

# Wirral Council VfM Review Governance of Company and other investments

2021-22

12 July 2022



# Commentary on the Council's arrangements to secure economy, efficiency and effectiveness in its use of resources

All Councils are responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness from their resources. This includes taking properly informed decisions and managing key operational and financial risks so that they can deliver their objectives and safeguard public money.

Councils report on their arrangements, and the effectiveness of these arrangements as part of their annual governance statement.

Under the Local Audit and Accountability Act 2014, we are required to be satisfied whether the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

The National Audit Office's Auditor Guidance Note (AGN) 03, requires us to assess arrangements under three areas:



## Financial sustainability

Arrangements for ensuring the Council can continue to deliver services. This includes planning resources to ensure adequate finances and maintain sustainable levels of spending over the medium term (3-5 years).



## Governance

Arrangements for ensuring that the Council makes appropriate decisions in the right way. This includes arrangements for budget setting and management, risk management, and ensuring the Council makes decisions based on appropriate information.



## Improving economy, efficiency and effectiveness

Arrangements for improving the way the Council delivers its services. This includes arrangements for understanding costs and delivering efficiencies and improving outcomes for service users.



This report is focused on the Governance arrangements in place at Wirral Metropolitan Borough Council

**Section 1: Council Governance over its  
Commercial Entities and other investments  
– Introduction and Executive Summary**

# 1.1 Scope and work undertaken

## Key lines of enquiry

- As part of the annual statutory audit we carried out a Value for Money audit on the Council's commercial entities and investments.
- The Council has a small group of subsidiaries and joint ventures. It has recently determined (2022) not to make further investment in these companies or joint ventures.
- It has also invested in a Public Sector Social Impact Fund (PSSIF) and made considerations towards investing in a bank. It has also begun to purchase retail buildings as part of its redevelopment of the area.
- This report will outline our understanding of Council governance arrangements for each subsidiary company and how Council structures support decisions that support and underpin the financial sustainability of each entity.
- We will also touch on the Council's access to the Public Sector Social Impact Fund (PSSIF), and its deliberations on investments decisions such as whether to join the Joint Community Bank and Wirral Waters.

## Levelling up funding

- We note that Wirral Council requested Exceptional Financial Support from the Department for Levelling Up, Housing and Communities (hereon DLUHC) for 2021-22 and 2021-22 to help it balance its budget by raising capital borrowing to support some of its revenue expenditure.
- DLUHC commissioned CIPFA to undertake an independent and detailed financial assurance review of Wirral Council (the Council). This review concluded that "the £10.7 million capitalisation directive requested by the Council remains a reasonable estimate of the funds required to balance the budget in 2021-22 once covid funding that has not already been utilised is factored in, where eligible."

## Overview of our work

- The factual information presented in this report, and our opinions on the governance arrangements are based on information received from Council officers (see a detailed list of source data in Appendix F) as well as interviews with Council officers via Microsoft Teams.

## Overview of our work (continued)

- As part of our work we conducted discussions with the following Council officers:
  - Steve Fox (Head of Democratic and Member Services)
  - Vicki Shaw (Head of Legal Service and Monitoring Officer)
  - Philip McCourt (Head of Law and Governance)
  - Alan Evans (Director of Regeneration and Place)
- These discussions took place across three meetings:
  - A detailed call with Steve Fox, Vicki Shaw and Philip McCourt on 14 December 2021 covering all of the entities and the existing and proposed governance structures.
  - A detailed call with Alan Evans on regeneration and place on 10 January 2022.
  - A follow up call with Alan Evans and Chris Ives focused on WGC 1 May 2022.
- On the following pages of this report we will lay out:
  - the current and historical legal structure of the Councils commercial investments.
  - the existing governance structure for each Commercial Entity.
  - our key findings and recommendations.

# 1.2 Overview of Wirral Council Group and other investments

## Overview of subsidiary entities

- There are currently three active organisations that would fall under that description. These are: Edsential Community Interest Company (ECIC), a joint venture with Cheshire West and Chester Council ; Wirral Evolutions Limited (WEL), a wholly owned subsidiary company; and Wirral Growth Company LLP (WGC), a joint venture Limited Liability Partnership with Muse Developments Ltd.
- In addition there are two dormant entities, Wirral Holdings Limited and Wirral Growth Company Nominee Limited, which as a consequence are not discussed in this report. The full subsidiary structure is shown in Appendix B.
- In recent years the Council has invested in the Public Sector Social Impact Fund (PSSIF), administered by Altana Wealth Limited, and has considered two other significant investments. These are in relation to the Council's decision not to join a multi-council owned Community Bank; and its investment in Wirral Waters.

## Recent governance changes at the Council

- On 28 September 2020 the Council voted to change the way it makes decisions. In place of a Leader and Cabinet Executive arrangement, the Council now makes its decisions through a Committee System, which is divided into four core committee categories, being Policy & Services, Review and Regulatory & Other. This structure, and the four areas as noted are shown in Appendix C.
- Under the new arrangements the Shareholder Board centrally oversees the entities. The Shareholder Board sits as a sub-committee of Policy and Resources and comprises only Members. An informal advisory panel made up of officers and members meets on an ad hoc basis. Any shareholder decision is made by Shareholder board (committee) after receiving advice from relevant officers. Officers do not make decisions other than within the scope of powers delegated to them in specific committee decisions. This provides governance over Council decisions related to the allocation of its financial resources.
- Specialist committees provide operational scrutiny of the three active companies and the services they provide: ECIC services are monitored by The Children, Young People and Education Committee; WEL services are overseen by the Adult Social Care and Public Health Committee; and Wirral Growth Company are held accountable by the Economy, Regeneration and Development Committee. The committee reporting structure is shown in Appendix D.
- Each of the active companies have a client officer whose role is to monitor the contractual obligations and operational performance of the company with respect to services provided in the region or to the Council specifically.
- The client officers are as follows: Edsential CIC (Director of Children and Young People); Wirral Evolutions Ltd (Director of Adult Social Care); Wirral Growth Company LLP (Director of Economy and Regeneration).

## References

Our source data is organised in the Appendix to this report as follows:

- Appendix B: Current Legal Structure
- Appendix C: Wirral Council Committees
- Appendix D: Current Governance Structure.
- Appendix E: Financial Context
- Appendix F: Source documentation

# 1.3 Summary conclusions on Council governance of subsidiary companies and other investments

Topic	Finding	Recommendation
Investment decisions	<ul style="list-style-type: none"> <li data-bbox="293 411 1547 528">• A recent CIPFA report recommended that the Council halt initiatives, such as the investment in a Community Bank, to avoid diverting the focus of the organisation away from addressing the Council's finances, and in order to avoid unnecessary financial risk. The Council has taken on board this advice and decided not to invest in a Community Bank.</li> <li data-bbox="293 555 1547 874">• The Council's investment in the PSSIF is over a period of 10 years from the final closure date (which has yet to be confirmed). To date it has resulted in a financial return of c£40,000. External Due Diligence was undertaken on the fund that concluded that it was a viable and credible investment. As a result and after its own internal review and a member workshop the Council entered into the investment. The Council appears to have limited control over how investments are made by the fund manager, which may lead to additional risk to the Council's monies. However, discussions with officers indicate that they are satisfied that the fund is run by suitably experienced and qualified fund managers. The fund also has an investment advisory committee made up of 8 members with 2/3 representatives from local government. The Council is not represented on this committee (although it was invited to sit on the committee). We note that the Council cannot exit the fund until 2032. Given the Council's uncertain financial position it is not clear that this was an appropriate investment and the Council will need to monitor its success closely.</li> <li data-bbox="293 901 1547 991">• We note that the investment in Wirral Waters potential creates a £100m liability for the Council if it is unsuccessful. We note that this is the worst case scenario and that mitigations can be put in place to prevent this scenario. For example, by creating a risk reserve or the sale of the properties.</li> <li data-bbox="293 1018 1547 1075">• We note that the Wirral Growth Company partnership has been reviewed and revised arrangements have been put in place for a number of reasons. This was reported to the Policy and Resources Committee in March 2022.</li> <li data-bbox="293 1102 1547 1220">• We note that the company has made a substantial profit but it is unclear whether the profit made is due to over funding and whether it is distributable. The Council consider that the amount above the build and interest costs is not over funding but is part of the forward contract deal and price. The Council is currently seeking legal and financial advice in this area.</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="1576 411 2063 469">• The Council should consider all future investment in terms of its financial reliance</li> </ul>



# 1.3 Summary conclusions on Council governance of subsidiary companies and other investments

Topic	Finding	Recommendation
<p>Oversight of financial performance</p>	<p>Financial performance is not uniform, but on the whole the commercial entities are not performing strongly. Our review has noted the following issues:</p> <ul style="list-style-type: none"> <li>Edsential has been more impacted (than other Council companies) by the Covid-19 pandemic resulting in losses.</li> <li>The Council has determined that it will transfer Wirral Evolution services back to the Council. In its value for money report the Council states:           <p style="margin-left: 40px;">‘During the length of the contract (2015 – present) the additional amount of money provided equals 49.9% of the original contract price. For context, the national inflation within this period was 8.6%. The annual cost pressures/cost envelope equates to 10% of the agreed contract price of £5.015m and Wirral Evolutions have not proactively addressed this position, despite an approximate 25% reduction in people accessing the services in the period to November 2021 (314 compared to 410). Whilst caution should be applied to one year’s data, particularly given the situation with Covid 19, it does not demonstrate value for money for Wirral Council’.</p> <p>Services are now being transferred back to and will be operated by the Council.</p> </li> </ul> <p>The Wirral Growth Company (WGC) arrangement has not delivered to the original planned time frame (partially due to COVID-19). Revised arrangements have been put in place. WGC will complete the Birkenhead Commercial District and Birkenhead market. Other planned projects will now be delivered by the Council.</p> <p>In terms of governance:</p> <ul style="list-style-type: none"> <li>There is evidence of scrutiny of company performance from both Officers and Members formally through the Council’s committee structure. Each entity’s financials are reviewed by the relevant sector committee as well as at the Shareholder Board providing oversight.</li> <li>There is limited member oversight of PSSIF (see earlier comments on page 6).</li> <li>Arrangements for the oversight of the Wirral Waters One guarantee are unclear.</li> <li>Board membership arrangements differ between companies. We note that Edsential (ECIC) has direct officer involvement on the Board. Wirral Evolutions has no Officer or Member involvement due to a request by the company. Wirral Council has two members and two officers on the Board of Wirral Growth Company. There is no external Non Executive Director.</li> </ul>	<ul style="list-style-type: none"> <li>Given the financial position of the Council it will need to monitor the finances of Edsential closely. We note that the Council has determined that it will face greater costs if it were to exit the Company. This decision should be revisited annually given the losses made by the company.</li> <li>We consider that further scrutiny is needed of the profit recognition and distribution from the Wirral Growth Company.</li> <li>Monitoring arrangements should be put in place for the Wirral Waters One guarantees. We note that the project is operational from 2023/24.</li> <li>We consider that the Council should have officer representation on the Board of Edsential. We consider that the Board for each company or related investment should be supplemented by Non Executive Directors with business experience, in order to better protect the Council’s commercial interests.</li> </ul>

# 1.3 Summary conclusions on Council governance of subsidiary companies and other investments (Cont.)

Topic	Finding	Recommendation
Oversight of financial forecasts and business planning	<ul style="list-style-type: none"> <li>There is a regular business planning requirement and review that occurs at company level as well as with Committees and Members showing good governance and understanding of the commercial entities.</li> <li>Risk assessments are not formally shared with members, making it difficult for the Council to assess the effectiveness of management in managing risk in the external environment within which each company performs.</li> </ul>	<ul style="list-style-type: none"> <li>There should be ongoing assessment of risks relating to the entity, supported by processes to ensure that risks are highlighted in the business plan and managed as part of the Council's overall risk management approach, with appropriate escalation and reporting.</li> </ul>
Reporting	<ul style="list-style-type: none"> <li>We can see clear evidence of reporting both at the Shareholder Board, as well as the Children, Young People and Education committee, Adult Social Care and Public Health Committee and Economy, Regeneration and Development Committee.</li> <li>We have been able to see a number of the committee meeting minutes online through the Council's public portal which demonstrate scrutiny of company performance.</li> </ul>	<ul style="list-style-type: none"> <li>The Council should continue to record evidence of formal periodic shareholder/Chair/CEO meetings with effective supporting papers to inform subsequent company Board meetings.</li> </ul>
Skills	<ul style="list-style-type: none"> <li>Whilst we can see evidence of Member scrutiny, we have not assessed whether they have the right skills to offer challenge to the officers of the Council or the subsidiary entities.</li> <li>We can however see evidence that the Director of Law and Governance continually provides training to Officers and Members on their responsibilities as directors of Local Authority entities.</li> </ul>	<ul style="list-style-type: none"> <li>The Council should continue to run robust training for Officers and Members on their roles and responsibilities.</li> <li>Fit and proper persons tests should be performed to ensure there are no conflicts of interest arising from the appointment of Officers to Boards or Members to panels and committees.</li> </ul>
Continuity of service	<ul style="list-style-type: none"> <li>We note due to the Council's election schedule that historically there has been a high turnover of councillors at WMBC.</li> <li>Whilst we note that there is a plan to move to less frequent elections, there is a short term risk that some councillors may have only short tenures on governance bodies and committees.</li> </ul>	<ul style="list-style-type: none"> <li>The Council should monitor the training of new members to ensure they have the skills to participate in commercial discussions as part of their legal duty to act in the companies interest.</li> <li>The Council should provide detailed minutes and papers presented at committees to new members to absorb as part of their orientation.</li> </ul>
Continuous improvement	<ul style="list-style-type: none"> <li>There is evidence that current officers are operating with professional oversight at a commercial entity-level.</li> <li>There is also evidence that the Council has a continual improvement plan in place in relation to the maintenance of governance standards.</li> </ul>	<ul style="list-style-type: none"> <li>The Council should also maintain a record of how it is operating against the Local Partnerships checklist in the paper: "Local Authority Company Review Guidance – A toolkit for undertaking strategic and governance reviews of wholly or partly owned council commercial entities."</li> </ul>
Accounting	<ul style="list-style-type: none"> <li>The Council did not obtain accounting advice for the Wirral Waters One project or the Wirral Growth Company Birkenhead Commercial District Office Building project in advance of entering into the agreements</li> <li>Accounting advice is being sought but has not been received</li> </ul>	<ul style="list-style-type: none"> <li>The Council should ensure that accounting advice is received before entering into any complex or substantial contract</li> <li>The Council should obtain accounting advice for Wirral Waters One project and the Wirral Growth Company Birkenhead Commercial District Office Building project as soon as possible</li> </ul>



# 1.4 Summary conclusions by subsidiary company and other investments

## Summary Conclusion by Company/Investment

Our conclusions specific to each subsidiary company are captured in Section 3 of this report and are summarised as follows:

### Edsential Community Interest Company (ECIC)

- ECIC's balance sheet is wholly supported by the Council and in the year to 31 May 2021 it made a net loss of £2.132 million on turnover of £10.144 million, contributing to net liabilities of -£11.3 million. We understand that as well as the equity investment in ECIC, the Council also guarantees the Merseyside Pension Fund element of ECICs' pension liability, which equates to £1.6 million. The Council shares liability for the company with Cheshire West and Chester Council.
- ECIC was significantly impacted by Covid-19 with a number of services being closed. This impacted on both **revenue and profitability**. **We understand that the business made a small profit in the years prior to the pandemic, and Officers expect the business to return to profitability in the next reporting year.**
- The Council appear to have a strong grasp of the companies financial and operational performance, with both the Shareholder Board and the Children, Young People and Education Committee providing periodic review. Given the issues that ECIC has faced, the Council should continue with the increased scrutiny until future results demonstrate a more stable financial position.
- We note that the company distributed profits as grants. Until ECIC return to profitability all grants should have Council s151 Officer approval or via an equivalent delegation of authority mechanism.
- There is a difference between the actual make-up of the Board of Directors and that prescribed in the Shareholder Agreement. Although this does not pose any legal issues it is not considered to be in the interests of good corporate governance. We note that this has been flagged to the Shareholder Board as part of a meeting that occurred on 28th October 2021. The Council should look to address this matter as a priority.
- We can see clear evidence of oversight of the company through the Shareholder Board and the Children, Young People and Education Committee.
- We consider that the Board should consist of executives and non-executives who are experienced in business. Representation from service users is helpful but this should be balanced with business experience. We note the presence of a Non-Executive Director with experience working as a chartered accountant in schools, who may offer helpful independent commercial challenge as ECIC seeks a return to profitability.
- Given the financial position of the Council it will need to monitor the finances of Edsential closely and determine whether it continues to support the company.

### Wirral Evolutions Limited (WEL)

- Wirral Evolutions Limited (WEL) is a wholly owned entity incorporated in 2015. It provides adult social care services. It is trading as a Local Authority Trading Company (LATCo) as it predominantly provides its services to the Council. The company has not been successful in winning new clients outside of the Council.
- There are no Officers or Members on the Board of Directors. Operational and financial performance of this entity was undertaken via the Shareholder Board Level or the Adult Social Care and Public Health Committee.
- The company's VfM has been under scrutiny within the Council. It was noted by Members that the costs associated with day services had increased beyond the contract value leading to a review of the service. A review was therefore commissioned on the operational efficiencies surrounding this entity.
- The review concluded that Wirral Evolutions does not demonstrate value for money for the Council and a decision has been made to bring the services back in house by September 2022.
- We consider that this decision is appropriate.

# 1.4 Summary conclusions on company governance by subsidiary company and other investments (Cont.)

## Summary Conclusion by Company/Investment (Cont.)

### Wirral Growth Company LLP (WGC)

- Wirral Growth Company was originally set up as a vehicle to unlock the regeneration of Birkenhead through a strategic JV with Muse Developments. The establishment of the vehicle was framed around the commercial benefits that could be unlocked through input from both the Council and Muse.
- We can see clear evidence of Officer and Member involvement, both in the decision making of the running of the entity, as well as the decisions to get a third party review of the Growth Company. We note that WGC has operated without independent non-executives working to ensure that the anticipated regeneration goals are achieved. We have therefore concluded that the governance was not appropriate, although we acknowledge the other oversight mechanisms.
- We note that the pace of delivery of WGC was not as originally planned (although we acknowledge that this will have been impacted by COVID-19). We note that the Wirral Growth Company partnership has been reviewed and revised arrangements have been put in place for a number of reasons. This was reported to the Policy and Resources Committee in March 2022.
- We note that the company has made a substantial profit but it is unclear whether the profit made is due to over funding and whether it is distributable. The Council consider that the amount above the build and interest costs is not over funding but is part of the forward contract deal and price. The Council is currently seeking legal and financial advice in this area.
- We note that the Wirral Growth Company Birkenhead Commercial District Office Building project effectively received more forward funding than was needed to construct the offices. This funding along with other assets are to be distributed to the Council and its partner. Given that the Council has underwritten the lease on the office block (which enabled the over funding) it is not clear whether it is appropriate for it to recognise any profit from the arrangement. The Council consider that the amount above the build and interest costs is not over funding but is part of the forward contract deal and price. We also note that Advice is being sought on the exact timing of recognition and where in our accounts this is to be shown. We will review this advice when it is made available to us.
- We requested details of the proposed accounting treatment for this arrangement but the Council has yet to prepare an accounting paper.
- The Wirral Growth Company partnership arrangement will complete the Birkenhead Commercial District and Birkenhead market. Other planned projects will now be delivered by the Council due to the receipt of alternative grant funding. We could not reach a conclusion in the revised arrangements and whether proper scrutiny was given to its value for money because our questions on this topic were not answered within the available timeframe.

### Wirral Holdings Limited (Dormant)

- Wirral Holdings Limited (WH) is a private company, wholly owned by Wirral Council since 2019. There is one director who is an officer of the Council, however we understand no meetings held as the company is currently dormant.
- From conversations with Officers, we understand that the company was set up as part of a property deal for several hundred flats funded by the pension fund. It will be dormant for a period of 10 years before becoming operational as a landlord run entity for a provisional 50 year period.

### Wirral Growth Company Nominee Limited (Dormant)

- Wirral Growth Company Nominee Limited (WGCN) is a wholly owned private company since 2017. There is one director who is an officer of the Council. We understand no meetings held as the company is currently dormant.
- We understand that there is currently no activity within each of the Dormant entities and as such there is no formal governance in the form of performance reporting or meetings. From our conversations with Officers, we understand that the company was set up as a name holder to protect the name 'Wirral Growth'.

# 1.4 Summary conclusions on company governance by subsidiary company and other investments (Cont.)

## Summary Conclusion by Company/Investment (Cont.)

### Public Sector Social Impact Fund (PSSIF)

- The Public Sector Social Impact Fund is an external fund established by Atlanta Wealth in late 2019 in partnership with Warrington Borough Council. It aims to raise £300m to invest in UK Social and Environmental projects. Other projects could be supported as long as they are UK based and meet the criteria of positive social/environmental impact. solar and wind energy projects, social housing, forestry and special needs schools. The Council invested £10m into the fund on 12 May 2020, which is a 10 year investment (possibly to extend for 2 years). This is roughly one quarter of the Council's total cash monies of £40m. The total fund value is currently around £46m, meaning that Wirral represents c.22% of the total fund.
- The Council were approached by Atlanta wealth who presented to the Councils CEO, Director of Finance and the Senior Finance Manager. The Council subsequently commissioned a number of due diligence reports from external advisors to review the proposal. Under the delegated authority of S151 officer (Director of Finance) the Council used their Treasury Management Policy to invest in the fund.
- The Councils investment into the fund was a commercial decision to return profits to the Council over the 10 year life of the fund. There appears to have been appropriate governance surrounding the decision to invest into the fund, as well as the ongoing financial monitoring.
- The fund had an original timeline of two years to find investment opportunities. Progress has been slow in terms of investment with Atlanta being undercut on a number of opportunities. Covid-19 also impacted on the investment opportunities and ability to undertake necessary due diligence processes on investments. As at the date of this report Atlanta have made no investments and the fund money is held in UK corporate bonds until invested.
- 'The Council appears to have limited control over how investments are made by the fund manager, which may lead to additional risk to the Council's monies. Discussions with officers indicate that they are satisfied that the fund is run by suitably experienced and qualified fund managers. The fund also has an investment advisory committee made up of 8 members with 2/3 representatives from local government. The Council is not represented on this committee (although it was invited to sit on the committee).
- We note that the Council cannot exit the fund until 2032. Given the Council's uncertain financial position it is not clear that this was an appropriate investment and the Council will need to monitor its success closely.

### North West Mutual Community Bank (Bank)

- The Council was previously considering investing in a joint community bank in collaboration with Preston and Liverpool as a Mutual. They took the decision not to invest in this operation.
- The Council, having applied for exceptional financial support, received a capitalisation directive for 2020/21 and received an offer for 2021/22 subject to an external assurance review focusing on its financial position and on its ability, including the strength of its governance arrangements, to deliver its plans for medium-term sustainability. Following two external reports the Council responded with an action plan which was presented to the Policy and resources committee.
- We also note that there is evidence of the Community Bank being on the capital report which was presented to members at the Policy and Resources Committee. We can see that the Bank has been removed from Capital Report which will be presented back to members on 15 February 2022 where the investment was removed. The investment will not be presented back again.
- Following the Cipfa report the Council has determined not to pursue this investment. We consider this decision to be appropriate.

# 1.4 Summary conclusions on company governance by subsidiary company and other investments (Cont.)

## Summary Conclusion by Company/Investment cont.

Our conclusions specific to each subsidiary company are captured in Section 3 of this report and are summarised as follows:

### Wirral Waters One

- Wirral Waters One/Legacy is a project to build 500 apartments at Wirral Waters in Birkenhead. The primary Lessor is developer Peel Land and Property. The Council takes an underlease of the 500 apartments carrying a fixed rent and service charge fee to Peel Legacy for the first 50 years. The Council will grant a sub-underlease to a Peel Management Company who will manage the apartments for years 0-10 and take on the Council's rental obligations.
- There was scrutiny in making the decision to approve the Full Business Case.
- The accounting for the arrangement were not confirmed before entering into the arrangement and should be confirmed to ensure that arrangement does not create assets or liabilities for the Council.
- The potential liability to the Council if the project is unsuccessful is c£100m. We note that this is the worst case scenario and that mitigations can be put in place to prevent this scenario. For example, by creating a risk reserve or the sale of the properties.
- Due to the material risk to the Council from years 11-50 we recommend that the project is closely monitored to ensure the development remains attractive to prospective tenants at least up until the point of handover.

## **Section 2: Council Governance of Subsidiary Companies**

# 2.1 Current legal structure of Wirral Council Group

## Overview of Wirral Commercial Entities and related Investments

The Council has historically considered each of their commercial entities separately from the perspective of legal structure and do not form part of a group (see Appendix [B] for the Council's legal structure).

- The Council has three wholly-owned subsidiary companies:
  - **Wirral Evolutions Limited (WEL)** - the company provides personalised Day Services and experiences for adults with a wide range of learning and physical disabilities;
  - **Wirral Holdings Limited (Dormant)** - the company was set up as part of a property deal for several hundred flats funded by the pension fund. It will be dormant for a period of 10 years before becoming operational as a landlord run entity for a provisional 50 year period;
  - **Wirral Growth Company Nominee Limited (Dormant)** - the company was set up as a name holder to protect the name 'Wirral Growth'.
- The Council also has two joint venture companies:
  - **Edsential Community Interest Company** – the company provides services to the Education sector, supporting schools in four core areas; Health and Wellbeing, Leadership & Management, Teaching & Learning, and Aspiration & Achievement;
  - **Wirral Growth Company LLP** - The company was set up to deliver the long-term vision for regeneration, which benefits communities across the borough.
- We understand through discussion with the Council that each of these entities was acquired or invested in to meet a strategic goal and the entities are run commercially.
- The Council has also invested into a **Public Sector Social Impact Fund (PSSIF)**
- The Council has also invested in **Wirral Waters One/Legacy**, a development project in which the Council has agreed to sublease 500 apartments from the developer for Peel over 50 years.
- Owing to the overall financial position of the Council, WMBC made the decision not to invest in a joint-community bank. A review of this decision making process can be found later in this report.
- We have considered each entity in scope in detail in Section 3 this report.

## Evidence base

In this section we have used the following evidence base:

- Appendix B: Current Legal Structure



## 2.2 Current governance structure of Wirral Council Group

### Overview of Wirral Corporate Governance

- On 28 September 2020 Wirral Metropolitan Borough Council voted to approve a change from a Leader and Cabinet arrangement to a Committee System is divided into four core committee categories, being Policy & Services, Forum, Review and Regulatory & Other. See Appendix [B] for an overview of the committee structure.
- The revised governance structure has bedding down but several of the Officers we interviewed noted that the frequency of elections and turnover of Members may be having a negative effect on progress and decision making.
- There is a Shareholder Board which centrally manages the entities (this falls part of the Policy and Resources Committee). The Shareholder Board is responsible for the Council's functions as corporate shareholder of a company, or group of companies.
- The Shareholder Board is made up of;
  - Councillor Janette Williamson - Council Leader
  - Councillor Yvonne Nolan - Chair Adult Social Care and Public Health Committee
  - Councillor Jeff Green - Conservative Member (currently opposition party)
- The Shareholder Board is also supported by Officers;
  - Phil McCourt - Director of Law and Governance and Monitoring Officer
  - Vicki Shaw – Head of Legal Services and Deputy Monitoring Officer
  - Shaer Halewood - Director Of Resources and s151 officer.
- In addition to the Shareholder Board, there are individual committees which monitor the performance and provide scrutiny of the three active companies. The Children, Young People and Education Committee provide this for Edsential CIC; the Adult Social Care and Public Health Committee provide this for Wirral Evolutions Ltd and the Economy, Regeneration and Development Committee provide this for the Wirral Growth Company LLP.
- Each of the active companies have a client officer whose role is to monitor the contractual obligations and/or operational performance of the company with respect to services provided in the region or to the Council specifically. The client Officers are as follows: Edsential CIC (Director of Children and Young People); Wirral Evolutions Ltd (Director of Adult Social Care); Wirral Growth Company LLP (Director of Economy and Regeneration).
- The Director of Law and Governance at Wirral Council provides regular training to the Shareholder Board and directors of the corporate entities about the responsibilities associated with the various roles. We have seen evidence of the internal workshops run.

### Evidence base

In this section we have used the following evidence base:

- Appendix C: Wirral Council Committees
- Appendix D: Current Governance Structure

## 2.2 Current governance structure of Wirral Council Group (Cont.)

### Overview of Wirral Corporate Governance

- We understand that there is an internal debate regarding the appointment of Officers and Members to the Board of each of the corporate entities, with the prevailing view ~~is~~ that members should be involved in the monitoring and governance of these entities, with Officers conducting the Company Secretarial role and General Council role.
- We note that of the three core entities only Edsential (ECIC) has direct officer involvement on the Board, with the appointment of the Assistant Director of Education at Wirral Metropolitan Borough Council. Wirral Evolutions has no Officer or Member involvement due to a request by the company. Wirral Council is on the Board of the Wirral Growth Company.
- We consider that the Council should have officer representation on the Boards of its companies and that it should ensure that each company or related investment this should be supplemented by Non Executive Directors with business experience, in order to better protect the Council's commercial interests.

### Evidence base

In this section we have used the following evidence base:

- Appendix C: Wirral Council Committees
- Appendix D: Current Governance Structure

# **Section 3: Company Governance – by Company**

# 3.1 Operational Governance – Edsential Community Interest Company

## Overview of the company

- Edsential Community Interest Company (ECIC) is a private company limited by shares, Registered in England and Wales (no. 09550258) and was incorporated on 20 April 2015.
- The company is jointly owned by Cheshire West and Chester Borough Council and Wirral Metropolitan Borough Council. The Council owns 50% of the shares in the company and provides governance oversight via a joint Shareholder Board with the other council
- ECIC provides services to the Education sector, supporting schools in four core areas; Health and Wellbeing, Leadership & Management, Teaching & Learning, and Aspiration & Achievement
- The entity provides catering and facilities management, governor clerking and training, tuition for sports, music, creative and performing arts, support for special educational needs and disabilities, learning outside the classroom and residential services
- ECIC financial and operational performance is monitored within the Children, Young People and Education Committee within the Council structure. The Shareholder Board, a sub-Committee of the Council's Policy and Resources Committee, provides further oversight and scrutiny on decisions like approval of annual reports, annual business plans, executive and non-executive director appointments, budgetary requests and remuneration packages.
- The business was negatively impacted by Covid-19, with schools being closed and leading to a reduced requirement for ECIC's services. We understand that the business made a small profit in the years prior to the pandemic, and Officers expect the business to return to profitability in the 2022/23 reporting year.
- ECIC has made operational changes to facilitate this return to profitability, including the expansion of ECIC's geographical footprint, for example by winning work with schools in the Halton area.
- ECIC is viewed as a strategic investment by Officers, because of its positive impact as a specialist local employer and due to the social impact of extra curricular activities for children in the local area. Schools travel from as far away as Oxford to benefit from the outdoor pursuits that ECIC are able to offer.

## Composition of the board

- From the Shareholder Agreement we understand that shareholders can appoint and remove directors, the chair and the secretary. The Board of Directors should be made up of;
  - Two, but not more than three, Executive Directors (ED) who are not employed by or an elected member of the shareholders;
  - One Executive Director from Cheshire West and Cheshire Council and one from Wirral Council;

## Evidence base

In this section we have used the following evidence base:

- 1.3.1 Edsential CIC- Articles of Incorporation
- 1.4.1 Edsential CIC- Shareholder Agreement
- 2.1.1 Edsential CIC Accounts 2021
- 3.1.1 Printed minutes 13092021 1800 Children Young People Education Committee
- 4.0 Meeting notes
- 5.0 Other reports
- 6.1.1 21.0 - Directors questions - Edsential (002)
- 6.1.2 Referral from Shareholder Board - Edsential Request for Funding
- 6.1.3 School Traded Services Separate Legal Entity
- 6.1.4 Schools Traded Services Joint Venture Known as Edsential

## 3.1 Operational Governance – Edsential Community Interest Company (Cont.)

- Three Non-Executive Directors (NED) that are heads or deputy heads of schools in the Cheshire West & Chester, and Wirral areas; and
  - One NED who is a governor in the admin area of CWAC or WMBC.
- We note that this composition is focused on representation. In particular school heads and deputy heads may have the skills to run a school, but will normally have access to school governors who can offer external challenge and commercial experience. There are two NEDs with commercial experience including a chartered accountant who has worked in the Schools sector.
  - At the time of this report we have identified the following differences between the current composition of the Board and that which was agreed in the Shareholder Agreement discussed previously:
    - There appears to only be one executive director who is not employed by, or is not an elected member of the shareholders (Ian McGrady the Managing Director) rather than the two designated;
    - There are no executive directors from Cheshire West & Chester Council, and Wirral Council. These are in fact NEDs on the Board. There is also an additional NED from Cheshire West & Chester Council and Wirral Council (Mark Parkinson who is acting as Chair of the Board);
    - Where there are meant to be three NEDS who are headteachers, the Board currently has four.;
    - There is an additional NED with a finance background who is not designated in the Shareholder Agreement.
  - It does appear that there is one NED who is a governor in the admin area of CWAC or WMBC Jane Owens MBE. See later for a further breakdown of the directors.
  - The composition of the Board of ECIC is not currently in accordance with the provisions set out in the Shareholder Agreement. We note that this has been flagged to the Shareholder Board as part of a meeting that occurred on 28 October 2021.
  - It was also noted that a review of the composition of the Board of ECIC would be completed to ensure that it is better aligned with the Shareholder Agreement and its Articles of Association. The outcome of this review would be brought to this Committee at a later date.
  - There are no direct legal implications in the composition of the Board of ECIC not being in accordance with the provisions set out in the Shareholder Agreement or the Articles of Association, but the divergence is not considered to be in the interests of good corporate governance and may expose the Council to reputational risk. It may also lead to a culture of operating “outside the lines” which could lead to larger issues.
  - Despite this, we can see clear evidence Shareholder Board is providing appropriate scrutiny and oversight over the appointments of directors to the company, for example;
    - In the 1 July 2021 Shareholder Board meeting, it was agreed that ECIC would appoint Mark Parkinson as Chair of the Board of Directors for a term of three years.
    - In the 1 September 2021 Shareholder Board meeting, it was agreed that the Director of Law and Governance be authorised to sign a written company resolution confirming appointment of Helen Elizabeth Brackenbury, the Council’s Director of Children and Safeguarding, as an NED to provide additional insight and experience.
    - In the 28th October 2021 Shareholder Board meeting, the Head of Legal Services confirmed that there would be two head teacher representatives from Wirral and two from Cheshire West and Chester Council. This confirmed the appointment of Alison Ashley and Sharon Senn as Directors of ECIC.

# 3.1 Operational Governance – Edsential Community Interest Company (Cont.)

## Council monitoring of business performance 2020/21 and 2021/22

- Per the Shareholder Agreement, the Shareholder Board are to approve the business plan and annual report of ECIC no later than 28th May in the immediately preceding Financial Year.
- As detailed in the overview section, in addition to the Shareholder Board, the monitoring and scrutiny of operational and financial performance is provided by the Children, Young People and Education Committee (CYPE). We noted that in the CYPE Committee meeting on 13 September 2021, a performance report detailed ECIC's achievements during 2021-22 including the delivery of the Holiday Activity Fund (HAF), Edsential at home service and free school meal parcels. It also outlined the current challenges being faced - specifically the impact of COVID-19 on the organisation's financial position, as well as the strategic business plan priorities for 2021-2022. Mark Parkinson, Chair of Edsential Board and Ian McGrady, Managing Director were in attendance to answer questions from Members. Members and Officers raised appropriate questions relating to the status of the company in terms of profit, as well as the liability for the loss of income during Covid-19 and the anticipated recovery. The status of the company as a CIC was outlined, as well as the use of any profits where it reported that the £100k of profits were reinvested into 12 Wirral schools through grant funding.
- We also noted that the Shareholder Board meeting (28 October 2021) acknowledged that ECIC had experienced significant trading and financial difficulties primarily as a consequence of the COVID-19 pandemic. The Company had been in negotiations with Officers of both the Council and Cheshire West and Chester Council with a view to obtaining additional financial support. We were satisfied that members asked pertinent questions including details of the loan such as whether the exact amount could be reduced if the Council felt that ECIC did not need the full amount, and whether they would have the facility to repay the loan early if they found that they could. The Shareholder Board agreed to authorise the Director of Resources in consultation with the Director of Law and Governance to approve financial support to be provided to the company over the forthcoming financial year, in the form of Covid related funding support grant of £643,000 and an interest-bearing loan of £857,000.
- From our discussions with Council Officers, the Head of Legal Services and the Director of Law and Governance, we understand that the Shareholder Board and the Children, Young People and Education Committee provide periodic review of the financial and operational performance of the ECIC and formally vote on key business decisions like director appointments, letters of financial support and approval of remuneration of non-executive and executive directors. This and the previous examples provide some evidence of effective challenge by the governance mechanism in relation to reported business performance.
- From our review of the Shareholder Board and the Children, Young People and Education Committee, we noted that there is no formal review of management accounts but there is evidence of financial review (including savings targets).

## Financial performance

- We understand that as well as the equity investment in ECIC, the Council also guarantees the Merseyside Pension Fund element of ECICs' pension liability, which equates to £1.6 million.
- ECIC's balance sheet is wholly supported by the Council and Cheshire West and Chester Council. In the year to 31 May 2021 it made a net loss of £2.132 million on turnover of £10.144 million, contributing to net liabilities of -£11.3 million.
- We understand that the business made a small profit in the years prior to the pandemic, and Officers expect the business to return to profitability in the next reporting year.
- We are concerned that grants to schools have been made by ECIC at a point when it appears to have been technically insolvent and wholly dependent on funding from the two councils.



# 3.1 Operational Governance – Edsential Community Interest Company (Cont.)

## Conclusions

- ECIC's balance sheet is wholly supported by the two councils and in the year to 31 May 2021 it made a net loss of £2.132 million on turnover of £10.144 million, contributing to net liabilities of -£11.3 million. We understand that as well as the equity investment in ECIC, the Council also guarantees the Merseyside Pension Fund element of ECICs' pension liability, which equates to £1.6 million
- ECIC was significantly impact by Covid-19 with a number of services being closed. This impacted on both **revenue and profitability**. **We understand that the business made a small profit in the years prior to the pandemic, and Officers expect the business to return to profitability in the next reporting year.**
- The Council appear to have a strong grasp of the companies financial and operational performance, with both the Shareholder Board and the Children, Young People and Education Committee providing periodic review. Given the issues that ECIC has faced, the Council should continue with the increased scrutiny until future results demonstrate a more stable financial position.
- We note that the company distributed profits as grants. Until ECIC return to profitability all grants should have Council s151 Officer approval or via an equivalent delegation of authority mechanism.
- There is a difference between the actual make-up of the Board of Directors and that prescribed in the Shareholder Agreement. Although this does not pose any legal issues it is not considered to be in the interests of good corporate governance. We note that this has been flagged to the Shareholder Board as part of a meeting that occurred on 28th October 2021. The Council should look to address this matter as a priority.
- We can see clear evidence of oversight of the company through the Shareholder Board and the Children, Young People and Education Committee.
- We consider that the Board should consist of executives and non-executives who are experienced in business. Representation from service users is helpful but this should be balanced with business experience. We note the presence of a Non-Executive Director with experience working as a chartered accountant in schools, who may offer helpful independent commercial challenge as ECIC seeks a return to profitability.
- Given the financial position of the Council it will need to monitor the finances of Edsential closely and determine whether it continues to support the company.

# 3.1 Operational Governance – Edsential Community Interest Company (Cont.)

Director	Post held	Experience
Mark Parkinson	Chair - non executive director	<ul style="list-style-type: none"> <li>Previously the Director of Education at Cheshire West and Chester Borough Council</li> </ul>
James Backhouse	WBC - non executive director	<ul style="list-style-type: none"> <li>Assistant Director of Education at Wirral Metropolitan Borough Council</li> </ul>
Helen Brackenbury	CW&C - non executive director	<ul style="list-style-type: none"> <li>Director of Child Services at Cheshire West and Chester Borough Council</li> </ul>
Ian McGrady	Managing Director	<ul style="list-style-type: none"> <li>Internationally experienced managing director whose experience spans the consumer goods and social enterprise sectors</li> <li>Has held key commercial roles, including: sales director for a unit of Mars UK and commercial strategy partner for a global consultancy</li> </ul>
Alison Ashley	Headteacher -non executive director	<ul style="list-style-type: none"> <li>Head Teacher Hebden Green Special School</li> <li>Worked in the SEND sector for 21 years</li> </ul>
Elaine McGunigall	Headteacher -non executive director	<ul style="list-style-type: none"> <li>Headteacher at Our Lady and St Edward's Catholic Primary School in Birkenhead</li> </ul>
Nicola Wetton	Headteacher -non executive director	<ul style="list-style-type: none"> <li>Headteacher of J H Godwin Primary School in Chester</li> </ul>
Adrian Whiteley	Headteacher -non executive director	<ul style="list-style-type: none"> <li>Headteacher of The Mosslands School in Wirral</li> </ul>
Jane Owens MBE	Governor - non executive director	<ul style="list-style-type: none"> <li>Chair of Board of The Mosslands School</li> <li>awarded an MBE in 2016 for services to education in Wirral</li> </ul>
Sharon Senn	Finance – non executive director	<ul style="list-style-type: none"> <li>Chartered accountant at KPMG</li> <li>Previously worked in finance within two schools</li> </ul>

## Evidence base

In this section we have used the following evidence base:

- List of Directors Edsential Community Interest Company (Companies House)
- Personal research online

## 3.2 Operational Governance – Wirral Evolutions Limited

### Overview of the company

- Wirral Evolutions Limited (WEL) is a private company limited by shares, Registered in England and Wales (no. 09589953).
- It was incorporated on 14 May 2015 and is wholly owned by Wirral County Council. It is trading as a Local Authority Trading Company (LATCo).
- The company provides personalised Day Services and experiences for adults with a wide range of learning and physical disabilities.
- As a local authority trading company, WEL operates within the parameters of Teckal. In order to remain Teckal compliant there are criteria's in place, firstly its 'control' and secondly its 'function' as illustrated below:
  - The 'Control Test' - The local authority must control all the shares in WEL and must exercise its powers within an effective governance structure underpinned by its articles of associations;
  - The 'Functional Test' – At least 80% of its turnover must be for its public sector owners – Wirral Council. Although, changes to the EU procurement regulations in 2015 means that 20% of trading can be outside the 'Teckal' contract which is calculated based on three years turnover and in accordance with tendering and procurement legislation;
  - The Council passes the 'Control Test' as it controls all the shares in WEL and exercises its powers within a governance structure underpinned by its articles of associations. In our discussions with Officers (including the Head of Legal Services and Head of Governance, we understand that nearly all WEL's income derives from the services provided to the Council. This suggests that the Council also passes the 'Functional Test', which requires that at least 80% of its turnover must from be from the company's public sector owners, i.e. Wirral Council.
- WEL currently has no formal working capital loan facility, however, it does have a letter of comfort, provided by Wirral Council Finance Director dated 19 May 2019, on behalf of Wirral Council Shareholder Board. It was agreed WEL would pay for the buy back of services in arrears to alleviate the cash flow issues through the year. WEL did explore access to a working capital loan facility in 2021/22 but did not take it up.

### Composition of the board

- The Board meets formally on a minimum of ten occasions annually and currently comprises
  - Four directors, of which, three are Non-Executive roles
  - One Executive role (Managing Director)
- There is no Officer or Member involvement on the Board of Directors at the request of the company. We note that previously the Leader of the Council sat on the Board. The Council provides oversight to this company through the Shareholder Board and Adult Social Care and Public Health Committee.

### Evidence base

In this section we have used the following evidence base:

- 1.3.2 Wirral Evolutions Ltd- Articles of Incorporation
- 1.6.1 Wirral Evolutions- Draft Business Plan
- 1.8.1 Wirral Evolutions Ltd- Annual Report
- 2.2.1 Wirral Evolutions Accounts 2021
- 3.2.1 Printed minutes 18012021 1800 Adult Social Care and Public Health Committee
- 3.2.2 Printed minutes 02032021 1800 Adult Social Care and Public Health Committee
- 3.2.3 Printed minutes 07062021 1800 Adult Social Care and Public Health Committee
- 3.2.4 Printed minutes 16112021 1800 Adult Social Care and Public Health Committee
- 3.2.5 Printed minutes 23092021 1800 Adult Social Care and Public Health Committee
- 4.0 Meeting notes
- 5.0 Other reports
- 6.2.1 22.0 - Directors questions - Wirral Evolutions
- 6.2.2 Day Services WE Report John Campbell ARCC 180821
- 6.2.3 Review Of Day Services Contract For People With A Learning Disability Delivered By Wirral Evolutions
- 6.2.4 Review of Day Services WE 230921
- 6.2.5 WE Shareholder\_agreement`
- 6.2.6 Wirral Evolutions Workshop 211203 PMc
- 6.2.7 Wirral Evolutions workshop agenda 3 December
- 6.2.8 Wirral Evolutions

## 3.2 Operational Governance – Wirral Evolutions Limited (Cont.)

### Council monitoring of business performance 2020/21 and 2021/22

- The Annual Business Plan is reviewed by the WEL Board of Directors on a quarterly basis as part of the company's performance reporting schedule. Any significant changes that constitutes a reserved matter are reported to the Shareholder Board/Officers in accordance with the Shareholder Agreement
- The Annual Business Plan will be submitted to the Shareholder Board for approval no later than 28th May in any year. We noted that in the Shareholder Board meeting on 1 September 2021, WEL presented its Annual Business Plan to the shareholders and following review, this was approved by the Board.
- Company performance is reported to the Board and the Shareholder on a quarterly basis in accordance with this Governance Framework, Annual Audit Plan and Shareholder Planning Cycle
- The company produces an Annual Report to the Shareholder Board by 1st June of each Financial Year. The Annual Report is published in July of each year, demonstrating WEL, progress, impact and achievements. We noted that in the Shareholder Board meeting on 1 September 2021, Wirral Evolutions Ltd presented its Annual Report to the shareholders. The report set out the performance of WEL assessed against its Annual Business Plan for the previous financial year. The report was approved by the Board.
- Per the Shareholder Agreement, the Company shall provide to the Shareholder Board a set of annual accounts of the Company, prepared in accordance with all statutory requirements and good accounting practice, within 9 months of the end of the year to which the annual accounts relate. Also, a set of quarterly management accounts of the Company, within 40 Business Days of the end of each quarter to which the management accounts relate, which shall include a profit and loss account, a balance sheet and a cash flow statement. We noted that in regular Adult Social Care and Public Health Committee meetings, the revenue budget for the Council's Adult Social Care directorate was monitored; this included a review of the financial position of WEL.
- Per the Shareholder Agreement, the Company shall provide an annual summary and review of health and safety incidents and data protection breaches together with more specific information as may reasonably be required from time to time by the Shareholder Board. We did not note any evidence relating to the review of health and safety and data protection breaches at the Shareholder Board Level or the Adult Social Care and Public Health Committee.
- In the Adult Social Care and Public Health Committee meetings held between 18 Jan 2021 and 16 November 2021, we noted appropriate scrutiny provided by the committee members in relation to the contractual services provided by Wirral Evolutions Ltd to the Council. In the May 2021 meeting, it was noted that the costs associated with day services for 2020/21 had increased beyond the contract value leading to a review of the service as requested by Adult Care and Health Overview and Scrutiny Committee in May 2022, which included the potential for bringing services back 'in-house' to address the financial challenges currently facing the service.
- Wirral Evolutions had discussed a range of options to modernise the current operating model, and the recommendation was that they would present these proposals to a future meeting of the Adult Social Care and Health Committee. The committee acknowledged that the quality of service was high and requested that Wirral Evolutions be invited to the Adult Social Care and Health Committee to present the company's proposals to modernise the current operating model and reduce the operating costs to ensure delivery of the service within the existing contract at the current contract price of £5.015m for 2021 to 2022.

## 3.2 Operational Governance – Wirral Evolutions Limited (Cont.)

### Council monitoring of business performance 2020/21 and 2021/22

- In the **June 2021** meeting, Jean Stephens, Managing Director of Wirral Evolutions presented the report which provided the Committee with the first quarterly report detailing the progress against Wirral Evolution’s saving proposals and plans to modernise the Company’s operating model to ensure the delivery of service was within the contract value of £5.015m for 2021/22.
- The Committee made clear that it wished to see how the consolidation, economies of scale and community hubs will be of genuine benefit to the users of the services, as well as how staff skills will be retained, and how service users view the future prospects. Wirral Evolutions was also requested to extend the consultation to wider members of the community and provide further detail on the community groups it was seeking to make links with, and their response.
- From July to August 2021, the Council commissioned an independent expert to meet with Wirral Evolutions to conduct a detailed assessment and review of the cohesiveness and deliverability of Wirral Evolutions’ modernisation plans. The outcome of this external review was that there is an absence of detail in Wirral Evolutions documentation to fully assess the deliverability of the proposed service redesign. (John Campbell report entitled “Wirral Evolution’s Plan for Service Modernisation” dated 18 August 2021).
- In the **September 2021** meeting, the members agreed to support the Shareholder Board’s decision to hold a workshop with Wirral Evolutions to address governance issues be supported. In the **November 2021** meeting, it was reported that Wirral Evolutions had agreed budget savings of £0.5m for the 2021/22 financial year and had achieved savings of £0.3m to date. The forecast is that the company will achieve the £0.5m targeted savings.
- On 23 September 2021 the Director of Adult Social Care, Graham Hodgkinson, produced a report concerning the contract with Wirral Evolutions Limited entitled “Review of day services contract for people with a learning disability delivered by Wirral Evolutions Limited”. In this it was proposed that the Council allows Wirral Evolutions more time to modernise the current operating model and reduce the operating costs. We can see evidence of Member scrutiny through the questioning of aspects of the review and potential options. Scrutiny should remain in place until there is clear evidence of the right balance between a quality service at an affordable cost, reflective of the savings plan entered into.

### Council monitoring of business performance 2020/21 and 2021/22 (Cont.)

- We noted that requests for financial support and changes to remuneration packages were sufficiently scrutinised by the designated governance mechanism, the Shareholder Board. In the September Shareholder Board meeting, Wirral Evolutions Limited applied for transition funding of £230,707 across financial years 2021/22 and 2022/23. The funding was required to cover the costs relating to cost of transitional pay during 2022/23, change in rent costs and forecasted loss of income due to covid-19. Members expressed their disappointment that the savings that were set out for Wirral Evolutions were not achieved, and that there was now an additional request of the Council to help them achieve those savings. Despite this, the Board approved the funding as it will ultimately support the ability of Wirral Evolutions limited to work within the current contract price.
- Partially as a result of this funding request, the Shareholder Board denied an additional request to increase the remuneration of a non-executive director and increase the remuneration and number of contracted remunerated days of the Non-Executive Chair of the Board. The scrutiny of these key business decisions supports our view that the both the Shareholder Board and its native, Adult Social Care Committee are functioning effectively.
- Wirral Council conducted a Value for Money Review of the company between November 2021 and January 2022, following a request initiated at the Adults Social Care and Public Health Committee on 23 September 2021. The Value for Money report concluded that while day services are beneficial for people with learning disabilities, the delivery of the contract does not justify the additional costs of running an arms-length company.
- The Council subsequently concluded that Wirral Evolutions does not demonstrate value for money

## 3.2 Operational Governance – Wirral Evolutions Limited (Cont.)

for the Council and overall a decision has been made to bring the services back in house by September 2022.

### Financial performance

- We could not pass comment on the financial performance of WEL as this was not provided by the Council prior to the release of this report. We note nevertheless that the company has net liabilities of £22k with £1.4 million of cash available in its bank account.

### Conclusion

- Wirral Evolutions Limited (WEL) is a wholly owned entity incorporated in 2015. It provides adult social care services. It is trading as a Local Authority Trading Company (LATCo) as it predominantly provides its services to the Council. The company has not been successful in winning new clients outside of the Council.
- There are no Officers or Members on the Board of Directors. Operational and financial performance of this entity was undertaken via the Shareholder Board Level or the Adult Social Care and Public Health Committee.
- The company's VfM has been under scrutiny within the Council. It was noted by Members that the costs associated with day services had increased beyond the contract value leading to a review of the service. A review was therefore commissioned on the operational efficiencies surrounding this entity.
- The review concluded that Wirral Evolutions does not demonstrate value for money for the Council and a decision has been made to bring the services back in house by September 2022.
- We consider that this decision is appropriate.



## 3.2 Operational Governance – Wirral Evolutions Limited (Cont.)

Director	Post held	Experience
Jean Stephens	Managing Director	<ul style="list-style-type: none"> <li>Has over 25 years of experience operating as a Chief Executive and at Board level within the Public, Voluntary and Commercial sectors.</li> <li>Qualified in leadership, management and marketing.</li> </ul>
Michael Naden	Chair - non executive director	<ul style="list-style-type: none"> <li>Broad range of experience with of roles within banking, Finance, Retail, Utilities and Engineering.</li> <li>Significant management experience at a senior level.</li> <li>Non-executive role at the Ministry of Defence.</li> </ul>
Pamela Williams	Non executive director	<ul style="list-style-type: none"> <li>Has a degree in Economics and is a qualified accountant.</li> <li>Member of the Chartered Institute of Public Finance and Accountancy.</li> <li>Over 20 years' experience operating at Board level in a wide range of local authorities, most recently as Executive Director of Finance at Tameside Metropolitan Borough Council.</li> <li>Holds Non-Executive Director and Audit Committee Chair positions with Mersey Care, NHS Foundation Trust, Countess of Chester NHS Foundation Trust and Muir Group Housing Association.</li> </ul>
Lisa Knight	Non executive director	<ul style="list-style-type: none"> <li>Has a clinical background in mental health care.</li> <li>Over 20 years' experience of working with the public and voluntary sector within health and social care.</li> <li>She is a Senior Lecturer in the School of Leadership &amp; Organisational Development at Liverpool John Moores University.</li> <li>Non-Executive Director for St Helens &amp; Knowsley NHS Trust.</li> </ul>

### Evidence base

In this section we have used the following evidence base:

- List of Directors Wirral Evolutions Limited (Companies House)
- Personal research online

# 3.3 Operational Governance – Wirral Growth Company LLP

## Overview of the company

- Wirral Growth Company LLP (WGC) is a Joint Venture with Muse Developments Limited in the form of a Limited Liability Partnership. It was incorporated on 26 June 2018 and is equally owned by Wirral Borough Council and Muse Developments Limited. Muse Developments Limited is declared to be 100% owned by Morgan Sindall Group PLC, which is a listed public company.
- The Limited Liability Partnership (LLP) was preferred over a limited company vehicle due to the preferred tax position that an LLP can achieve when a partner is a local authority. The primary purpose of the joint venture is the regeneration of the Birkenhead area and it is anticipated that some developments will be loss making whilst other developments will derive significant profits. It is expected that all profits are re-invested and will offset losses across the portfolio. Within the Joint Venture LLP, the Council's role is to provide interest bearing loans alongside Muse funds, which can be leveraged for financing. Muse's parent company, the Morgan Sindall Group, also provide additional expertise on the financing of the joint venture.
- As agreed in the Partnership Agreement, the Objectives of the WGC are:
  - to bring forward, in a timely manner and responding to market demand, the development of the indicative sites and potentially to undertake other site development;
  - to bring forward, responding to market demand, the development of sites which are considered more difficult to develop at a comparable rate with sites which are considered easier to develop;
  - to make strategic and opportunistic acquisitions, in particular interventions that support the implementation of the Council's Growth Plan or the development of an improved retail, commercial and public sector offer in Birkenhead and other Wirral town centres;
  - to secure an adequate return to the JV Partners commensurate to their investment and the level of risk in respect of such investment to maximise the profits made by the LLP; and
  - to support the Council in pursuit of its wider objectives by identifying and helping deliver favourable solutions that balance financial, economic and social returns.
- As a partnership, WGC is not bound by the rules pertaining to local authority ownership of a company. Conversely, it does not have the benefit of the financial and legal freedoms of a local authority interest company and must, instead, abide by the full set of limitations imposed by local government law on its powers and functions.

## Evidence base

In this section we have used the following evidence base:

- 1.3.3 Wirral Growth Company LLP- Articles of Incorporation
- 1.6.2 Wirral Growth Company
- 2.3.1 Wirral Growth Accounts 2020
- 3.3.1 Printed minutes 26072021 1800 Economy Regeneration Development Committee
- 3.3.2 Printed minutes 26102021 1800 Economy Regeneration Development Committee
- 3.3.3 Public reports pack 26012022 1800 Economy Regeneration Development Committee
- 4.0 Meeting notes
- 5.0 Other reports
- 6.3.1 20.0 - Directors questions - Wirral Growth Company
- 6.3.2 Delivering Wirral's Growth Report Cab 19 June 2017
- 6.3.3 In confidence
- 6.3.4 wbc wgc partnership agreement (002)
- 6.3.5 WGC Recommendations
- 6.3.6 WGC Review 9.7.21
- 6.3.7 WGC Timeline for External Auditor BEST VALUE REVIEW Feb 22

# 3.3 Operational Governance – Wirral Growth Company LLP (Cont.)

## Overview of the company (Cont.)

- We can see evidence that the establishment of the JV partnership was approved by the Council at a Cabinet meeting held on 26 May 2018. We can also see good evidence of both Officer and Member involvement in decision making surrounding WGC including the approval of the business plan on 24 May 2020.

## Initial development – Wirral Growth Company Birkenhead Commercial District Office Building project

- The resulting development was to be delivered in two phases and was originally designed to develop approximately 300,000 square feet of prime office space in Birkenhead.
- The Council approved the purchase of additional land in Birkenhead town centre (Milton Pavements) as part of its Strategic Regeneration Framework on 4<sup>th</sup> November 2019. This land is leased to Canada Life on a 250 year lease and leased back to the Council for a 43-year term to enable the development by WGC. After 35 years of rental, the Council can buy back the interest and buildings for £1 or Canada Life can force the Council to acquire it for £1 (an arrangement known as a “Put and Call” option that allows either party to exit the arrangement cleanly).
- Canada Life have agreed to fund the construction costs of the project, under a forward funding / income strip agreement to WGC of £75.3 million. As the build costs are estimated to be c.£56 million with a profit to WGC of £5.6 million there is c.£11 million of remaining funding [after interest]. It is unclear as to whether the remaining balance of £11m will be taken as ‘superprofit’ by the Council and its partner or whether it will be used on other residential projects across the region.
- We understand that the delivery of Phase 1 of the development will result in the construction of circa 150,000 sq.ft of Grade ‘A’ office accommodation in two buildings referred to as A1 and A2 with associated quality public realm. The larger of the two buildings A1 measuring 89,591 sq.ft will be occupied by Council employees while the second building A2 measuring 58,176 sq.ft will be let on the open market to commercial occupiers. Work on site started in October 2021 and is anticipated to be completed in October 2023.
- The Council have guaranteed rent to Canada Life for 35 years. The Council is in discussion with a public sector body, who may become the anchor tenant for building A2.
- We requested details of the proposed accounting treatment for this arrangement, particularly with regard to the substance of the forward funding agreement and lease for building and the distribution of the £11m of remaining funding as ‘superprofit’. This has not been provided to us.

## Revised agreement

- We note that the Wirral Growth Company partnership has been reviewed and revised arrangements have been put in place for a number of reasons. This was reported to the Policy and Resources Committee in March 2022.
- We note that the company has made a substantial profit but it is unclear whether the profit made is due to over funding and whether it is distributable. The Council consider that the amount above the build and interest costs is not over funding but is part of the forward contract deal and price. The Council is currently seeking legal and financial advice in this area.
- The Council was successful at raising >£100m external funds through the Town Deal Future High Street fund and Levelling Up. At this point the Council engaged Deloitte UK LLP to review the Optimum Delivery Model and commissioned a Local Partnerships report to review the Councils needs in the context of WGC.
- The review established that instead of needing to sell off the land owned in viable parts of the borough to subsidise the development of Birkenhead, the Council could now use grant funding to contribute to the development costs.
- The LLP will continue to deliver the Birkenhead phase 1 offices currently on site with fees and profit sharing as previously agreed. The development surplus at completion (estimated at £11.725m) will then be shared between the Council and Muse. Based on the current programme completion is due to occur in November 2023.

## 3.3 Operational Governance – Wirral Growth Company LLP (Cont.)

- Officers therefore decided to wind back WGC to deliver only the Phase 1 piece of work. Negotiations with Muse Developments then took place and an agreement was reached, on the split of site profits, the superprofit, and sale proceeds of smaller sites. We have not seen the business case to determine whether this represents Value for Money to the Council, but it has been represented to us verbally as cost neutral and we understand it was approved by the Policy and Resources Committee, although we do not have evidence of such approval.

### Composition of the board

- The Board of the WGC is responsible for the management of the LLP accordance with the business plans to be approved by the Council and Muse. The Wirral Growth Company Board comprises of four representatives of the Council (currently 2 officers and 2 members) and four representatives of Muse.
- The Officer representation on the Board is;
  - Assistant Director of Finance;
  - Director of Children's Services.
- We understand that the Council is looking at altering this role to change the Director of Children's Services to someone with more experience of real estate and development. A report went into the Policy and Resources Committee in August and following Member discussion it was agreed that the CEO would be given discretion to reappoint the new Officer.
- The Member representation on the Board is;
  - Councillor Green (Conservatives)
  - Councillor Robinson (Labour)
- We note that there is only a light presence of Officers and limited input from Non-Executive Directors in a venture with such important ambitions for local regeneration.

### Council monitoring of business performance 2022/21 and 2021/22

- The Director of Regeneration, performs the role of the client officer on behalf of the Council. The Economy, Regeneration and Development Committee (ERDC) perform a primary role in monitoring the work carried out by the LLP. Members are consulted through this committee. All appraisals and site development plans (SDP) are scrutinised by the ERDC. Following this, any property acquisitions and disposals with a value exceeding £100,000 have to be considered by the Policy and Resources Committee.
- The Council's monitoring arrangements of the business plan and monthly financial updates are carried out by the Policy and Resources Committee, the parent committee of the Shareholder Board. This reflects the need for an enhanced level of scrutiny for acquisitions and disposals of land and buildings. However, the additional layer of governance appears to add significant time delays to decision making within the joint venture and the Council and Muse (the parent entities) may need to review the LLP's existing governance arrangements in order to expedite decisions.

## 3.3 Operational Governance – Wirral Growth Company LLP (Cont.)

### Council monitoring of business performance 2022/21 and 2021/22 (Cont.)

#### Conclusions

- Wirral Growth Company was originally set up as a vehicle to unlock the regeneration of Birkenhead through a strategic JV with Muse Developments. The establishment of the vehicle was framed around the commercial benefits that could be unlocked through input from both the Council and Muse.
- We can see clear evidence of Officer and Member involvement, both in the decision making of the running of the entity, as well as the decisions to get a third party review of the Growth Company. We note that WGC has operated without independent non-executives working to ensure that the anticipated regeneration goals are achieved. We have therefore concluded that the governance was not appropriate, although we acknowledge the other oversight mechanisms.
- We note that the Wirral Growth Company partnership has been reviewed and revised arrangements have been put in place for a number of reasons. This was reported to the Policy and Resources Committee in March 2022.
- We note that the company has made a substantial profit but it is unclear whether the profit made is due to over funding and whether it is distributable. The Council consider that the amount above the build and interest costs is not over funding but is part of the forward contract deal and price. The Council is currently seeking legal and financial advice in this area.
- We note that the Wirral Growth Company Birkenhead Commercial District Office Building project effectively received more forward funding than was needed to construct the offices. This funding along with other assets are to be distributed to the Council and its partner. Given that the Council has underwritten the lease on the office block (which enabled the over funding) it is not clear whether it is appropriate for it to recognise any profit from the arrangement. The Council consider that the amount above the build and interest costs is not over funding but is part of the forward contract deal and price. We also note that Advice is being sought on the exact timing of recognition and where in our accounts this is to be shown. We will review this advice when it is made available to us.
- We requested details of the proposed accounting treatment for this arrangement but the Council has yet to prepare an accounting paper.
- The Wirral Growth Company partnership arrangement will complete the Birkenhead Commercial District and Birkenhead market. Other planned projects will now be delivered by the Council due to the receipt of alternative grant funding but also due to high costs of delivery (due to the nature of the sites being redeveloped). We could not reach a conclusion on the revised arrangements and whether proper scrutiny was given to its value for money because our questions on this topic were not answered within the available timeframe.

## 3.3 Operational Governance – Wirral Growth Company LLP (Cont.)

Director	Post held	Experience
Muse Developments Limited	Partner	<ul style="list-style-type: none"> <li>Muse Developments Limited is declared to be 100% owned by Morgan Sindall Group PLC</li> </ul>
Wirral Borough Council	Partner	<ul style="list-style-type: none"> <li>Council</li> </ul>

### Evidence base

In this section we have used the following evidence base:

- List of Directors Wirral Growth Company LLP (Companies House)
- Please see p30 for a list of the Council nominated representatives in the Partnership

## 3.4 Operational Governance – Dormant companies

### Overview of Dormant entities

- There are two more commercial entities related to the Council, both of which are currently Dormant.
- Wirral Holdings Limited (WH) is a private company limited by shares and was incorporated on 4 May 2019. The company is a 100% subsidiary of Wirral Borough Council and there is one director who is an officer of the Council. We understand no meetings held as the company is currently dormant.
- From conversations with Officers, we understand that the company was set up as part of the Wirral Waters property deal for several hundred flats. It will be dormant for a period of 10 years before becoming operational as a landlord run entity for a provisional 50 year period. We have performed no further work on these arrangements.
- Wirral Growth Company Nominee Limited (WGCN) is a private company limited by shares and was incorporated on 14 May 2017. The company is a 100% subsidiary of Wirral Borough Council and there is one director who is an officer of the Council. We understand no meetings held as the company is currently dormant.
- We understand that there is currently no activity within each of the dormant entities and as such there is no formal governance in the form of performance reporting or meetings. From our conversations with Officers, we understand that the company was set up as a name holder to protect the name ‘Wirral Growth’.

### Evidence base

In this section we have used the following evidence base:

- 1.3.4 Wirral Growth Company Nominee Ltd- Articles of Incorporation
- 1.3.5 Wirral Holdings Ltd- Articles of Incorporation
- 2.4.1 Wirral Holdings Accounts 2021
- 2.5.1 Wirral Growth Nominee Accounts 2021
- 4.0 Meeting notes
- 5.0 Other reports



## **Section 4: Other investments**

# 4.1 Other Governance – Public Sector Social Impact Fund (PSSIF)

## Overview of PSSIF

- The Public Sector Social Impact Fund is an external fund established by Atlanta Wealth in late 2019 in partnership with Warrington Borough Council. Its aims to raise £300m to invest in solar and wind energy projects, social housing, forestry and special needs schools. From discussion with the Council, we understand that the fund currently has five local authority investors, including Wirral. Atlanta are still looking for further investment in the fund, both from Local Authorities and private sector entities.
- The Council have invested £10m into the fund which is a 10 year investment (possibly to extend for 2 years). This is roughly one quarter of the Council's total cash reserves of £40m. The total fund value is currently around £35m, meaning that Wirral represents c.29% of the total fund.
- The fund had an original timeline of two years to find investment opportunities. Progress has been slow in terms of investment with Atlanta being undercut on a number of opportunities. As at the date of this report Atlanta has made no investments and the fund money is held in UK corporate bonds until invested.
- The Council were approached by Atlanta wealth who presented to the Councils CEO, Director of Finance and the Senior Finance Manager. The Council subsequently commissioned a number of due diligence reports from external advisors to review the proposal. Under the delegated authority of S151 officer (Director of Finance) the Council used their Treasury Management Policy to invest in the fund. We were not able to determine how investments made are communicated through Council's governance bodies.

## Council monitoring of business performance 2022/21 and 2021/22

- The Council reports the fund based on its fair value in their accounts. The investment into the fund is reported into the Policy and Resources committee as part of the treasury reports.
- We understand that the Council receive a quarterly report back from fund manager. They have not been invited to sit on the fund committee and as such have no input as to the investment decisions of the fund. They also have limited control over how investments are made by the fund manager. It was noted that there is some LA representation from Warrington.
- The Council's Senior Finance Manager will be meeting with the fund manager in the weeks following this report and will report this conversation back to the Policy and Resources committee.
- Divesting from the fund is not possible with the £10m being exposed to upside and downside risk for the full 10 year period.

## Conclusion

- The fund had an original timeline of two years to find investment opportunities. Progress has been slow in terms of investment with Atlanta being undercut on a number of opportunities. Covid-19 also impacted on the investment opportunities and ability to undertake necessary due diligence processes on investments. As at the date of this report Atlanta have made no investments and the fund money is held in UK corporate bonds until invested.
- The Council appears to have limited control over how investments are made by the fund manager, which may lead to additional risk to the Council's monies. Discussions with officers indicate that they are satisfied that the fund is run by suitably experienced and qualified fund managers. The fund also has an investment advisory committee made up of 8 members with 2/3 representatives from local government. The Council is not represented on this committee (although it was invited to sit on the committee).
- We note that the Council cannot exit the fund until 2032. Given the Council's uncertain financial position it is not clear that this was an appropriate investment and the Council will need to monitor its success closely.

### Evidence base

In this section we have used the following evidence base:

- 4.0 Meeting notes
- 5.0 Other reports
- 6.5.1 PSSIF Slide Member Investment Risk Workshop 220208
- 6.5.2 Treasury Management Strategy 202122
- 6.5.3 Treasury Management Strategy Report 19-20 (Cabinet)

## 4.2 Operational Governance – North West Mutual Bank

### Overview of decision not to invest in a Joint Community Bank

- The Council was previously considering investing in a joint community bank in collaboration with Preston and Liverpool as a mutual.
- The Council, having applied for exceptional financial support, received a capitalisation directive for 2020/21 and received an offer for 2021/22 subject to an external assurance review focusing on its financial position and on its ability, including the strength of its governance arrangements, to deliver its plans for medium-term sustainability.
- There were two reports commissioned;
  - “External Assurance Review – Governance Wirral Metropolitan Borough Council” by Ada Burns in September 2021
  - “Local Government Finance Review – Wirral Council” by CIPFA in November 2021
- Taken from external Governance Review by Ada Burns we can see recommendations for the Council not to go ahead with the Community Bank. “For example, Officers have invested time in exploring at the request of Members a Community Investment Bond idea, and there is a commitment to support the development of a Mutual Bank for Wirral. While both ideas undoubtedly fit with the ambitions in the Wirral Plan, they are risky, will not contribute to the immediate challenge the Council faces, and will consume Officer time in a service area where capacity is said to be very thin. One would expect Officers to give very clear advice to Members that these and other new initiatives should be deferred for any further consideration until finances are on a stable and sustainable footing. This has not been observed.”
- There was a Policy and resources Committee meeting on 30 November 2021 to look at the external review. We note that the CIPFA report was an appendix to that meeting. This covered the recommendations in response to the letter from the government minister and emphasised the financial recovery plan the Council is implementing.
- The Council responded to the reports with an action plan, and following a review of these reports the Council decided not to move forward with a joint community bank.
- We also note that there is evidence of the Community Bank being on the capital report which was presented to members at the Policy and Resources Committee. We can see that the Bank has been removed from Capital Report which will be presented back to members on 15 February 2022 where the investment was removed. The investment will not be presented back again.

### Conclusion

- We can see clear evidence of appropriate governance surrounding the decision not to invest in the Community Bank, both from Officers and Members within the Council. We can also see evidence that the Council are actively trying to improve the governance of its commercial entities and gain control over their financial plan.
- The Council should continue to focus on its internal capacity, with Officer time being spent on primary matters instead of the projects which may be considered nice to have.

### Evidence base

In this section we have used the following evidence base:

- 4.0 Meeting notes
- 5.0 Other reports
- 6.4.1 CAPITAL MONITORING QUARTER 2 202122
- 6.4.2 CAPITAL MONITORING QUARTER 3 202122
- 6.4.3 Ministerial External Assurance Review
- 6.4.4 Printed minutes 30112021 1800 Policy and Resources Committee

## 4.2 Operational Governance – Wirral Waters

### Overview of decision to approve the Full Business Case for Wirral Waters One/Legacy Development

- Wirral Waters One/Legacy Development is a project to build 500 apartments across Wirral Waters to rent out. There is no Council subsidiary involved in the development and the Council's role is one of lessor and lessee.
- The rationale behind the project is to develop brownfield sites to build homes for the Wirral residents, aligned with the governments house-building targets. The developer is Peel Land and Property who have secured forward funding from Pensions Investments Corporation (PIC).
- The head-lease to be granted by Peel Holdings Land and Property (UK) Limited to Peel Legacy (Wirral Waters) Limited is to be assigned for 250 years to PIC. The Council will then take an underlease of the 500 apartments and pay a fixed rent and service charge fee to Peel Legacy for the first 50 years. The agreement gives the Council the option to hold 350 units for the remainder of the head lease after 50 years.
- The Council will grant a sub-underlease to a Peel Management Company who will manage the apartments for years 0-10 and take on the Council's rental obligations. A Peel company of substance will provide a guarantee of the Company's rent payments to the Council. From Years 11-50 the commercial risks will be transferred to the Council with the Council's Management Company being responsible for letting out the properties, managing the apartments and for securing the rental payments for the Council. The commercial risk the Council will be exposed to during years 11-50 will be capped at £2,556,000 per annum, which represents a worst-case scenario of all apartments being left vacant ("void risk").
- We note that there is no service charge amount defined in the agreement, and this may represent an additional cost to the Council covering the activities of being a managing agent, currently undertaken by Peel Management Company.
- There is evidence of Member engagement in seeking approval of the Business Case. It is important to note that the decision to approve the business case was performed prior to the changes in the decision-making process and such there are no committee approval steps involved in this process. Members were engaged on the following dates:
  - 26 February 2018. Cabinet considered and approved a proposal to progress the development of the Wirral Waters One project.
  - 1 October 2018. Business Case and Report issued to the Cabinet for premeeting reading.
  - 10 October 2018. Business Case approved.
  - 2 August 2019. Conditional Lease Agreement approved.
  - 20 January 2022. Main contractor approved.
- The Members provided challenge in the decision, examining multiple scenarios and the commerciality of each to ensure viability. The report which described the opportunities, risks of the project and the implications for the council, was issued in a timely manner to allow for the Members to make an informed decision.

### Evidence base

In this section we have used the following evidence base:

- 6.6.1 Wirral Waters One Cabinet Report
- 6.6.2 Wirral Waters-Legacy-Timeline
- 6.6.3 Wirral Waters One - Members Questions
- 6.6.4 Exempt Appendix 2 Agreement for Lease
- 6.6.5 Wirral Waters One - Legacy Project Cabinet Report Final
- 6.6.6 Decision - Wirral Waters One, Legacy Project \_ Wirral Council

## 4.2 Operational Governance – Wirral Waters

### Accounting arrangements

The accounting arrangements for the investment, leases and guarantee were not agreed prior to entering into the agreement. The Council should resolve this matter as soon as practicable. From our initial assessment:

- The Council will need to consider the substance of the lease and whether SIC27 Evaluating the Substance of Transactions in the Legal Form of a Lease applies
- we would expect the council to assess the risk of the guaranteed being activated on an annual basis and determine whether a charge should be made to the general fund.

### Conclusion

- There was scrutiny in making the decision to approve the Full Business Case.
- The accounting for the arrangement should be confirmed to ensure that arrangement does not create assets or liabilities for the Council.
- The potential liability to the Council if the project is unsuccessful is c£100m. Due to the material risk to the Council from years 11-50 we recommend that the project is closely monitored to ensure the development remains attractive to prospective tenants at least up until the point of handover.

### Evidence base

In this section we have used the following evidence base:

- 6.6.1 Wirral Waters One Cabinet Report
- 6.6.2 Wirral Waters-Legacy-Timeline
- 6.6.3 Wirral Waters One - Members Questions
- 6.6.4 Exempt Appendix 2 Agreement for Lease
- 6.6.5 Wirral Waters One - Legacy Project Cabinet Report Final
- 6.6.6 Decision - Wirral Waters One, Legacy Project \_ Wirral Council

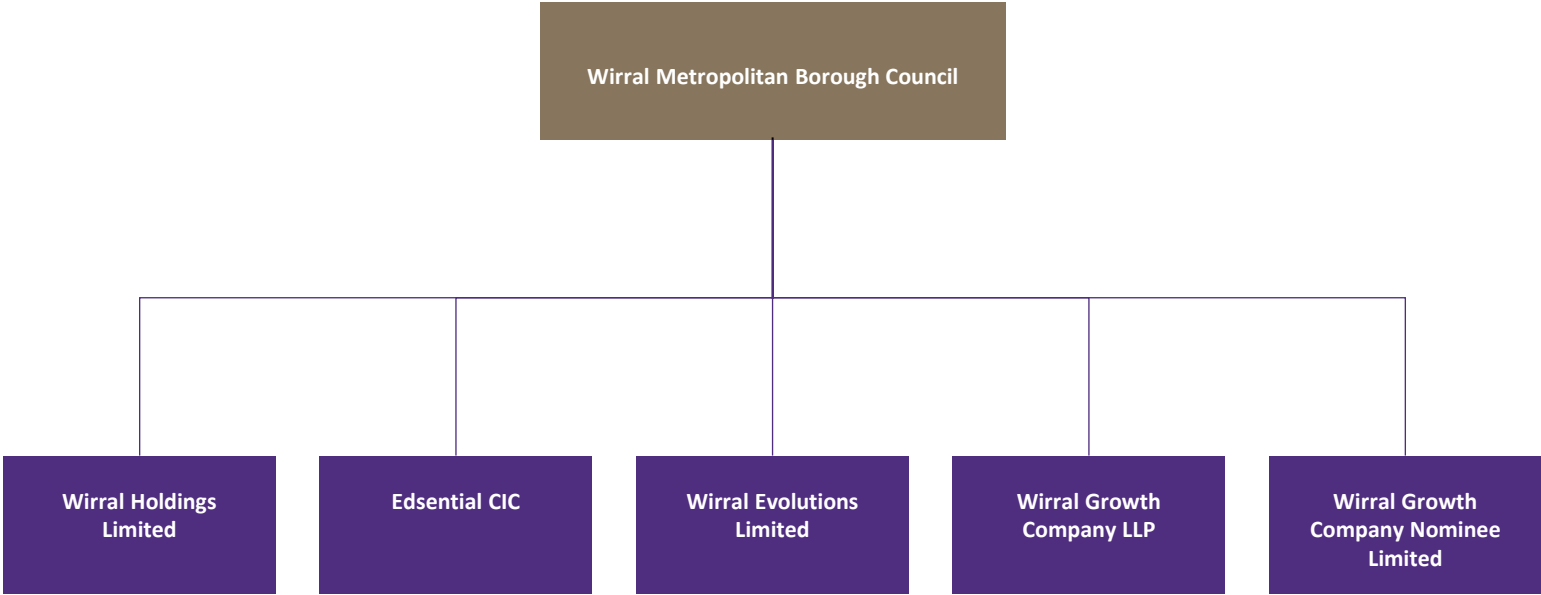
# **Section 5: Appendices**

# Appendix A - Glossary of terms

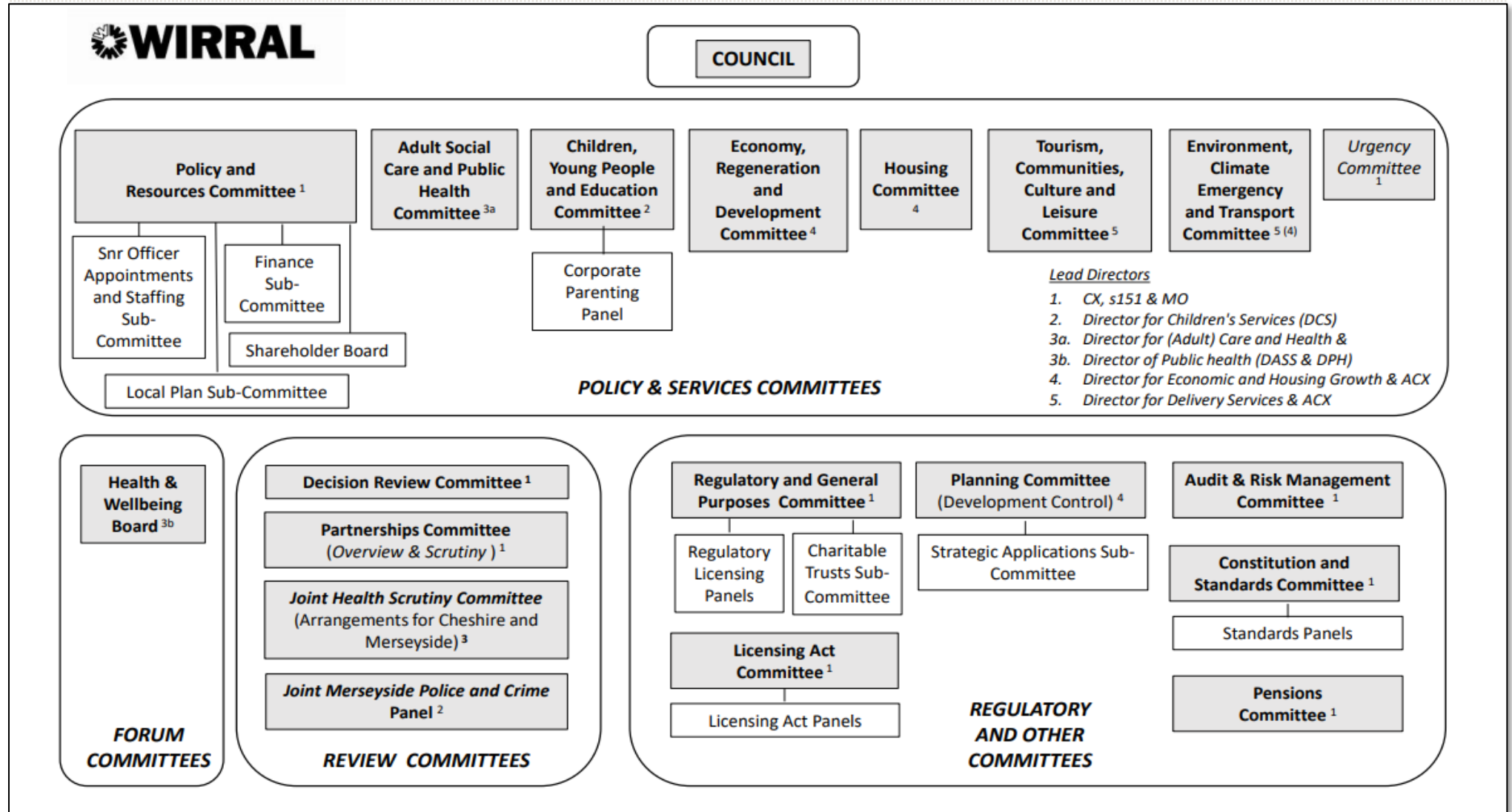
General terms	
Chartered Institute of Public Finance and Accountancy	CIPFA
Department for Levelling Up, Housing and Communities	DLUHC
Edsential Community Interest Company	Edsential, or; ECIC
GBP	British Pound Sterling
LLP	Limited Liability Partnership
Local Authority Trading Company	LATCo
Members	Elected members of the Council
Muse Developments Limited	Muse
Officers	Employees of the Council
Public Sector Social Impact Fund	PSSIF
Wirral Evolutions Limited	WEL
Wirral Growth Company LLP	Wirral Growth, WGC or; WGC
Wirral Growth Company Nominee Limited	WGCNL
Wirral Holdings Limited	WHL
Wirral Metropolitan Borough Council	the Council, WBC, or; Wirral



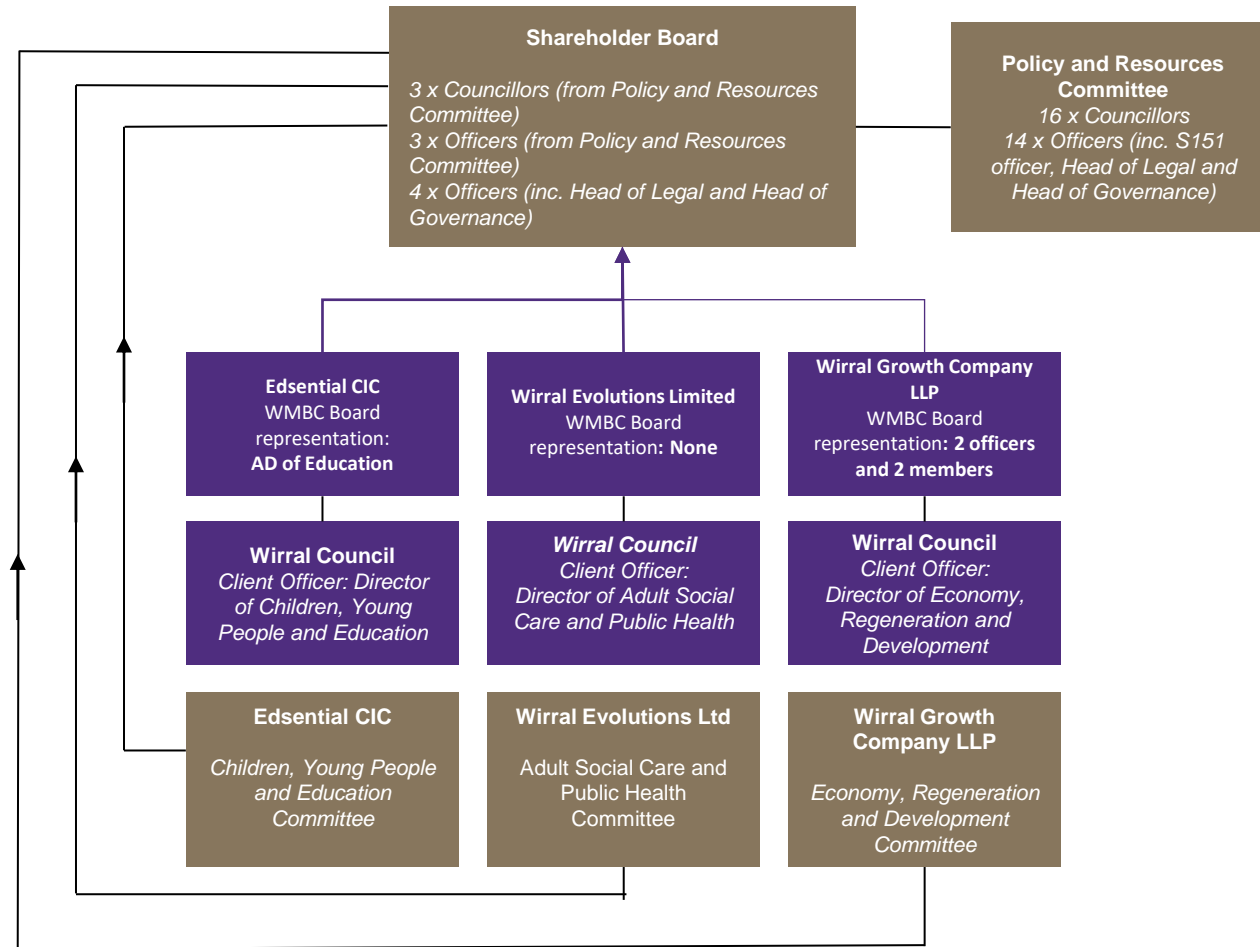
# Appendix B – Current legal structure subsidiary companies



# Appendix C – Wirral Council committees



# Appendix D – Current Governance Structure



# Appendix E – Financial Context

£ '000	Edsential Community Interest Company (ECIC)	Wirral Evolutions Limited (WEL)	Wirral Growth Company LLP (WGC)
<b>Principal activities</b>	Edsential provides services to the Education sector, supporting schools in four core areas; Health and Wellbeing, Leadership & Management, Teaching & Learning, and Aspiration &	The company provides personalised Day Services and experiences for adults with a wide range of learning and physical disabilities. It operates as Teckel company, with 95% of its services provided to the Council.	The company was set up to deliver the long-term vision for regeneration, which benefits communities across the borough.
<b>Year End</b>	31 May 2021	31 May 2021	31 December 2020
<b>Turnover</b>	10,144	N/A	Nil
<b>Gross Profit</b>	(2,410)	N/A	Nil
<b>Net profit/(loss) (after Tax)</b>	(2,132)	N/A – Movement in reserves is £130k (assuming that's just profit)	(65)
<b>Total comp. income for the year</b>	(7,407) (due to actuarial loss on defined benefit schemes)	N/A	(122)
<b>Cash at bank</b>	1,626	1,424	84
<b>Total assets (inc. Cash)</b>	4,707	1,676	3,366
<b>Current liabilities</b>	(4,110)	(1,697)	(621)
<b>Net current assets/(liabilities)</b>	275	(22)	2,745
<b>Non current liabilities (inc. Pension)</b>	(11,904)	Nil	Nil
<b>Net Assets/ (Liabilities)</b>	(11,337)	(22)	2,745
<b>Notes</b>	Negative balance sheet.  Company was materially impacted by Covid-19 with residential service being closed  Shareholders agreed to support the company for at least 12 months from the 16/12/2021	Negative balance sheet.  Strong cash balance may offset potential losses	Positive balance sheet.  Large stocks of development work in progress and a small cash balance.  Not currently revenue generating

From Statement of Accounts, for latest available year end. Figures are in £'000s.

# Appendix E – Financial Context (Cont.)

£ '000	Wirral Holdings Limited	Wirral Growth Company Nominee Limited
Principal activities	Wirral Holdings was set up as part of a property deal for several hundred flats funded by the pension fund. It will be dormant for a period of 10 years before becoming operational as a landlord run entity for a provisional 50 year period.	The company was set up as a name holder to protect the name 'Wirral Growth'.  This entity is Dormant
Year End	31 May 2021	31 May 2021
Turnover	N/A	N/A
Gross Profit	N/A	N/A
Net profit/(loss) (after Tax)	N/A	N/A
Total comp. income for the year	N/A	N/A
Cash at bank	N/A	N/A
Total assets (inc. Cash)	N/A	N/A
Current liabilities	N/A	N/A
Net current assets/(liabilities)	N/A	N/A
Non current liabilities (inc. Pension)	N/A	N/A
Net Assets/ (Liabilities)	N/A	N/A
Notes	This entity is Dormant	This entity is Dormant

From Statement of Accounts, for latest available year end. Figures are in £'000s.

# Appendix F – Source information

1.0 Information received
1.1 Committee structure
1.1.1 Committee System Structure V9
1.1.2 Company information matrix for auditors (003) Draft
1.2 Wirral Accounts
1.2.1 Wirral Council Draft Statement of Accounts 2020-21 (1)
1.2.2 Group Company Summary Accounts 2020-21
1.3 Articles of association
1.3.1 Edsential CIC- Articles of Incorporation
1.3.2 Wirral Evolutions Ltd- Articles of Incorporation
1.3.3 Wirral Growth Company LLP- Articles of Incorporation
1.3.4 Wirral Growth Company Nominee Ltd- Articles of Incorporation
1.3.5 Wirral Holdings Ltd- Articles of Incorporation
1.4 Shareholder Agreements
1.4.1 Edsential CIC- Shareholder Agreement
1.5 Wirral Strategy
1.5.1 Wirral Council Commercial Strategy
1.5.2 Wirral Investment Strategy - May 2015
1.6 Business Plans
1.6.1 Wirral Evolutions- Draft Business Plan
1.6.2 Wirral Growth Company
1.7 Risk Management
1.7.1 Corporate Risk Management Update
1.7.2 Public reports pack (Risk Register in Appendix 1)
1.8 Accounts
1.8.1 Wirral Evolutions Ltd- Annual Report
1.8.2 Wirral Evolutions Ltd- Summary of financial statement (page 85)
1.9 Existing Board
1.9.1 Wirral Evolutions Ltd- Annual Report
1.9.2 Wirral Evolutions Ltd- Summary of financial statement (page 85)
2.0 Companies House Documents
2.1 Edsential
2.1.1 Edsential CIC Accounts 2021
2.2 Wirral Evolutions
2.2.1 Wirral Evolutions Accounts 2021
2.3 Wirral Growth
2.3.1 Wirral Growth Accounts 2020
2.4 Wirral Holdings
2.4.1 Wirral Holdings Accounts 2021
2.5 Wirral Growth Nominee
2.5.1 Wirral Growth Nominee Accounts 2021

3.0 Online resources
3.1 Meeting minutes - Edsential
3.1.1 Printed minutes 13092021 1800 Children Young People Education Committee
3.2 Meeting minutes - Wirral Evolutions
3.2.1 Printed minutes 18012021 1800 Adult Social Care and Public Health Committee
3.2.2 Printed minutes 02032021 1800 Adult Social Care and Public Health Committee
3.2.3 Printed minutes 07062021 1800 Adult Social Care and Public Health Committee
3.2.4 Printed minutes 16112021 1800 Adult Social Care and Public Health Committee
3.2.5 Printed minutes 23092021 1800 Adult Social Care and Public Health Committee
3.3 Meeting minutes - Wirral Growth
3.3.1 Printed minutes 26072021 1800 Economy Regeneration Development Committee
3.3.2 Printed minutes 26102021 1800 Economy Regeneration Development Committee
3.3.3 Public reports pack 26012022 1800 Economy Regeneration Development Committee
3.4 Meeting minutes - Shareholder Board
3.4.1 Printed minutes 01072021 1500 Shareholder Board
3.4.2 Printed minutes 01092021 0930 Shareholder Board
3.4.3 Printed minutes 28102021 1000 Shareholder Board
4.0 Meeting notes
4.1 David Shaw notes
4.1.1 Alan Evans (01.02.2022)
4.1.2 PSSIF and Bank
4.1.3 Wirral meeting 14.12.2021
4.2 Robert Shaw notes
4.2.1 Wirral Council 11.10.2021
4.2.2 Wirral Council 24.11.2021
4.2.3 Wirral Council 14.12.2021
4.2.4 Wirral Council 10.01.2022
4.2.5 Wirral Council 01.02.2022
4.2.6 Wirral Council 07.02.2022

# Appendix F – Source information (Cont.)

5.0 Other reports	
	5.1 Local_Partnerships_Local-authority_company_review_guidance_v1
	5.0.2 CIPFA_Report_Wirral
	5.0.3 Governance_review_Wirral_Metropolitan_Borough_Council
	5.0.4 Struggling council drops proposal to create community bank _ Public Finance
6.0 Information received by Email	Directors questions - Peter Molyneux Input
6.1 Edsential	
	6.1.1 21.0 - Directors questions - Edsential (002)
	6.1.2 Referral from Shareholder Board - Edsential Request for Funding
	6.1.3 School Traded Services Separate Legal Entity
	6.1.4 Schools Traded Services Joint Venture Known as Edsential
6.2 Wirral Evolutions	
	6.2.1 22.0 - Directors questions - Wirral Evolutions
	6.2.1 22.0 - Directors questions - Wirral Evolutions
	6.2.3 REVIEW OF DAY SERVICES CONTRACT FOR PEOPLE WITH A LEARNING DISABILITY DELIVERED BY WIRRAL EVOLUTIONS
	6.2.4 Review of Day Services WE 230921
	6.2.5 WE SHAREHOLDER AGREEMENT`
	6.2.6 Wirral Evolutions Workshop 211203 PMc
	6.2.7 Wirral Evolutions workshop agenda 3 December
	6.2.8 WIRRAL EVOLUTIONS
6.3 Wirral Growth	
	6.3.1 20.0 - Directors questions - Wirral Growth Company
	6.3.2 Delivering Wirrals Growth Report Cab 19 June 2017
	6.3.3 In confidence
	6.3.4 wbc wgc partnership agreement (002)
	6.3.5 WGC Recommendations
	6.3.6 WGC Review 9.7.21
	6.3.7 WGC Timeline for External Auditor: BEST VALUE REVIEW Feb 22
6.4 Bank	
	6.4.1 CAPITAL MONITORING- QUARTER 2 202122
	6.4.2 CAPITAL MONITORING- QUARTER 3 202122
	6.4.3 Ministerial External Assurance Review
	6.4.4 Printed minutes 30112021 1800 Policy and Resources Committee
6.5 PSSIF	
	6.5.1 PSSIF Slide Member Investment Risk Workshop 220208
	6.5.2 Treasury Management Strategy 202122
	6.5.3 Treasury Management Strategy Report 19-20 (Cabinet)
6.6 Wirral Waters	
	6.6.1 Wirral Waters One Cabinet Report
	6.6.2 Wirral Waters-Legacy-Timeline
	6.6.3 Wirral Waters One - Members Questions
	6.6.4 Exempt Appendix 2 Agreement for Lease
	6.6.5 Wirral Waters One - Legacy Project Cabinet Report Final
	6.6.6 Decision - Wirral Waters One, Legacy Project _ Wirral Council





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