# CHESHIRE EAST COUNCIL

## Cabinet

| | |
|---|---|
| **Date of Meeting:** | 1st April 2014 |
| **Report of:** | Lorraine Butcher, Executive Director of Strategic Commissioning |
| **Subject/Title:** | Future Delivery Model for the Integrated Transport Unit (Forward Plan Ref: CE 13/14-76) |
| **Portfolio Holder:** | Cllr David Topping, Environment |

### 1.0 Report Summary

1.1 Cheshire East Council is determined to deliver services using a 'best-fit' approach that puts residents first. This proposal has determined that the most appropriate model for delivering Transport services is via a Wholly Owned Company (WOC)

1.2 The proposal is in accord with the Councils' declared intent to become a strategic commissioning authority with a hard split between commissioning and service delivery and with a focus on stimulating innovation, efficiency and staff involvement whilst delivering against challenging budgetary targets.

1.3 This report therefore seeks Cabinet approval to proceed with the implementation of a Wholly Owned Company (WOC) limited by shares that will deliver all the functions of the Council's Integrated Transport Unit.

1.4 The Council has already registered a company under the name Transport Service Solutions Ltd (TSS), 100% owned by the Council.

1.5 Officers have developed a detailed business case and plan for the implementation of the new company. This has been subject to the scrutiny provided by the Council's project management regime having been endorsed by TEG on 5 March 2014 and EMB on 18 March 2014. The ambitious aim is to have the new company operational by 1 July 2014 but with a contingency go-live date of 1 October 2014.

1.6 The role of TSS will be to deliver transport services on behalf of the council with a current total budget of approximately £17.8M.

1.7 This proposal directly accords with the Council's three year plan to becoming a strategic commissioning council. This consists of 29 major change programmes covering 8 key priorities. This plan sets out the core purpose of the council, and identifies the need to redefine its role in core place-based services.

1.8 The catalyst for change is driven by the need to invest in our transport services, to find ways to sustain these services in an era of declining resources and to improve the quality of this service for local residents.

1.9 Environment PDG has been fully involved in considering the available delivery options for the Transport Service. There was widespread approval for the WOC model as being the most appropriate for the Integrated Transport Unit, both in terms of financial sustainability as well as service improvements for end users.

## 2.0 Recommendations

Cabinet is asked to:

2.1 Approve the implementation of Transport Service Solutions Ltd as the future management model for integrated transport services, in accordance with the detailed business case and implementation plan attached as Appendix A.

2.2 Agree that all current functions of the Integrated Transport Unit are transferred to Transport Service Solutions Ltd whilst accepting that the ultimate strategic direction for Transport remains with the Council.

.

2.3 Give any necessary delegated authority to the Executive Director of Strategic Commissioning, the Head of Local Communities, the Head of Legal Services and the Chief Operating Officer, in consultation with the Portfolio Holder for Environment to proceed with that implementation in accordance with the project plan. That plan includes negotiating appropriate contractual arrangements, arranging leases and central support services plus novating contracts where necessary.

2.4 Acknowledge the timetable for the project which aims to establish the company by 1 July 2014 but with a contingency go-live date of 1 October 2014 should operational issues prevent this being achievable.

2.5 Agree to the commencement of a formal consultation period with all the staff who might be affected by any proposed TUPE transfer.

2.6 Acknowledge that, following Cabinet's approval of this proposal, work will continue to develop the more detailed business plans and draft contracts for the new company. The headline commercial and contractual arrangements will be set out in a further report to Cabinet in June 2014.

## 3.0 Reasons for Recommendations

3.1 The Council has recognised the need to change the way services are provided in the future 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 Council has developed a Three Year plan and the development of a new delivery model for transport services is identified as one of the major change projects within that plan: Priority 6; Redefining the Council's role in core place-based services; 6.1 Develop new delivery models; 6.1F Transport.

**4.0 Scope of Services for the New Delivery Model**

4.1 The Integrated Transport Unit provide public transport, home to school and social care transport. In addition, a range of associated local travel options are supported, such as walking, cycling and community rail schemes, as well as information provision, on-street infrastructure etc. The majority of these services are statutory, such as home to school travel provision and public transport support.

4.2 The Policy Development Group (PDG) considered various different options for the future delivery of this service. These included:

- Continued In House Delivery
- Outsourcing to a Private Contractor
- Joint Venture Agreement
- Wholly Owned Company
- Creation of a charitable trust
- Staff mutually owned organisation

4.3 PDG concluded that a WOC would offer one of the quickest means of delivering change, promoting cost efficiencies and effectiveness whilst retaining control of a sensitive service area and managing the reputational risks associated with service delivery. It would also improve the speed of decision making and allow staff to develop and implement their entrepreneurial skills. A number of the alternatives were deemed to be non-viable, as they ceded too much control of the day to day decisions to external influences, and did not allow members to have full oversight of service provision.

4.4 Whilst the Council would remain in control of the Company, the service would be able to operate with greater freedom and pursue other innovative and creative opportunities that would otherwise be difficult for the service to secure in its current form.

4.5 The preferred legal solution for this WOC is a company that is limited by shares and this model is also being adopted for other new delivery vehicles within the Major Change Programme.

## 5.0 Wards Affected

5.1 All Wards are affected.

## 6.0 Local Ward Members

6.1 All local Ward Members.

## 7.0 Policy Implications

7.1 The project accords with the Council's Three Year Plan as part of the major Change Programme to re-define the Council's role in core place-based services.

7.2 The Council has a number of contractual and statutory responsibilities in respect of Transport services (e.g. C&W LTB partnership, home to school transport for SEN pupils). It is, therefore, expected that the Council will retain development, ownership and control of all relevant strategies and polices and will subsequently commission TSS to deliver against a number of specific outcomes (an 'output-based specification') which align with these. How TSS will deliver these outcomes will be proposed by the company and agreed in the service specification element of the contract with the company.

7.3 It is acknowledged that the staff within TSS have significant experience and expertise in the field of transport and it therefore expected that one of the services they will be commissioned to provide will be to deliver strategic and policy advice and proposals for the most effective means of delivering transport services within the borough.

## 8.0 Legal Implications

8.1 The Council has received legal advice on the options for company models which has been used to identify that a Teckal company model is likely to best meet the Council's operating criteria for transport .

8.2 The Council must adhere to good practise principles when assessing the business case for proposed transfers to an alternative delivery vehicle these include:

- Ensuring there is a good case for change and that the business case states whether any relevant parties have been consulted;
- Clarifying how the change will affect the accountability of the Council;
- Undertaking a thorough options appraisal to ensure the most cost-effective and efficient option is chosen;
- Identifying and managing the costs associated with the proposed reorganisation as accurately as possible;
- Identifying and realising the benefits of the proposed change;
- Ensuring the proposed change is well managed and delivered;

- Putting in place effective review arrangements to monitor whether the long-term objectives of the proposed change have been achieved.

8.3 It is important for the Council to:

- Identify the scope of the company and its objects and the relationship with the Council;
- Consider who will be the Board of Directors and how such a role is to be reconciled with any role within the Council, taking into account actual and perceived conflicts of interest and bias;
- Consider the necessary constitutional and administrative processes which the Council has and make any necessary amendments to these to ensure that the subsidiary can be used effectively and efficiently to improve service delivery;
- Consider the effective drafting of the Memorandum and Articles of Association of the Company, to give the Council the necessary degree of control (e.g. the Council would approve any Business Plan (i.e. the overarching "envelope" of the Company's activities), scrutinise the Company's performance and Board activities (directing the Board where necessary to act or not act in a certain way) and exercise a veto at Board level on all or key, strategic decisions affecting the Company), without hampering the day-to-day operations of the Company or discretion of it's Board so it retains agility and flexibility.

8.4 In considering the most appropriate model the Council has reflected that unless the Council is outsourcing the service delivery to a company that is wholly controlled by Cheshire East Council it will be necessary to undertake a procurement exercise. However, there is an exception, in certain circumstances, where a contract let by a public body will not be deemed to be a contract for the purposes of the Public Procurement Regime. The relevant circumstances are that:

- The service provider carries out the principal part of its activities with the relevant public body;
- The public body exercises the same kind of control over the service provider as it does over its own departments;
- There is no private sector ownership of the service provider or any intention that there should be any.

8.5 The exemption was established by a European Court of Justice case and is referred to as the Teckal exemption. Case law has shown that the contracting authority, the Council, must have the power of decisive influence over the strategic objectives of the company at a constitutional and operational level. The company will need to function as a commercial entity.

8.6 The Council will have to establish a service contract with the company to define all the services and the service levels that it will provide to the Council and consider the most appropriate service delivery mechanism where service users are "purchasing " the service.

8.7 In addition the transfer for the service to the company is likely to constitute a relevant transfer under the Transfer of Undertakings Protection of Employment Rights Regulations 2013 (TUPE) under which employees who are working in or for transport immediately before the transfer will transfer.

8.8 The Council will have to undertake the necessary due diligence to identify which employees have the right to transfer and to be able to provide the necessary employee liability information in accordance with the TUPE regulations.

8.9 The Council and the company will also have to comply with the Regulations consultation requirement which stipulates that consultation on changes to terms and conditions (measures) needs to be conducted in good time before the transfer. In "good time" is not defined in the regulations but a comparison is usually drawn with the timescale for redundancy consultation which is 45 days.

8.10 Further specialist pension/actuary advice will be required on pension issues for both the Council and the subsidiary/ company

8.11 The business case attached has been developed in accordance with the Council's ASDV (Alternative Service Delivery Vehicle) Framework guidance and has been challenged and subsequently endorsed by TEG and EMB

## 9.0 Financial Implications

9.1 The services under consideration currently have a gross budget of £17.8M.

9.2 The new company will be able to trade at a profit and the Board of Directors may, subject to the terms of the contract, have the freedom to choose whether to invest such profits in service development and/or declare them as dividends to the Council as 100% shareholder

9.3 Two alternative financial projections have been prepared as part of the business case; one 'prudent', the other 'ambitious'. These both show the company to be financially viable with the potential to return profits over 5 years of £615K and £2M respectively. It should be noted that these figures assume a stable contract income from CEC of £14.7M

9.4 It is recognised that that all the Council's WOCs, 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. This factor will be included when developing the detailed financial business plan.

## 10. Risk Management

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

10.2 The project risks for this company are detailed within the appended business case. They are managed by the project board which has established appropriate mitigating actions and monitors each risk on a regular basis in accordance with the Council’s project management methodology. Risks have been logged and challenged and endorsed by TEG/EMB

10.3 Programme risks are those that are common to more than one ASDV project. These risks together with other risks generated by the impact of the overall ASDV programme are identified, managed and monitored by the ASDV Steering Group. There are currently 20 risks and one opportunity captured on the programme risk register.

10.4 Corporate risks are those that have the potential to cause corporate concern. These have been identified from the programme risk register and escalated to the corporate Risk Management Group for consideration, monitoring and inclusion on the Corporate Risk Register. The Corporate Leadership Board ensures that actions and recommendations within the Corporate Risk Register are implemented.

10.5 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.

10.6 The top three project risks that have been identified, and which now have appropriate mitigating actions in place, are:

- The ‘Intelligent Client Function’ is not established quickly enough and/or lacks understanding and knowledge of transport operations (including market demand, fluctuations and pricing) leading to ASDV contractual arrangements not being robustly specified leading to failure to deliver the effective service as planned;
- The council fails to recognise that some aspects of demand are without the company's control (e.g. SEN transport) leading to unrealistic expectations of profitability and shareholder returns which ensure expected benefits are not delivered;
- The challenging timescales under consideration do not allow for any contingency and assume resources will be readily available when needed. Should resources be overstretched then the project will fail to be

completed on time resulting in a delay in delivering planned benefits and potential reputational damage for the council;

## 11.0 Background and Options

11.1 At the meeting of Cheshire East Council on 4 February 2013 it was agreed that the Council should proceed to becoming a strategic commissioning organisation where a small core of commissioning and client managers under the strategic direction of the Executive, identify and prioritise local needs, develop the outcomes that people require and then commission the services most appropriate to the delivery of those outcomes.

11.2 The basis of this decision was recognition that the landscape under which local public services are designed, purchased and delivered is changing rapidly under new Government policy and legislation. The establishment of Police and Crime Commissioners, the creation of Clinical Commissioning Groups for health and well being services, and the transfer of Directors of Public Health to become statutory officers of local authorities, all represent this strategic shift in how public services are secured and delivered. In order then to align public services locally, the Council is changing the way it operates to become a strategic commissioning body.

11.3 While this shift will not happen immediately there is already momentum towards this new arrangement with the establishment of the Leisure Trust, the Environmental Operations Company (ANSA) and Bereavement Company (ORBITAS) in April 2014. Additionally other forms of alternative service delivery are occurring such as the personal and individual commissioning of care, the multi-local authority collaboration for adoption, the establishment of the Single Legal Entity for Shared Services. Finally, an extensive range of commissioning review work is underway to inform potential further models for service delivery as well as areas for decommissioning.

11.4 Since LGR significant progress has been made in transforming the model of transport delivery previously inherited, resulting in the formation of Cheshire East Transport. Significant financial savings of approximately £6.6m have resulted from a mixture of changes to policy and entitlement, operational practices and tendering processes.

11.5 The service has now reached the point where it is difficult to continue to deliver transport efficiently and effectively without the freedoms, flexibilities, greater entrepreneurship and business development options that a WOC will allow.

11.6 The key current service delivery areas are:

- Home to school transport
- Specialised transport
- Public transport
- Demand responsive transport
- Local sustainable transport, such as walking and cycling coordination and support
- Overall transport policy advice/implementation

11.7 An options appraisal has been conducted and has been the subject of policy development through the Environment and Prosperity Policy Development Group. This process has concluded that the new ASDV should take the form of a wholly-owned company limited by shares

11.8 It is envisaged that there will be significant business development and growth opportunities arising from having a trading arm and the additional income generated could (with shareholder agreement) be re-invested in the company or declared as dividends payable to the Council

## 12.0 Access to Information

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


| | |
|---|---|
| Name: | Lorraine Butcher |
| Designation: | Executive Director of Strategic Commissioning |
| Tel No: | 01270 686021 |
| Email: | lorraine.butcher@cheshireeast.gov.uk |