

Shareholder Committee

Date of Meeting: 06 August 2018

Report Title: ASDV Review and Change Programme

Portfolio Holder: Councillor Paul Bates, Finance and Communication

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. In July 2017 the Council commissioned an external and independent review of its Alternative Service Delivery Vehicles (“ASDVs”) from Edge Public Solutions Limited (“Edge”) a company that specialises in improving public services and value for money.
- 1.2. The review was completed in November 2017 and Edge concluded that improvements could be made to how the Council commissioned services from its ASDVs and how the ASDVs were governed.
- 1.3. In summary, Edge concluded that a change programme should be implemented which could lead to the delivery of savings and benefits for the Council and its residents.
- 1.4. Cabinet considered a report in March 2018 to seek a decision to implement an ASDV Review and Change Programme.
- 1.5. At that meeting Cabinet resolved:

That subject to the consideration of the Appendices to the report in Part 2 (Edge Report) of the agenda, Cabinet

- 1. notes the contents of the report, the findings and recommendations of the Edge report set out in Appendices A and B, and endorses the need for an ASDV change programme;*

- 2. approves the creation of a Cabinet Committee named the Shareholder Committee which will give advice and direction to the Cabinet member(s) with legal responsibility for making ASDV shareholder decisions; and*
- 3. instructs the Shareholder Committee to design and oversee the implementation of an ASDV change programme.*

1.6. This report relates to the initiation of an ASDV change programme and seeks endorsement from the Shareholder Committee in relation to.

1.6.1. The terms of reference for the Shareholder Committee (Appendix A)

1.6.2. The scope and timeframes for the ASDV change programme (Appendix B)

1.6.3. The recruitment process for 2 opted members to join the Shareholder Committee if required (Appendix C)

2. Recommendation/s

2.1. That the Shareholder Committee considers

2.1.1. The Draft Terms of Reference for the committee (Appendix A)

2.1.2. The change programme as outlined in Appendix B

2.1.3. The proposals regarding the recruitment of the 2 co-opted members be undertaken as outlined in Appendix C

2.2. That the Shareholder Committee provides recommendations to the Portfolio Holder for Finance and Communication relating to terms of reference, the change programme and the recruitment process for the co-opted members.

3. Reasons for Recommendation/s

3.1. The Cabinet report of March 2018 outlined the need for a full change programme and this was approved by Cabinet.

3.2. The report produced by Edge also recommended the most effective operating model for each ASDV;

3.3. Edge's recommendations have included one or more of the following options for each ASDV;

- To stay as an incorporated company in its current form and make improvements to governance and service delivery.
 - To dissolve the company with service delivery returning to Cheshire East Council.
 - To dissolve the company and transfer the responsibilities to another ASDV. To dissolve the company and explore an alternative model such as private partnership or sale.
- 3.4. However it is for the Shareholder Committee to consider the detail work of the next phase of the programme and to make recommendations to the Portfolio Holder.
- 3.5. A project team has now been setup and Appendix B provides a programme plan for this work. The change programme is envisaged to take place over 2 years and will look at the recommendations that were provide by Edge and undertake further work, that will incorporate the most up to date information available.
- 3.6. Final recommendations will then be presented for the committee to consider.
- 3.7. The change programme also includes consideration of the matter of an Alternative Pension Scheme for the companies.
- 3.8. The ASDV Review has naturally meant that any further consideration of an Alternative Pension Scheme for the group of companies should be an integral part of the change programme – not least in relation to the review of strategic purpose and direction of companies; and the associated HR policies, terms and conditions of company employees.
- 3.9. The work of the Alternative Pension Scheme Project to date - particularly in relation to modelling of the potential costs and benefits of closing the LGPS and introducing a Defined Contribution pension scheme - has in effect pointed to the need for further consideration of the matter by the Shareholder Committee, as part of its remit, and has also provided the Programme with a significant suite of resources to inform its work

4. Other Options Considered

- 4.1. Do Nothing: The Council could continue to provide services in the same way, but this would not provide the required check and balance that is required as part of providing value for money for the residents of Cheshire East.

5. Background

- 5.1. Given the current fiscal climate within the Public Sector, the Council must do all it can to make the best use of its resource, one essential tool to achieving this is Strategic Commissioning.
- 5.2. 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.

Edge's Review of ASDVs

- 5.3. With this in mind a review was commissioned from Edge to see if the current ASDVs were still meeting the objectives of the Council namely to:
 - Deliver significant value to customers, residents and the Council
 - Create a sustainable competitive advantage.
 - Deliver Strong growth prospects.
 - Work in an environment where the Council is not its only customer.
 - Invest to generate a commercial return.
 - Generate year on year efficiencies or income opportunities
 - Work to become self-funding (no Council subsidy)
- 5.4. The key objectives of Edge's review were:
 - 5.4.1 To ensure that the configuration of each ASDV (and its management) is meeting the needs of the Council and the Borough's residents. This included an evaluation of the scope of services provided by each, identification of any risks to CEC, commissioning arrangements, objective setting and performance management; and
 - 5.4.2 To identify opportunities for possible financial savings and/or income opportunities that could form part of the Council's medium term financial plan.
- 5.5. Over the course of Edge's review each ASDV was evaluated through the information made available to them including financial accounts, statutory

filings, operating, agency and shareholder agreements, and performance information and by meeting key stakeholders.

- 5.6. Operational managers and staff in each ASDV as well as all Council nominated commissioners, Trade Unions, ASDV Chairs and Managing Directors were consulted as part of the review. These key stakeholders will continue to be consulted as the change management arrangements are implemented.
- 5.7. A number of potential savings have been identified by Edge but these require further detailed analysis by the Shareholder Committee and the ASDVs to ensure that:
 - a) They do not cut across initiatives already included in the Council's Medium Term Financial Strategy ("MTFS"); and
 - b) That the level of savings is realistic and deliverable.

Key Recommendations Arising from the Review

- 5.8. The report prepared by Edge outlines a number of recommendations in relation to the Council's management of ASDVs as well as recommendations for each ASDV.
- 5.9. The first core recommendation from Edge is that the Cheshire East Residents First Limited's ("CERF") board, should be decommissioned and its strategic oversight function should be transferred to a newly formed Committee. This recommendation has been effected by the creation of a Shareholder Committee.
- 5.10. The terms of reference for this committee will be agreed at its first meeting. However, in summary the role of the Shareholder Committee will be to provide strategic oversight of the Council's commissioning arrangements for its ASDVs. The Shareholder Committee will also design, implement and oversee the change programme and to provide recommendations to the Portfolio Holder regarding decisions required to implement the required changes. However the Shareholder Committee will not get involved in the detail of the day to day management of each ASDV.
- 5.11. The Shareholder Committee will be subject to the Council's Committee Procedure Rules (as detailed in the Constitution).
- 5.12. It is to be noted that Edge recommended the appointment of co-opted members to the Shareholder Committee and, under the Council's Committee Procedure Rules; the Committee will be able to co-opt any person to advise and assist its function. Co-optees must not be elected

Members of the Council and would not be entitled to vote at any meeting of the Shareholder Committee.

- 5.13. The Shareholder Committee will be advised by the Chief Executive, the interim Executive Director of Corporate Services, the Director of Legal Services and the Executive Director of Place or their representatives.
- 5.14. It should also be noted that a number of detailed recommendations are also made in relation to each ASDV in the Edge Report.
- 5.15. Edge also recommended that a clearly defined and precise commissioning framework, including contract management, be developed for each ASDV with clearly defined roles for each commissioner and formalised structured reporting and performance review arrangements put in place

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1 Pursuant to the Constitution (and in particular the ASDV Framework), the exercise of any of the Council's rights as a shareholder in a company is an Executive function. This function will now be supported by the Shareholder Committee.
- 6.1.2 On going legal advice in relation to matters including contracts, shareholder agreements, articles of associations, company matters and decision making will be provided

6.2 Finance Implications

- 6.2.1 The recommendations contained in the report will have financial implications, as regards the potential for savings from a programme of change for the group of companies, and also the costs of managing and delivering the programme itself.
- 6.2.2 As part of implementing the change programme, it will be necessary to review and determine the scope for any savings, over and above those contained in the existing MTFS.
- 6.2.3 With regard to funding for the change programme, once the required resources are identified it may be necessary to seek budget approval in due course to cover additional costs. The earmarked reserve, held by the Council and made up of shares

from the profits of companies, may be a source of funding; and the appropriate approval route would be followed for this purpose, as necessary.

6.3 Policy Implications

- 6.3.1 The programme and review is in line with the Council's three year plan.

6.4 Equality Implications

- 6.4.1 None

6.5 Human Resources Implications

- 6.5.1 Transferring the service delivery to an arm's Length Company or bringing back in-house will trigger a TUPE transfer of employees who are working in or for the service immediately before the transfer
- 6.5.2 The Council will have to undertake the necessary due diligence to identify which employees have the right to transfer back to the Council and must be able to provide the necessary employee liability information in accordance with the TUPE regulations.
- 6.5.3 The Council and any arm's length 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.

6.6 Risk Management Implications

- 6.6.1 There are number of risks associated with the programme. These will be captured in detail along with mitigating actions as a part of the programme governance.
- 6.6.2 There is a risk that if the outcome of the review is not communicated appropriately then the benefits will fail to be realised. To mitigate this, continued engagement with company Chairs, MDs, trade unions and the existing workforce at this early

stage will be part of the arrangement to successfully delivering the outcomes of the review.

6.7 Rural Communities Implications

6.7.1 There are no direct implications for rural communities.

6.8 Implications for Children & Young People

6.8.1 There are no direct implications for children and young people.

6.9 Public Health Implications

6.9.1 There are no direct implications for public health.

7 Ward Members Affected

7.1.1 All Wards

8 Contact Information

8.1 Any questions relating to this report should be directed to the following officer:

Name: Frank Jordan

Job Title: Executive Director of Place

Email: Frank.Jordan@cheshireeast.gov.uk