

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	6 <sup>th</sup> January 2015
<b>Report of:</b>	Lorraine Butcher, Executive Director of Strategic Commissioning
<b>Subject/Title:</b>	Building and Planning Support Consultancy ASDV
<b>Portfolio Holders:</b>	Councillor D Stockton, Housing and Jobs Councillor D Topping, Service Commissioning

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### 1.0 Report Summary

- 1.1 Over the preceding 12 months the Council has successfully established a range of delivery vehicles for functions which are public facing and designed to improve the service offer to residents while also opening up new business opportunities to assist in reducing the reliance on Council funding.
- 1.2 This report seeks Cabinet approval to build upon the experience of establishing ANSA, ORBITAS and ESAR and to proceed with the establishment of a Council Owned Company limited by shares that will deliver the functions of a Building and Planning Support Consultancy Service. The aim is to have the new company operational by 1 April 2015.
- 1.3 The proposal seeks to deliver a first class, unique and innovative building and planning service for the residents of Cheshire East. The Council is currently well placed to deliver these functions successfully providing advice and support to residents and businesses who seek advice. The new company will provide a one-stop-shop for people seeking to make investments. A transformed, co-ordinated and commercial approach will re-invigorate staff and service innovation delivering a modern agile 21<sup>st</sup> century approach to building control and planning support services.
- 1.4 The new company will be able to take a pro-active role in mitigating the threats coming from private sector 'Approved Inspectors' and, in part, the loss of revenue from the Land Registry's proposed reform of land search charges. Without such mitigation the Council is at risk from increased cost in performing its statutory building control duties, including enforcement regimes. The proposal also opens up opportunities for partnership working with neighbouring authorities delivering further benefits from economies of scale.
- 1.5 Cheshire East Council is determined to deliver services using a 'best-fit' approach that puts residents first. Against that background the most appropriate model for delivering Building and Planning services is via a Council Owned Company.
- 1.6 The proposal fits with the Councils' declared intent to become a strategic commissioning authority with a clear distinction between commissioning and service delivery and a renewed focus on stimulating innovation, efficiency and staff involvement at a lower cost base.

## **2.0 Recommendations**

Cabinet is recommended to:

- 2.1 Consider the revised financial detail set out in section 11, acknowledging that the lack of clarity over the Land Registry's proposals for reform of land search charges makes all forecasts provisional.
- 2.2 Approve the implementation of a new Building and Planning Support Consultancy company which is structured as a Teckal company to act as an agent for the Council in accordance with the detailed business case and implementation plan attached as Appendix A.
- 2.3 Give any necessary delegated authority to the Executive Director of Strategic Commissioning, the Head of Legal Services and the Chief Operating Officer, in consultation with the Portfolio Holder for Service Commissioning to proceed with that implementation in accordance with the project plan to include leases, licences, guarantees and all necessary contractual documentation including all TUPE provisions.
- 2.4 Approve, through a contract, the intention to transfer Council Building and Planning Support services to the new company on 1 April 2015. This timetable remains ambitious and Cabinet will be kept up to date with progress.
- 2.5 Agree to the commencement of a formal consultation period with all the staff who might be affected by any proposed TUPE transfer.
- 2.6 Authorise Officers to commence formal negotiations with other local authorities who may be interested in forming partnership arrangements in respect of building control and associated services. A further submission to Cabinet would be expected as a result of any final proposals in this respect.

## **3.0 Reasons for Recommendations**

- 3.1 The Council has recognised the need to change the way services are provided in the future 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 Council has developed a Three Year plan and the development of a new delivery model for these services is identified as one of the major change projects within that plan: Priority 6; Redefining the Council's role in core place-based services; 6.1 Develop new delivery models; 6.1G Building & Planning Support Consultancy.

## **4.0 Wards Affected**

- 4.1 All wards are affected

## **5.0 Local Ward Members**

5.1 All local Ward Members

## **6.0 Policy Implications**

6.1 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 the commissioning and delivery of services.

6.2 The Council seeks to support economic growth within the area and as a consequence needs to provide effective and efficient services which support and assist those who wish to invest in the area, through development or relocation. The Council's building and planning support services provide a number of services that do just that, with some of these services currently operating within a commercial and competitive arena, attempting to respond and react appropriately whilst operating within the constraints associated with a traditional council operation.

## **7.0 Financial Implications**

7.1 The financial projections are shown in detail in section 11 and these show that, based on a number of assumptions with regard to Land Charges reform, the company should be able to deliver a net surplus of £269k over the first five years of operation.

## **8.0 Legal Implications**

8.1 Various delivery models have been considered to identify a model best suited to deliver the services. Key considerations in evaluating the models have been that:

- The balance of the work undertaken by the service is directly to the public and not the Council
- Parts of the building, planning and land charges work are statutory functions of the Council and although the Council is allowed to cover its costs in delivering the services it is legally restricted from generating a profit.
- Certain of the decisions that the Council makes in relation to the statutory duties are non delegable and must remain with the Council
- The Council needs to maintain market share

8.2 The preferred delivery model for other ASDV's has been a company structured to benefit from the Teckal exemption that has allowed the Council to contract with the company for the delivery of its services without undertaking a procurement exercise. For a company to benefit from the Teckal exemption it is a requirement that at least 80% of the company's work be for the Council. This can be achieved by the company acting as agent on behalf of the Council in delivering the service to the public and the contractual relationship will remain between the Council and the customer.

8.3 Under the agency model the Council cannot generate profit because the Council can only act commercially through a company and an agency arrangement does not satisfy this. The company will however be able to generate a profit on 20% of its activity provided directly to the public, i.e. not via the agency arrangement.

- 8.4 The Council will need to monitor all support or benefit in kind to ensure that the company/council is complying with state aid legislation. The council will also have to have due regard to the fact that some of the functions/decision making are non delegable and will remain with the Council. Therefore appropriate structures and staffing arrangements between the company and the Council will need to be put in place to ensure certain decisions are retained by the Council. Appropriate arrangements will also be required in relation to access to data.
- 8.5 In accordance with the decision by Cabinet (24 March 2014) to create a group structure for its COACCs (Council Owned And Controlled Company) the new company will be formed as a subsidiary of the Council's 'Cheshire East Residents First' (CERF) parent company with 80% ownership resting with CERF and the remaining 20% directly owned by the Council. This is consistent with the governance arrangements used for all the Council's other COACCs. By holding a minority shareholding in the subsidiaries the Council retains more control over important decisions. Importantly, the minority shareholding also provides all councillors with access to the companies.
- 8.6 The Council will have to establish a service contract with the company to define all the services, any lease arrangements and the service levels that they will provide to the Council and a buy back agreement for support services.
- 8.7 The transfer of the services to the company is likely to constitute a relevant transfer under the Transfer of Undertakings Protection of Employment Rights Regulations 2013 (TUPE) under which employees who are working in or for the services under consideration immediately before the transfer will transfer. The Council and the Company must comply with their duties under the Regulations and ensure that appropriate provisions are in place for employee pensions rights.

## **9.0 Risk Management**

- 9.1 The risks within the ASDV programme are identified and managed at 3 levels: Project, Programme and Corporate.
- 9.2 The project risks for this company are detailed within the appended business case. They are managed by the project board which has established appropriate mitigating actions and monitors each risk on a regular basis in accordance with the Council's project management methodology. Risks have been logged and challenged and endorsed by TEG/EMB (Technical Enabler Group/Executive Monitoring Board)
- 9.3 There is a risk (highly likely) to the Authority that the current government proposals to move the maintenance of the land charge register to the Land Registry would result in lost income for the Authority unless action is taken. Based on the current year's level of activity this loss is estimated to be £234k, though this is based on a number of assumptions about the government's proposals, which are not yet clear. This proposal partially mitigates this risk by 'bundling' works within the search realm thereby recapturing some £134k of this lost income. Other threats from competitors are expected to cause a further decline in income unless addressed quickly. If remedial action is not taken, these risks could result in a total additional cost to the Council of £892k over the next 5 years.

## 10.0 Background and Options

- 10.1 At the meeting of Cheshire East Council on 4<sup>th</sup> February 2013 it was agreed that the Council should proceed to becoming a strategic commissioning organisation where a small core of commissioners under the strategic direction of the Executive, identify and prioritise local needs, develop the outcomes that people require and then commission the services most appropriate to the delivery of those outcomes.
- 10.2 The basis of this decision was recognition that the landscape under which local public services are designed, purchased and delivered is changing rapidly under new Government policy and legislation. In order to align this with public services locally, the Council is changing the way it operates to become a strategic commissioning body.
- 10.3 While this shift will not happen immediately there is already momentum towards this new arrangement with the establishment of the Leisure Trust, the Environmental Operations Company (ANSA) and Bereavement Company (ORBITAS). Additionally other forms of alternative service delivery are occurring such as the personal and individual commissioning of care and the multi-local authority collaboration for adoption. Finally, an extensive range of commissioning review work is underway to inform potential further models for service delivery as well as areas for decommissioning.
- 10.4 The services under consideration currently generate revenues of £1,756k per annum but they are currently under threat from a number of factors which are detailed in the business case. To stem this decline, and to support future inward investment in our communities, it is therefore proposed to create a “Building and Planning Support Consultancy” service to realise the benefits and associations of those services which may be improved through the provision of a “one-stop” shop approach, co-ordinating advice and support and exploiting opportunities for upselling and package deals together with new services such as energy and fire risk assessments.
- 10.5 The key current service delivery areas are:
- Building Control
  - Local Land Charges
  - Planning support, liaison and customer interface
  - Street Naming and Numbering
- 10.6 An options appraisal has been conducted and has concluded that the new ASDV should take the form of a wholly-owned company limited by shares.
- 10.7 Officers have developed a detailed business case and plan for the implementation of the new company. The initial high level business case has been subject to the scrutiny provided by the Council’s project management regime having been endorsed by TEG on 4 June and EMB on 27 June at Gate 1.
- 10.8 Primary legislation within the Infrastructure Bill is due to receive Royal Assent in March 2015. The proposed changes include the transfer of local land charges to central government from October 2017 onwards to provide a central digital service for

local land charges. It is intended that the Building Control and Planning Support Company should be reviewed to inform the evolution of the Company going forward.

## 11.0 Financial Detail

11.1 The relevant budgets for the services under consideration are shown below:

2014/15 BUDGET	TOTAL £K
Employees	1,546
Transport	44
Supplies & Services	53
Service Expenditure	1,643
Support service recharges to service	1,029
Gross Expenditure	2,672
Income	1,756
Net Expenditure	916

11.2 This proposal is driven by a business imperative to retain high quality professional capacity to provide the fullest advice to those who wish to invest in the area, through development or relocation. In the longer term, it is anticipated that the new business opportunities provided, and secured through the company model, will see a growth in income levels securing further savings for the Council.

11.3 If we do nothing, then the service estimates that it will lose income to its competitors which could lead to an additional cost to the authority of £892k over the next five years. However, it is estimated that the formation of a new company and the initiation of a number of creative income generation streams over the first five years of operation will turn this projected additional cost of £892k into a small saving of £269k – a net benefit of £1.161m.

11.4 The table below shows the projected 'do nothing' increase in costs from a decline in building control income, coupled with a projected loss of an element of land charge income, assumed to impact on the Authority in 2016/17. When the details of the government's land charge reforms become clearer, then these financial projections may need to be revisited. This projected loss increase in costs would be mitigated under the company model by additional income streams from new initiatives.

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
	2015/16	2016/17	2017/18	2018/19	2019/20	5 years
	£k	£k	£k	£k	£k	£k
'Do-nothing' profit/(loss)	-125	-125	-214	-214	-214	-892
New company initiatives	-15	+264	+304	+304	+304	+1161
Net profit/(loss)	-140	+139	+90	+90	+90	+269

\*The figures above do not incorporate inflation / interest rates.

## **12.0 Access to Information**

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

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