

# CHESHIRE EAST COUNCIL

## Audit and Governance Committee

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<b>Date of Meeting:</b>	27 March 2014
<b>Report of:</b>	Chief Operating Officer
<b>Subject/Title:</b>	Alternative Service Delivery Vehicle Governance and Stewardship
<b>Portfolio Holder:</b>	Councillor Peter Raynes

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### 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 updates the Audit and Governance Committee on the:
- governance structures under which Cheshire East Limited and its subsidiary companies will operate; and
  - governance arrangements for other alternative service delivery vehicles, (ASDVs).

It also outlines the Committee's role in relation to the ASDVs. The 24 March 2014 Cabinet report on Group Structure and Governance is attached, appendix A and B.

### 2.0 Recommendations

- 2.1 The Audit and Governance Committee is asked to endorse the arrangements set out in this Report and appendices A and B.

### 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 strategic 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.
- 3.3 It is important that the Committee is reassured that the overall governance arrangements for the ASDVs are fit for purpose. The Committee's Terms of Reference include:  
....overseeing the Council's roles and responsibilities in respect of Corporate Governance and Audit....; and  
....undertaking, as appropriate, an assessment of wider governance issues....

**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 4<sup>th</sup> February 2014. These included plans to deliver savings of over £3.3m over the next three financial years.
- 7.2 There are no further financial implications arising from 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

**"4. Limits on doing things for commercial purpose in exercise of general power**

(1)The general power confers power on a local authority to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose.

(2)Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.

(3)A local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.

(4)In this section “company” means—

(a)a company within the meaning given by section 1(1) of the Companies Act 2006, or

(b)a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.”

In other words any enterprise must be conducted through a company within the meaning of section 1 of the Companies Act 2006.

9.0 The requirements of both local government and company law are reflected in this report and its appendices.

## **9.0 Risk Management**

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

10.2 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.

10.3 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.

## **10.0 Background**

- 11.1 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.
- 11.2 In January 2014 the Chief Operating Officer presented an initial report to the Committee on the proposed governance, stewardship and control arrangements for the Council's ASDV's. The Committee requested a further report to its next meeting in March 2014.

## **11.0 Alternative service delivery vehicles**

- 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 The Council already has two Council owned and controlled companies in place – East Cheshire Engine of the North Limited and Tatton Park Enterprises Limited. In February 2014 Cabinet also approved the detailed business cases for two new companies - Ansa Environmental Services Limited and Orbitas, Bereavement Services Limited. Each of these companies will now become subsidiaries of Cheshire East Ltd.
- 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.
- 11.4 Two further ASDVs will go live during the first quarter of 2014-15:
- Everybody Sport & Recreation, (ESAR), and
  - CoSocius Limited (shared HR, Finance and ICT back office services with Cheshire West and Chester Council)
- 11.5 Everybody Sport & Recreation is an independent charitable trust and, as such, will not form part of the group. CoSocius, a joint venture with Cheshire West and Chester Council will not form part of the group.

## **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 Further details on the purpose and outline content of each of the documents listed in paragraph 12.3 are set out in appendix A, section 12. These documents require careful drafting not least to protect the companies' *Teckal* exemption in the early years. (The *Teckal* exemption enables the Council to award contracts directly to its subsidiaries without going through a public procurement process.) Draft documents will be shared with the Cabinet and the board of each company before they are approved.
- 12.5 The governance arrangements for ESAR and Coscious are different:
- **ESAR:** As an independent charitable trust the Council's relationship with ESAR is, essentially, contractual. A detailed contract and performance specification is currently being negotiated. The contract will protect the Council's interest and ensure that its significant investment in ESAR plays an important role in achieving its key strategic outcomes.
  - To provide additional protection, the freehold of the assets used by ESAR will remain with the Council. ESAR will operate/access those assets through a series of leases and licences.
  - Performance monitoring against the contract will be led by the Council's Executive Director of Strategic Commissioning.
  - **CoSocius** will be legally separate from the Council and will have more freedom to trade and operate on a commercial basis. The Council will enter into a 5 year contract for the provision of ICT, finance and HR services. The Council together with Cheshire West and Chester Council (as shareholders) will seek to maximise value for money to benefit local taxpayers.
  - The shared services joint committee agreed the governance of CoSocius, its relationship with the Councils and the relationship between Cheshire East Council and Cheshire West and Chester Council at its meeting on 29 November 2013. (A link to that report is provided in the access to information section in paragraph 16.) That

committee is expected to agree the go live date for CoSocius on 28 March 2014.

- The Council will exercise its powers as shareholder in CoSocius through the new shareholder board. That Board will be expected to provide regular update reports to the Cabinet.

12.6 The governance arrangements summarised above will be regularly reviewed. This is necessary to ensure 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.

12.7 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.

### **13.0 The role of the Audit And Governance Committee**

13.1 Ensuring the adequacy of governance, stewardship and risk management over ASDVs or other commercial arrangements can be complicated. However, the accountability for value for money, (vfm), performance and stewardship of public funds remains with the Council whatever vehicle is used.

13.2 The Committee's terms of reference, (TOR), is currently being reviewed. The current TOR includes a number of areas that highlight the Committee's role in relation to ASDVs. These include:

- overseeing the Council's roles and responsibilities in respect of Corporate Governance and Audit;
- undertaking, as appropriate, an assessment of wider governance issues;
- supporting the Council's audit function, both internal and external;
- ensuring the Council has in place appropriate policies and mechanisms to safeguard the Council's resources; and
- reviewing and approving the Annual Governance Statement.

13.3 The latest CIPFA paper on Audit Committees, (Practical Guidance for Local Authorities and Police, 2013), also gives some guidance. It suggests that in relation to ASDVs audit committees:

- consider the assurance available to them on whether the arrangements are satisfactorily established and are operating effectively. For example, the Committee could seek assurance that the Council has appropriate arrangements to identify and manage risks, ensure good governance and obtain assurance on compliance.
- know what arrangements have been put in place to maintain accountability to stakeholders, to ensure transparency of decision making and to ensure standards of probity are maintained.

- receive assurance over governance matters at the project stage and seek clarity over its own responsibilities in relation to the new ASDV.
  - consider the coverage of assurances that underpin the Annual Governance Statement (AGS) to make sure that ASDVs are adequately covered.
- 13.4 The Committee will want to be assured about the vfm, governance and stewardship of public funds in relation to ASDVs in much the same way as for other areas of spend. The Corporate Governance Group is reviewing the Council's overall assurance framework and will present a report for this Committee to consider. As part of the Annual Governance Statement process, the group will also assess the Council's partnership arrangements – including all ASDVs.
- 13.5 In addition, 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.
- 13.6 In providing that assurance internal audit will include specific pieces of work in its 2014-15 audit plan. This will include, for example:
- Reviewing the governance arrangements in place at both the Council and the companies to determine whether they are operating effectively; and
  - mapping the assurance framework – including all ASDVs - to determine whether reliance can be placed on an ASDV's own internal auditors or external auditors/assurance providers; and
- In addition Internal Audit will carry out specific pieces of work at the request of the Audit and Governance Committee and, for example, the Chief Operating Officer or the Cabinet.
- 13.7 **Audit and access to information:** For each Council owned and controlled company the shareholders agreement and accompanying articles of association enable the Cabinet and its advisors to visit and inspect the books and records at any time. In particular, the Council's internal and external auditors will have open access to every company in the group. This will not apply to ESAR as an independent charitable trust.
- 13.8 The Cabinet expects to appoint Grant Thornton as external auditors for the group. Cheshire East Ltd accounts will be consolidated into the Council's financial statements. Internal Audit will continue to share information and co-ordinate audit activities with the external auditors to ensure appropriate coverage and minimise duplication of effort in respect of the ASDVs.
- 13.9 **Risk Management:** The Council's risk management processes are being updated to ensure proper assessment of risk in relation to ASDVs. This is to ensure that:

- The risks associated with each ASDV have been identified, prioritised and are being appropriately managed; and
- Each ASDV has effective risk management procedures in place.

## **14.0 Business cases for change**

- 14.1 The detailed business cases for change for ANSA, Orbitas and ESAR were approved by Cabinet in February 2014. Each business case was prepared in line with statutory guidance and the principles of the Council's own strategic framework. Through this process the Council has demonstrated that there is a sound financial case for creating each company.
- 14.2 The business cases were considered in detail by the Technical Enabling Group on 13 December 2013. They were also discussed and endorsed by the Executive Monitoring Board (EMB) on 16 December 2013.
- 14.3 To gain further assurance, the Chief Operating Officer engaged Price Waterhouse Cooper (PwC) to undertake a high level review of the business cases during early January 2014. PwC concluded that the business case for change was made in each case. PwC recognised the scale of the Council's change programme and the significant amount of preparatory work done. They highlighted a number of areas where further work would help to minimise risk and optimise the successful implementation of the new organisations.
- 14.4 In early March 2014 the Chief Operating Officer engaged PwC to take a further look at the progress made towards securing the contracts. PwC carried out a review of the contract documentation for ANSA. They concluded that the Council has made some good progress on a number of the issues raised in a relatively short period of time following their initial review of business cases. The Council's project team is continuing to work on the detailed specification and the strategic and financial aspects of the business plan. Similar work is being done by the projects teams for Orbitas, ESAR and CoSocius.

## **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.
- 15.2 They will be regularly reviewed. The Audit and Governance Committee will also take the opportunity to review the assurance framework and ensure that it remains satisfied with the arrangements.



## 16.0 Access to Information

<http://moderngov.cheshireeast.gov.uk/ecminutes/documents/s26357/Governance%20Final.pdf>

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

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