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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