

Proposed Governance, Stewardship and Control Arrangements for the Alternative Service Delivery Vehicles (ASDVs)

1. Introduction

- 1.1. The Council is creating a number of Alternative Service Delivery Vehicles (ASDVs) as part of its move to becoming a Strategic Commissioning Council. The Council's aim in setting up the ASDVs is to ensure the best long term success of the services by the continued delivery of quality to residents whilst, over time, becoming more commercial.
- 1.2. The overriding principle for the governance, stewardship and control arrangements for the ASDVs is that although the new vehicles take on responsibility for the service delivery, the Council remains responsible for ensuring that it uses the public funds the Council provides properly and can demonstrate value for money.
- 1.3. The proposed approach to the ASDVs is that of 'safety first' and the overall governance framework of the Council is being reviewed to ensure the arrangements are robust and fit for purpose at the outset. Maintaining accountability to service users, citizens and local members following the introduction of the ASDVs is vital and the arrangements introduced must ensure this and therefore will remain under regular review.
- 1.4. This paper sets out the proposed governance, stewardship and control arrangements for the ASDVs and the role of the Audit and Governance Committee in relation to them. The arrangements specified are for Wholly Owned Companies (WOCs), which is the main delivery vehicle utilised so far. Arrangements for other delivery vehicles e.g. charitable trust will vary.

2. Role of the Audit & Governance Committee

- 2.1. Ensuring the adequacy of governance and risk management over shared service arrangements, commercial relationships and other service delivery arrangements such as ASDVs can be complicated but is very important as accountability for performance and stewardship of the public funds involved remains with the Council. For these reasons the role of the Audit and Governance Committee need be clearly defined.
- 2.2. The latest CIPFA guidance, *Audit Committees: Practical Guidance for Local Authorities and Police (2013 Edition)* suggests the role of the Committee with regard to ASDVs should be:
 - to consider the assurance available on whether the arrangements are satisfactorily established and are operating effectively. For example, the Committee should seek assurance that the Council has appropriate arrangements to identify and manage risks, ensure good governance and obtain assurance on compliance.
 - to know what arrangements have been put in place to maintain accountability to stakeholders, to ensure transparency of decision making and to ensure standards of probity are maintained.

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- where the Council is developing new arrangements, to receive assurance over governance matters at the project stage and seek clarity over its own responsibilities in relation to the new ASDV.
 - to consider the coverage of assurances that underpin the Annual Governance Statement (AGS) to make sure that ASDVs are adequately covered.
- 2.3. Please note that a separate report on the new guidance for Audit Committees is being presented at this Committee meeting.

3. Overall Governance, Stewardship and Control Arrangements

- 3.1. An overview of the proposed governance, stewardship and control arrangements of the Wholly Owned Companies (WOCs) is shown as Appendix 1 and detailed below.

The Contract

- 3.2. The contract sets out how the services will be delivered by the ASDV to the residents and business of Cheshire East and is effectively divided into four elements:
- Contract Terms
 - Output Specification
 - Method Statements
 - Performance Monitoring

Contract Terms

- 3.3. This is the main part of the contract and sets out the respective obligations of the contractor, the ASDV and the Council, as client. They also set out the consequences of failure to comply with an obligation. In addition, the contract terms deal with issues such as how disagreements between the parties may be resolved.

Output Specification

- 3.4. The output specification will set out what the Council wishes the ASDV to do. Modern best practice is for the specification to set out the outcomes required by the client but not to specify how the contractor is to deliver those outcomes.

Method Statements

- 3.5. This is where the contractor sets out in detail how it is going to deliver the outcomes that the client requires. The contract terms make it clear that the contractor is to deliver both the specified outcomes and what is set out in the method statements.

Performance Monitoring

- 3.6. A number of key performance key indicators will be used to measure the extent to which the contractor is or is not delivering the desired outcomes. It is the

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responsibility of the Council to monitor the contractor's performance by reference to those key indicators. It is best practice to ensure that the core service retains staff who understand how the outsourced service is delivered. The contract terms establish a forum for interaction between the Council and identified managers within the contractor.

- 3.7. Although contractual, the relationship established by the contract between the Council and the contractor can also be said to be a strategic or a partnering relationship. That strategic relationship will entail meetings taking place on a periodic basis between the relevant portfolio holder and the managing director of the ASDV. In the same way as members currently raise concerns directly with a portfolio holder; in future, this will still be the case.

Sanctions

- 3.8. Within each contract there will be provision for sanctions, if the contractor has not performed its obligations, as set out in the terms of the contract. Such sanctions will depend on the nature of the non-performance but could include the withholding or deduction of monies payable under the contract.

The Shareholder

- 3.9. The Council is the Principle Shareholder within an ASDV. The Articles of Association are the company's Constitution, setting out the rules by which the company will be governed and the decision making processes that will be operated. They have been developed to comply with the requirements of the Companies Act 2006 and aim to provide the appropriate controls for the Council as the shareholder whilst at the same time providing the required independence, flexibility, and commercial decision making for the company.

- 3.10. The Articles of Association set out powers of the shareholders including:

- Appointment and removal to the Board
- Appointment of Auditors
- Setting all key strategy decisions of the company
- Approval of the business plan
- Scrutinise the Company's performance and Board's activities.

The Shareholder Committee

- 3.11. The Shareholder Committee is a sub-committee of and accountable to Cabinet and will exercise the Council's powers as shareholder. This Committee will provide a single point of contact between the management of the ASDVs and the Council as shareholder.

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- 3.12. The Shareholder Committee will be made up of the Leader, Deputy Leader, Chief Executive, Executive Director of Strategic Commissioning and Finance representation amongst others.
- 3.13. The Committee will ensure that clarity of roles is maintained, hold the Directors of the ASDVs accountable and provide a formal mechanism whereby the Shareholder's views can be communicated to the ASDV.

Audit

General

- 3.14. The Council's auditors have a statutory right to fully inspect the Company accounts and the power to visit and inspect books and records at any time.

External Audit

- 3.15. ASDV accounts will be consolidated into the Council's Statements and subject to audit by the External Auditors. They will also carry out a Value For Money assessment.

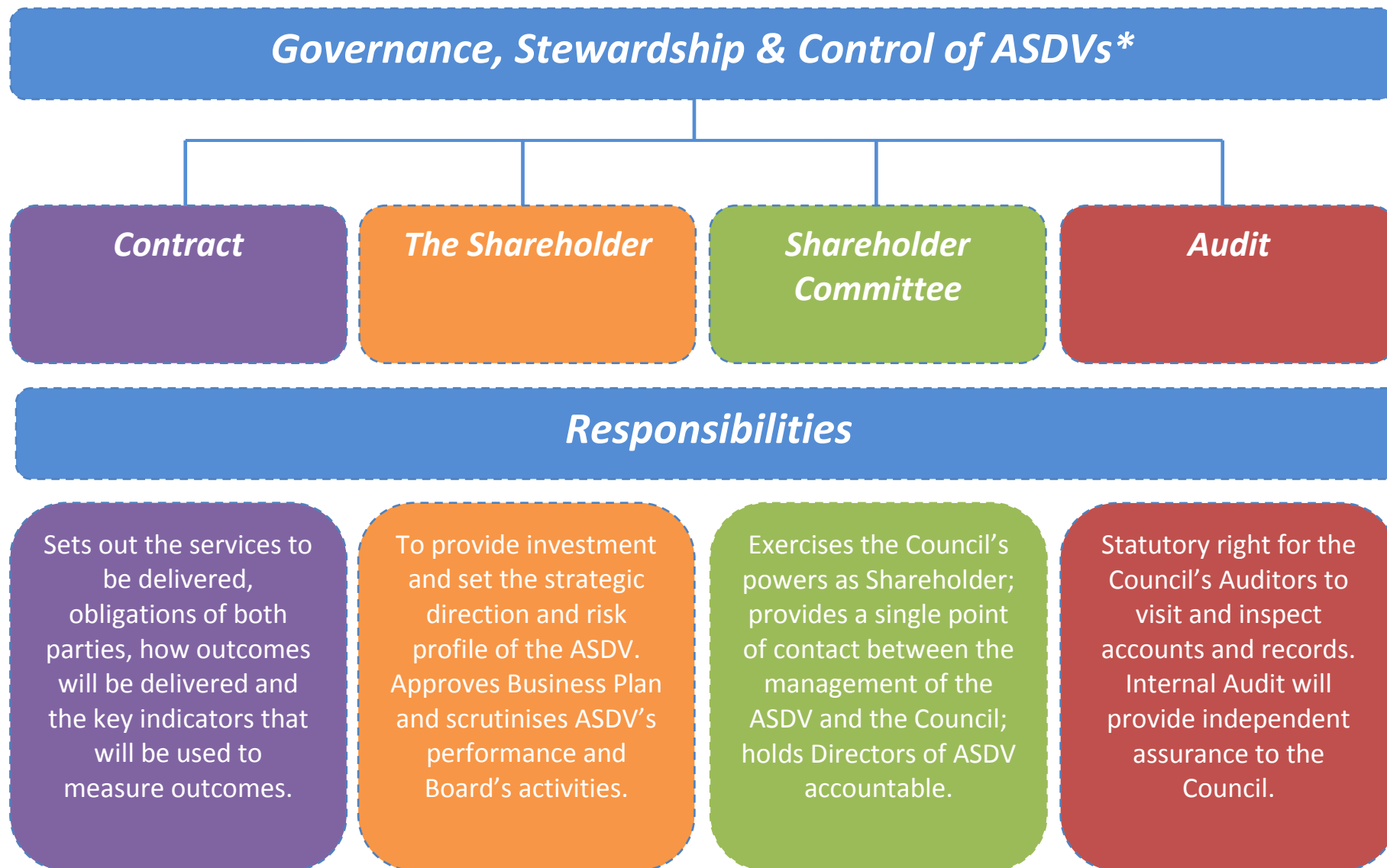
Internal Audit

- 3.16. Internal Audit provides independent assurance to the Council. In respect of ASDVs, this assurance will be required over the following risks:
- Risks to the Council's strategic objectives posed by the use of ASDVs at a broad level for the Council i.e. Macro level, strategic risks, and
 - Risks to individual business/service areas i.e. Micro level, operational risks.
- 3.17. To provide independent assurance to the Council, Internal Audit will need to:
- Establish the governance arrangements in place at both the Council and the ASDV and whether they are operating effectively.
 - Map the assurance framework to determine whether reliance can be placed on the ASDV's own internal auditors or external auditors/assurance providers.
 - If sufficient reliance cannot be placed, Internal Audit may need to obtain assurance directly itself. Access to records is included within the Powers of Audit included in the Articles of Association.
- 3.18. As part of the Annual Governance Statement (AGS) process, there will be an assessment of partnership arrangements, which will include ASDVs.
- 3.19. As with the Council itself, Internal Audit will also make arrangements to share information and co-ordinate audit activities with the External Auditors to ensure adequate coverage and minimise duplication of effort in respect of the ASDV.

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Risk Management

- 3.20. The Council's risk procedures are being updated to ensure there are adequate arrangements on risk management in relation to new and alternative delivery models. The Council needs to meet two key responsibilities for each new delivery model vehicle:
- provide assurance that the risks associated with working as a new vehicle have been identified and prioritised and are being appropriately managed
 - ensure that the new vehicle has effective risk management procedures in place.
- 3.21. Each new vehicle must ensure that risk management is embedded in the business and that the risk management methodology conforms to good practice. The specific challenge is being clear about where the new vehicle's objectives overlap, and can be aligned, to address a common goal with common risks, as opposed to where they are fully independent. Consideration will need to be given to matters such as:
- Reporting on shared key risks to management
 - Defining arrangements for joint risk registers or escalating risks from the new vehicle to the Council's risk register
 - Facilitating prioritisation of action plans
- 3.22. In considering the alternative models we need to think about risk appetite. This is not a single, fixed concept. There will be a range of appetites for different risks which need to align and these appetites may well vary over time. The risk appetite must take into account differing views of all stakeholders at a strategic, tactical and operational level. It needs to be measurable and should be developed in the context of both the Council's and the new vehicle's risk management capability and risk maturity. Risk appetite from a strategic level (Council's viewpoint) is proportionately more about risk taking than exercising control, while at the operational level (New Vehicle's viewpoint) the proportions are broadly reversed.



* Arrangements relating specifically to Wholly Owned Companies (WOCs).