

# ASDV Shareholder Committee

## Agenda

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**Date:** Thursday, 14th November, 2019  
**Time:** 1.00 pm  
**Venue:** Committee Suite 1, Westfields, Middlewich Road, Sandbach  
CW11 1HZ

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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 in the 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. **Minutes of Previous meeting**

To approve the minutes of the meeting held on 1<sup>st</sup> November 2019 (to follow).

4. **Terms of Reference** (Pages 3 - 12)

To give further consideration to the Committee's terms of reference.

5. **Group of Companies' Trading Reserve** (Pages 13 - 18)

To consider a report on the Group of Companies' Trading Reserve and make recommendations to the Cabinet Member.

6. **Exclusion of the Press and Public**

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government

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Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

## **PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT**

### **7. Care4CE Report**

To consider a report on the establishment of a wholly-owned community interest company, in connection with a strategic review of Care4CE, and make recommendations to the Cabinet Member (report to follow).

### **8. ASDV Business Plans (Pages 19 - 116)**

To consider the following business plan:

- **ANSA Environmental Services Ltd Business Plan**

**Membership:** Councillors S Carter (Chairman), M Goldsmith (Vice-Chairman), S Handley, S Pochin and L Smetham

**Agenda Item 4****SHAREHOLDER COMMITTEE  
TERMS OF REFERENCE****1. Purpose of the Shareholder Committee**

**1.1.** The Shareholder Committee will give advice and direction to the Cabinet Member(s) who hold the legal responsibility for making ASDV shareholder decisions. [ The Cabinet Member(s)]

**1.2.** The Shareholder Committee will:

- 1.2.1. Provide strategic oversight of the commissioning arrangements for ASDVs and to provide assurance to The Cabinet Member(s) that these arrangements are:
  - 1.2.1.1. compliant with the councils constitution, rules and procedures;
  - 1.2.1.2. achieving best value
  - 1.2.1.3. fit for purpose.
- 1.2.2. Provide specific recommendations to The Cabinet Member (s) regarding any improvements to be made to these commissioning arrangements.
- 1.2.3. Commission and then oversee an ASDV change programme as per the resolutions of Cabinet meeting of 13 March 2018.
- 1.2.4. Review any proposals to expand or reduce the scope of any of the existing ASDVs and advise The Cabinet Member (s) regarding any decisions to be made in this regard.
- 1.2.5. Review any proposals to create a new ASDV and advise The Cabinet Member(s) regarding any decisions to be made in this regard
- 1.2.6. Review any proposals to close any of the existing ASDVs and advise The Cabinet Member(s) regarding any decisions to be made in this regard.
- 1.2.7. Review the strategic business cases for each ASDVs and to provide strategic advice to The Cabinet Member(s) before these business plans are endorsed by the shareholder.
- 1.2.8. Ensure that appropriate communication and engagements processes are put in place for all stakeholders.

- 1.2.9. Otherwise discharge the role of the Shareholder in respect of the Council's ASDVs.

## **2. Membership**

- 2.1.** The Shareholder Committee shall consist of 5 voting members drawn from the Elected Members of the Council. This will be appointed to in line with the rules set out within the constitution for the appointment of members to committees.
- 2.2.** The proportionality of the voting members will reflect the political proportionally of the Full Council.
- 2.3.** A further 2 co-opted members will also be appointed to the Committee to provide the committee with a wider range of commercial and governance expertise to the committee and the Cabinet Member(s).
- 2.4.** Quorum: For the transaction of business there must be [3] Elected members present.

## **3. In Attendance**

- 3.1.** The Chief Executive, the Section 151 Officer, the Director of Legal Services and the Executive Director for Place (or their representatives) will be advisors to the Shareholder Committee. The committee and/or those Officers may invite additional advisors to attend the Shareholder Committee as required.

## **4. Functions**

- 4.1.** The core function of the Shareholder Committee is providing strategic oversight of the arrangements with the Councils ASDVs at the group level. In exercising this core function the Shareholder Committee may determine the areas it wishes to consider but as a minimum the committee must be able to:
- 4.1.1. Provide assurance that strategic commissioning arrangements for the ASDVs are fit for purpose or provide recommendations to ensure that they are.

- 4.1.2. Provide assurance that the overarching performance arrangements for each ASDV are fit for purpose or provide recommendations to ensure that they are.
  - 4.1.3. Provide assurance that the arrangements for ASDVs comply with the Public Contract Regulations 2015;
  - 4.1.4. Provide assurance that all ASDVs are complying with the relevant statutory and regulatory framework for their respective areas of operation;
  - 4.1.5. Prepare and maintain a strategic risk register in relation to the group of ASDVs
- 4.2.** The shareholder committee shall provide advice to The Cabinet Member(s) on any decisions that need to be made in relation to the overall commissioning arrangements and also prepare and present a strategic report to the Cabinet at least once a year on the overall governance and performance arrangements for the Council's ASDVs.
- 4.3.** The second core function of the Shareholder Committee is to fulfil the resolution of the Council's Cabinet at its meeting of 13 March 2018 in relation to the establishment of an ASDV change programme and any future change
- 4.4.** Within this core function the Shareholder Committee will consider the initial review undertaken by the external advisors and will commission a detailed programme plan to enable a set final recommendations to be made to The Cabinet Member (s) regarding each of the companies. These recommendations may include:
- 4.4.1. The expansion of an existing ASDV
  - 4.4.2. The creation of a new ASDV
  - 4.4.3. The transfer of services from one ASDV to another
  - 4.4.4. The returning of the services from an ASDV back to the Council
  - 4.4.5. Making changes to the council's overarching commissioning arrangements
  - 4.4.6. In support of this core function the Shareholder Committee will review and analyse the annual statement of accounts of each ASDV.
- 4.5.** The third core function of the Shareholder Committee is to make recommendations to The Cabinet Member (s) about whether or not to approve the business plans of each of the ASDVs as shareholder. Within this core function the Shareholder Committee will also:
- 4.5.1. Provide strategic advice to The Cabinet Member (s) on the robustness and suitability of each of the ASDV Business Plans

- 4.5.2. Review any proposals to make a significant capital or revenue investment in any of the council's ASDVs
- 4.5.3. Specifically reviewing any proposal by an ASDV to submit tender for services to a client other than Cheshire East Council
- 4.5.4. Provide advice to The Cabinet Member(s) before exercising any shareholder consents
- 4.5.5. Determine the distribution of any surplus or the issue of any dividends from an ASDV

**4.6.** It is to be noted that the Shareholder Committee will not have operational control over the ASDVs. Within the parameters legitimately falling for approval by the Shareholder, all decisions regarding the day to day operation of each Company are the responsibility of the Directors of each Company. In addition, the day to day liaison with the companies will be between the client service of the Council and the managing director of each company.

## **5. Frequency of meetings**

**5.1.** The Shareholder Committee will:

- 5.1.1. Meet Quarterly as a minimum
- 5.1.2. Report to the Council's Cabinet on at least an annual basis
- 5.1.3. Report to the Corporate Overview and Scrutiny Committee annually

## **6. Administration**

**6.1.** Minutes and agendas will be distributed no later than 5 clear working days prior to the meeting

## **7. Principal Information Management needs.**

- Statutory accounts of each company
- Annual engagement and commercial activity report
- Update reports on major projects
- Business plans for each company including risk registers

## Appendix 1

## ASDV Shareholder Committee Meeting Forward Plan, from 2020

Date	Standard agenda items (Regular Business)	Work Programme (Scheduled)
Initial meetings of new Committee	Induction training <ul style="list-style-type: none"> <li>• Overview of ASDVs (internal)</li> <li>• Governance as Shareholder (external)</li> <li>• ASDV finances (internal)</li> </ul>	Appointment of Chair, Vice-Chair Agree: – <ul style="list-style-type: none"> <li>• TOR, Forward Plan, and Process for Appointment of Co-opt members</li> <li>• Reviewing Business Plans – Appraisal template</li> <li>• Trading Reserve - Process</li> </ul>
Ideal schedule date: January  (to align sign off of BPs in MTFS)	Update on ASDV change programme  Trading reserve – review of any proposals for investment/status update  ASDV Business Planning - note final reports x 4  Sign-off of Shareholder Committee Report to Cabinet	Presentation to Corporate Overview and Scrutiny Committee  Report to Cabinet on Shareholder Committee on overall governance and performance arrangements for Council's ASDVs
Ideal Schedule date: April	Update on ASDV change programme  Trading reserve – status update  Review of ASDVs strategic risk register  Engagement and commercial activity report (Yr prior)	
Ideal Schedule date: August  (to align with HLBC timetable)	Update on ASDV change programme  Trading reserve – review of any proposals for investment/status update  ASDV Business Planning – review draft Business Plans x 4	Report to Cabinet Member offering strategic advice on robustness and suitability of ASDV business plans
Ideal Schedule date: October	Update on ASDV change programme  Trading reserve - status update  Review of ASDVs strategic risk register  Mid Year Review	

		<p><b>Work Programme (Ad hoc – based on need)</b></p> <p>Report to Cabinet Member providing advise regarding any proposal to expand or reduce the scope of any of the ASDVs</p> <p>Report to Cabinet Member providing advise regarding any proposal to create or close any of the ASDVs</p>
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#### **Scheduled meetings (as at 1<sup>st</sup> Oct 2019)**

- 22<sup>nd</sup> January 2020 2.00 pm
- 18<sup>th</sup> March 2020 2.00 pm

#### **Future considerations**

- Length of meetings
- ASDV business plan reviews – duration of each session, scheduling of review sessions (1 day, 2 x half day, 3 x 2 hour sessions, to allow BAU?)

End



## Appendix 2

### Process for appointment of ASDV Shareholder Committee co-opt members

#### 1. Process

It is proposed that the appointment of the ASDV co-opt members follows the normal recruitment process adopted by Cheshire East Council.

This involves:-

- Booking local advertising via Cheshire East Council's media buying contract with TMP worldwide.
- Inviting interested candidates to apply by submitting a comprehensive CV together with a supporting statement which outlines their motivation for applying for the role, and how they meet the person specification outlined in the Job Description (Below) – this will be kept to no more than 2 sides of A4 in length
- As per normal recruitment practice, interested candidates will also be asked to nominate two referees (both should ideally be current/past employers) and complete an Equal Opportunities monitoring form
- Shortlisting of potential applicants by a task and finish Recruitment Panel, including the Chairman, the Executive Director of Place, and 1 other nominated member.
- Interviews of shortlisted candidates by the established Recruitment Panel, to select the new members.

#### 2. Local Advertising of Appointments

The positions will be advertised in the Recruitment Sections of the media outlets, namely:-

- Crewe Chronicle
- Wilmslow Express
- Macclesfield Express

Additionally, the adverts will also be listed on the Cheshire East Council website.

#### Draft Recruitment Advert

### **ASDV Shareholder Committee Appointments x 2**

**Modern, fast-paced delivery never looked so good as it does right now at Cheshire East Council.** The council is an aspiring, high performing organisation, with an ambitious corporate plan, a thriving economy, beautiful surroundings and strong links with our partners and neighbouring authorities. As part of its strategy to seek better value from delivery it has established Alternative Service Delivery Vehicles (ASDVs), with four of these operating as wholly owned companies of the Council. A Shareholder Committee provides advice and guidance to the Cabinet Member holding legal responsibility for making ASDV shareholder decisions.

The Shareholder Committee is seeking to appoint 2 x co-opt members to supplement the commercial and governance expertise of the Committee, which comprises 5 Elected Members of the Council, who were appointed in line with the rules of the council's constitution. By committing to circa 6 x 2.5 hr meetings a year, you could make a far reaching impact across services covering building control and planning admin, community and public transport, waste and environmental, and bereavement. **Expenses will be reimbursed**. Email xxxxxx for more information. Closing date xxxx.

### **3. Job Description and Person Specification**

#### **Role - Shareholder Committee Member**

##### **1. Context**

Cheshire East Council is seeking to appoint 2 x co-opt members to its Alternative Service Delivery Vehicle (ASDV) Shareholder Committee. The purpose of the appointments is to supplement the commercial and governance expertise of the Committee, with co-opt members joining 5 Elected Members of the Council, who were appointed in line with the rules of the council's constitution.

The Shareholder Committee is established to give advice and direction to the Cabinet Member/s who hold legal responsibility for making ASDV shareholder decisions. It meets Quarterly as a minimum.

ASDV's are a range of organisations that the Council has created to deliver services to residents, businesses and service users. They include companies, charities and co-operatives. The Council currently has five ASDVS being: ANSA Environmental Services, Orbitas Bereavement services, Transport Services Solutions Ltd, Tatton Park Enterprises Limited and Everybody Sport & Recreation. ESAR is outside the remit of the Shareholder Committee as it reports directly to Council's Cabinet.

##### **2. Role Description**

The Key Accountabilities of the Members are:

1. To take corporate, team and personal responsibility as a Board member.
2. To offer constructive criticism and challenge and any other contributions to Board discussions and decisions to be made by the Cabinet Member (s).
3. To contribute positively to the development of the Business Plans and in relation to any other material and significant issues facing each Company.
4. To set challenging targets aimed at improving performance and delivering excellence, and against which the performance of the business can be measured and monitored.

5. To communicate effectively with Stakeholders and ensure that their objectives are met and provide a wider community perspective on the operating environment of the Companies through regular communication with other stakeholders
6. To ensure that the Companies are operated in a safe, legal, efficient and environmentally sustainable manner.
7. To participate in appropriate training on Board duties and accountabilities and to familiarise themselves with the Companies' operations.
8. Ensure that the obligations to members and other stakeholders are understood and met.
9. Promote equality of opportunity and embrace diversity in the way the organisation goes about its work.
10. To fulfil a time commitment of approximately 6 days per year as required and maintain a good attendance record at meetings.

### **3. Skills and Experience**

Whilst Committee Members are expected to have the following skills and experience, some training and development will be made available:

1. Knowledge and understanding of the development and monitoring of organisational or business strategy.
2. Understanding of the processes of planning financial control, performance management and assurance that deliver Company objectives.
3. Credibility with internal and external stakeholders.
4. Ability to understand complex strategic issues, to analyse and to resolve difficult problems.
5. Able to work as an effective member of the Board, all of whose members are equally and jointly responsible for its decisions.
6. Cognisant of the need for accountability to the Shareholders and able to bring engagement with the Shareholders and the broader stakeholder community.
7. Some knowledge and understanding of delivering commercial ventures within the current Local Government system in the UK.

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## **Portfolio Holder Decision**

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**Date of Meeting:** 21 November 2019

**Report Title:** Group of Companies' Trading Reserve

**Portfolio Holder:** Cllr Craig Browne, Deputy Leader

**Senior Officer:** Jane Burns, Executive Director of Corporate Services

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### **1. Report Summary**

- 1.1. The purpose of this report is to enable the Shareholder Committee to consider the Group of Companies' Trading Reserve and make recommendations to the Deputy Leader.

### **2. Recommendation/s**

The Portfolio Holder agrees that:

- 2.1. To facilitate closure of the Trading Reserve the contractual agreements between the Council and each of its wholly owned Companies be amended, as described in the report; and by consultation and agreement with the Companies as required by the Variation Procedure
- 2.2. The Trading Reserve be closed and the monies transferred to the Council's General Fund Balance
- 2.3. Companies are encouraged to utilise their own retained reserves in respect of funding initiatives that are aimed at developing their business
- 2.4. In the event that development finance is required from the Council, companies may make a bid, via the Shareholder Committee, for support on an "invest to save" basis, for inclusion in the Medium Term Financial Strategy, as part of the Council's business planning and in-year review processes
- 2.5. The existing approach to year-end profit/ loss sharing also be considered as part of the ASDV Review and a further report be prepared in the event that any changes are proposed

### **3. Reasons for Recommendation/s**

- 3.1. Proposals for use of the Trading Reserve have previously been considered and approved by Cheshire East Residents First Ltd (CERF). Following several years of trading by the companies – and the creation of the Shareholder Committee and implementation of the ASDV Change Programme – it is timely to review the purpose of the Reserve.
- 3.2. With the balance of the Reserve totalling £2.161m at 31 March 2019, the proposals and recommendations set out in the report will help to ensure that those resources are best used to meet the strategic needs of the Council, and also that robust consideration is given to the future investment and development plans of the companies.

### **4. Other Options Considered**

- 4.1. The alternative would be for the Trading Reserve to remain in place. However it is considered that transferring the monies to the General Fund Balance will help to ensure that Cheshire East Group resources are used to best strategic effect; and that companies will also focus on the utilisation of their own reserves as a key part of their future development plans.

### **5. Background**

- 5.1. Since the formation of each company, their financial outturn has been subject to a “profit/ loss sharing” calculation, in respect of the year-end position on their respective contracts with the Council. By way of simple illustration in respect of profits, the legal agreement is typically such that:

- a) 25% of profit is retained by the Company
- b) 50% of profit is held by the Council in the Trading Reserve
- c) 25% of profit is paid over to the Council (though in practice this share of profits has also been added into the Trading Reserve)

NB. There are also arrangements for sharing year-end losses; they are more “unique” to each company (their operations; scale, etc.)

- 5.2. Following several years of trading there is a balance reported on the Council’s Balance Sheet as the earmarked Trading Reserve of £2.161m as at 31 March 2019.
- 5.3. It should be noted that in setting the Council’s budget for 2019/20, a “dividend” payment of £500,000 was included; this may be realised from

either a share of profits made in the financial year, or a transfer from the Trading Reserve at year-end.

### **Current Arrangements and Proposals for Change**

- 5.4. The contractual agreements between the Council and each Company include the following terms, as part of the Schedule relating to the Payment and Performance Monitoring System:

#### **SCHEDULE 6 PART 2 RING FENCED FUND**

1. The portion of any Underspend specified in paragraph 7 [relating to year end profit/ loss sharing arrangements] of Part 1 of this Schedule 6 to be paid to the Ring Fenced Fund is to be paid into an account in the name of the Contractor in the books of the Authority ("Ring Fenced Fund" [i.e. the Trading Reserve] )
2. The Ring Fenced Fund may only be spent in furtherance of the objectives of the Contractor; it may not be used to defray any expenses of the Authority or of any other entity.
3. The Contractor may from time to time apply for monies to be paid from the Ring Fenced Fund to be applied in furtherance of the objectives of the Contractor and if agreed the Authority shall release the agreed amount from the Ring Fenced Fund and pay the same to the Contractor
4. Any monies standing to the credit of the Ring Fenced Fund at the Expiry Date or earlier termination of this Agreement will be paid to the Authority
5. The provisions paragraphs 7 and 8 [relating to year end profit/ loss sharing arrangements] of Part 1 of this Schedule 6 and paragraphs 1 to 4 of Part 2 of this Schedule 6 may be reviewed from time to time with the agreement of both parties in accordance with Schedule 7 (Variation Procedure).

#### **SCHEDULE 7 VARIATION PROCEDURE**

.. no amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf each of the parties hereto.

- 5.5. Following several years of trading, rather than continue to ring-fence a significant reserve for the furtherance of the objectives of the wholly owned companies, it is proposed that:

- a) The Trading Reserve be closed and the monies transferred to the Council's General Fund Balance
  - b) Companies are encouraged to utilise their own retained reserves in respect of funding initiatives that are aimed at developing their business
  - c) In the event that development finance is required from the Council, companies may make a bid, via the Shareholder Committee, for support on an "invest to save" basis, for inclusion in the Medium Term Financial Strategy, as part of the Council's business planning and in-year review processes
- 5.6. It is also worthy of note that, relating to this proposal, as part of the review of their business plans for 2020/21 each company will be asked to establish appropriate minimum levels of retained reserves, on a risk assessment basis, mindful of the nature of their operations and financial commitments and that there will no longer be a Trading Reserve to "absorb" any share of a year-end loss.
- 5.7. As regards the year-end profit/ loss sharing arrangements described in paragraph 5.1, it is proposed that:
- a) The approach to profit/ loss sharing be considered as part of the ASDV Review and a further report be prepared in the event that any changes are proposed
  - b) That pending any review outlined in 5.7a the contracts be amended to reflect that there will not be a Trading Reserve and that:
    - 5.7.b.1. Any share of profits that would have been paid into the Trading Reserve are paid into the Council's General Fund Balance
    - 5.7.b.2. Any share of losses that would have been paid into the Trading Reserve are retained by the company
- 5.8 To effect the above proposals, the contractual agreements between the Council and each Company will need to be amended and agreed by all parties, in accordance with the Variation Procedure.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- a) The recommendations will require amendment to the contractual agreements with the Companies and will need to be agreed by all parties, in accordance with the Variation Procedure



**6.2. Finance Implications**

- a) The report relates to the transfer of monies in an existing earmarked reserve into the General Fund Balance of the Council, and proposes alternative approaches to the financing of future investment in the development of companies – i.e. utilisation of company retained reserves, and/ or requests for funding support from the Council on an invest-to-save basis, as part of the Council’s regular business planning and reporting processes.
- b) As the Trading Reserve has, in part, “received” a share of year-end losses of companies (as well as profits), it will be important for companies to develop sound approaches to the determination of their required minimum level of retained reserves; and also to devise robust plans for recovery in the event of having a retained loss Balance Sheet position.

**6.3. Policy Implications**

- a) There are no policy implications relating to the recommendations contained in the report.

**6.4. Equality Implications**

- a) There are no implications relating to the report that require an Equality Impact Assessment to be prepared.

**6.5. Human Resources Implications**

- a) There are no HR implications

**6.6. Risk Management Implications**

- a) As described in the Financial Implications section at 6.2 above, removal of the Trading Reserve will mean that a different approach to financial risk management should be taken by companies, placing greater significance on their need to establish minimum levels of retained reserves; and where applicable to devise plans to recover from any retained loss position.

**6.7. Rural Communities Implications**

- a) There are no direct implications for rural communities.

**6.8. Implications for Children & Young People**

- a) There are no direct implications for children and young people.

**6.9. Public Health Implications**

- a) There are no direct implications for public health.

**6.10. Climate Change Implications**

- a) There are no direct climate change implications.

**7. Ward Members Affected**

- 7.1. All

**8. Consultation & Engagement**

- 8.1. It is proposed that, in consultation with the Shareholder Committee, arrangements be made to consult with Company Chairmen and Managing Directors with regard to the recommendations set out in the report, particularly with respect to making the changes to the contractual agreements with Companies relating to the proposals, and as required by the Variation Procedure.

**9. Access to Information**

- 9.1. There are no supporting documents relating to this report.

**10. Contact Information**

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Paul Goodwin

Job Title: Finance Manager (Commercial & Project Accounting)

Email: paul.goodwin@cheshireeast.gov.uk

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of the Local Government Act 1972.

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