

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	15 <sup>th</sup> October 2013
<b>Report of:</b>	Head of Environmental Protection and Enhancement
<b>Subject/Title:</b>	Future Delivery Model for Bereavement Services (Forward Plan Ref: 13/14-32)
<b>Portfolio Holder:</b>	Cllr David Topping, Environment

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### 1.0 Report Summary

- 1.1 The report seeks Cabinet's approval to progress with the registration of a Wholly Owned Company (WOC) limited by shares to act as the Council's agent in managing the provision of Bereavement Services for the Council whilst work continues to develop the Business Case for future implementation.
- 1.2 The catalyst for change is driven by the need to invest in our buildings and services and to improve the quality of this service for local residents. This exciting opportunity will ensure that our services remain sustainable and able to provide high quality services in a dignified and sensitive manner for our local residents.

### 2.0 Recommendations

It is recommended that

- 2.1 Cabinet approve the formation of a new wholly owned company that is limited by shares, benefiting from the Teckal exemption principles as the future management model for delivery of Bereavement Services.
- 2.2 Cabinet give delegated authority to the Head of Environmental Protection and Enhancement, the Borough Solicitor and the Section 151 Officer (and officers that are devolved those powers) to commence the detailed implementation of the WOC, (including, but not limited to, identifying the optimum procurement route) in consultation with the Portfolio Holder for Environment and is subject to the corporate project quality assurance process governed by the Executive Monitoring Board (EMB) to ensure that the project is reviewed prior to any future implementation.
- 2.3 Following the outcome of the actions contained within 2.2 above, Cabinet agree to the establishment of a Board of Directors for the company and the Portfolio Holder for Environment work with the Leader of the Council and Chief Executive to define the appointments of the Non Executive Directors,

nominating three Board Members to act as the Chairman, Vice Chairman and Director on the new Company Board of Directors.

### **3.0 Reasons for Recommendations**

- 3.1 The Council has realised the need to change the way future services are provided in order to create opportunities for innovation and provide service efficiencies. As a result, the Council has determined to take a more commissioning role.
- 3.2 The aspirations to deliver services and redefine our role in core place-based services are set out in the Three Year Plan. The development of a new delivery model for Bereavement Services forms part of that major Change Programme.

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

- 4.1 Bereavement Services offer burial, cremation, memorial and bereavement support and currently provide a high quality, professional, caring and sensitive service. The service is responsible for two crematoria sited at Macclesfield and Crewe, and eleven cemeteries located within the boundaries of Cheshire East and the maintenance of the closed churchyards.
- 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
- 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.
- 4.4 Whilst the Council would remain in control of the Company, the service would be able to operate with greater autonomy 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.
- 4.6 The Project is being presented to EMB on the 31<sup>st</sup> October and will be Governed in accordance with the corporate project quality assurance process.

## **5.0 Business Case - Why the project is needed?**

- 5.1 The operating model has historically proved effective although the changing operating environment and customer expectations mean that constraints do exist which can hamper performance and innovation. In recent years the service has also suffered from a lack of investment whilst facilities in neighbouring authorities have benefited from improvements in facilities/services. A private new facility will shortly be built in Northwich providing new and modern facilities and a broader range of services.
- 5.2 In reviewing the options, the focus remains on identifying a means of providing the service in a way which creates greater flexibility, is more commercially focused and yet retains and enhances existing relationships with local communities and community/voluntary and charitable groups.
- 5.3 There is a need to achieve best value for the services that the Council directly provides and reduce net operating costs wherever possible, whilst at the same time maintaining the best possible service for its residents in line with the Council's three year plan.
- 5.4 It is envisaged that there will be significant business development opportunities arising from having a trading arm and the income from the Company could either be reinvested in the company (with shareholder agreement) or shared with employees as part of a profit sharing agreement).
- 5.5 It is also anticipated that a variety of further benefits such as local employment opportunities and investment within local communities will be generated by the creation of a WOC.
- 5.6 Without direct intervention, we anticipate service standards and service users will decline as the continuing financial and operating constraints impact on the service over the coming years.
- 5.7 On 4<sup>th</sup> February 2013, the Council announced its three year plan, which consists of 29 Major Change Programmes covering 8 key priorities. The three year plan identifies the core purpose of the Council, reflects the changing role of local government, responds positively to the challenge of major funding reductions, and is in line with policy changes at both national and local levels. The Change Programme is a significant undertaking by the Council reflecting the need to ensure that we provide the right service that is value for money. This project is in line with the Council's three year plan: Priority six: Redefining the Council role in core place-based services and also the Major Change Programme 6.2 "Developing new delivery model for Streetscape and Bereavement Services"
- 5.8 Benefits

Moving to a wholly owned company model with Teckal exemption offers the following benefits:

- The continued provision of a sensitive and dignified service which is designed to help meet the needs of the individual.
- Aligns with the Council's objective and ambition to invest in innovative ways to deliver services and to be a commissioning organisation.
- Ability to operate under commercial terms and greater autonomy for the services
- Retention of jobs within the local economy.
- Benefits of improvements in service delivery are retained by the service, Council or WOC not shared with private sector.
- Core Council work can legitimately be devolved without a lengthy procurement exercise being required – benefit from Teckal exemption
- Opportunities for co-ownership with other Councils and a Teckal exempt model will provide opportunities for shared delivery
- Ability to generate surpluses to reinvest in the growth of the business or pass back to the Council as dividends
- Implementation of different terms and conditions for staff thus potential reduction in costs to the Council.
- Ability to influence and drive the direction of the service and attract partners
- Incentivisation of the team to drive the business forward.
- Opportunity to develop a new culture/brand
- Opportunities to reduce the core cost of the service

#### 5.9 Benefits realisation

Anticipated net benefits will start to be realised in 2014/15 increasing by approximately £5k - £10k a year until year 5. This project is anticipated to deliver net benefits of £261k, spread over the initial 5 year period, enabling the Council to continue to deliver Bereavement Services, while delivering best value to its residents.

This includes incremental savings on corporate costs of 5% each year for years 2 - 4.

#### 6.0 Wards Affected

6.1 All Wards are affected.

#### 7.0 Local Ward Members

7.1 All local Ward Members.

#### 8.0 Policy Implications

- 8.1 The project is identified in 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.

## **9.0 Financial Implications**

- 9.1 The creation of the new legal entity should produce benefits, spread over the initial 5 year period, as shown in the table below.

	£k
Costs	(357)
Benefits	618
Net benefits / (Costs)	261
Payback	2.89 years
NPV	214
IRR	151%

- 9.2 This assumes that capital expenditure is incurred by Cheshire East Council (CEC) to ensure the cremators are replaced during 2013-14 and that the Crewe crematorium refurbishment scheme is taken forward.
- 9.3 The new company will provide Bereavement Services on behalf of CEC but all "existing" income streams will go directly to CEC.

## **10.0 Legal Implications**

- 10.1 The services provided by the bereavement service are Part B services for the purposes of the Public Contracts Regulations 2006. A contract to provide such services does not have to comply with the full public procurement regime required by those regulations. However, case law has established that the Council would still be liable to ensure that the so-called treaty obligations (e.g. transparency and non-discrimination) are complied with. It is generally felt that the best way of ensuring that those duties are discharged is to carry out a full public procurement exercise. Were the Council to carry out a full public procurement exercise, then unless the Company was able to take advantage of the Teckal exemption, the Council could only award a contract to the Company if the Company was the successful tenderer.
- 10.2 However, the treaty obligations only apply if the service concerned was one, the procurement of which would be likely to attract interest from undertakings based in other member states. In practice, most people like to be buried close to where they or other family members live which suggests that cremation and cemetery services are not services that would be likely to attract interest from undertakings in other member states. If this is the case, the question of whether or not the Company qualifies for the Teckal exemption is irrelevant.
- 10.3 To qualify for the Teckal exemption, the Company must have no private sector ownership and provide at least 90% of its services to the public sector.

- 10.4 If the Council were to transfer the provision of the service to the Company this would result in the Company providing services to funeral directors and members of the public; thereby losing the Teckal exemption. Of course, such a transfer would not require the Teckal exemption in the circumstances set out in paragraph 10.2.
- 10.5 Were the Council to award the Company a contract to manage/operate the facilities on behalf of the Council (such that, for example, fees were payable to the Council and not to the Company) such a contract could be structured to be Teckal exempt.
- 10.6 The award of such a contract would trigger a TUPE transfer and both the Council and the Company would need to be mindful of the need to inform and consult those engaged in providing the service as to the manner in which they would be affected by the transfer.
- 10.7 The Council has power to award such a contract under statute including Part 1 Chapter 1 the Localism Act 2011 and s111 Local Government Act 1972.

## **11.0 Risk Management**

- 11.1 The risks associated with this Project are captured in the Risk Log and will be reviewed and challenged at EMB.
- 11.2 There is one major risk to the Council that needs to be noted at this stage and it relates to the construction of a new private crematorium in Northwich, which, will be managed by Westerleigh Group LTD. It will principally serve the old Vale Royal area and may impact on funerals from Winsford and Middlewich.
- 11.3 To help mitigate a wider impact, the Council should undertake further works to the Crematoriums to ensure they can provide a similar standard of customer service and reduce leakage from a wider catchment area. An allowance for this should be included in the Asset Management Programme.
- 11.4 This risk would occur whether the service is transferred or remained in-house.

## **12.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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