

# ASDV Shareholder Committee

## Agenda

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**Date:** Monday, 6th August, 2018  
**Time:** 2.00 pm  
**Venue:** Committee Suite 1 & 2, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and in the report.

It should be noted that Part 1 items of Cheshire East Council decision-making meetings are audio recorded and the recordings are uploaded to the Council's website.

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. **Appointment of Chairman**
2. **Appointment of Vice-Chairman**
3. **Apologies for Absence, Welcome and Introductions**
4. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

5. **ASDV Review and Change Programme** (Pages 3 - 18)

To consider the draft Terms of Reference, the change programme and the proposed recruitment process for two co-opted members.

6. **Draft Training Plan** (Pages 19 - 20)

To consider the proposed Shareholder Committee Training Plan.

7. **Alliance/ANSA - Update**

To receive an oral update.

8. **Next and Future Meetings**

**THERE ARE NO PART 2 ITEMS**



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## Shareholder Committee

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**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

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### 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

**Appendix A**

**SHAREHOLDER COMMITTEE  
DRAFT TERMS OF REFERENCE**

**1. Purpose of the Shareholder Committee**

**1.1.** The Shareholder Committee will give advice and direction to the Cabinet Member(s) who hold the legal responsibility for making ASDV shareholder decisions. [ The Cabinet Member(s)]

**1.2.** The Shareholder Committee will:

- 1.2.1. Provide strategic oversight of the commissioning arrangements for ASDVs and to provide assurance to The Cabinet Member(s) that these arrangements are:
  - 1.2.1.1. compliant with the councils constitution, rules and procedures;
  - 1.2.1.2. achieving best value
  - 1.2.1.3. fit for purpose.
- 1.2.2. Provide specific recommendations to The Cabinet Member (s) regarding any improvements to be made to these commissioning arrangements.
- 1.2.3. Commission and then oversee an ASDV change programme as per the resolutions of Cabinet meeting of 13 March 2018.
- 1.2.4. Review any proposals to expand or reduce the scope of any of the existing ASDVs and advise The Cabinet Member (s) regarding any decisions to be made in this regard.
- 1.2.5. Review any proposals to create a new ASDV and advise The Cabinet Member(s) regarding any decisions to be made in this regard
- 1.2.6. Review any proposals to close any of the existing ASDVs and advise The Cabinet Member(s) regarding any decisions to be made in this regard.
- 1.2.7. Review the strategic business cases for each ASDVs and to provide strategic advice to The Cabinet Member(s) before these business plans are endorsed by the shareholder.
- 1.2.8. Ensure that appropriate communication and engagements processes are put in place for all stakeholders.

- 1.2.9. Otherwise discharge the role of the Shareholder in respect of the Council's ASDVs.

## **2. Membership**

- 2.1.** The Shareholder Committee shall consist of 5 voting members drawn from the Elected Members of the Council. This will be appointed to in line with the rules set out within the constitution for the appointment of members to committees.
- 2.2.** The proportionality of the voting members will reflect the political proportionally of the Full Council.
- 2.3.** A further 2 co-opted members will also be appointed to the Committee to provide the committee with a wider range of commercial and governance expertise to the committee and the Cabinet Member(s).
- 2.4.** Quorum: For the transaction of business there must be [3] Elected members present.
- 2.5.** Appendix A provides a summary of the required skills sets for each of the members of the committee

## **3. In Attendance**

- 3.1.** The Chief Executive, the Section 151 Officer, the Director of Legal Services and the Executive Director for Place (or their representatives) will be advisors to the Shareholder Committee. The committee and/or those Officers may invite additional advisors to attend the Shareholder Committee as required.

## **4. Functions**

- 4.1.** The core function of the Shareholder Committee is providing strategic oversight of the arrangements with the Councils ASDVs at the group level. In exercising this core function the Shareholder Committee may determine the areas it wishes to consider but as a minimum the committee must be able to:
- 4.1.1. Provide assurance that strategic commissioning arrangements for the ASDVs are fit for purpose or provide recommendations to ensure that they are.

- 4.1.2. Provide assurance that the overarching performance arrangements for each ASDV are fit for purpose or provide recommendations to ensure that they are.
  - 4.1.3. Provide assurance that the arrangements for ASDVs comply with the Public Contract Regulations 2015;
  - 4.1.4. Provide assurance that all ASDVs are complying with the relevant statutory and regulatory framework for their respective areas of operation;
  - 4.1.5. Prepare and maintain a strategic risk register in relation to the group of ASDVs
- 4.2.** The shareholder committee shall provide advice to The Cabinet Member(s) on any decisions that need to be made in relation to the overall commissioning arrangements and also prepare and present a strategic report to the Cabinet at least once a year on the overall governance and performance arrangements for the Council's ASDVs.
- 4.3.** The second core function of the Shareholder Committee is to fulfil the resolution of the Council's Cabinet at its meeting of 13 March 2018 in relation to the establishment of an ASDV change programme and any future change
- 4.4.** Within this core function the Shareholder Committee will consider the initial review undertaken by the external advisors and will commission a detailed programme plan to enable a set final recommendations to be made to The Cabinet Member (s) regarding each of the companies. These recommendations may include:
- 4.4.1. The expansion of an existing ASDV
  - 4.4.2. The creation of a new ASDV
  - 4.4.3. The transfer of services from one ASDV to another
  - 4.4.4. The returning of the services from an ASDV back to the Council
  - 4.4.5. Making changes to the council's overarching commissioning arrangements
  - 4.4.6. In support of this core function the Shareholder Committee will review and analyse the annual statement of accounts of each ASDV.
- 4.5.** The third core function of the Shareholder Committee is to make recommendations to The Cabinet Member (s) about whether or not to approve the business plans of each of the ASDVs as shareholder. Within this core function the Shareholder Committee will also:
- 4.5.1. Provide strategic advice to The Cabinet Member (s) on the robustness and suitability of each of the ASDV Business Plans

- 4.5.2. Review any proposals to make a significant capital or revenue investment in any of the council's ASDVs
- 4.5.3. Specifically reviewing any proposal by an ASDV to submit tender for services to a client other than Cheshire East Council
- 4.5.4. Provide advice to The Cabinet Member(s) before exercising any shareholder consents
- 4.5.5. Determine the distribution of any surplus or the issue of any dividends from an ASDV

**4.6.** It is to be noted that the Shareholder Committee will not have operational control over the ASDVs. Within the parameters legitimately falling for approval by the Shareholder, all decisions regarding the day to day operation of each Company are the responsibility of the Directors of each Company. In addition, the day to day liaison with the companies will be between the client service of the Council and the managing director of each company.

## **5. Frequency of meetings**

**5.1.** The Shareholder Committee will:

- 5.1.1. Meet Quarterly as a minimum
- 5.1.2. Report to the Council's Cabinet on at least an annual basis
- 5.1.3. Report to the Corporate Overview and Scrutiny Committee annually

## **6. Administration**

**6.1.** Minutes and agendas will be distributed no later than 5 clear working days prior to the meeting

## **7. Principal Information Management needs.**

- Statutory accounts of each company
- Annual engagement and commercial activity report
- Update reports on major projects
- Business plans for each company including risk registers

Planned Activity Timeline Completed Overdue



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## **APPENDIX C**

### **Recruitment Process for Co-opted Members of the Shareholder Committee**

#### **Bloom**

Bloom provides the Council with a 'one stop shop' for the procurement, contracting and performance management of all specialist professional consultancy services, in a compliant, quick and efficient way. This is a vendor neutral solution. Bloom acts as the independent broker for the procurement of specialist professional services working with accredited suppliers and will manage the end to end process of appointment.

A specialist professional contract is an arrangement to employ an individual, group or organisation.

The most common reasons for hiring such professionals are to:

- bring industry or sector specific knowledge
- bring specific skills
- provide extra resource, capability and capacity in addition to existing establishment
- undertake independent and unbiased analysis and facilitation
- aid creative thinking

#### **Application of Bloom**

The management of the processes of recruitment of co-opted members will be delivered on behalf of the Shareholder Committee by the ASDV Review and Change Programme Team.

The Team will work with the Shareholder Committee to identify the requirements of a contract and the management of the market with regard to seeking and ensuring potential 'suppliers' (experts/advisors) are registered to tender for contracts via Bloom.

During the 'contract' the Team will liaise with the Shareholder Committee to manage performance in accordance with the requirements of the Bloom system.

At the appropriate time within the ASDV Review and Change Programme timescale, hand-over of the management of the Co-opted members to a suitable 'business as usual' arrangement will be made.

Comprehensive detail of the Bloom facility can be found at:

<http://centranet.ourcheshire.cccusers.com/tasks/buying/Procurement/CorporateContracts/Pages/Consultancy---Bloom.aspx>

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## Shareholder Committee Draft Training Plan

#	Topic:	Delivered by:
1	Original Objectives set for each ASDV	Exec Director Place
2	ASDV Review - The Edge Report – <i>what did this indicate regarding how CEC ASDVs stack up against the evidence base / principles / objectives?</i>	Exec Director Place
3	Responsibilities of shareholders -Governance -Financial Matters -HR Matters -Performance Management -Assurance	External
4	Risk Management, including commercial decisions	Business Governance and Risk Manager - Legal
5	Commissioning and Contract Management	TBC
6	Democratic Roles and Responsibilities re: CEC Constitution and Committees	Democratic Services

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