

Cheshire East Council: Special Meeting

14 December 2017

Report of: Head of Governance and Democratic Services

Subject: Request for Special Meeting of Council

1 Report Summary

1.1 This report enables Council to consider issues raised on behalf of Members who used powers, contained in legislation, to call a Special Council meeting.

2 Recommendation

2.1 That Council consider the matter set out in paragraph 3.2 of the report.

3 Background

3.1 Under powers contained in legislation, five Members of the Council have requisitioned a Special meeting of Council.

3.2 On behalf of those Members, Councillor Amanda Stott has submitted the following motion to Council, to support the request for the Special meeting:-

“Council recognises that aspects of its decision of 27th July to gift a sum of £2.4m to ANSA, were based on incorrect or misleading information and could, therefore, be perceived as unsound. In order to provide clarity and assurance to its taxpayers, Council now agrees to commute this sum to take the form of a fully repayable loan.”

4 Legal Implications

4.1 The Council has the power to enter into loan arrangements by virtue of:

4.11 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles, and

4.12 S.111 of the Local Government Act 1972 enables a Council to do anything (whether or not involving expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate or is conducive or incidental to, the discharge of any of its functions. The terms

of any loans would need to be considered carefully to ensure that market rates/ state aid compliant rates were charged.

4.2 If the council wishes to proceed with a loan then any loan and the rate of interest to be charged would also have to be negotiated and agreed with Ansa and appropriate terms put in place to govern the repayment of the loan.

4.3 In addition it is understood that the £2.4mil relates to the costs associated with the new waste hub which was an approved virement of the Council budget, as set out in the financial implications below. Therefore no decision was made to gift £2.4mil to Ansa.

4.4 The hub is currently a Council asset and therefore any loan which were to be offered to the Company in order to fund the hub could result in the company securing an interest in that asset which could ameliorate the Council's control of the same and have an impact on the council financially in terms of its asset portfolio.

4.5 Therefore as a minimum detailed financial, asset and legal due diligence should be undertaken before any loan arrangement is agreed.

5 Financial Implications

5.1 The Waste Strategy Implementation project provides the Council with an unencumbered asset, funded from Council resources. Occupancy of the site was not a material element of the decision. The decision of Council on 27th July 2017 approved a virement of Council funds to ensure the project was completed to specification and within agreed timescales, ensuring that the Council would have a fit for purpose asset. The financial implications of the decision were reflected in the 2016/17 Financial Outturn Report. The decision did not provide a gift to Ansa and the Council retains exclusive ownership of the asset.

5.2 Provision of a loan to Ansa could not be secured against the Council's asset and would incur costs from the required due diligence and administration of setting up a loan agreement. As Ansa is a wholly owned company the management fee would have to reflect the financial impact of the schedule of loan repayments, and ultimately any repayment or default would not impact on the Council's Group accounts as the arrangements would only exist within the group. In any regard a loan agreement could not be commuted upon Ansa without the agreement of the company, and this agreement has not been sought to date. The benefits of a loan arrangement with Ansa would need to be articulated much further in order to demonstrate that the proposal provided appropriate value for money.

6 Background Papers

- 6.1 Other than the minutes of the Council meeting, which took place on 27 July 2017, in respect of which the above matter relates, there are no other background papers to this report.

7 Contact Information

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