

## ABERDEEN CITY COUNCIL

---

<b>COMMITTEE</b>	Council
<b>DATE</b>	7 <sup>th</sup> February 2024
<b>EXEMPT</b>	The covering report is not exempt; however the outline business case in the appendix is exempt under paragraph 6 and 11 of Part I of Schedule 7A to the Local Government (Scotland) Act 1973 because they contain information relating to the financial or business affairs of other organisations, and information relating to labour relations.
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Reconfiguration of working arrangements with ALEOs – Bon Accord Care and Aberdeen Sports Village
<b>REPORT NUMBER</b>	COM/24/038
<b>DIRECTOR</b>	Gale Beattie
<b>CHIEF OFFICER</b>	Craig Innes
<b>REPORT AUTHOR</b>	David Leslie
<b>TERMS OF REFERENCE</b>	24.6 and 24.7

---

### 1. PURPOSE OF REPORT

- 1.1 At its meeting of 3 November 2023, Council instructed the Chief Officer Commercial and Procurement, in relation to Bon Accord Care (i.e. Bon Accord Care Ltd, and Bon Accord Support Services Ltd), to note that the Options Appraisal process has highlighted potential benefits in bringing the associated services in-house and integrating them into the Council structure; and instruct the Head of Commercial and Procurement Services, following consultation with the Managing Director of Bon Accord Care, to outline the benefits of this potential option and provide indicative delivery milestones within an Outline Business Case for consideration by Council in December 2023’.
- 1.2 Furthermore, in relation to Aberdeen Sports Village Ltd (ASV), the Council instructed the Council’s Chief Officer - Finance, following consultation with the Head of Commercial and Procurement Services, to explore the potential for the Council and the University of Aberdeen to amend the shareholder agreement and ownership and report back to Council in February 2024 to align with Council budget setting process.
- 1.3 This report satisfies the instructions.

### 2. RECOMMENDATIONS

That Council:-

- 2.1 agree, in respect of Bon Accord Care, that given the current financial arrangements between the Council and the Integrated Joint Board (IJB) outlined in this report, not to develop-a full business case to bring Bon Accord Care back in-house and integrate into the Council structure;
- 2.2 notes that the National Care Service (Scotland) Bill is currently undergoing parliamentary process and if there is any change to the operating environment for Bon Accord Care resulting from this legislation then a report will be prepared by the Chief Executive and submitted to council;
- 2.3 notes that the redesign opportunities highlighted in the outline business case, appended to this report, will be taken forward by the IJB's annual commissioning of Bon Accord Care;
- 2.4 notes, in respect of Aberdeen Sports Village, that neither partner has the financial resources to enable a change in ownership model, and therefore the Joint Venture Agreement should be maintained on the basis of the Council and the University of Aberdeen being equal partners, 50:50.

### **3. CURRENT SITUATION**

#### Bon Accord Care

- 3.1 A tripartite relationship currently exists between the Council, the IJB and Bon Accord Care. Bon Accord Care is 100% owned by the Council and is responsible for the provision of adult social care. Bon Accord Care was created before the establishment of the IJB. Prior to the establishment of the IJB, the Council commissioned Bon Accord Care directly via a formal contract and Service Level Agreement. Following the establishment of the IJB, and its formal role in the commissioning of adult social care, the IJB has assumed the role of commissioning the Council, and by proxy, Bon Accord Care, for adult social care provision.
- 3.2 In light of financial pressures in 2023/24, colleagues within the tripartite bodies came together to work through how the tension between funding and commissioned need could be reconciled for financial year 2024/25 and beyond in order to secure the financial sustainability of Bon Accord Care. This work on the financial sustainability of Bon Accord Care was underway in the background as part of the annual commissioning review cycle of the IJB, while officers acted on the council's instruction to develop an Outline Business Case for identifying the benefits of bringing Bon Accord Care back into the council. Following the instruction from Council, workshops have been held with the Bon Accord Care Senior Management Team to consider the potential benefits and implications of Bon Accord Care coming back in-house, and colleagues across the three bodies worked together on both pieces of work.
- 3.3 The two pieces of work overlapped with the redesign opportunities identified from the annual commissioning review being viewed as savings which the Outline Business Case could acknowledge but, the Outline Business Case was unable to identify any further savings beyond some small level savings

associated with the merger of Bon Accord Care back office and its governance arrangements into the Council's arrangements.

- 3.4 The outline business case concludes that there are costs associated with bringing Bon Accord Care back in-house and integrating them into the Council structure. These would have to be quantified after further due diligence as part of preparing a full business case.
- 3.5 With the Council having to comply with Scottish Government conditions to maintain a baseline of funding that the IJB receives, any saving that arises from bringing Bon Accord Care back into the Council would be retained by the IJB as a consequence of its commissioning role. This would mean a failure to comply with one of the key objectives of the options appraisal and remove the potential for financial benefits from the option.
- 3.6 Given the nature of the redesign opportunities identified from the annual commissioning review, which represent the significant part of the savings identified in the outline business case, and that these savings can be implemented without a requirement to bring Bon Accord Care back into the Council, the scale of the financial benefit to the council does not justify bringing BAC in house.
- 3.7 Further to this, The National Care (Scotland) Bill (NCS) is currently progressing through the Parliamentary Stages and is presently at Stage 1. The Scottish Government has now clarified throughout Stage 1 of the Bill going through Parliament, that they are keen to establish a national framework for shared accountability and that Local Authorities will retain legal responsibility for the delivery of social care and social work functions, as well as retaining staff and assets. In addition, a new National Care Service Board structure will be created, accountable to both Local Government and Scottish Ministers, with responsibility for national improvement, standards and oversight, and with an agreed escalation framework in place for when standards are not met. Under the NCS, it is the intention that services will continue to be planned, designed and delivered locally because the care boards will plan and commission services for their local area.
- 3.8 Paragraph 48 of the Policy Memorandum accompanying the Bill as presented by the Government to Parliament for Stage 1, provides that social care services currently provided in-house by local authorities, may continue under a commissioning arrangement with the [newly constituted] care board, or the care board may take over direct delivery, with staff transferring to the care board. These will be decisions to be taken locally as the care boards are established, which may require reconsideration of the working arrangements with Bon Accord Care. Amendments are expected to be submitted by the Government to Parliament for Stage 2 consideration of the Bill, and this will provide clarity on the Government's intention, particularly on the approach to local services.

Aberdeen Sports Village

- 3.9 The report on 3 November 2023 drew attention to the fact that the Joint Venture Agreement was a barrier to achieving potential savings from implementing different operating arrangements or from one partner deciding to decrease funding. This resulted in the instruction to the Chief Officer – Finance to explore potential changes to the Joint Venture. While this was specifically targeted at looking at the financial benefit the Council could achieve from changes, it could not be done in isolation. Therefore any proposals had to be considered by both the Council and the University of Aberdeen.
- 3.10 The Council, University of Aberdeen, and Aberdeen Sports Village, explored and discussed, through a series of Partnership meetings, what was possible and both the Chief Officer – Finance for the Council and the Director of Finance for the University of Aberdeen, agreed that for a shift in ownership to be achieved, there would have to be both a capital and revenue commitment made by the University of Aberdeen.
- 3.11 A Capital transaction would be required to purchase the shares the Council owns, and holds as Long-term Investments on its Balance Sheet; and Revenue would be required to fund the operating subsidy currently paid by the Council. The combination of these two commitments was not affordable to the University of Aberdeen.
- 3.12 For this reason the recommendation notes the status quo should be maintained.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 The Medium Term Financial Strategy (MTFS) is a 5 year plan which sets out how our commitment to provide services that meet the needs of people locally are matched against anticipated costs and funding. Addressing the gap between income and expenditure is addressed in part through the Council Transformation Programme. The MTFS is aligned to the Council Delivery Plan, which in turn aligns the Council's commitments to the vision and priorities of the Local Outcome Improvement Plan.
- 4.2 Having determined in the outline business case that there are potential efficiencies, it is necessary to understand which part of our system benefits from that saving. There are various relevant factors that influence this.
- 4.3 Fundamentally, however, financing arrangements are at the centre of those factors. The flow of funding to support the Bon Accord Care service delivery can be summarised as:
- The IJB receives funding from the Council to enable the provision and commissioning of adult social care services.
  - Bon Accord Care are commissioned by the IJB, and pay Bon Accord Care for the delivery of those services.
- 4.4 There are therefore two parties in relation to 'who benefits from the saving?': the Council and the IJB.

- 4.5 Since inception the Council has followed a similar budget process with the IJB, funding for future years will not be increased or reduced except as a result of funding decisions included in the Council's financial settlement. This means that the IJB has had to manage the financial pressures affecting its services, finding savings and meeting costs and balancing the budget annually.
- 4.6 Over the years IJB's have had money included in the Local Government financial settlement that has had to be passported through the Council to the IJB. Through this means, the Scottish Government has sought to ensure that national policy objectives and funding to support that is made available to all IJBs and all are therefore able to deliver on those policy objectives. The passporting of funding has been required by the conditions of the Local Government financial settlement.
- 4.7 Going forward this is not expected to change, as the Local Government Settlement (for 2024/25) includes reference to a letter from the Deputy First Minister with the following:
- "The funding allocated to Integration Authorities for Free Personal and Nursing Care and adult social care pay in commissioned services should be additional and not substitutional to each Council's 2023-24 recurring budgets for adult social care services that are delegated. This means that, when taken together, Local Authority adult social care budgets for allocation to Integration Authorities must be £241.5 million greater than 2023-24 recurring budgets to ensure funding from Health and Social Care Portfolio contributes to meeting outcomes in this area. Where there is evidence funding is not passed across to be used for the policy intent, the Scottish Government reserves the right to look at reclaiming this."
- 4.8 Against a background of the Council not having provided additional funding to the IJB for core services, including the Bon Accord Care contract, and the Council having to comply with Scottish Government conditions to maintain a baseline of funding that the IJB receives, any saving that arises from bringing Bon Accord Care back into the Council would be retained by the IJB.
- 4.9 There are no financial implications arising from this report in respect of Aberdeen Sports Village.

## **5. LEGAL IMPLICATIONS**

- 5.1 The Council has a variety of duties and powers in relation to the provision of care for the elderly. These powers and duties come from a number of different pieces of legislation including, but not limited to, the Social Work (Scotland) Act 1968, the NHS and Community Care Act 1990, the Adult Support and Protection (Scotland) Act 2007 and the Social Care (Self-directed Support) (Scotland) Act 2013. The Council delegated all adult social work functions to the IJB, as required by the Public Bodies (Joint Working) (Scotland) Act 2014, but remains responsible for the delivery of those functions,

- 5.2 Bon Accord Care and Bon Accord Support Services and Aberdeen Sports Village are private limited companies (i.e. limited by shares).
- 5.3 Aberdeen Sports Village was established in 2007 as a limited company with charitable status and is a joint venture between the Council and the University of Aberdeen ('AU'). The current operating agreement with Aberdeen Sports Village cannot be terminated before 2034 unless the Joint Venture Agreement (containing annual Grant obligations) with AU is terminated, which would require to be negotiated with AU. Such negotiation has not been within the scope of this project to date.
- 5.4 For any ALEO being brought in-house, the company would require to be wound up after novating any necessary third-party contracts to the Council.
- 5.5 In terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006, employee rights are safeguarded when the business, or part of the business, in which they work changes hands from one employer to another. When the TUPE Regulations apply, their effect is that the employees' contracts of employment transfer automatically from the current employer (Transferor) to the new employer (Transferee). There are two types of TUPE transfer, namely (i) the transfer of a business or undertaking, and (ii) a service provision change. TUPE covers the following scenarios:-
- Outsourcing – where a contract to deliver services is awarded to a contractor.
  - Re-assignment – where a contract is re-let to a new contractor.
  - Insourcing – where services are brought back in house.

## 6. ENVIRONMENTAL IMPLICATIONS

- 6.1 The Council and partners continue to work towards ambitious net zero targets. Given the importance of this, a weighting within the Options Appraisal was allocated to net zero.

## 7. RISK

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H)  *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
<b>Strategic Risk</b>	Risk that the current provision of services delivered through ALEOs is reduced to take account of	Considerable time has been invested in looking at efficiencies and synergies to enable more efficient delivery of services in keeping with the	L	Yes

<b>Category</b>	<b>Risks</b>	<b>Primary Controls/Control Actions to achieve Target Risk Level</b>	<b>*Target Risk Level (L, M or H)</b>  <small>*taking into account controls/control actions</small>	<b>*Does Target Risk Level Match Appetite Set?</b>
	reducing resource and that this impacts on the delivery of our strategic outcomes	Council Delivery Plan in order to mitigate this risk.		
<b>Compliance</b>	Risk of not complying with legislative duties concerning provision of adult care services.	This risk is being mitigated by working to identify options which will enable the provision of services to continue within a smaller funding envelope.	L	Yes
<b>Operational</b>	Risk that staff are uncertain of the implications of any change in working arrangements and this impacts on morale  Risk that services to citizens are reduced.	Mitigated through on-going engagement with Trade Unions and staff.	L	Yes
<b>Financial</b>	Risk of negative impact on the Council in terms of non-domestic rates.		L	Yes

## 8. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
	<b>Impact of Report</b>
<b>Aberdeen City Council Policy Statement</b>	Delivering services in keeping with the financial envelope will enable the continued delivery of a broad range of Council services and more comprehensive delivery of the Aberdeen City Council Policy Statement.
<u>Aberdeen City Local Outcome Improvement Plan</u>	
<p>Economy stretch outcomes:</p> <ul style="list-style-type: none"> <li>• No one will suffer due to poverty by 2026</li> <li>• 400 unemployed Aberdeen City residents supported into Fair Work by 2026</li> <li>• 500 Aberdeen City residents upskilled/ reskilled to enable them to move into, within and between economic opportunities as they arise by 2026.</li> </ul> <p>Prosperous People:</p> <ul style="list-style-type: none"> <li>• 90% of children and young people will report that their experiences of mental health and wellbeing have been listened to.</li> <li>• 95% of care experienced children and young people will have the same levels of attainment in education, health and emotional wellbeing, and positive destinations as their peers</li> <li>• Healthy life expectancy (time lived in good health) is five years longer by 2026</li> <li>• Rate of harmful levels of alcohol consumption reduced by 4% and drug related deaths lower than Scotland by 2026.</li> </ul> <p>Prosperous Place:</p>	

<ul style="list-style-type: none"> <li>Addressing climate change by reducing Aberdeen's carbon emissions by at least 61% and adapting to the impacts of our changing climate</li> </ul>	
<p><b>Regional and city strategies</b></p> <p>Climate Change Plan 2021-2025</p> <p><b>Council strategies</b></p> <p>Medium Term Financial Strategy</p>	<p>The Medium Term Financial Strategy assumed a saving has been realised by our ALEOs.</p>

## 9. IMPACT ASSESSMENTS

Assessment	Outcome
<b>Integrated Impact Assessment</b>	Stage 1 impact assessments have been completed.
<b>Data Protection Impact Assessment</b>	Not required
<b>Other</b>	None

## 10. BACKGROUND PAPERS

None

## 11. APPENDICES

Appendix A – Outline Business Case - Reconfiguration of working arrangements with ALEOs – Bon Accord Care

## 12. REPORT AUTHOR CONTACT DETAILS

<b>Name</b>	David Leslie
<b>Title</b>	Service Manager (Corporate PMO)
<b>Email Address</b>	<a href="mailto:dleslie@aberdeencitygov.uk">dleslie@aberdeencitygov.uk</a>