leader as a non-executive director to act as Chairman of the Group Board.

iii) The re-organisation of the Council's existing companies as subsidiaries of Cheshire East Ltd. Cheshire East Ltd will hold 80% of the shares in its subsidiaries with the Council holding the remaining 20%.

iv) That each subsidiary apply to the government to be recognised under the Redundancy Payments Modification Order (RPMO). This will protect the continuous service for employees who transfer under TUPE and those who are appointed in future from another RPMO body.

v) A 1 April implementation date for Cheshire East Limited, Ansa and Orbitas. Beyond that date the Council will continue to review and refine the contract documentation - together with the governance arrangements set out in this report - for all its companies.

And to note:

vi) The appointment of Kevin Melling as the Managing Director for ANSA and Orbitas.

2.2 In addition to the specific recommendations, Cabinet approves the general approach laid out in this report and authorises the:

i) Chief Operating Officer as Section 151 Officer to take any necessary and consequential action arising from the above recommendations, in agreement with the Leader of the Council.

ii) Head of Legal Services and Monitoring Officer to enter into any necessary documentation to give effect to the above recommendations including the:

- articles of association;
- the shareholder agreement and mandate for the shareholder's representative; and
- Directors' mandate for each company.

3.0 Reasons for recommendations

3.1 The Council has realised the need to change the way future services are provided in order to create opportunities for innovation and provide service efficiencies. As a result, the Council has determined to take a more commissioning role.

3.2 The aspirations to deliver services and redefine the Council's role in core place-based services are set out in the Three Year Plan. The development of a group company structure forms part of that major change programme.

4.0 Wards Affected - All wards are affected by this decision.

5.0 Local Ward Members - All wards are affected by this decision.

6.0 Policy Implications

6.1 The recommendations are in accordance with the Council's plan to become a strategic commissioning council.

7.0 Financial Implications

7.1 The financial implications for the establishment of ANSA, Everybody Sport and Recreation (ESAR) and Orbitas were laid out in the detailed business cases presented to Cabinet on 4th February 2014. These business cases laid out plans to deliver savings of over £3.3m over the next three financial years. Further financial implications relating to directors' remuneration are set out in this report.

8.0 Legal Implications

8.1 The legal implications regarding the establishment of the companies were considered in reports to Cabinet in June and October 2013 and February 2014. The legal implications are considered further within the body of this report.

8.2 The Council can set up the companies under the general power of competence laid down by section 1 of the Localism Act 2011. In addition, section 4 of the Localism Act 2011 provides that "any enterprise be conducted through a company within the meaning of section 1 of the Companies Act 2006".

9.0 Risk Management

9.1 The risks within the Alternative Service Delivery Vehicle, (ASDV), programme are identified and managed at 3 levels: Project, Programme and Corporate.

9.2 The project risks for each of the new companies were detailed within the business cases presented to Cabinet in February 2014. The respective project boards - in managing the risks - have established appropriate mitigating actions and monitor each risk on a regular basis in accordance with the Council's project management methodology.

9.3 Programme risks are those that are common to more than one ASDV project. These risks are identified, managed and monitored by the ASDV Steering Group. Two of the programme risks are classified as corporate risks and have been escalated to the corporate Risk Management Group for consideration and monitoring and inclusion. These are:

- Contract and relationship management; and
- ASDV Business Plans

The Corporate Leadership Board ensures that actions and recommendations within the Corporate Risk Register are implemented.

9.4 The Audit and Governance Committee is responsible for keeping under review the effectiveness of the risk management, control and governance arrangements. That Committee receives a quarterly update on the Corporate Risk Register. Cabinet also receives quarterly monitoring reports and an annual report on the Corporate Risk Management.

9.5 The responsibility to manage operational risks after the 'go live' date rests with the individual company.

10.0 Background

10.1 It is clear that change is inevitable. Strategic Commissioning is about achieving even greater value for money, by doing things differently and using innovative new approaches to the way in which services are delivered, that achieve the outcomes desired by local people. It is not about simply reducing costs through arranging cheaper provision or about traditional outsourcing. The new approaches will be used to get the best from in-house services, from joint ventures between the Council and other providers, and from new delivery vehicles such as social enterprises or staff mutuals.

10.2 The Council already has two successful wholly owned companies in place – Engine of the North and Tatton Park Enterprises. In February 2014 it also approved the detailed business cases for two new companies - Ansa Environmental Services Limited and Orbitas Bereavement Services Limited.

11.0 Proposed structure and mandate of Cheshire East Ltd

11.1 The Council's group of companies will be structured under its wholly owned parent company, Cheshire East Ltd. The Council is the sole shareholder of Cheshire East Ltd.

11.2 Everybody Sport and Leisure is a charitable trust and, as such, is not part of the group. CoSocius, a joint venture with Cheshire West and Chester Council is also not part of the group.

11.3 Cheshire East Ltd will own the majority interest, (80%), in all of its subsidiaries. Cheshire East Council retains a minority interest, (20%), in each subsidiary. By holding a minority shareholding in the subsidiaries the Council retains more control over important decisions. Importantly, the minority shareholding also provides all councillors with access to the companies. The following companies will now become subsidiaries of Cheshire East Ltd:

- Tatton Park Enterprises Ltd;
- East Cheshire Engine of the North;
- Ansa Environmental Services Limited; and
- Orbitas, Bereavement Services Limited.

A diagram showing the proposed group structure is attached, appendix A.

11.4 Cheshire East Ltd and all of its subsidiaries, although separate entities, will continue to be held accountable by Cheshire East Council. The Council will have robust governance arrangements in place to ensure each company provides quality services for the residents and businesses of Cheshire East. Formal contracts, built around key outcome focused performance indicators, will be in place and will be monitored by an effective client function. Arrangements relating to the Council's strategic contract with Engine of the North will be considered by Cabinet in April 2014.

11.5 Each subsidiary will be required to apply to the government to be recognised under the Redundancy Payments Modification Order (RPMO). This will protect the continuous service for employees who transfer under TUPE and those who are appointed, in future, from another RPMO body. (RPMO refers to the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 (as amended)), commonly referred to as the redundancy payments.)

11.6 The legal framework for all UK companies is enshrined in company law. Cheshire East Ltd will be a company limited by shares. The Council is the sole shareholder. All of the Council's powers as shareholder will be exercised by the Cabinet. The Cabinet will hold directors to account to ensure the proper use of public money. The objects of the parent company and its subsidiaries are clearly set out in their articles of association.

11.7 Cheshire East Ltd's primary objective is to provide a forum for strategic decision-making across the group. Its board of directors will set the overall strategy in relation to the activities of its subsidiaries. In setting the overall strategy for the group Cheshire East Ltd will also sign off all business plans and hold its subsidiaries to account. However the Cabinet, representing the shareholder, will approve any decisions which would have an effect on the shareholder's rights.

11.8 Cheshire East Ltd also provides a 'natural home' for roles that could be common across the group – company secretary, finance and HR. The subsidiary companies will be expected to adopt a common 'group' approach using existing Council policies and strategies where appropriate. For example, these will include group financial procedure rules, fraud and whistle-blowing policies, urgent decisions, disciplinary procedures, health and safety. The group expects to appoint Grant Thornton as its auditors and its accounts will be consolidated into the Council's financial statements.

11.9 The Deputy Leader of the Council, as portfolio holder for strategic outcomes and delivery will be the chairman of Cheshire East Ltd. The new service commissioning portfolio holder will also be a non-executive director providing an explicit link with the Council's new commissions.

11.10 The appointment of directors to Cheshire East Ltd is not yet complete. At this stage it is anticipated that the Strategic Director of Commissioning will sit on the board. The Leader of the Council, the finance portfolio holder and the Chief Executive should also attend but will not have a vote.

11.11 The Council's Chief Operating Officer and Head of Legal Services will also advise the board from time to time. The Head of Legal Services will also act as company secretary for all companies in the group unless agreed otherwise in consultation with Cabinet.

11.12 There are some risks associated with the Council's statutory officers involvement with Cheshire East Ltd – whether as directors or advisors. The Council has sought external legal advice in relation to those risks. In summary, given that the Council will wholly own Cheshire East Ltd it is unlikely that there will be a potential conflict of interest between it,(or its subsidiaries), and the Council at least in the early years.

11.13 In the event that there were a potential or actual conflict of interest the Council's statutory officers may still act for both partiers – subject to certain provisions. These include:

- the need for the Council's Scheme of Delegation to specifically provide for these new roles and that relevant contracts of employment are amended to accommodate them - including appropriately worded specific indemnities against potential non-fraudulent personal liability; and
- that where those officers feel in any doubt as to whether there is a potential or actual conflict of interest between their statutory role to the Council and their advisory role to the companies then they should be allowed absolute discretion to seek external advice from an appropriately qualified professional if they wish; and
- company directors should accept that in light of the fact that they are receiving advice from the Council statutory officers, it will be even more important that the Company remains solvent and complies with the law.

11.14 In addition those officers must be allowed sufficient time to devote to their statutory duties. In the event of any conflicting demands between the Council and its companies the officers should prioritise those of the Council.

11.15 While the Cheshire East Ltd group is unique in its range and scope of services, a number of other public sector companies operate in a similar way. Examples include:

- The Norse Group – bringing together property services, commercial services – covering a wide range of services including waste management, environmental services, building maintenance, transport, catering - and residential and housing with care service across Norfolk and further afield.
- Kent Commercial Services – a range of trading companies providing energy purchasing, temps/agency staff and minor building works in Kent .
- Essex Cares – a trading company for disability and homecare services.
- The Barnet Group - bringing together a trading company to manage 15,000 council homes and a social care provider for people with learning and physical disabilities.

12.0 Governance

12.1 The Council's overriding principle for the governance, stewardship and control arrangements for its ASDVs is to be resident and business led, and to ensure accountability to residents, service users, businesses and local councillors. However, the Council remains responsible for ensuring that it uses public funds properly and that it can demonstrate value for money.

12.2 Maintaining accountability to residents, service users, businesses and local councillors is vital. The arrangements introduced will ensure this and will remain under regular review.

12.3 Cabinet's control over the parent company and its subsidiaries is exercised through a number of key documents:

- articles of association;
- directors' mandate;
- shareholder's agreement;
- mandates for the shareholder's representatives; and
- the contract.

12.4 The content of the **articles of association** is governed by company law. Put simply they set out the objectives of the company and what its directors can and cannot do. Typically they will also include specific powers reserved for the Cabinet as shareholder. They will also ensure that the Council's internal and external auditors - and other employees/advisors - can inspect all records held by the company.

12.5 A **directors' mandate** is used to set out a more detailed 'set of rules' under which the company board can operate. They are particularly helpful in the context of local authority companies where the over-riding objective is to retain transparency and openness. They also have a key role in ensuring each company continues to benefit from the *Teckal* exemption - at least initially. (The *Teckal* exemption enables the Council to award contracts directly to its subsidiaries without going through a public procurement process.)

12.6 The **shareholder's agreement** is a key document between the Cabinet and the companies. It will set out, in some detail, how the Cabinet will exercise control and influence over the group. The Cabinet will have the key role of holding directors to account to ensure quality delivery and proper use of public money.

12.7 The shareholder's agreement will set out the governance principles set out in this report. It will include a range of issues which are subject to prior approval by the shareholder before a decision can be made by the company boards. These are described as 'reserved decisions'. For example:

- appointment and removal of directors and auditors;
- remuneration of directors;
- non-executive directors must be serving councillors;
- approval of business plan and any subsequent (significant) changes;
- requirement to meet in public;
- expectations re performance reporting;
- engagement of consultants.

12.8 The agreement is the key mechanism for ensuring that the Council, through the Cabinet, or via appropriate delegations, exercises decisive control over its companies and continues to approve significant decisions. These proposals will also ensure that relevant decisions remain subject to the Council's scrutiny arrangements – including the new commissions.

12.9 Cabinet will also nominate **shareholder's representatives** for each company. In summary, this person observes the companies' decision making processes and represents the interests of the shareholder. Given the range of companies involved, this is likely to be more than one person. They will be able to attend board meetings across the group – as the shareholder's eyes and ears. This 'access' is secured through the minority shareholding the Council has in the subsidiaries. Without the minority shareholding the Council's access to the subsidiaries would have been restricted to the parent company board. In turn this could have limited its ability to demonstrate decisive control.

12.10 The shareholder's representatives will, in most cases, be an officer. Cabinet will authorise its representative to communicate its wishes to the company as required. Where issues arise in relation to a *non-executive* director, (a councillor), the shareholder's agreement will provide Cabinet with the necessary powers to act.

12.11 The **contract** is intended to empower rather than constrain the companies. In summary, the Council will specify the broad outcomes it requires the contractor to deliver and include key performance indicators. In contrast, the contractor is required to produce detailed statements setting out how it will meet the Council's requirements.

12.12 The contract will also include the agreed payment mechanism and clear triggers and sanctions if either party does not meet its obligations. The overall terms and conditions will be the same for each contract.

12.13 Each of the documents listed at paragraph 12.3 need to be carefully drafted to protect the companies' *Teckal* exemption – at least in the early years. Taken together these arrangements will demonstrate that the shareholder has decisive control over the group. (This is an important *Teckal* test.) Over time a company may well wish to trade more widely. At that stage the Council and the company will need to reconsider these arrangements – not least to ensure that the companies do not get caught by public procurement legislation in future.

12.14 The implementation date for Cheshire East Limited, Ansa and Orbitas is 1 April 2014. However, beyond that date the Cabinet will continue to review and refine the documents set out in paragraph 12.3 and the wider governance and scrutiny arrangements set out in this report.

13.0 Company Directors

13.1 Each company board will have:

- a managing director; and
- three non-executive directors (Councillors).

Cabinet will agree outline job descriptions for each of the above roles.

Each company will also have a staff representative (nominated by the employees). That person will be expected to attend management and Board meetings as an observer. It will be for Cabinet to determine whether the staff representatives, or any other operational managers, are appointed as directors.

13.2 In addition, the shareholder's representative will be expected to attend the Board as an observer. The shareholder, staff representatives and any other operational manager regularly attending board meetings will need to be alert to the risks of becoming a shadow director under company law.

13.3 The roles and responsibilities of company directors are governed by company law. In summary, a director must act in the way he considers is most likely to promote the success of the company.

13.4 A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. In the context of a local authority company the articles of association will expressly state that a director is not to be regarded as having a conflict of interest by virtue of being a member of the Council alone.

13.5 Company directors can be paid. Under company law the nature of any payments are for each board to determine. Under local government law the role of company director cannot be classed as a special responsibility allowance. They are not special responsibilities in relation to the Council.

13.6 In principle any payment to a *non-executive* director through a council owned company should be pitched at a level of similar/comparative duties in the Council. For example being the chair of a company may be considered as being over and above the role of a Council committee chair but less than a Cabinet member. To ensure transparency and consistency in relation to any such payments the shareholders agreement will set out the Council's expectations in relation to any remuneration offered. The Council expects all companies to:

- offer councillors acting as the chair of a company payment of up to £10,000. It will be for each councillor to decide whether to accept this payment; and
- offer other councillors acting as *non-executive* company directors a payment of up to £5,000. It will be for each councillor to decide whether to accept this payment.

13.7 In each case where any individual councillor is also entitled to a special responsibility allowance in respect of their wider responsibilities the total amount paid is subject to the limits set out in paragraph 13.6. This ensures that a councillor does not 'benefit twice' by receiving an income from the company in addition to their special responsibility allowance.

13.8 Directors' remuneration accrues from day to day. It is also generally accepted that such accrual is from the day the company was incorporated/became active. It is for each board to determine what their remuneration is and from when it falls due in agreement with Cabinet. This will be reflected in the shareholder's agreement.

13.9 The Council's Chief Executive proposes to appoint a single managing director for ANSA and Orbitas. Following the recent recruitment exercise Kevin Melling will be appointed to that post.

14.0 **Scrutiny**

14.1 While the Council is setting up a group company structure to provide services it remains committed to being open and transparent. The Cabinet will ensure that all services remain directly accountable to residents and elected members by offering them the chance to influence, scrutinise and propose changes to how services are run. The Cabinet will set out its expectations for all of its companies in the shareholder's agreement.

14.2 For example, that agreement will empower the new commissioning portfolio holder to:

- hold periodic meetings with the chairs and vice chairs of each company;
- present joint reports to Cabinet alongside the shareholder's representative, any scrutiny committee and, where appropriate, the company boards;
- ensure regular public meetings and quarterly reporting of outcomes and performance; and
- in exceptional circumstances, have the right to recommend the removal of a *non-executive* director to the Leader of the Council and Cabinet.

14.3 The Council is currently reviewing its scrutiny arrangements. Led by the Constitution Committee, the detailed review is being done by a cross-party working group, Chaired by Councillor Peter Groves. The terms of reference for the review have recently been agreed and expert advice is being provided by Professors Steve Leach and Colin Copus of De Montfort University.

14.4 The working group has agreed that the review must take into account the emerging ASDV landscape including issues of accountability and transparency. One potential outcome is the creation of cross-party commissions with *scrutiny-like* powers. It is envisaged that these new commissions will be both forward looking and retrospective, whilst allowing for ultimate scrutiny powers to be held by the Council's corporate scrutiny function.

14.5 Commissions will be cross-party, and member-led. They will assist in policy development and also scrutinise the performance of each subsidiary. They will present join reports to the Cabinet alongside the commissioning portfolio holder and subsidiary company boards where appropriate. The lead officer will be the Strategic Director of Commissioning.

14.6 Cheshire East Ltd will require its subsidiaries to provide regular performance monitoring reports. In most cases these will be quarterly. Those reports will form the basis of public reporting to Cabinet as the shareholder and also to the Commission. The precise frequency of reporting and public meetings will be set out in the directors' mandate for each company. Cheshire East Ltd will also prepare an annual report and hold its annual general meeting in public – together with those of all of its subsidiaries.

14.7 Cheshire East Ltd will meet in public at least once a quarter – it will also hold private meetings. At the request of the chairman of Cheshire East Ltd, the Leader of the Council, the Chief Executive, or other invitee will be expected to answer questions from members of the Public or from other elected members.

14.8 Each subsidiary will be required to hold:

- a quarterly public meeting; and
- a monthly management meeting - minuted but not public, unless the Board agrees otherwise.

14.9 All councillors will have the right to attend all public meetings with the right to speak with the agreement of the chair. All papers for public meetings will be made available electronically, on request.

14.10 The business cases for each company have been reviewed through the Council's usual Technical Enabler Group, (TEG), and Executive Monitoring Board, (EMB), processes. Their day to day activities, beyond the 'go live' date will not be subject to further review by TEG or EMB. Ongoing contract monitoring will be done by the Strategic Director of Commissioning. However, the Council's usual checks and balances, including TEG and EMB, will continue to apply in the following instances:

- business cases proposing significant changes in scope for an existing company;
- proposals to establish a new vehicle; and
- any specific projects with a total value on £250,000 or more.

These requirements will be set out in the shareholder's agreement.

14.11 In addition EMB will receive regular reports summarising all new contracted spend of £250,000 or more. EMB will reserve the right to seek clarification on, and review of, any such expenditure. This information will also be included in EMB's regular update reports to Cabinet.

14.12 The Cabinet and its advisors have the power to visit and inspect the books and records of the new delivery companies at any time. In particular, the Council's internal and external auditors will have open access to every company in the group. The Council's internal auditors will continue to:

- provide independent assurance on arrangements;
- evaluate and assess strategic risks; and
- evaluate reliability and integrity of information

15.0 Conclusions

15.1 The Council's overriding principles for the governance, stewardship and control arrangements for its ASDVs are:

- to be resident and business led; and

- to ensure accountability to residents, service users, businesses and local councillors.

The arrangements set out in this report will ensure this. They will be regularly reviewed so that they provide the appropriate balance between proper governance and stewardship of public money alongside doing things differently and using innovative new approaches to service delivery.

15.2 The Cabinet will also take the opportunity to reflect upon its experiences in setting up ASDVs to date. This will include officers continuing to review and refine the contract documentation for ANSA and Orbitas beyond the 1 April ‘go live’ date. This will ensure that the learning from these two vehicles, and from ESAR, will be applied to the next phase of ASDVs.

16.0 Access to Information

There are no background papers relating to this report. The report author is:

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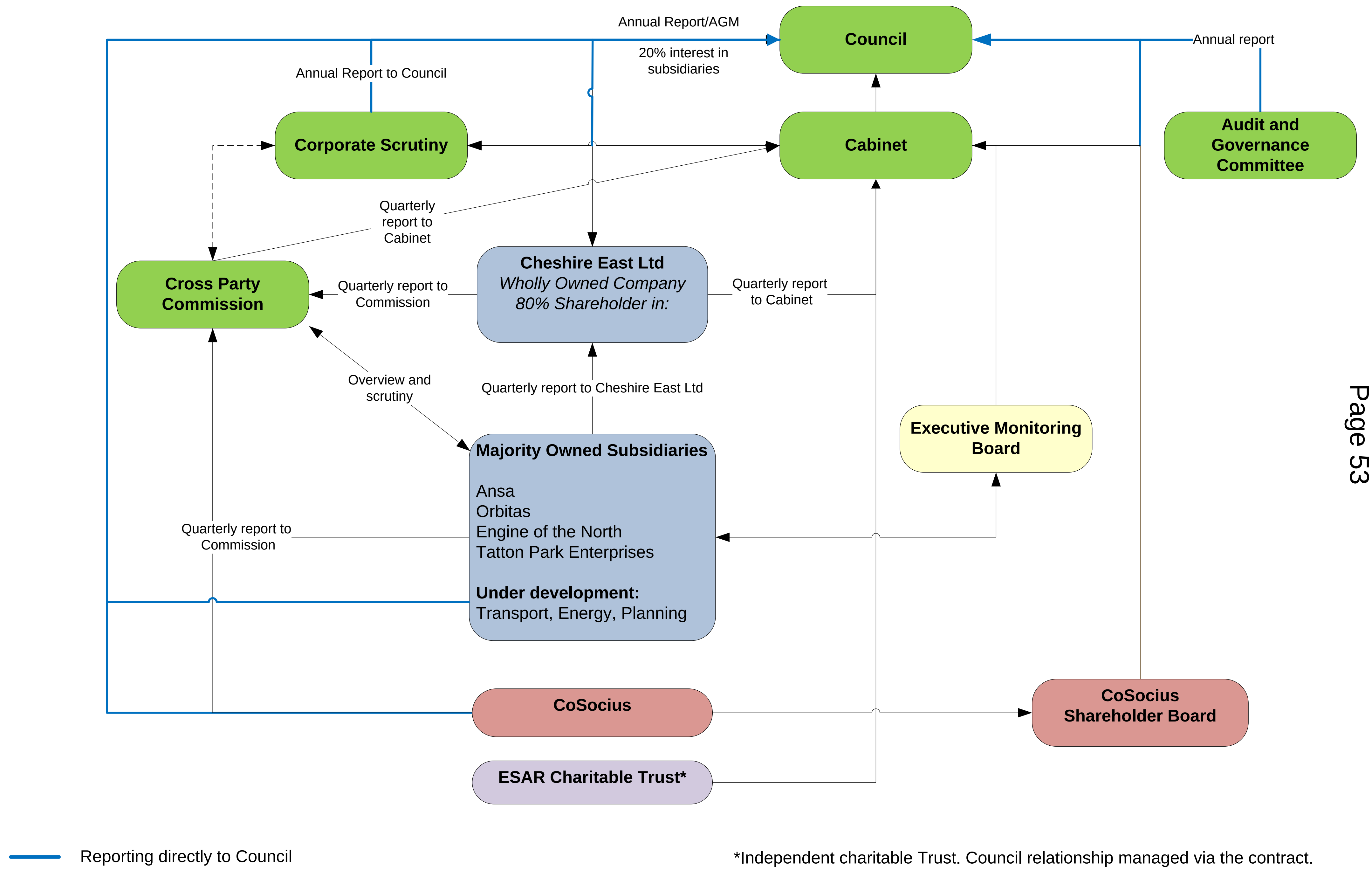
Cheshire East Council - ASDV Reporting Lines



*Independent charitable Trust. Council relationship managed via the contract.

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CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	24th March 2014
Report of:	Chief Operating Officer
Subject/Title:	Decisions for Alternative Service Delivery Vehicles
Portfolio Holder:	Cllr Michael Jones, Leader of the Council

1.0 Report Summary

1.1 In February 2013 the Council set out its three year plan to becoming a strategic commissioning council. The strategic commissioning model ensures a measured approach to achieving the Council's ambitions alongside the required financial savings. It also provides a platform to redesign and reconfigure services and to provide sustainable services to the residents and businesses of Cheshire East.

1.2 To this end, the Council has been reviewing how a number of key services are best delivered by putting the needs of the people, service users and businesses of Cheshire East first. In deciding to set up alternative service delivery vehicles, the Council has considered a range of options.

1.3 Two alternative service delivery vehicles (ASDVs) have already been set up and are established:

- Tatton Park Enterprises Ltd ("**TPE**") and
- East Cheshire Engine of the North ("**EoTN**").

1.4 A second wave of alternative service delivery models are to go live during the first quarter of 2014-15, namely:

- Ansa Environmental Services Limited ("**ANSA**"),
- Orbitas, Bereavement Services Limited ("**Orbitas**"),
- Everybody Sport & Recreation Limited ("**ESAR**") and
- CoSocius Limited (shared HR Finance and ICT back office services with Cheshire West and Chester Council) ("**CoSocius**").

1.5 A great deal of worthwhile and detailed work has been completed by the project teams for this programme of activity, supported by a core team and a Steering Group. By the time this report is received, Cabinet will have considered the detailed business cases for the establishment of the new companies. The purpose of this report is to seek approval to a number of operational decisions regarding the ASDVs.

1.6 The Council proposes to create a new wholly owned company – Cheshire East Ltd, which will act as parent company to all other companies set up by the Council. Cheshire East Ltd will hold 80% of the shares in its subsidiaries with the Council holding the remaining 20%. The principles and recommendations in this report refer to all those companies which will be subsidiaries of Cheshire East Ltd. Arrangements relating to the Council's strategic contract with Engine of the North will be considered by Cabinet in April 2014.

1.7 CoSocius is owned jointly by Cheshire East and Cheshire West and Chester Council and is governed through the Shared Services Joint Committee and is not covered by this report, except where specifically referenced. Similarly, ESAR is not covered by this report except where specifically referenced.

2.0 Recommendations

That:

2.1 Cabinet agree that contracts do not provide for automatic indexation of payments and that:

(i) a minimum savings target will be set for each Council owned and controlled company annually

and

(ii) an annual fixed cap fee set for ESAR.

Accordingly, detailed negotiations will take place each year on the level of the management fee within this cost envelope (see paragraph 10.10).

2.2 Cabinet agree that any associated lease periods be coterminous with the relevant contract length and the standard contract length for Council owned and controlled companies is 7 years (see paragraph 10.15).

2.3 Cabinet agree that for ESAR the contract length be 10 years (plus 5 years extension) and the lease period be coterminous (see paragraph 10.17).

2.4 the approach set out in paragraph 10.37 in relation to pensions arrangements be approved. In particular, the Council will guarantee pension liabilities as follows:

The Council shall provide the Administering Authority a guarantee of the payment of all sums by the companies ANSA, Orbitas, CoSocius and ESAR due under the terms of admission to the LGPS and under the LGPS Regulations arising in respect of or in connection with Eligible Employees.

2.5 Cabinet agree a loan of up to £3.5m on a commercial basis be provided to CoSocius to provide the company with half of its immediate cashflow requirements (see paragraph. 10.44).

2.6 the Council act as financial guarantor for all companies that are owned and controlled by the Council (see paragraphs 10.45 to 10.46)

2.7 the approach to the incubation period and charging for support services as set out in paragraphs 10.51 to 10.62 be approved.

2.8 that the companies, outside of and separate to the NJC bargaining process, will be required to apply an uplift in pay for 2014/15 which is equivalent to the uplift agreed by the NJC for 2014/15. Beyond 2014/15 the Council will review this annually (see paragraph 10.38).

2.9 the properties to be transferred to ESAR under leases consist of certain playing fields as well as the leisure centres. S123 of the Local Government Act requires that where such public open space is to be disposed of the Council must first advertise its intentions and consider any objections to the proposed disposal. Having advertised the intentions, paragraphs 10.76 to 10.78 set out a proposed change arising from this. Cabinet are asked to consider and agree this change.

2.10 that business plans for all companies to be agreed and signed off by the Leader, relevant Portfolio Holder and the Executive Director of Strategic Commissioning.

2.11 in addition to the specific recommendations, Cabinet approve the general approach laid out in this document.

2.12 Cabinet authorises the Chief Operating Officer as Section 151 Officer to take any necessary and consequential action arising for the above recommendations, as set out in 2.1 to 2.11, only to be exercised in agreement with the Leader of the Council.

2.13 the Head of Legal Services and Monitoring Officer be authorised to enter into any necessary documentation to give effect to the above recommendations as set out in 2.1 to 2.12.

3.0 Reasons for Recommendations

3.1 A number of decisions need to be made to enable the second wave of Council ASDVs to be mobilised in the first quarter of 2014-15. These decisions will be incorporated within the ASDV framework for the development of further ASDVs beyond the current wave.

4.0 Wards Affected

4.1 All wards are affected by this decision.

5.0 Local Ward Members

5.1 All wards are affected by this decision.

6.0 Policy Implications

6.1 The recommendations are in accordance with the Council's plan to become a strategic commissioning council.

7.0 Financial Implications

7.1 The financial implications for the establishment of ANSA, Everybody Sport and Recreation (ESAR) and Orbitas were laid out in the detailed business cases presented to Cabinet on 4th February 2014. These business cases laid out plans to deliver savings of over £3.3m over the next three financial years. Further financial implications relating to additional Pensions costs are included in this report (section 10.36-10.37). These show that the imminent transfer of staff to the ASDVs will generate an additional annual cost of £142k. This cost would rise to £325k if the LGPS within the ASDVs was then closed to new entrants. Discussions to finalise the management fees to be paid to ASDVs are progressing and at this stage no significant additional financial implications are anticipated.

8.0 Legal Implications

8.1 The legal implications regarding the establishment of the companies have been considered in the reports to Cabinet in June and October 2013 and February 2014. Legal implications are considered further within the body of this report. The Council can set up the companies under the general power of competence laid down by section 1 of the Localism Act 2011. In addition, section 4 of the Localism Act 2011 provides that "any enterprise be conducted through a company within the meaning of section 1 of the Companies Act 2006".

9.0 Risk Management

9.1 The risks within the ASDV programme are identified and managed at 3 levels: Project, Programme and Corporate.

9.2 The project risks for each of the new companies were detailed within the business cases presented to Cabinet in February 2014. The respective project boards in managing the risks have established appropriate mitigating actions and monitor each risk on a regular basis in accordance with the Council's project management methodology.

9.3 Programme risks are those that are common to more than one ASDV project. These risks are identified, managed and monitored by the ASDV Steering Group. Two of the programme risks have also been classified as corporate risks (i.e. those that have the potential to cause corporate concern), as follows:

- Contract and Relationship Management**;** and

- ASDV Business Plans

The Corporate Leadership Board ensures that actions and recommendations within the Corporate Risk Register are implemented.

9.4 The Audit and Governance Committee is responsible for keeping under review the effectiveness of the risk management, control and governance arrangements. Audit and Governance Committee receives a quarterly update on the Corporate Risk Register and considers any changes to the corporate risks and their ratings. Cabinet also receives quarterly monitoring reports and an annual report on the Corporate Risk Management.

10.0 Background

10.1 It is clear that change in the public sector is inevitable. Strategic Commissioning is about achieving even greater value for money, by doing things differently and using innovative new approaches to the way in which services are delivered, to achieve the outcomes desired by local people. It is not simply about reducing costs through arranging cheaper provision or about traditional outsourcing, as the new approach will be used to get the best from in-house services, from joint ventures between the Council and other providers, and from new delivery vehicles such as Social Enterprises or Staff Mutuals.

10.2 The Council already has two successful Council owned and controlled companies in place, Engine of the North and Tatton Park Enterprises. In February 2014 Cabinet approved the detailed business cases for ANSA, Orbitas and ESAR.

10.3 The Contract

10.4 The key principle governing the drafting of the contract has been that the contract is to empower rather than constrain the ASDVs.

10.5 The principal tools governing the relationship between the Council and each of the ASDVs will be the; contract, articles of association, director's mandate and the share-holder agreement, each of which are explained within the governance report on this meeting's agenda. The contract will set out what the contractor is to do, how it is to be paid, what happens if either party does not do what it should do and how services are to be delivered.

10.6 The contract will contain five main elements: (a) the terms and conditions (outlined in 10.8 above); (b) a statement of the Council's requirements; (c) a set of method statements explaining how the contractor will meet the Council's requirements; (d) a set of key performance indicators (or KPIs) against which the contractor's performance will be measured and (e) a mechanism detailing how the contractor is to be rewarded.

10.7 The terms and conditions will be the same for all vehicles with the other contract elements (outlined in 10.9 below) differing for each ASDV.

10.8 It is important that the contract gives the contractor freedom to determine how it will provide its services. The Council will specify the outcomes it requires under the contract, but it will not specify *how* the contractor delivers its services. The Council's outcomes are accordingly set out in the form of broad statements as to the outputs to be achieved (commonly known as an "output based specification").

10.9 By contrast, the method statements are to be specific, detailed, statements describing how the contractor intends to meet the Council's requirements.

10.10 The contract does not provide for automatic indexation of payments. For ESAR the proposed approach is to set a fixed cap for the management fee at the current level and to renegotiate the management fee within this cap annually. In respect of Council owned and controlled companies the proposal is that a minimum savings target will be set each year. The contract assumes therefore, that there will be an annual negotiation between the Council and the contractor in which the fee for the provision of the service will be agreed.

10.11 There will be pressure on the contractor to achieve efficiencies and it is to be expected that, from time to time, the scope of services may need to change to reflect budgetary constraints. So far as practicable, the contractor would be encouraged to develop other sources of revenue independent of the Council - though not where to do so would have a direct impact on the services.

10.12 The contract will provide for a "target cost" model, through which a target cost budget will be agreed with the contractor. This will provide for any savings or overspends to be shared in varying proportions. The precise basis on which any savings or overspends are shared would differ from contract to contract and may well vary year-on-year. It is to be assumed that the contractor would be able to retain the benefit of an agreed proportion of underspend and any such proportion can be used to build up a reserve to contribute to future overspend or, a reserve that can be applied, at some stage in the future, towards maintenance of the buildings used by that contractor.

10.13 The Council will act as a corporate landlord for the buildings used by all contractors and charge a peppercorn rent. The most efficient landlord arrangement will be for the Council to be responsible for insuring the properties and all aspects of maintenance. For year one only the Council will also undertake minor maintenance work. Thereafter the contractors will be responsible for minor maintenance work. Such an arrangement will minimise the VAT liability incurred by ESAR. In addition, all utility costs will also be provided by the Council within the terms of the lease agreement.

10.14 A specific provision will be included in both the contracts and the associated leases so that, where a company ceases to be owned and controlled by the Council the peppercorn rent, insurance and maintenance status will be replaced by a full repairing and insuring lease.

10.15 It is proposed that the contracts with Council owned and controlled companies should have a 7 year duration. This is consistent with the advice provided by PwC. Two reasons commonly support the decision to have a 7 year contract. Commercial vehicles (such as refuse collection vehicles) usually have a 7 year lifecycle and leases for 7 years and under are exempt from s123 Local Government Act's best rent requirement.

10.16 It is also proposed that any associated lease will be coterminous with the contract. As Orbitas will be acting as the Council's agent, the company's use of the Council's properties will be under licence rather than through a lease.

10.17 In ESAR's case it is proposed that the contract be for 10 years with a provision to extend for a further 5 years and that the lease period be coterminous.

10.18 Commissioning and Client Arrangements

10.19 The Council will be commissioning significant works from the 6 ASDVs it will have established in the first quarter of 2014-15 comprising a collective budget of circa £67m. This is in addition to the commissioning arrangements/spend already in place for the Ringway Jacobs contract and contracts with private care providers and the third sector.

10.20 It will be important therefore that challenging and enabling commercial contracts are in place, supported by service specifications and robust governance and performance management.

10.21 To manage and underwrite this important activity and to ensure that the Council receives value for money from its spend; staff currently deployed on these activities are prioritising these key projects.

10.22 There will be a continuing need for robust and effective client arrangements with the current team being brought together into a small integrated unit.

10.23 Given the synergy and relationship between Strategic Commissioning, strategy, understanding the market-place, and contracting and contract management, the team will be an integral part of the wider Strategic Commissioning Service. This will ensure that the Council's commissioning plans; strategies and planned outcomes inform and are built into the contracts, specifications and performance indicators.

10.24 Contracting Authorities/Contract and Procurement Rules

10.25 Detailed legal advice has been taken from external solicitors which confirmed that the fact that a company has been set up as a *Teckal* company does not entail that the company is a contracting authority.

10.26 Following external advice, Legal have concluded that during the incubation period the ASDVs (with the exception of ESAR) will be categorised as “bodies governed by public law” under the Public Contracts Procurement Regulations 2006 (a “contracting authority”). At the end of the incubation period or if circumstances change during the incubation period then the position will be reviewed on a case by case basis. Therefore, in the case of each of the ASDVs, where it spends public money, whilst it will not need to follow the contracting procedure rules laid out in the Council’s Constitution, it must adhere with the following:

- The Public Contracts Regulations 2006 (and amendments)
- EU Procurement Law, including the need for all contracts for goods or services, with a value of £172,514 or more, over the life of the contracts, to be procured via an EU compliant procurement process
- All procurement to be undertaken in an open, fair and transparent manner, as laid out in an internal procurement policy

Arrangements relating to the Council’s strategic contract with Engine of the North will be considered by Cabinet in April 2014. Engine of the North will be covered by a bespoke procurement strategy that meets its needs as a development company.

10.27 Existing contracts/corporate contracts

10.28 The Council has significant buying power. Initially at least, the ASDVs will have comparatively weak buying power and poor credit history. Therefore, where appropriate, ASDVs need to be able to access contracts which have been set up on terms which reflect the Council’s purchasing power.

10.29 Where practicable, existing contracts are being novated. Where this is not possible the ASDV should set up a new contract with the relevant supplier. If an ASDV continues to trade with a supplier that it does not have a contract with (either novated or set up directly) then the ASDV would have no recourse if the supplier lets the ASDV down.

10.30 In addition, the continued use of corporate contracts by ASDVs will need to be facilitated by the Council. Access to corporate contracts will be directly by the ASDV where possible and where not, additional processes will be put in place by the Council to pay and recharge invoices, as well as resolving associated issues regarding treatment of VAT, disputes, queries, errors, bad debts, credit notes etc. Management of the ASDVs should actively engage with suppliers to establish whether, and on what terms, future supplies will be made.

10.31 Where the ASDV is a contracting authority, as laid out in paragraphs 10.28 to 10.32 and the spend is over the OJEU threshold the procurement procedures in the *Public Contract Regulations 2006* must be followed.

10.32 Fees and Charges

10.33 ASDVs will operate within a framework agreed with the Council when they set fees and charges for services to their customers. It is proposed that this framework limits the overall increase in fees and charges by 2% per annum and contracts set out the treatment and control of fees under three headings:

1) Statutory fees – there is no discretion as to the level of charges and the ASDV will abide by the legislative requirements.

2) Strategic/High Profile fees – in a limited number of cases the Council may want to directly set the level of fees and charges for the ASDV. This may relate to the Council's outcomes and a desire to promote or discourage certain behaviour. These will be specified in the service contract.

3) Other – for most fees and charges. The overarching threshold is that individual fees and charges should not increase by more than 2% per annum without the specific approval of the Council. Proposals for any increases in fees and charges will be produced by the ASDV and included in their draft Business Plan, which in turn will be considered and signed off by Cheshire East Ltd.

10.34 In all cases information on the level of proposed fees and charges must be shared with the Council in advance of each financial year. Annex 2 of the Council's Charging and Trading Strategy offers further guidance on trading issues. The specific details relating to the setting of fees and charges will be specified in the individual contracts.

10.35 Staffing Matters

10.36 Pension arrangements: When Council staff transfer across to the new ASDVs there are several critical questions that need to be answered with regard to pensions:

(i) Will the ASDV take a share of the Council's historic deficit with them?

(ii) Will ongoing responsibility for the deficit rest with Council or the ASDV?

(iii) What approach will be taken to manage variations in employer's future service contribution rates for the new ASDVs where these are different from the residual Council and different between vehicles?

(iv) What impact will the transfer of staff to the ASDVs have on the Fund and the Council's contributions in future?

(v) Should ASDVs close access to the Local Government Pension Scheme, (LGPS), to new employees?

(vi) How should the pension liabilities of ASDVs be managed where one, or more, cease to participate in LGPS?

10.37 The approach recommended in this report is that:

(i)&(ii) **The ASDVs will not take a share of the historic debt with them. Ongoing responsibility for the deficit will rest with the Council.**
The Council will assume responsibility for the ASDVs share of its total past service deficit of £287m. The Council's actuary will 'notionally' allocate a proportion of this deficit to each ASDV on separation to inform contribution rates.

The annual cost of the Council retaining the deficit is lower than the estimated cost associated with transferring responsibility to the ASDVs. This is because the actuary regards the Council as being more secure - and offering less risk - than a limited company.

(iii) **Managing variations in future contribution rates:**
The Council will 'smooth out' variations in future contribution rates between ASDVs - as far as possible.

Where an ASDVs future contribution rates fall below those currently paid by the Council any savings will be retained to assist in the funding of ASDVs whose rates increase. Savings may also be used to help the Council meet future liabilities. This point is illustrated by the variation in the future service rates produced by the actuary in respect of open schemes for ESAR and ANSA.

ESAR – on separation the contribution rate will fall from 16.4% to 14.5%, a saving of £56,000.

ANSA - on separation the contribution rate will rise to 19.4% from 16.4%, generating an additional annual cost of £191,000.

The £56,000 will be retained by the Council – through adjustments in the management fee - to help pay the higher charges arising from increases in pension costs elsewhere.

Overall, the net additional cost to the Council in 2014-15 from ANSA, Orbitas, ESAR and CoSocius will be £142,000.

(iv) **Impact of transfer on the Council's fund and its future contribution rates:**
A key issue for consideration in transferring staff to ASDVs is the potential knock on effect on the Council's future contribution rates. This may occur regardless of whether the ASDVs keep the LGPS open or closed to new entrants. The actuary has warned that large scale transfers of staff to

ASDVs may lead to a knock on 'maturing effect' on the Cheshire Pension Fund. This may also lead to higher Council pension contributions in future. This issue is described in more detail in Appendix 1, together with proposed steps to mitigate the risk.

(v) **Access to LGPS for new employees:**

With the greater clarity gained from decisions (i) to (iii) more focused analysis and forecasting has been completed on the question of closing the LGPS to new ASDV employees.

One of the key considerations here is to establish at what point savings could be realised from closing the scheme. That is, the tipping point where the savings from reduced future liabilities outweigh the increased costs of closing the scheme. (The costs of closing the scheme include the consequential ageing of the membership and reduction of income via new joiners. Further details are set out in Appendix 1.)

Initial modelling by the Council suggests total additional costs of £183,000 in 2014-15. Beyond this the modelling suggests net savings for the Council and the ASDVs from year 7 onwards. This modelling will now be shared with the actuary for review.

The Council is also completing a more detailed analysis of the risks and impact of any decision to close LGPS to new employees.

Until this work is completed it is proposed that ASDVs are admitted to the scheme on the basis that access to LGPS will remain open to all employees.

(vi) **Managing liabilities should an ASDV cease to participate in LGPS altogether:**

This question would arise where the ASDV ceases to exist or where it closes access to LGPS to new employees. To cover either eventuality the Council will need to act as guarantor of the potential liability with the Fund. Alternatively the ASDV could purchase a bond to provide security to the Fund and the Council. The costs associated with ASDVs purchasing bonds are likely to be prohibitive.

It is recommended that the Council guarantee the potential future pensions liabilities for eligible staff within ASDVs as follows:

"The Council shall provide to the Administering Authority a guarantee of the payment of all sums by the ASDVs due under the terms of admission to the LGPS and under the LGPS Regulations arising in respect of or in connection with Eligible Employees."

Note - Eligible Employees means:

(a) the Transferring Employees who are active members of or have the right to acquire benefits under the LGPS under Regulation 4 of the Administration Regulations on a Relevant Transfer Date; and (b)any other individuals nominated by the Trust or subcontractor (as appropriate) with the prior written agreement of the Council, in accordance with the terms of the LGPS Regulations.

10.38 **Annual Pay Award for staff on NJC terms**: Following a TUPE transfer the new employer is not bound by changes negotiated and agreed after the date of transfer as part of a collective agreement, where the new employer is not a party to the collective agreement bargaining process. The Council's owned and controlled companies will not be party to the national NJC bargaining process unless they elect to be so and will not therefore be tied to future revised terms unless they so elect. Following consultation with the unions on this point, it is recommended that the Council's owned and controlled companies, outside of and separate to the NJC bargaining process, will be required to apply an uplift in pay for 2014/15 which is equivalent to the uplift agreed by the NJC for 2014/15. Beyond 2014/15 the Council will review this annually.

10.39 Cash-flow / Working capital and Financial guarantees

10.40 In order to operate from Day 1 ASDVs will need sufficient cashflow. An advanced payment methodology will therefore apply as follows:

- An invoiced advanced payment will be made to the ASDV for the services due.
- Payment will be made monthly based on estimated cashflows, but subject to close monitoring and made more frequently if required.
- Daily balances held in ASDV accounts to be monitored and transferred to Barclays reserve (interest bearing) type account, held in the name of the company.
- It is possible that the money market fund currently used by the Council will be available, but due to low level of balances held this probably will not be required.

10.41 The payment in advance methodology means that the Council will be paying its own ASDVs on more favourable terms than most other Council suppliers. However, on balance it is felt that pre-payment is justified when weighed against the additional expense and administration required in issuing loans to the ASDVs. Consideration of the Council's cashflow suggests that the funding required by the current and proposed ASDVs will not have a significant impact on the overall level of investment income and is more of a timing issue. If approximately £6m is advanced at the beginning of the year, the Council would lose out on £30k investment income, however some of this would be recovered by the companies. This will be monitored and the Council reserves the right to pass the costs of lost income onto the ASDVs if costs escalate.

10.42 Where appropriate the contracts with ASDVs may specify that an element of the agreed pre payment amount is withheld and only released on successful completion of agreed outcomes.

10.43 In respect of Co-Socius (wholly owned and controlled jointly with Cheshire West and Chester) the Shared Services Joint Committee agreed to issue a loan to Co-

Socius. This will be on a commercial basis with the two Councils providing half of the required amount. The interest rate for the loan will be based on the 1 year money market rate plus a commercial margin. The proposed maximum loan amount is £7m with Cheshire East providing half this amount. The suggested rate is 4.85%, which has been calculated in accordance with OJEU Guidance to ensure there are no State Aid implications. CoSocius will draw down amounts within the £7m maximum cap as required i.e. the loan will in effect be used as an “overdraft facility” by the company. The loan will be accounted for as a long term debtor in the Council’s balance sheet with interest earned on the loan to be credited to the revenue account.

10.44 The approach recommended in this report for CoSocius is that a loan, calculated on a commercial basis, is provided to the company to enable them to operate from day 1. Given the commercial nature of the loan and the fact that the company is wholly owned by two councils the risk associated with the loan is considered to be minimal.

10.45 On day 1 most ASDVs will have little or no net assets on their balance sheets and will therefore struggle to function without some form of financial guarantee. For example, companies supplying goods or services will not extend their usual terms of trade (28 days credit etc) to an ASDV with no assets. A similar issue arises with regard to the transfer of leases from the Council to an ASDV where the leasing company will require financial guarantees prior to agreeing to the transfer.

10.46 Where appropriate the Council will act as guarantor, which means that the Council is creating a potential liability on its own balance sheet. In respect of ESAR it is unlikely that the Council would be able to offer a meaningful guarantee given that the entity will not be owned or controlled by the Council. In this instance, should the Council’s guarantee not prove sufficient then our new bankers, Barclays are considering whether they are able to offer a guarantee for ESAR and on what terms this would be offered.

10.47 Performance/financial reporting and systems

10.48 The Council will expect ASDVs to report on their performance in line with the relevant contract and some indicators will be annual with others monthly. Commentary on all indicators contained within the Performance Management Framework will be collated at least quarterly and commentary will focus on the ASDV achievements against the relevant Council outcomes.

10.49 Financial monitoring will be reported via Cheshire East Ltd and Cabinet. In addition the Board of each company will want to consider financial performance against the business plan, at least quarterly.

10.50 ASDVs will be required to supply financial information on the frequency determined in their contract. All performance indicators will focus on the achievements against the Council’s outcomes.

10.51 The application of an "Incubation Period" for the provision of support services to ASDVs

10.52 The term "incubation period" refers to the period of time over which the ASDVs will be required to take Support Services from Cheshire East. There are a range of mutual benefits in having an incubation period; including providing stability and continuity for the ASDVs on formation; and also facilitating a managed approach to the realisation of Support Service cost savings.

10.53 The Council's Chief Operating Officer will determine a set of "essential requirements" for all ASDVs that will be mutually beneficial, in order to ensure good governance and stewardship and support the role of the Shareholder Committee in managing performance. As reflected further below, the method of provision may change over time, but their delivery will be reviewable annually. The key elements will include:

- Accounting and financial reporting arrangements, in accordance with legislation and professional standards applicable to the sector (e.g. charitable trust; private limited company) and also in accordance with local authority accounting requirements (as applicable) for inclusion in the statutory accounts of the Council
- Robust financial systems, capable of supporting the delivery of accounting and reporting requirements and resilient ICT systems, in relation to main Service provision; office and business administration; and associated infrastructure, networking, management and support
- Internal Audit arrangements, to provide assurance in relation to financial systems, processes and controls, anti-fraud and corruption provisions, corporate governance, stewardship and reporting
- Operations and practices are legal, including procurement activities, terms of trading and associated business processes, compliance with tax and other financial administrative requirements, as applicable to the sector
- Insurance and risk management arrangements
- Strategic financial advisory arrangements - professionally qualified and experienced – and robust business planning and budgeting arrangements, including cognisance of the Council's medium term financial planning as reflected in the level of management fee/ subsidy
- Programme and Project Management services
- Professional HR management, Workforce Development and employee-related administrative arrangements
- Health and Safety arrangements
- Professional legal advice, as required.

10.54 **For Council owned and controlled companies** the over-arching principles of the Incubation Period are that:

- The Support Services Incubation Period is for up to three years, from "go live". During the incubation period, the method of providing support services may change if opportunities to deliver material cost efficiency savings are identified and they can be realised by corresponding cost reductions in the Council's budget i.e. a reduction in *total* cost (or as a minimum a net nil position) to the taxpayer can be delivered. Where a company wishes to change this arrangement it must be agreed with Cheshire East Ltd and Cabinet.

- Oracle will be used as the main financial/ business system for each ASDV - reviewable after the first 12 months. This will provide the Council with a high degree of audit assurance and ensure full and direct access to all financial records is guaranteed.
- ASDVs will use the services of CoSocius (payroll; debtor and creditor invoice processing; ICT support services) - reviewable every 12 months.

10.55 In certain instances, where a Support Service is largely "embodied" within an individual (e.g. senior HR advisor), it may be appropriate to consider TUPE transfer of that individual at "Day 1" of the ASDV. Where a package of Support Services is being provided by the Council, matters relating to TUPE transfer of individual staff will not apply. At the end of the Incubation Period, ASDVs will have freedom to choose to buy from the Council, or from elsewhere; the eligibility for TUPE transfer of individuals involved in the provision of Support Services at that time will be considered. ASDVs will need to continue to demonstrate meeting the essential requirements of good governance and stewardship, beyond the Incubation Period.

10.56 In respect of ICT, Support Services include the systems and also the staffing support to the operation and development of systems. With regard to exploring and moving to alternatives (to Oracle and CoSocius), it is expected there would be dialogue between the ASDV and the Cabinet. With regard to systems specific to each ASDV and solely used by them, ASDVs will be free to develop or replace those systems, in accordance with their business needs and within their budget envelopes, providing the essential requirements of good governance and stewardship continue to be met.

10.57 In respect of ESAR both it and the Council will be concerned to achieve best value for money for residents of the Borough. ESAR will need to be clear on what it must procure independently and make choices on the merits of buying other services offered by the Council, informed by discussions around service specifications and associated prices. In order to assure continuity for "go live" and stability for a period, it is strongly recommended that the ESAR uses the Council's Oracle system as its main financial/ business system for up to three years.

10.58 Charging for Support Services

10.59 The realisation of Support Services cost savings is a shared goal for each ASDV and the Council. As new ways of working are developed and support service cost efficiencies identified within an ASDV, the cost of Support Services required and charged to that ASDV will fall; and the Council's Support Services budgets (and its associated resources) will be reduced. Savings will be fed into the Council's

Medium Term Financial Strategy process, thereby enabling decisions to be taken on whether savings should be shared between the Council and the ASDVs.

10.60 The practical application of the Incubation Period is described above. ASDVs will be charged for the cost of Support Services actually provided by the Council, on freshly devised methodologies. The subsidy provided by the Council to each ASDV in respect of their operating bottom line will take into account the cost of Support Services provided, £ for £ - i.e. ASDVs will not be "penalised" for using the Council's Support Services, in the determination of total management fee/ subsidy. Going forward, as any cost efficiencies are realised, any reduction in the cost of Council support services required by an ASDV will be matched by a reduction in its management fee i.e. the financial benefits are passed on to the taxpayer.

10.61 Any Support Services provided by the Council – to deliver the "essential requirements" of good governance and stewardship or meet other needs of the ASDV - will be in accordance with agreed specifications and charges will be as set out in agreements between each ASDV and the Council. Usually, this will take the form of a fixed price, for a package of Support Services provided each year.

10.62 With regard to some Support Services, alternative approaches may be more appropriate – e.g. a fixed price "retainer" for a certain level of service, along with separate charges for ad hoc work commissioned only as and when required by the ASDV.

10.63 Company Specific Issues

10.64 As a charity, ESAR must use its resources in the furtherance of its charitable objects. It may not make any distribution to its members.

10.65 During its lifetime ESAR will acquire assets of its own. The Council must be mindful that should the provision of services by the trust come to an end, for instance at the end of a contract period, any assets of the trust could be transferred to other sport and recreation charities and not necessarily in Cheshire East. Property assets such as the leisure centres would be rented to the trust and, in line with normal property practice would revert to the landlord at the end of the contract or upon the insolvency of the tenant.

10.66 To ensure that equipment transferred to ESAR would continue to be available to residents of Cheshire East, it is suggested that all fitness equipment etc. be leased to the trust. The trust would be responsible for maintaining and refreshing that equipment. As with the properties, the equipment would revert to the landlord at the end of the contract or in the event of the insolvency of the trust.

10.67 Insurance

10.68 The general principle for all Council owned and controlled companies is that all significant strategic assets will be retained by Cheshire East and not transfer to the new vehicle. As a consequence the Council can extend its existing insurance approach and policies to cover the majority of the insurance requirement of companies. This means that the companies will be covered by the same self insurance arrangements as the Council i.e. insurance payouts below current excess levels will be funded from the Council's Insurance Fund.

10.69 The principle of extending the Council's cover should be able to continue so long as the companies continue to be owned and controlled by the Council and do not carry out any new, 'non-Council' functions. If either of these changes take place then additional separate insurance arrangements would have to be made for each company. In all cases an additional policy to indemnify Directors and Officers of each company will also need to be put in place.

10.70 This approach of extending the Council's cover will not work for ESAR given their independent status and therefore a complete insurance package has been separately procured outside of the Council's policies.

10.71 Accordingly, wherever possible, the Council will extend the existing insurance arrangements to cover the requirements of its companies.

10.72 Section 106 Income

10.73 Section 106 income relates to legal agreements between developers and the Council, as planning authority. As an obligation as part of planning permission, developer's contributions are received by the Council for specifically-defined purposes, often in respect of funding future grounds maintenance in the local area and/ or financing the build of new facilities (e.g. play areas).

10.74 Both existing and any future S106 income will remain with the Council. It will be used to finance the works as set out in respective planning agreements. The Council will commission the delivery of works as most appropriate; this may be by using the services of one of its ASDVs. In considering S106 income in respect of a particular development proposal, the Council may seek information and advice from its ASDVs, to help determine the appropriate level of developer contribution.

10.75 Statutory requirement before disposal of public open space

10.76 In mobilising ESAR, the Council will dispose of a number of properties to the company under leases, the properties consist of certain playing fields and other open space as well as the leisure centres. S123 of the Local Government Act 1972 requires that where open space is to be disposed of the Council must first advertise its intentions and consider any objections to the proposed disposal.

10.77 The required advertisements were placed in the local press during the latter part of January 2014 and concerns/objections were received in respect of five of the fourteen sites included in the proposal, as a result of which the following change has been made.

10.78 The land adjacent to Congleton Leisure Centre, known as ‘Hankinson’s Field’, will be licensed to ESAR providing for the full usage of the site for the purpose of promoting and providing sport and recreation services under the contract.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Appendix 1

ASDV Pensions – Potential Impact of staff transfers on the Council's pensions contributions

The Issue

1 An important issue for consideration in transferring staff to ASDVs is the potential knock on effect on the LGPS and Cheshire East Council's contributions to the fund. This may occur regardless of whether the ASDVs keep the LGPS open or closed to new entrants.

2 The potential impact of ASDV staff transfers flows from the fact that Cheshire East's pension contributions are set on the assumption that its membership will remain broadly stable i.e. the flow of new entrants to the scheme is balanced by the number of leavers and retirees. The question is whether this assumption still holds true when the Council is transferring staff to ASDVs who are set up as separate employees in the scheme.

3 The Fund's actuary has warned that a large transfer of staff (or series of transfers) means that the flow of new entrants into the Council is stemmed. This has the effect of 'ageing' the membership of the Council scheme. This process starts to have an impact on the investment strategy of the fund as cash flow becomes a more pressing concern - less cash from new members coming in. This could result in the fund moving away from a predominately equity based strategy. A more risk adverse strategy may then be pursued resulting in reduced returns. This in turn places a greater strain on the Fund and the Council's contribution to it from a shrinking number of active members.

4 It is not possible to estimate the long term impact of the transfers with any degree of accuracy. This is mainly because there are a huge number of other factors at play e.g. non ASDV Council downsizing, investment returns, longevity etc. To give an indication of the potential impact - a 1% increase/decrease on employer contributions for the Council equates to approx. £1.1m per annum.

Mitigation

5 The number of active members transferring to ASDVs on 1st April is 582. This equates to 7.7% of the Council's current active members. The actuary has confirmed that the Council's contributions do not need to be increased at the time of these transfers. The actuary has also said that the Council needs to be aware of the potential risk of the transfers hastening or contributing to the maturing impact on the main fund. At this stage, given the numbers involved, there is unlikely to be a significant effect on the residual fund.

6 Further mitigation of any potential risk is offered by the broader review of Cheshire East's strategy on the funding of its contributions to the Pension Fund, where a number of options are being reviewed. These include options such as pre-paying deficit contributions to the Fund as cash amounts rather than the current monthly drip feed. This could deliver benefits to both the Fund and the Council's long term pension contributions.

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