

## **Cabinet –18 May 2017**

### **The Future of Walsall Adult and Community College**

**Portfolio:** Councillor Nawaz, Children's Services & Education

**Related portfolios:** N/A

**Service:** Children's Services

**Wards:** N/A

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Summary**

- 1.1 In 2010 the Council formed Walsall Adult and Community College (WACC) with the amalgamation of the College of Continuing Education and Walsall Community College. On 1 August 2015 WACC became a separate legal entity; a company limited by guarantee that is a wholly owned subsidiary of the Council.
- 1.2 The Council remained the contract holder and accountable body for the funding from the Skills Funding Agency (SFA) with the delivery of the contracts being carried out by WACC.
- 1.3 In July 2016 the Skills Funding Agency (SFA) issued new funding guidance under which Walsall Adult and Community College (WACC) and the Council could be deemed to be no longer operating in accordance with the requirements of the funding contract.
- 1.4 To rectify this, the Council and WACC are required to review and amend the business relationship between them.
- 1.5 The following options have been identified:
  1. WACC spins out completely from the Council and bids for funding directly from the Skills Funding Agency in an open procurement process. The Council would then commission its services for Adult Education through an open procurement process and WACC would bid for contracts alongside other interested providers.
  2. A formal subcontracting arrangement that is compliant with the funding rules is put in place between the Council and WACC. The SFA contract and responsibility for delivery of Adult Education under the contract would remain with the Council.

3. The subsidiary Company, WACC, is dissolved and the operation returns to being a Council service. The SFA contract and responsibility for delivery of Adult Education in Walsall under the contract would remain with the Council.
  4. WACC merges with another Skills Funding Agency grant funded organisation which is not the Council, for example Walsall College. The SFA then novate the Adult Education contract to the organisation with whom WACC have merged.
- 1.6 This report seeks to advise and makes recommendations on the above options that will ensure the Council continues to operate in accordance with the requirements of its contract with the Skills Funding Agency.

## **2. Recommendations**

- 2.1 Cabinet approve that WACC merges with another Skills Funding Agency (SFA) grant funded organisation which is not the Council, namely Walsall College. The SFA then novate the Adult Education contract to Walsall College with whom WACC has merged.
- 2.2 Cabinet approve that a merger proposal report is presented to Cabinet by 31 October 2017, and the report identifies:
- the contracts, staff, and assets of Walsall Adult and Community College be transferred to the identified SFA grant funded organisation, namely Walsall College
  - WACC cash reserves to be returned to the Council
  - how the Council continues to ensure SFA investment in the Borough grows and that adult skills provision meets Walsall residents current and future needs
  - a merger plan for WACC with the College and, the novation of the SFA contract - completion by 31 March 2018
  - a memorandum of understanding setting out the Council's ambition and expectation for the delivery and provision of adult education within the Borough.
- 2.3 Cabinet approve any pension deficit, and any other costs relating to the transfer of WACC to the new body is fully funded from WACC's reserves.
- 2.4 Cabinet approve that the operation currently carried out by Walsall Adult and Community College continues until the final Cabinet decision is made.

## **3. Report detail**

### **Context**

- 3.1 Walsall Adult and Community College (WACC) was formed in 2010 with the amalgamation of the College of Continuing Education and Walsall Community College.

- 3.2 Over the past two years, WACC has been working towards becoming an independent college, during which time it has become more commercial and resilient, introducing new structures to enable it to move forward in a changing world.
- 3.3 In December 2014 Cabinet approved that by 1 August 2015 Walsall Adult and Community College become a separate legal entity; a company limited by guarantee with charitable status that is a wholly owned subsidiary of the Council.
- 3.4 It was identified that an independent Walsall Adult and Community College would be able to create significant and lasting benefits for the individuals and communities it serves. These benefits were:
- The ability to access alternative funding streams enabling it to grow as an organisation and increase its support for neighbourhoods.
  - Greater freedom and flexibility, enabling it to be more responsive to changing needs, more effective and more efficient.
  - Secure the future of existing provision, increase learning opportunities in local communities and support more people towards work, continuing to reduce dependency on state benefits.
  - Increase the choice of learning opportunities in the Borough.
- 3.5 In its first year of independence, WACC has made significant progress in delivering these benefits. The highlights are:
- WACC has to date successfully bid for grants with a value of £0.916 million to support communities, families and individuals to raise aspirations and skills enabling them to enter education, training and sustainable employment resulting in increased social mobility and improvement to health and wellbeing.
  - WACC was able to respond very quickly in successfully supporting 23 young people who were at risk following the mandatory closure of a local private training provider. This intervention enabled these Walsall residents to complete and achieve their qualification within the academic year and continue on their chosen journeys into further study, work and apprenticeships.
  - WACC identified an immediate local need and worked closely with the job centre to provide Maths, English and vocational tasters supporting Walsall residents to engage on training for a career path or enter employment.
  - WACC is further developing its high needs provision and is providing education and training to 16 young people with EHC plans who would otherwise have to be placed in establishments outside of the borough of Walsall at significant cost to the council.
- 3.6 In 2012, WACC was rated as 'Outstanding' by Ofsted, and it was the first college in the UK to be given such a rating in the new Ofsted Framework at that time. In the recent inspection in October 2016, WACC was rated as 'Good'; this is under a new Common Inspection that applies to all sectors. The inspection recognised and confirmed the delivery of WACC's mission, where the confidence of the

learner grows and that they progress. This result is recognised as strong by the sector, with several organisations requesting 'best practice' visits.

- 3.7 There are 73,000 people currently living in Walsall that do not have a qualification above level 1. WACC is unique in what it does, working with those furthest away from life opportunities. In the last 3 academic years WACC has educated in the region of 13,000 learners, with a wide range of programmes aimed at giving them skills to get them into employment. 98% of WACC's delivery is to those living within the Borough of Walsall and 84% is at level 1 or below. As well as learning opportunities, WACC also provides employment opportunities within the Borough of Walsall. Currently 60% of WACC's workforce has a 'WS' postcode. It operates out of approximately 50 sites across the Borough, with the main centres at Hawbush in Leamore and the former Whitehall Junior School in Caldmore.
- 3.8 WACC's delivery is directed with the Council and LEP objectives in mind, with particular reference to the People and Inclusion objectives. It has begun to align its strategies close to the Council strategies, such as the Locality Delivery Model Strategy and securing maximum return on the new Apprenticeship Levy. Several high impact contributions are being devised and delivered for the people of Walsall through innovative projects secured through City Deal, Building Better Opportunities, Talent Match and Youth Impact; much of which is delivered and reviewed at a Ward level. In the first year as a Walsall Council trading company, WACC budgeted for an operating loss of £176,000 but actually made an operating surplus of £109,000.
- 3.9 Recognising that Walsall College and WACC have distinctive learning opportunities, the two colleges have been working closely to create a 'Curriculum for Walsall', referring learners to where they are more suited to learn and working to ensure they have the correct progression pathway.
- 3.10 It is important for the residents of Walsall to continue to have the opportunity to learn with WACC as no other organisation offers the local delivery model. In the past year WACC have successfully achieved Matrix accreditation and at the recent inspection Ofsted identified the importance of WACC for learners that found attending 'large institutions daunting' and acknowledged that it could become a stepping stone to further academic success and therefore employment opportunities.
- 3.11 WACC achieves above national average achievement rates for English and Maths, qualifications that are seen as a key barrier to people gaining employment or opening up their employment opportunities.

## **Background to Recommendation**

- 3.12 It was originally intended that Walsall Adult and Community College would completely spin out from the Council when the following conditions could be met:
- The transfer of the Skills Funding contracts has been confirmed
  - The financial position of WACC is secure
  - The pension arrangements for staff have been secured

The expected timescale for this was 31 July 2017.

- 3.13 Originally the preferred option for WACC was to become a company limited by guarantee with charitable status that is a wholly owned subsidiary of the Council. This was only partially achieved, as the company established could not secure charitable status as the charities commission deemed that as a wholly owned subsidiary of the Council, “too close” to the Council.
- 3.14 Once the new legal entity was established, it was intended to fully spin it out from the Council. However this will not be achievable immediately as the Skills Funding Agency, WACC’s main source of funding, would not fund a new organisation that had not acquired an independent financial track record. Thus the Council remained the contracting party with the Skills Funding Agency and has utilised the ‘Teckal’ exemption which is now codified in regulation 12 of the Public Contracts Regulations 2015 (that the Council had the same control over WACC as it did over its Departments) to pass the funding to WACC.
- 3.15 In July 2016 the Skills Funding Agency issued new funding guidance for the academic year 2016/17 that included updated guidance for subcontracting. In the new guidance subcontractors are now defined as:
- “A separate legal entity that has an agreement with you to deliver any element of the education and training we fund, or which is funded through Advanced Learner Loans. A separate legal entity includes companies in your group, other associated companies and sole traders. It also includes individuals who are self-employed or supplied by an employment agency, unless those individuals are working under your direction and control, in the same way as your own employees.”
- 3.16 Walsall Adult and Community College is a registered company that is limited by guarantee and a wholly owned subsidiary of the Council. It therefore meets the criteria for “a separate legal entity”. The Council is the contracting body for funding from the Skills Funding Agency and transfers the funding to WACC by way of a funding agreement using the Teckal exemption. Therefore, under the new guidance there is a subcontracting relationship between WACC and the Council.
- 3.17 On 1 September 2016 the SFA confirmed to WACC that the funding arrangement between the Council and WACC did constitute subcontracting under the new guidance and that the Council had to ensure that it operates within the funding rules for subcontracting or cease the subcontracting arrangement.
- 3.18 The SFA have stated that WACC and Walsall Council must be compliant with SFA funding guidance by 31<sup>st</sup> March 2018 otherwise they will withdraw the contract. They have requested that Walsall Council submit detailed plans, within 6 months (by October 2017), that confirm how a resolution will be put in place.
- 3.19 The Council cannot novate the SFA grant. Only the SFA can novate grants, such as received by Walsall Council, to other SFA grant funded bodies, which are either a further education establishment incorporated under the Further and Higher Education Act 1992 or a Local Authority. This means that the Council cannot transfer the SFA grant to WACC, even if it were to become entirely

independent of the Council. Any Council led transfer of the funding contract would need to be via an open procurement process rather than agreement between the Skills Funding Agency, the Council and WACC as originally expected.

3.20 In October 2016 four possible options were identified to ensure that the Council operated in a way compliant with the funding rules. These options were:

1. WACC spins out completely from the Council and bids for funding directly from the Skills Funding Agency in an open procurement process. The Council would then commission its services for Adult Education through an open procurement process and WACC would bid for contracts alongside other interested providers.
2. A formal subcontracting arrangement that is compliant with the funding rules is put in place between the Council and WACC. The responsibility for delivering adult education remains with the Council.
3. The subsidiary company, WACC, returns to being a Council service. The responsibility for delivering adult education remains with the Council.
5. WACC merges with another Skills Funding Agency grant funded organisation which is not the Council. The SFA then novate the Adult Education contract to the organisation with whom WACC have merged.

3.21 Following full appraisal of the options by the Council and WACC a recommendation would be presented to Cabinet for consideration and approval. This paper sets out the results of the options appraisal and the ensuing recommendations.

#### **4. Options Appraisal**

4.1 WACC engaged the services of specialists from the Association of Colleges and Eversheds to advise on the legislative and legal implications of the options. Haynes Associates, who supported the first stage spin out of WACC and who have experience of Local Authority spin out projects have also contributed.

The Skills Funding Agency have also been consulted.

##### **Option 1 – WACC spins out completely from the Council.**

4.2 Under this option, WACC would have to tender independently in an open Public Procurement process for SFA contracts.

4.2.1 WACC would have to successfully gain entry to the Register of Training Organisations to be eligible to tender for funding contracts.

4.2.2. Entry to the Register is gained through a due diligence process where WACC would have to demonstrate its capacity to deliver a funding contract and satisfactory financial health.

- 4.2.3 WACC has a record of successful delivery of funding contracts and has a financial health rating of 'good'.
- 4.2.4 Under the Skills Funding Agency rules the maximum contract that can be awarded to a new contractor is £2 million.
- 4.2.5 This option is not recommended because it is not certain that WACC would be successful in an open procurement process and there is a risk that the funding would be directed away from Walsall and WACC would be unable to achieve financial viability on a maximum contract value of £2 million.

**Option 2 – A Skills Funding Agency compliant subcontracting arrangement is put in place between the Council and WACC.**

- 4.3 This option would require full compliance with the Skills Funding Agency subcontracting rules/guidance.
- 4.3.1 WACC would have to remain a wholly owned subsidiary of the Council for the exemption to apply under regulation 12 of the Public Contracts Regulations 2015. Alternatively, the Council would commission its services for Adult Education through an open procurement process and WACC would need to bid for contacts alongside other interested providers.
- 4.3.2 If there was an open procurement process and WACC was unsuccessful then a TUPE transfer of staff to the new provider would need to be considered.
- 4.3.3 WACC would have to gain entry to the Register of Training Organisations as with Option 1.
- 4.3.4 Skills Funding Agency consent would be required for the Council to subcontract with WACC. This can be withheld where there is a perceived or actual conflict of interest. Under the Articles of Association WACC has to ensure; that 80% of its activities are in pursuant of Council objectives; one third of the Board is Council appointed, including the Chair; and that the Council is the sole member of WACC. The SFA have indicated that this would be considered a conflict of interest.
- 4.3.5 Skills Funding Agency consent would also be required for WACC to then subcontract with local community organisations. This is known as Second Tier Subcontracting and consent is only given in exceptional circumstances.
- 4.3.6 Not all of the Skills Funding Agency provision can be sub-contracted. Currently Advanced Learner Loan provision is barred from sub-contracting. The draft funding rules for 2017/18 contain significant restrictions on the amount of apprenticeship provision that can be sub-contracted.
- 4.3.7 The Council would need to have systems in place to independently manage data and make statutory returns. The Council would also need to have independent processes in place for the monitoring and checking of the quality of WACC's delivery. This could necessitate additional investment for the Council in systems and staff resources diverting funds away from front line Council services.

4.3.8 This option is not recommended as even if consent was given by the Skills Funding Agency:

- The amount of grant that could be subcontracted would be limited to the Adult Education Budget which is £3.1 million and this would be unlikely to increase in future years, which would put pressure on WACC's financial viability.
- The Advanced Learner Loans and Apprenticeship provision are two possible growth areas for WACC and couldn't be sub-contracted.
- Local community organisations could lose income sources if Second Tier Sub-contracting consent is not given. The Council could contract directly with these organisations, however this would present an increase in the same burdens and risks to the Council as sub-contracting with WACC.
- There would be a cost to the Council of putting in place, and operating systems to manage the "sub-contractor(s)". These two functions have an annual budgeted cost of £278,000. WACC would also still need to retain these functions in part to manage its delivery as a sub-contractor, so there would be a duplication of costs.

**Option 3 – The subsidiary company, WACC, is dissolved and the operation remains as a Council service.**

4.4 Under this option the company, Walsall Adult and Community College, would be dissolved and its staff, assets and contracts would transfer to the Council under TUPE.

4.4.1 The SFA contract and responsibility for delivery of Adult Education in Walsall under the contract would remain with the Council.

4.4.2 There would be no sub-contracting relationship between the Council and WACC.

4.4.3 There could be potential benefits to the Council in being able to maximise the return on the Apprenticeship Levy as WACC has experience of delivering apprenticeships and maintaining an influence over the delivery of adult skills provision in Walsall.

4.4.4 WACC may be able to operate with a balanced budget as some business running costs will not be duplicated and VAT which is currently irrecoverable would be recoverable.

4.4.5 Based on current forecasts it is anticipated that WACC will have cash reserves and assets with a total value of £2.097 million at 31 July 2017. These reserves would be required to meet dissolution and transfer costs and settle any pension deficit required, the balance of assets then transferring to the Council.

4.4.6 Since the establishment of the subsidiary WACC company in August 2015 WACC has performed well, both in terms of learner outcomes and financially. This has also been recognised by the recent October 2016 Ofsted Inspection.

This level of performance has been chiefly as a result of the operational benefits brought about through independence. These benefits were recognised in the



December 2014 Cabinet paper, upon which the original decision to establish the subsidiary WACC company was based and are identified at 3.4 above.

The change in SFA sub-contracting rules has resulted in the need for the Council and WACC to review and amend the business relationship between them. However what has not changed are the conditions required for WACC to deliver effective and sustainable adult skills provision. The current adult skills market remains an increasingly challenging environment, both in terms of securing funding and also in achieving positive learner outcomes.

It is less than 2 years since the Council launched WACC and its 5-year business plan as the best model for adult skills provision in Walsall. WACC's performance to date demonstrates the validity of that decision.

4.4.7 This option is not recommended because as a Council service WACC would lose the operational freedoms and flexibilities required of a modern learning provider and any such loss would significantly threaten the operational and financial viability of WACC.

4.4.8 The following are also pertinent and would need to be considered in the event that this option was considered, now, or at a future point in time:

- Operationally WACC would have to serve two different stakeholders (SFA and Council) which dilutes the resource that is available to learners in the classroom.
- It would reduce the speed with which WACC could respond to opportunities/needs due to operating within the restrictive procedural and hierarchical environment of local authority operational structures.
- As a Local Authority Department WACC would be limited in the funding sources it could access, reducing investment in Walsall adult skills provision and affecting the financial viability of WACC.
- The Council would need to have systems in place to independently manage data and make statutory returns. The Council would also need to have independent processes in place for the monitoring and checking of the quality of WACC's delivery. This could necessitate additional investment for the Council in systems and staff resources, thereby diverting funds away from front line Council services.
- Even if this option was selected as a temporary holding position then WACC would have to remain stationary with little or no ability to expand or secure new investment. The severely restricted ability to secure investment is a significant risk as this could encourage adult funds to be directed away from Walsall into larger more innovative and flexible authorities. This would have a negative impact for learners and financially; both almost immediately and in the future.
- The Council spent resources establishing WACC and less than 2 years later would be repeating similar levels of expenditure in absorbing WACC back into the Council.
- There is a reputational risk to the Council both externally with key partners and stakeholders and internally with learners, staff and residents regarding its ability to understand and operate the best model required meet adult skills provision in Walsall.

**Option 4 – WACC merges with another SFA grant funded organisation, which is not the Council, namely Walsall College.**

- 4.5 Under this option the SFA novate the Walsall SFA adult skills grant currently received by Walsall Council to Walsall College with whom WACC would by then have merged.
- 4.5.1 Merging with another SFA grant funded organisation enables WACC to continue delivering the benefits that were identified in the December 2014 Cabinet paper, upon which the original decision was taken to establish WACC as an independent entity, chiefly:
- access to alternative funding streams enabling growth and support
  - greater freedom and flexibility to be more responsive to changing needs, more effective and more efficient.
  - security of provision, learning opportunities and support for people towards work and reduced dependency on state benefits.
  - Increased choice of learning opportunities in the Borough.
- 4.5.2 The same December 2014 cabinet identified that if WACC were to remain under direct Council control then it would be limited in the funding sources it could access reducing investment in Walsall adult skills provision and affecting the financial viability of the WACC model.
- 4.5.3 Since August 2015, able to operate outside of direct Council control, WACC has made significant progress, achieving the outcomes as detailed at 3.5 above. WACC was also able to operate with the financial freedom it required and delivered an operating surplus of £109,000 against a budgeted operating loss of £176,000.
- 4.5.4 It is important to note that it is not within the Council's power to novate the SFA adult skills grant to another SFA grant funded organisation; only the SFA can novate the Walsall adult skills grant.
- 4.5.5 The SFA acknowledge that the current situation could not have been foreseen by WACC, the Council or themselves and they are supportive of the option appraisal process currently being undertaken. They are looking for the full delivery of compliance as soon as this can be achieved.
- 4.5.6 The SFA have stated that they would novate the Walsall adult skills grant to Walsall College and that if the novation is done before the end of the 2017/18 academic year then they can do it without the need for a public procurement exercise.
- 4.5.7 The SFA have indicated that an SFA grant funded organisation, other than the Council or Walsall College, would have to be identified via an open public procurement process so that they could demonstrate the capacity to manage delivery in Walsall. Walsall College has a track record of successful delivery in Walsall and is recognised as "Outstanding" by Ofsted, the only SFA grant funded West Midlands FE provider to be graded as such.

- 4.5.8 A mid-year transfer of an SFA grant funded contract would necessitate the re-registration of learners with the new SFA grant funded organisation. The SFA have stated that Walsall College has very strong data management functions and they are confident that such a transfer of learner data would be well managed and would not disrupt learners' progression and achievement.
- 4.5.9 This assurance by the SFA that they would novate the adult skills grant to Walsall College secures the continued investment of SFA funding for Walsall and its residents and prevents the risk of SFA funds being diverted away from Walsall and secured by organisations with no delivery record in Walsall.
- 4.5.10 In developing this option initial discussions have been held with Walsall College. They welcome the opportunity to explore a potential merger and to work with the Council to develop a viable operating model. This model will detail both the short and long term operational and financial considerations of the merger, which the Walsall College board would need to approve. This operating model would form part of the merger proposal report presented to Cabinet in October 2017.
- 4.5.11 As highlighted at 3.9 above, WACC and Walsall College have already been working closely to create a 'Curriculum for Walsall', referring learners to where they are more suited to learn. WACCs community provision at entry and level one with Walsall Colleges Vocational Provision generally at Level 2 and above provides a good progression pathway for learners between two well established high quality Walsall based learning providers.
- 4.5.12 Apprenticeships were identified in WACC's recent Ofsted Report (October 2016) as an area requiring improvement. Whilst the issues raised are being addressed the WACC Board and SMT recognise that their resources are better focused upon community based learning, engaging those hardest to reach and enabling a successful progression of such learners into employment or opportunities (such as apprenticeships) with other learning providers.
- 4.5.13 With Walsall Colleges' greater experience and resources in apprenticeship delivery the merger of WACC and Walsall College would increase the security of WACC's current apprenticeship learners, maximising the opportunities for those learners to achieve and progress.
- 4.5.14 Under this option a report would be developed by the Council that would provide the Cabinet with the evidence base regarding:
- the contracts, staff, and assets of WACC which would transfer to Walsall College
  - WACC cash reserves which would be returned to the Council
  - the business and operating model of a merged WACC/Walsall College
  - a merger plan for WACC/Walsall College and novation of the SFA contract - completion by 31 March 2018
  - the establishment of an Adult and Community Learning Priority Plan setting out the Council's ambition and expectation for the delivery and provision of adult education within the Borough which ensures that adult skills provision meets Walsall residents current and future needs

- 4.5.15 A report meeting the above criteria would be delivered to the October 2017 Cabinet meeting. If Cabinet approve the recommendation then a WACC merger completion date of 31<sup>st</sup> March 2018 would be achievable. The SFA have indicated that such a decision-making process and associated timescales would be acceptable to them.
- 4.5.16 It is highly probable that the merger of WACC with Walsall College would be a Type B merger whereby one organisation dissolves and the other organisation becomes the receiving body for the assets and liabilities of the organisation that is dissolved.
- 4.5.17 Under this option, the WACC company would be dissolved and resources, assets and staff would transfer to Walsall College with their current terms and conditions of employment protected under TUPE.
- 4.5.18 This option is recommended because it allows Walsall Council to identify Walsall College as the organisation to which the SFA adult skills grant should be novated to and to continue to influence the agenda for adult skills delivery in Walsall.
- 4.5.19 This option is also recommended because it allows WACC to operate without the insecurities and uncertainties of option 1, avoids the conflict of interest and sub-contracting issues of option 2 and the loss of freedom and responsiveness and additional Council investment of option 3.
- 4.5.20 It also protects and presents the least risk to the Council's priorities through:
- ensuring that Walsall College:
    - provides protection of the identity/brand of WACC, the community delivery model and "family ethos" of WACC
    - commits to continue using local Walsall delivery partners
    - continues engagement with people in Walsall who are hardest to reach
    - ensures SFA investment in Walsall is maximised and directed specifically at meeting Walsall residents current and future needs.
  - the establishment of an Adult and Community Learning Priority Plan for Walsall that outlines the current and future investment required to meet learners needs.
  - affording the best opportunity for WACC to continue to operate with the freedoms and flexibilities, that have been identified since December 2014 and enjoyed since August 2015, which has seen WACC's learner performance return to previously high levels.
  - providing the Council with the opportunity to ensure WACC moves to a position of compliance with SFA subcontracting rules within timescales that the SFA have indicated as acceptable, and which avoid duplication of costs.
  - negating the need for the Council to divert funds from front line Council services to establish the systems required to independently manage data, make statutory returns and have processes in place for the monitoring and checking of the quality of WACC's delivery.

## **5. Council Priorities**

### **Lifelong health wealth and happiness**

- 5.1 The recommended option will best ensure learning opportunities for Walsall residents continues at least at the current levels and will help protect Walsall funding from being diverted elsewhere.
- 5.2 The recommended option will best ensure that the social mobility and economic wellbeing of Walsall residents will be enhanced through the provision of quality education and training.
- 5.3 The recommended option will protect provision for high needs learners within Walsall and ensure that there is provision for some of those whose needs cannot be met by other educational institutions within Walsall and are therefore funded out of Borough.

### **Safe, resilient and prospering communities**

- 5.4 The recommended option would continue to support the Council with community cohesion amongst existing and new communities, through WACC's provision of courses to increase the English language skills of those communities enabling them to obtain and maintain employment.
- 5.5 The recommended option would enable the Council to continue to reach communities through local organisations, supporting the local community organisations with continued funding.

## **6. Risk management**

Risk identified:

- 6.1 That a financially viable operational model cannot be agreed between Walsall College and the Council.

Mitigation of these risks will be managed through: "the strategic investment of WACC reserves, the Council's role as WACC landlord and the relationship and influence WACC, the Council and Walsall College have with the SFA.

- 6.2 The risk of not taking any action is that the Council will be considered to be in breach of funding rules and the Skills Funding Agency will cancel the contract. WACC would then be unable to continue to operate and the provision of adult education in Walsall will be greatly depleted.
- 6.3 The risks to the Council of taking the recommended course of action are identified as being:
- by relinquishing the SFA adult education grant the Council will cease to have direct control over the development of the service which the grant has been used to fund to date
  - the Council will have less control over the current and future investment that is required to meet the needs of adults in Walsall.

6.4 Mitigation of these risks will be managed through:

- the establishment of an Adult and Community Learning Priority Plan for Walsall that outlines the current and future investment required to meet learners needs.
- Walsall Council influencing the SFA, learning providers active in the Borough and the emerging agenda of the Combined Authority.

**7. Financial implications**

- 7.1 The value of the Skills Agency funding contract that the Council will transfer to WACC between 1 August 2016 and 31 July 2017 is £3.439 million.
- 7.2 WACC has a total income budget of £4.390 million in 2016/17. Of this £0.738 million is from sources other than the Council.
- 7.3 In line with the 3-year financial plan presented to cabinet in December 2014, WACC has a budget for 2016/17 with a deficit of £0.087 million. This included Council support of £0.176 million (committed by the Council for the 2015/16 and 2016/17 academic years only) towards the additional business related costs of operating as a separate legal entity. WACC are currently on target to achieve the budget.
- 7.4 There are costs that WACC has currently planned to fund on an ongoing basis once the £0.176 million of grant funding from the Council ceases at the end of the 2016/17 academic year. These costs are:

	£ million
Audit Fees	0.022
Finance System Support	0.017
JaNet Connection	0.016
Legal Support	0.005
HR Support	0.007
Insurance Bond	0.006
Payroll processing	0.009
Rent	0.080
<b>Total</b>	<b>0.152</b>

- 7.5 Assuming that no new income streams are secured the current forecast shows that WACC will have cash reserves of £1.683 million and assets with a book value of £0.414 million that would transfer to the new body.
- 7.6 The Council agreed upon the creation of WACC as a separate company to retain any pension deficit with the authority at the point of spin out. Since that point, due to changes in the global economic climate and actuarial assumptions, the pension deficit has increased, which is borne by WACC as a standalone entity.

WACC's current pension deficit based on the West Midlands Pension fund valuation as at 31 July 2016 is £0.837 million. To avoid any further financial detriment to the authority or any other SFA funded body, it is therefore recommended that if the company is dissolved any pension deficit, and any other costs relating to the transfer of WACC to the new body is fully funded from WACC's reserves.

- 7.7 The strategic fit, values and aspirations of WACC and Walsall College will work well together. Walsall College will need to understand and assess the risks it takes on in taking over WACC. Whilst Walsall College is a financially strong College, the ongoing financial challenges for the sector remain significant and in line with those identified in the original business case, to Spin WACC out from the Council to protect the Council's core functions from the financial risks in the education sector.

## **8. Legal implications**

- 8.1 Further work will be undertaken to ensure that the Council appropriately manage any legal related risks associated with the recommendations set out in this report. In particular it is important that WACC complies diligently with any legal obligations arising out of a TUPE transfer of its staff.

## **9. Procurement Implications/Social Value**

- 9.1 The recommendations currently identified within this report fall outside the scope of the Public Contracts Regulations 2015 however this will continue to be reviewed to ensure that the Council appropriately manage any procurement related risks associated with the recommendations set out in this report. Advice will be sought from the Council's Legal and Procurement Services to ensure that such matters are appropriately addressed.

## **10 Property implications**

- 10.1 The two sites occupied by WACC, the Hawbush Centre in Leamore and the Whitehall Centre in Caldmore are owned by the Council and leased to WACC.
- 10.2 Both sites are currently occupied by WACC as a business tenant under a 5-year lease term which ends on 31 July 2020. These sites would revert to the Council if WACC is dissolved, unless the Leases are assigned to the new body by WACC immediately prior to its dissolution (with the Council's consent).

## **11. Health and wellbeing implications**

- 11.1 By WACC continuing to deliver its services via the new body, this will ensure continued support for learners in Walsall to progress, thereby increasing their sense of worth thorough achievement and reduce their dependence on state benefits in the longer term.
- 11.2 In 2015/16 over 65% of learners progressed to further study, and over 12% of learners secured paid employment.

- 113 Many learners also increase their understanding of healthy lifestyles through their learning programmes and the advice and support received through WACC.
- 11.4 WACC is mindful that some staff, learners and other stakeholders may have concerns about the impact of moving into another organisation. WACC and the Council will develop a Communications strategy to ensure that all stakeholders are kept informed of the progress and implications for them.

## **12. Staffing implications**

- 12.1 At the point of transfer, staff employed by WACC will transfer to the identified new body. The Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to these staff. Full consultation will be held with staff affected by WACC.
- 12.2 With an effective date of 31<sup>st</sup> March 2018 there would be sufficient time to conduct a full and proper consultation if a final decision is made in October 2017.
- 12.3 The numbers of staff currently employed by WACC, who would be liable for transfer are 130 in total, analysed as: 32 teaching staff, 31 sessional tutors, 33 business support staff, 8 sessional support workers, 6 project staff and 20 managers.
- 12.4 WACC operates two pension schemes for staff; the Teachers' Pension Scheme and the West Midlands Pension Scheme. It is likely that the identified SFA grant funded organisation would also operate these schemes, so the pension position for College staff should be able to be maintained.

## **13. Equality implications**

- 13.1 A key element of the selection criteria for the SFA grant funded organisation would be how it planned to continue WACC's focus upon directly supporting inclusion by targeting its learning programmes and support services to the most disadvantaged individuals and groups locally, including those with protected characteristics as defined by the Equality Act 2010.
- 13.2 Many of WACC's learning programmes are designed to address worklessness and to reduce the number of local young people who are not accessing education, employment or training. WACC also offers a wide range of community provision both directly and through ESF funded projects that encourages those who are not yet ready to access mainstream programmes to attend a local 'first-step' course. The SFA grant funded organisation would be required to identify how it would continue this work.
- 13.3 WACC will continue to support inclusion by promoting community cohesion and reducing inequalities through the delivery of targeted programmes across the borough in partnership with local community organisations where appropriate. The SFA grant funded organisation would be required to identify how it would continue this work.
- 13.4 An Equality Impact Assessment will be undertaken to ensure the proposed changes will maintain the learning opportunities, support and access that are



currently provided to the most disadvantaged groups and individuals in Walsall. This will form part of the report to be submitted to cabinet as outlined in the preferred option above.

#### **14. Consultation**

- 14.1 If Cabinet approves the proposal, formal consultation will be undertaken with the staff who are employed by WACC and trade unions.

#### **Background papers**

##### **Author**

David Haley  
Executive Director: Children's Services  
Email: [David.haley@walsall.gov.uk](mailto:David.haley@walsall.gov.uk)  
Tel: 01922 652081



David Haley  
Executive Director  
9 May 2017



Councillor A Nawaz  
Portfolio Holder  
9 May 2017