

Corporate Overview and Scrutiny Committee

Date of Meeting: 9th January 2020

Report Title: Update from ASDV Shareholder Committee

Portfolio Holder: Councillor Craig Browne - Deputy Leader

Senior Officer: Frank Jordan - Executive Director - Place

1. Report Summary

- 1.1. The ASDV Shareholder Committee (the Committee) held its first meeting under the new administration on 14th October 2019. The Committee immediately embarked on a review of the business plans of companies in order to make recommendations to the Deputy Leader. The exercise also allowed the Committee to obtain key assurances from the companies on their overall governance and performance arrangements.
- 1.2. The review by the Shareholder Committee covered Orbitas Bereavement Services Ltd, Transport Services Solutions Ltd and ANSA Environmental Services Ltd.
- 1.3. The arrangements relating to the Everybody Sports and Recreation Ltd, as a leisure trust, require it to provide an annual report to Cabinet. Therefore it is not within the scope of the Committee.
- 1.4. Tatton Park Enterprises, which provides the catering at Tatton Park, reports to the Tatton Board and therefore member assurance is provided through the governance arrangements relating to Tatton.
- 1.5. In relation to its remit to oversee the ASDV review and change programme, the Committee has also considered a report on the commissioning review of services delivered by Civicance, and a proposal to establish a wholly-owned company for the services currently delivered by the council through Care4CE.

- 1.6. Given the recommendations relating to Civicance arising from that review, the Shareholder Committee did not consider the business plan for that company.
- 1.7. Furthermore, and in relation to its operations, the Shareholder Committee has reviewed the terms of reference for the Committee.
- 1.8. The purpose of this report is to outline the process of review and oversight that has been undertaken by the Committee.
- 1.9. It makes recommendations and observations to the Deputy Leader to consider in relation to the business plans it has reviewed and also in relation to the management of the ASDVs at the group level.

2. Recommendations

- 2.1. That the Corporate Overview and Scrutiny Committee notes the observations of the ASDV Shareholder Committee.
- 2.2. Notes that the observations and recommendations of the Shareholder Committee will be considered by the Deputy Leader.

3. Reasons for Recommendations

- 3.1. Through the business plan appraisal process the Committee has met with the three companies outlined at paragraph 1.2 to review the draft business plans.
- 3.2. The Committee can provide assurance to the Deputy Leader, as the shareholder's representative that the business plans should be approved, subject to the management fee being agreed by the commissioner.
- 3.3. In addition, the observations of the Committee are aimed at improving the business performance of the companies.

4. Other Options Considered

- 4.1. This section is not applicable, as the functions carried out by the Committee, and the need to report on progress and recommendations are

set out in the Shareholder Committee Terms of Reference, and linked to the Constitution.

5. Background

- 5.1. The ASDV Shareholder Committee membership comprises Councillor Steve Carter as Chairman, Councillor Mark Goldsmith as Vice-Chairman, and Councillors Sally Handley, Sarah Pochin and Lesley Smetham.
- 5.2. To align with the Council's business planning cycle, an immediate priority for the Committee was to make recommendations to the Deputy Leader about whether or not to approve the business plans of each of the ASDVs as shareholder. This is identified in the Committee's Terms of Reference as one of three core functions (Appendix A Paragraph 4.5 further explains this function).
- 5.3. As the Shareholder Committee members had only limited previous exposure to the operations of the ASDVs within its scope, the review of the company business plans was also the process by which to obtain assurances necessary to provide strategic oversight of the arrangements with the Council's ASDVs at the group level. This is the second of three core functions of the Committee (Appendix A Paragraph 4.1 identifies minimum considerations for the Committee).
- 5.4. The Committee determined that a series of extra meetings were necessary to properly review and appraise the business plans. Meetings were held on 14th October, 1st, 14th and 28th November, and sessions were scheduled with the Managing Director and Chair of each of the ASDVs to be reviewed, each lasting between 1-2 hours.
- 5.5. In addition to the business plans review, the Committee has conducted the following business since August:
 - Consideration and endorsement of its Terms of Reference;
 - Closer scrutiny of business cases for investment relating to Orbitas, upon request of the Committee. It passed on recommendations to the Deputy Leader;
 - Consideration of the report from the ASDV change programme relating to bringing Civcance in-house. Following additional discussion with the Chair and Directors of the company it endorsed the recommendation made to the Deputy Leader ; and
 - Consideration of the report to establish a wholly-owned separate legal entity for the future delivery of Care4CE services. It passed on some recommendations to the Deputy Leader.

6. Key Findings from the annual ASDV Business Plan Review

6.1. In line with its Terms of Reference the Shareholder Committee:-

- 6.1.1. Is able to provide assurance to the Deputy Leader that the Business Plans for 2020 relating to Orbitas, TSS and ANSA be approved, subject to the management fee being agreed by the relevant commissioner.
- 6.1.2. Provides assurance, following its detailed review and scrutiny, that these ASDVs are well run operationally and comply with relevant statutory and regulatory frameworks for their respective areas of operation, including compliance with public contracts regulations.
- 6.1.3. In reviewing the strategic commissioning arrangements, it recommends the following to provide assurance that they are fit for purpose:

In relation to Orbitas and TSS:-

- 6.1.3.1. The Council considers introducing rolling contract renewals for Orbitas and TSS.
- 6.1.3.2. Commissioning meetings work towards establishment of a forward five year plan, encouraging alignment of the strategic vision for the services being delivered between company and the Council;
- 6.1.3.3. The above be supported by the ASDVs adopting a more proactive attitude towards contract uncertainty (as per the private and charitable sectors), and investing time to build up robust forward plans;
- 6.1.3.4. That the financial plans and the management fees be agreed before business plans are finalised for 2020/21.
- 6.1.3.5. Should budget reconciliation result in a material change to the business plans they be submitted back via this Committee for approval.

Across the group of companies:

- 6.1.3.6. Annual business plans and in-year business cases be shared with their respective commissioners in Cheshire East Council, insofar as the development of a business case was to further the aims of the commissioner, or would have an impact on the commissioner, and such plans must clearly and transparently demonstrate constructive discussions with the commissioner in their development; and
 - 6.1.3.7. The budget parameters for the ASDVs be agreed before the Shareholder Committee annual business plan review in future, with requests for use of company or Council reserves being clearly identified and robustly developed.
- 6.1.4. In providing assurance that the overarching performance arrangements for each ASDV are fit for purpose, it recommends that:
- 6.1.4.1. The ASDVs introduce KPIs around business growth, in recognition of the maturity of the companies and that most operational savings have now been made.
- 6.1.5. The companies were also invited to present proposals for capital or revenue investment to support the delivery of their business plans. On review of the two proposals that were advanced enough to submit, the Shareholder Committee noted that:
- 6.1.5.1. Business cases were not of an investment-ready standard and the companies would benefit from the scrutiny to be provided by the Committee on future submissions;
 - 6.1.5.2. The previous focus on savings not growth might have created a belief that effort on business cases was not valued;
 - 6.1.5.3. It therefore recommended that the Committee carry out quarterly review and scrutiny of Directors Reports as part of its work plan, so as to provide the encouragement and expectation that more time be invested in this activity.

7. Implications of the Recommendations

7.1. Legal Implications

7.1.1. Pursuant to the Constitution, the exercise of any of the Council's rights as a shareholder in a company is an Executive function. This function is now supported by the ASDV Shareholder Committee.

7.1.2. Ongoing legal advice in relation to matters including contracts, shareholder agreements, articles of associations, company matters and decision making are provided, and a legal officer has been in attendance at all Committee meetings to date.

7.1.3. The recommendations required are pursuant to the core function of the Shareholders Committee as references in their Terms of Reference, including making recommendations to the Portfolio Holder that;

- strategic commissioning arrangements for the ASDVs are fit for purpose or provide recommendations to ensure that they are.
- the overarching performance arrangements for each ASDV are fit for purpose or provide recommendations to ensure that they are.
- the arrangements for ASDVs comply with the Public Contract Regulations 2015.
- ASDVs are complying with the relevant statutory and regulatory framework for their respective areas of operation.
- Prepare and maintain a strategic risk register in relation to the group of ASDVs.

7.2. Finance Implications

7.2.1. The review of ASDV business plans by Shareholder Committee does make some assessment of financial information. An assessment on whether the business plans match with the management fee held by the council or exceed it has not been made, and it will fall to the Council commissioner to ensure that the ASDV operates within its budget. Going forward, the Shareholder Committee have requested a clear and transparent statement from the commissioner on each business plan or business case so it can gain necessary assurances on financial and other matters.

7.2.2. Ongoing financial advice in relation to matters including business plans, business cases for additional funds, contracts, company matters and

decision making are provided, and a finance officer has been in attendance at all Committee meetings to date.

7.3. Policy Implications

7.3.1. The ASDVs provide services to the residents of Cheshire East, and their delivery is commissioned by Cheshire East in alignment line with the Council's three-year plan. A core function of the Committee is to provide assurance that strategic commissioning is fit for purpose, and the business plan review reported on herein is a key mechanism in fulfilling this.

7.4. Equality Implications

7.4.1. A core function of the Shareholder Committee is to review and advise on the ASDV change programme and any future change. Depending on any recommendations from the programme of change for the group of companies, there could be equality implications. Equality implications will be considered as part of each review undertaken as part of the programme.

7.5. Human Resources Implications

7.5.1. The ASDV change programme and individual business cases may have human resource implications, and these will be considered as part of each review or business case brought forward for consideration by the Shareholder Committee.

7.6. Risk Management Implications

7.6.1. The Shareholder Committee maintains a strategic risk register in relation to the group of ASDVs under its remit.

7.7. Rural Communities Implications

7.7.1. There are no direct implications for rural communities.

7.8. Implications for Children & Young People/Cared for Children

7.8.1. There are no direct implications for children and young people.

7.9. Public Health Implications

7.9.1. There are no direct implications for public health.

7.10. Climate Change Implications

7.10.1. Depending on any recommendations from the programme of change for the ASDVs, there could be climate change implications. These will be considered as part of each individual review undertaken.

7.10.2. Climate change implications are a consideration included in the ASDV Business Plan/Case Appraisal Tool (Appendix C), to assist committee scrutiny of the ASDVs operations.

8. Ward Members Affected

8.1. All wards are impacted.

9. Consultation & Engagement

9.1. In fulfilling its functions, the Shareholder Committee may determine that further consultation is necessary before it can make recommendations, and as has happened to date may defer final consideration until further consultation has occurred.

10. Access to Information

10.1. All supporting information is contained within the appendices to this report.

11. Contact Information

11.1. Any questions relating to this report should be directed to the following officer:-

Name: Frank Jordan

Job Title: Executive Director of Place, Lead Officer supporting Shareholder Committee

Email: Frank.Jordan@cheshireeast.gov.uk

And:-

Name: Councillor Steve Carter

Job Title: Chair of Shareholder Committee

Email: Steve.Carter@cheshireeast.gov.uk

APPENDIX A

SHAREHOLDER COMMITTEE 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.

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