

## CHESHIRE EAST BOROUGH COUNCIL

### Portfolio Holder Report

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**Date of Meeting: 07 December 2015**

**Report of: Caroline Simpson: Executive Director of Economic Growth and Prosperity**

**Subject/Title: Skills & Growth Company - ASDV**

**Portfolio Holder: Cllr Don Stockton**

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#### 1. Report Summary

- 1.1. Total government investment in employment and skills provision in Cheshire East is estimated to be as much as £100 million annually, (excluding Higher Education). However, less than 1% of this investment is currently channelled through the council. Considering this investment, combined with both the changing landscape of skills policy and the opportunity for economic growth, it is timely to evaluate how best the Council's skills and growth services are delivered to ensure we are best placed to bring forwards investment, **create employment opportunities for all** and to **attract and grow business, creating high quality employment**.
- 1.2. At its meeting on 21 July 2015 Cabinet approved a service review and options appraisal to deliver an integrated skills & growth vehicle. It gave delegated authority to the Portfolio Holder for Regeneration and Assets, in consultation with other relevant Portfolio Holders, the Head of Legal Services and the Chief Operating Officer, to implement the outcome of the review.
- 1.3. The service review was completed and resulted in the preparation of a detailed business case for change. That business case was approved by the Portfolio Holder on 1 Sept 2015. However the council wishes to further review its requirements for Workforce Development and thus the Workforce Development has been de-scoped while a more detailed review of need and provision is completed. There remains an aspiration to deliver apprenticeship, leaderships and talent services commercially from the skills and growth ASDV. Therefore, should an opportunity arise from the review of Workforce Development, aspects

of the service may be brought into scope at a later date, but are excluded for the purpose of this business case.

- 1.4. In accordance with the delegation from Cabinet the revised business case reflecting these changes is to be considered, enabling the Portfolio Holder for Regeneration and Assets to make a fully informed decision about the creation of a Skills and Growth ASDV.

## **2. Recommendation**

The Portfolio Holder is recommended to:

- 2.1. Exercise the authority delegated to him by Cabinet to consider and approve in consultation with other relevant Portfolio Holders, the Head of Legal Services and the Chief Operating Officer, the detailed business case (Appendix A) for the implementation of a council owned Skills & Growth company .
- 2.2. Implement the creation of a Skills and Growth company, authorise the necessary governance arrangements and the arrangements with other Council owned and controlled companies.
- 2.3. Give delegated authority to relevant Service Managers and Officers to undertake all necessary and consequential action arising from the above recommendations including, but not limited to, entering into any necessary contracts, consultation, loans, leases, licences, pension admission agreements and guarantees.

## **3. Other Options Considered**

- 3.1. A detailed options appraisal has been completed (appended to the attached detailed business case) and this concluded that:  
“..... the option of creating a single wholly owned company limited by shares is recommended as the way forward.”
- 3.2. The appraisal considered 8 different delivery models including a do-nothing approach.

## **4. Reasons for Recommendation**

- 4.1. To tackle long-term unemployment, increase productivity of our business base and grow the Cheshire East economy there is a need to take a fresh approach to skills and growth. Ensuring there is an integrated and effective service meeting the needs of our employers, which is designed to ensure the best

employment and skills opportunities are available for all our residents and businesses, and will maximise our strengths for high growth employment opportunities particularly in science, energy, advanced manufacturing, technology, rail and engineering.

4.2. The new company will deliver a range of benefits to ensure we have a highly effective labour market and thriving economy, making Cheshire East the best place to live and work in the country. Focus will be placed on the following key outcomes:

- **To create employment opportunities for all** – providing opportunities for young people to access apprenticeships, training and jobs; supporting people into employment; developing skills, reskilling and upskilling; matching current and future labour market needs
- **To attract and grow business, creating high quality employment** – attracting investment; creating and safeguarding jobs; improving business productivity; supporting businesses to prosper, so growing the economy

4.3 The company's primary objective is to improve the prosperity of Cheshire East. It is forecast that over the first five years of operation the company will support the delivery of £500m growth in the local economy and £5m new income to the council in business rates. Operationally over the same time period it is forecast that the company will turn a predicted 'do-nothing' loss to the authority of £213k into a profit of £218k – a net improvement of £431k.

4.4 The services to be delivered by the company are expected to be those currently delivered by the following teams:

- Major Projects
- Business Engagement & Inward Investment plus Rural Enterprise
- 14+ Skills and Lifelong Learning\*

(\* NB: The inclusion of the Lifelong learning team is dependant of the successful completion of negotiations with the SFA in respect of 3<sup>rd</sup> tier contracting and RTO approval)

A list of the functions delivered by these teams is given in Appendix 2 of the business case and includes managing the delivery of key business growth projects such as Connecting Cheshire Broadband.

4.5 The Skills and Growth company will deliver a fully integrated model working closely with related council services (e.g. Youth Engagement Services, Supported Employment, and Schools services), other skills and growth service providers, businesses, young people, government and the Cheshire and Warrington LEP.

4.6 Skills and growth policy is undergoing radical reform. Aligned to the Government's Productivity Plan three priorities have been set; to meet employer needs, to get people into work and to increase business investment to improve productivity. Government initiatives including Devolution Deals, Local Area Reviews of Further Education, a new Apprenticeship Framework,

Employer Levy and the Youth Obligation will mean far reaching changes to how skills and growth services are commissioned and delivered. The establishment of a holistic skills and growth company will ensure Cheshire is best placed benefit from these changes.

## **5. Background/Chronology**

- 5.1. 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 delivered using a 'best-fit' approach.
- 5.2. 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 commissioners 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.
- 5.3. 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. In order to align this with public services locally, the Council is changing the way it operates to become a strategic commissioning body.
- 5.4. Economic growth is a top priority for the Council. A strong economy and fully functioning labour market is a crucial aspect of our growth strategy, making Cheshire East a more prosperous place and reducing dependency, benefitting business, residents and the Council itself.
- 5.5. Following the de-scoping of Workforce Development and subsequent options appraisal a revised detailed business case has been developed and this has been scrutinised and endorsed by MGB (11 Nov 2015), TEG (11 Nov 2015) and EMB (21 Nov 2015). The business case includes an implementation plan with the following key milestones:
  - Portfolio Holder(s) approval to implement recommended option (30/11/15)
  - New delivery arrangements and company board in place (01/01/16)
  - New delivery vehicle fully operational (01/04/16)

## **6. Wards Affected and Local Ward Members**

- 6.1. All wards will be affected.

## 7. Implications of Recommendation

### 7.1. Policy Implications

7.1.1. The Council has developed a three year plan with two specific outcomes which relate to Skills and Growth:

**Outcome 2:** Cheshire East has a strong and resilient economy

**Outcome 3:** People have the life skills and education they need to thrive.

7.1.2. The Council seeks to support economic growth within the borough and therefore needs to provide effective and efficient services that both maximise the life chances of its residents and create a pool of talented labour, which can capture the massive investments and developments that are planned.

7.1.3. Ensuring employment and training opportunities are available for all our residents will give them the best start possible in life. Having such home grown talent will ensure that schemes such as HS2, Jodrell Bank, and the Alderley Park Biohub recruit locally rather than having to 'import' expertise from elsewhere. We also need to ensure that the workforce for critically important sectors such as construction and care are catered for.

### 7.2. Legal Implications

7.2.1. Section 1 of the Localism Act 2011 (the "2011 Act") provides local authorities with the general power of competence to do "*anything which the individual may do*". This includes the power to do things for a "*commercial purpose*" including making a profit, for which section 4 stipulates that a trading vehicle must be used which is either a company as defined in section 1(1) of the Companies Act 2006 or a society registered or deemed to be registered under the Cooperative and Community Benefit Societies and Credit Unions Act 1965. The options appraisal has recommended that the preferred delivery model is a single wholly controlled private company limited by shares. This model allows the Council to make a direct award of contract to the company without requiring a formal procurement exercise. In order to be exempt from the Public Contracts Regulations 2015 (the Regulations) it is a requirement that at least 80% of the company's work be for the Council.

7.2.2. In accordance with the decision by Cabinet (24 March 2014) to create a group structure for its ASDVs (Alternative Service Delivery Vehicles) it is anticipated that the new company will be formed as a subsidiary of the Council's 'Cheshire East Residents First' (CERF) parent company with 80% ownership resting with CERF and the remaining 20% directly owned by the Council. This is consistent with the governance arrangements used for all the Council's other ASDVs. The Council will have to enter

into an operating agreement with the company which will include any licences or leases of property necessary for the company to operate. The company will buy back office services from the Council/Council owned company by virtue of entering into a support services agreement.

7.2.3. The transfer of the services to the company will 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 the services under consideration immediately before the transfer will transfer. The Council and the Company must comply with their duties under the Regulations and ensure that appropriate provisions are in place for employee pensions rights.

7.2.4. At present the Council will receive funding of £782,132 for the 2015/2016 academic year for the provision of Life Long learning programmes from the Skills Funding Agency (“SFA”). The Council uses this funding to directly deliver and also contracts with various suppliers to supply these learning programmes.

7.2.4.1. The Council does not have any legal right to unilaterally transfer the funding agreement to the proposed Skills and Growth company. In order to transfer the funding agreement the SFA must give consent (which may not be given).

7.2.4.2. A potential alternative to transferring the SFA funding agreement to the proposed Skills and Growth company is for the Council to remain as the receiver of the funds but subcontract its role as lead provider to the proposed Skills and Growth company (who would, in turn, subcontract with the suppliers). This would create three levels or tiers of contracting between the Council, the proposed Skills and Growth company and the suppliers. The Council does not have the right to unilaterally take this course of action and must first obtain the SFA’s written permission (which must be obtained every year the arrangement is in place). This is because the SFA only allows “second-level subcontracting” (i.e. a three-tier model as described above) in specific “exceptional circumstances” such as a policy change by the SFA or if it is necessary to delivery a niche provision and where the arrangement offers value for money.

7.2.5. The SFA requires that all lead providers and subcontractors must be registered on the UK Register of Learning Providers and hold a valid UK Provider Reference Number before they can receive any SFA funding (either directly or through a subcontracting arrangement). There is a need for the company to apply for this through the normal procedure. The decision to proceed with the formation of the company is a pre-requisite of such an application since the company must formally ‘exist’ for it to apply.

### **7.3. Financial Implications**

- 7.3.1. The services under consideration mentioned above have a gross budget of £2.08m in the current financial year.
- 7.3.2. The detailed business case attached discusses the unmitigated loss that would accrue to the council due to the reduction in government grants should an ASDV not be created. These funding cuts will be more than offset by the proposed new company initiatives which turn that loss into a surplus. The business case also notes the councils intention to increase investment in skills and growth in 16/17.
- 7.3.3. There will also be substantial increases in the business rates accruing to the Council (£5m) and returns to the local economy (GVA) could be as high as £500m. Further detail is given in the attached business case, Appendix 5.
- 7.3.4. In addition to the expected direct savings it is anticipated that there will be further savings to the public purse by reducing the number of individuals not in employment, education or training or claiming Job Seekers Allowance.

### **7.4. Equality Implications**

- 7.4.1. The detailed business case attached includes a detailed Equality Impact Assessment which has concluded that: *“There will be no negative impact for any group as this project is aiming to increase service users’ skills and employment opportunities for all. The target group may benefit positively from this due to the increase in skilled jobs and opportunities and a decrease in the socio-economic gap”*.

### **7.5. Rural Community Implications**

- 7.5.1. Given that the aim of this work is to improve the range and quality of services supporting employment and skills development it is expected that any impacts will be positive. Focus will be placed on supporting rural enterprise and growth of businesses in rural areas.

### **7.6. Human Resources Implications**

- 7.6.1. There are 34.1 FTE posts within the services, all of which would transfer under TUPE rules. The staff are wholly dedicated to the services transferring.
- 7.6.2. Given the nature of the teams and roles transferring, it would not automatically lead to a restructure but there may be a need to review the structure during the early months due to potential resignations and

vacancies being carried over and to ensure the business is fit for purpose.

7.6.3. The staff currently delivering the services as their primary role will transfer to the ASDV under these proposals. The transfer would be carried out in compliance with 'The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). TUPE regulations protect existing terms and conditions and assumptions have been included in the financial business case to cover this. This proposed transfer would only take place following full consultation with staff and unions.

7.6.4. Any known risks that may affect employees have already been recorded and included in this business case and in the developing project plan. Informal consultation and engagement activities are already underway with trade unions and consultation with staff will follow. This valuable process will continually be used to promote staff involvement and engagement with feedback used to inform decisions and project planning. Appropriate steps will be taken in relation to the LGPS.

#### **7.7. Public Health Implications**

It is expected improving skills and employment opportunities of our residents will have a positive impact on health outcomes.

#### **7.8. Other Implications (Please Specify)**

7.8.1. There are none envisaged at this stage.

### **8. Risk Management**

8.1. 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 (Technical Enabler Group/Executive Monitoring Board).

8.2. A key risk that has been identified is the funding relationship between the Lifelong Learning team (part of 14+ skills) and the Skills Funding Agency (SFA). As previously mentioned, in order to resolve this it will be necessary to conduct the action referenced in 7.2.4 and 7.2.5.

8.3. The application to the SFA to become an RTO is a standard procedure that is scheduled twice each year. The next application 'window' is expected to be by June 2016 and the company will apply then. Discussions have also begun in respect of the 2nd tier contracting. Should either of these elements prove problematic then they can be resolved by not transferring

some of the Lifelong learning team to the company, but by retaining them within the council. The fundamental principles of the business case would remain largely unchanged, although mitigating the losses associated with ALB and CLB grant reductions would be not be as effective if not in the company.

## 9. Contact Information

Contact details for this report are as follows:-

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