

# CHESHIRE EAST COUNCIL

## Corporate Scrutiny Committee

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<b>Date of Meeting:</b>	<b>31 March 2014</b>
<b>Report of:</b>	<b>Chief Operating Officer</b>
<b>Subject/Title:</b>	<b>ASDV Scrutiny, Governance and Stewardship</b>
<b>Portfolio Holder:</b>	<b>Councillor Peter Raynes</b>

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### **1.0 Purpose of the report**

- 1.1 In February 2013 the Council set out its three year plan to becoming a strategic commissioning council. The strategic commissioning model ensures a measured approach to achieving the Council's ambitions alongside the required financial savings. It also provides a platform to redefine and reinvent services and to sustain quality services to Cheshire East residents and businesses. The role of elected members is also strengthened - beginning and ending with councillors' democratic relationship with local residents, who should have a stronger voice and input into commissioning decisions in the future.
- 1.2 This new approach requires robust corporate leadership, innovation and for the Council and its partners to deliver more with less. In summary it requires a clear focus on identifying and prioritising local needs. Cheshire East Council then concentrates on meeting those needs in a cost-effective way by stimulating and managing a diverse local market of high quality local providers.
- 1.3 This report updates the Corporate Scrutiny Committee on the:
- governance structures under which Cheshire East Limited and its subsidiary companies will operate; and
  - scrutiny arrangements for other alternative service delivery vehicles, (ASDVs).

The 24 March 2014 Cabinet report on Group Structure and Governance is attached at appendix A and B.

### **2.0 Recommendations**

- 2.1 The Committee is asked to:
- 2.2 Note and comment upon the scrutiny arrangements set out in this report and at appendices A and B.
- 2.3 Note the need to review the scrutiny arrangements set out in the report in light of the wider scrutiny review being done by a cross-party working group Chaired by Councillor Peter Groves.

### **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 strategic commissioning role.
- 3.2 The aspirations to deliver services and redefine the Council's role in core place-based services are set out in the Three Year Plan. The development of a group company structure forms part of that major change programme.
- 3.3 The Corporate Scrutiny Committee has an ongoing statutory role of scrutiny and monitoring performance of ASDVs.

### **4.0 Background**

- 4.1 The Council has realised the need to change the way future services are delivered. 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, that achieve the outcomes desired by local people. It is not about simply reducing costs through arranging cheaper provision or about traditional outsourcing. The new approaches will be used to 'get the best' from:
  - in-house services;
  - joint ventures between the Council and other providers;
  - and from new delivery vehicles such as social enterprises or staff mutuals.
- 4.2 The Council is currently reviewing its scrutiny arrangements, led by the Constitution Committee. The detailed review is being done by a cross-party working group, Chaired by Councillor Peter Groves. The terms of reference for the review have been agreed and expert advice is provided by Professors Steve Leach and Colin Copus of De Montfort University.
- 4.3 The working group has agreed that the review must take into account the emerging ASDV landscape including issues of accountability and transparency. The Corporate Scrutiny Committee chair invited the Chief Operating Officer to present a report outlining the scrutiny arrangements for the new ASDVs.

### **5.0 Alternative service delivery vehicles**

- 5.1 The Council's group of companies will be structured under its wholly owned parent company, Cheshire East Ltd. The Council is the sole shareholder of Cheshire East Ltd.
- 5.2 The Council already has two Council owned and controlled companies in place – East Cheshire Engine of the North Limited and Tatton Park Enterprises Limited. In February 2014 Cabinet also approved the detailed business cases for two new companies - Ansa Environmental Services Limited and Orbitas, Bereavement Services Limited. Ansa and Orbitas will 'go live' on 1 April 2014.

- 5.3 Each of the companies listed in paragraph 5.2, together with any other Council owned and controlled companies set up in future, will be subsidiaries of Cheshire East Ltd. Cheshire East Ltd will own the majority interest, (80%), in all of its subsidiaries. Cheshire East Council retains a minority interest, (20%), in each subsidiary. By holding a minority shareholding in the subsidiaries the Council retains control over important decisions.
- 5.4 Two further ASDVs will 'go live' during the first quarter of 2014-15:
- Everybody Sport & Recreation, (ESAR), and
  - CoSocius Limited (shared HR, Finance and ICT back office services with Cheshire West and Chester Council)
- 5.5 ESAR is an independent charitable trust and, as such, will not form part of the group. CoSocius, a joint venture with Cheshire West and Chester Council will also not form part of the group.

## **6.0 Governance**

- 6.1 The Council's overriding principle for the governance, stewardship and control arrangements for its ASDVs is to be resident and business led, and to ensure accountability to residents, service users, businesses and local councillors. However, the Council remains responsible for ensuring that it uses public funds properly and that it can demonstrate value for money.
- 6.2 Maintaining accountability to residents, service users, businesses and local councillors is vital. The arrangements introduced will ensure this and will remain under regular review.
- 6.3 Cabinet's control over the parent company and its subsidiaries is exercised through a number of key documents:
- articles of association;
  - directors' mandate;
  - shareholders agreement;
  - mandates for the shareholder's representatives; and
  - the contract.
- 6.4 Further details on the purpose and outline content of each of the documents listed in paragraph 12.3 are set out in appendix A, section 12. These documents require careful drafting not least to protect the companies' *Teckal* exemption in the early years. (The *Teckal* exemption enables the Council to award contracts directly to its subsidiaries without going through a public procurement process.) Draft documents will be shared with the Cabinet and the board of each company before they are approved.
- 6.5 The governance arrangements for ESAR and Coscious are different:
- **ESAR:** As an independent charitable trust the Council's relationship with ESAR is, essentially, contractual. A detailed contract and performance specification is currently being negotiated. The contract will protect the Council's interest and

ensure that its significant investment in ESAR plays an important role in achieving its key strategic outcomes.

- To provide additional protection, the freehold of the assets used by ESAR will remain with the Council. ESAR will operate/access those assets through a series of leases and licences.
- Performance monitoring against the contract will be led by the Council's Executive Director of Strategic Commissioning.
- **CoSocius** will be legally separate from the Council and will have more freedom to trade and operate on a commercial basis. The Council will enter into a 5 year contract for the provision of ICT, finance and HR services. The Council together with Cheshire West and Chester Council (as shareholders) will seek to maximise value for money to benefit local taxpayers.
- The shared services joint committee agreed the governance of CoSocius, its relationship with this Council and between Cheshire West and Chester Council at its meeting on 29 November 2013. That committee is expected to agree the 'go live' date for CoSocius on 28 March 2014.
- The Council will exercise its powers as shareholder in CoSocius through a new shareholder board. That Board will be expected to provide regular update reports to the Cabinet.

6.6 The governance arrangements summarised above will be regularly reviewed. This is necessary to ensure that they provide the appropriate balance between proper governance and stewardship of public money alongside doing things differently and using innovative new approaches to service delivery.

6.7 The Cabinet will also take the opportunity to reflect upon its experiences in setting up ASDVs to date. This will include officers continuing to review and refine the contract documentation for ANSA and Orbitas beyond the 1 April 'go live' date. This will ensure that the learning from these two vehicles, and from ESAR and CoSocius, will be applied to the next phase of ASDVs.

## **7.0 Scrutiny**

7.1 While the Council is setting up a group company structure to provide some services it remains committed to being open and transparent. The Cabinet will ensure that all services remain directly accountable to residents and elected members by offering them the chance to influence, scrutinise and propose changes to how services are run.

7.2 The Cabinet will set out its expectations for all of its companies in the shareholder's agreement. For example, that agreement will empower the new commissioning portfolio holder to:

- hold periodic meetings with the chairs and vice chairs of each company;

- present joint reports to Cabinet alongside the shareholder's representative, any scrutiny committee and, where appropriate, the company boards;
  - ensure regular public meetings and quarterly reporting of outcomes and performance; and
  - in exceptional circumstances, have the right to recommend the removal of a *non-executive* director to the Leader of the Council and Cabinet.
- 7.3 One potential outcome of the Council's review of its scrutiny arrangements is the creation of cross-party commissions with *scrutiny-like* powers. It is envisaged that these new commissions will be both forward looking and retrospective, whilst allowing for ultimate scrutiny powers to be held by the Council's corporate scrutiny function.
- 7.4 Commissions will be cross-party and member-led. They will assist in policy development and also scrutinise the performance of each subsidiary. They will present joint reports to the Cabinet alongside the commissioning portfolio holder and subsidiary company boards where appropriate. The lead officer will be the Strategic Director of Commissioning.
- 7.5 Cheshire East Ltd will require its subsidiaries to present regular performance monitoring reports. In most cases these will be quarterly. Those reports will form the basis of public reporting to Cabinet as the shareholder and also to the Commission. The precise frequency of reporting and public meetings will be set out in the directors' mandate for each company. Cheshire East Ltd will also prepare an annual report and hold its annual general meeting in public – together with those of all of its subsidiaries.
- 7.6 Cheshire East Ltd will meet in public at least once a quarter – it will also hold Board meetings in private. At the request of the chairman of Cheshire East Ltd, the Leader of the Council, the Chief Executive, or other invitee will be expected to answer questions from members of the Public or from other elected members. In addition, each subsidiary will be required to hold:
- quarterly public meetings; and
  - monthly Board meetings - minuted but not public, unless the Board agrees otherwise.
- 7.7 All councillors will have the right to attend all public meetings with the right to speak with the agreement of the chair. All papers for public meetings will be made available electronically.
- 7.8 The Cabinet and its advisors have the power to visit and inspect the books and records of the new delivery companies at any time. In particular, the Council's internal and external auditors will have open access to every company in the group. The Council's internal auditors will continue to:
- provide independent assurance on arrangements;
  - evaluate and assess strategic risks; and

- evaluate reliability and integrity of information
- 7.9 In providing that assurance internal audit will include specific pieces of work in its 2014-15 audit plan. This will include, for example:
- Reviewing the governance arrangements in place at both the Council and the companies to determine whether they are operating effectively; and
  - mapping the assurance framework – including all ASDVs - to determine whether reliance can be placed on an ASDV's own internal auditors or external auditors/assurance providers; and
- 7.10 In addition Internal Audit will carry out specific pieces of work at the request of the Audit and Governance Committee and, for example, the Chief Operating Officer or the Cabinet.
- 7.11 The activities carried out by other ASDVs will form part of the Council's usual scrutiny arrangements. For example:
- Cosocius will report to its joint Shareholder Board. That Board will report to Cabinet.
  - For ESAR via the Chief operating Officer's quarterly performance reports to Cabinet.
- 7.12 A diagram showing the proposed governance and scrutiny reporting lines for ASDVs is attached at appendix B.

## **8.0 Audit arrangements and access to information**

- 8.1 For each Council owned and controlled company the shareholders agreement will and accompanying articles of association enable the Cabinet and its advisors to visit and inspect the books and records at any time. In particular, the Council's internal and external auditors will have open access to every company in the group. This will not apply to ESAR as an independent charitable trust.
- 8.2 The Cabinet expects to appoint Grant Thornton as external auditors for the group. Cheshire East Ltd group accounts will be consolidated into the Council's financial statements. Internal Audit will continue to share information and co-ordinate audit activities with the external auditors to ensure appropriate coverage and minimise duplication of effort in respect of the ASDVs.

## **9.0 Conclusions**

- 9.1 The Council's overriding principles for the governance, stewardship, scrutiny and control arrangements for its ASDVs are:
- to be resident and business led; and
  - to ensure accountability to residents, service users, businesses and local councillors.
- 9.2 The scrutiny arrangements set out in this report and its appendices will be regularly reviewed. The Corporate Scrutiny Committee will also want to take the opportunity to review the scrutiny arrangements for ASDVs and ensure that they remain appropriate.

**10.0 Wards Affected** - All wards are affected by this decision.

**11.0 Local Ward Members** - All wards are affected by this decision.

**12.0 Policy Implications**

12.1 The recommendations are in accordance with the Council's plan to become a strategic commissioning council.

**13.0 Financial Implications**

13.1 The financial implications for the establishment of ANSA, Everybody Sport & Recreation (ESAR) and Orbitas were laid out in the detailed business cases presented to Cabinet on 4<sup>th</sup> February 2014. These included plans to deliver savings of over £3.3m over the next three financial years.

13.2 There are no further financial implications arising from this report.

**14.0 Legal Implications**

14.1 The legal implications regarding the establishment of the companies were considered in reports to Cabinet in June and October 2013 and February 2014. The legal implications are considered further within the body of this report.

14.2 The Council can set up the companies under the general power of competence laid down by section 1 of the Localism Act 2011. In addition, section 4 of the Localism Act 2011 provides

“4. Limits on doing things for commercial purpose in exercise of general power

(1) The general power confers power on a local authority to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose.

(2) Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.

(3) A local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.

(4) In this section “company” means:

(a) a company within the meaning given by section 1(1) of the Companies Act 2006, or

(b) a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.”

In other words any enterprise must be conducted through a company within the meaning of section 1 of the Companies Act 2006.

- 14.3 The requirements of both local government and company law are reflected in this report and its appendices.

## **15.0 Risk Assessment**

- 15.1 The risks within the Alternative Service Delivery Vehicle, (ASDV), programme are identified and managed at 3 levels: Project, Programme and Corporate.
- 15.2 The project risks for each of the new companies were detailed within the business cases presented to Cabinet in February 2014. The respective project boards - in managing the risks - have established appropriate mitigating actions and monitor each risk on a regular basis in accordance with the Council's project management methodology.
- 15.3 Programme risks are those that are common to more than one ASDV project. These risks are identified, managed and monitored by the ASDV Steering Group. Two of the programme risks are classified as corporate risks and have been escalated to the corporate Risk Management Group for consideration and monitoring and inclusion. These are:

- Contract and relationship management; and
- ASDV Business Plans

The Corporate Leadership Board ensures that actions and recommendations within the Corporate Risk Register are implemented.

- 15.1 The Council's risk management processes are being updated to ensure proper assessment of risk in relation to ASDVs. This is to ensure that:
- The risks associated with each ASDV have been identified, prioritised and are being appropriately managed; and
  - Each ASDV has effective risk management procedures in place.

## **16.0 Access to Information**

- 16.1 The background papers relating to this report are attached as appendices. The report author is:

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