



Shareholder Board

Date:	Thursday, 21 March 2024
Time:	4.00 p.m.
Venue:	Committee Room 1 - Birkenhead Town Hall

Contact Officer: Anna Perrett
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Please note that public seating is limited therefore members of the public are encouraged to arrive in good time.

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This meeting will be webcast at
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AGENDA

- 1. WELCOME AND INTRODUCTION**
- 2. APOLOGIES**
- 3. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members are asked to consider whether they have any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

- 4. MINUTES (Pages 1 - 4)**

To approve the accuracy of the minutes of the meeting held on 25 March 2022.

5. PUBLIC AND MEMBER QUESTIONS

5.1 Public Questions

Notice of question to be given in writing or by email by 12 noon, 18 March 2024 to the Council's Monitoring Officer via this link: [Public Question Form](#) and to be dealt with in accordance with Standing Order 10.

For more information on how your personal information will be used, please see this link: [Document Data Protection Protocol for Public Speakers at Committees | Wirral Council](#)

Please telephone the Committee Services Officer if you have not received an acknowledgement of your question by the deadline for submission.

5.2 Statements and Petitions

Notice of representations to be given in writing or by email by 12 noon, 18 March 2024 to the Council's Monitoring Officer (committeeservices@wirral.gov.uk) and to be dealt with in accordance with Standing Order 11.1.

Petitions may be presented to the Committee if provided to Democratic and Member Services no later than 10 working days before the meeting, at the discretion of the Chair. The person presenting the petition will be allowed to address the meeting briefly (not exceeding three minute) to outline the aims of the petition. The Chair will refer the matter to another appropriate body of the Council within whose terms of reference it falls without discussion, unless a relevant item appears elsewhere on the Agenda. If a petition contains more than 5,000 signatures, it will be debated at a subsequent meeting of Council for up to 15 minutes, at the discretion of the Mayor. Please telephone the Committee Services Officer if you have not received an acknowledgement of your statement/petition by the deadline for submission.

5.3 Questions by Members

Questions by Members to be dealt with in accordance with Standing Orders 12.3 to 12.8

- 6. DRAFT ESENTIAL BOARD COMPOSITION AND NON-EXECUTIVE DIRECTOR SUCCESSION PLANNING REPORT (Pages 5 - 18)**
- 7. ESENTIAL DRAFT ANNUAL BUSINESS PLAN REVIEW (Pages 19 - 24)**
- 8. EXEMPT ITEMS - EXCLUSION OF THE PRESS AND PUBLIC**

RECOMMENDATION: That, under section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business on the grounds that they involve the likely disclosure of exempt information as defined by paragraph 3 of Part I of Schedule 12A (as amended) to that Act. The Public Interest test has been applied and favours exclusion.

9. ANNUAL BUSINESS PLAN APPENDICES (Pages 25 - 58)

Shareholder Board Terms of Reference

The terms of reference for this sub-committee can be found at the end of this agenda.

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SHAREHOLDER BOARD

Friday, 25 March 2022

Present: Councillors J Williamson (Chair)
Y Nolan
M Jordan (in place of J Green)

7 WELCOME AND INTRODUCTION

The Chair welcomed everyone to the meeting of the Shareholder Board.

8 APOLOGIES

The Chair confirmed that apologies had been received from Councillor Jeff Green and that Councillor Mary Jordan was deputising.

9 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

No such declarations were made.

10 PUBLIC AND MEMBER QUESTIONS

There were no questions, statements or petitions from the public or Members.

11 WIRRAL EVOLUTIONS LIMITED - CONTRACT TERMINATION

The Head of Legal Services introduced a report that noted that Wirral Council had conducted a Value for Money Review of the services provided by Wirral Evolutions Limited (the 'Company') and the review was presented to the Council's Adult Social Care and Public Health Committee on 3 March 2022.

The Adult Social Care and Public Health Committee approved the transition of the services supplied by the Company to the Council by 30 September 2022 and recommended to the Shareholder Board that the Director of Law and Governance be authorised to progress the necessary steps to transfer the Company's undertaking to the Council, including the cancellation of the current contract with the Company and to consider all appropriate options for the future deployment or disposal of the Company.

The Chair noted that the report stated in paragraph 8.1; that "The directors and senior employees of the Company had an opportunity to comment on the content of this report prior to publication". A written copy of the report was not available to the Company before publication as time and circumstances did not permit, however the content of the report had been discussed with the

Company prior to publication and changes to the report were made as a consequence of representations from the Managing Director.

On a motion by the Chair, seconded by Councillor Yvonne Nolan it was –

Resolved – That:

- (1) The decision of the Adult Social Care and Health Committee in relation to the matter of the Wirral Evolutions Limited Value Review Report as summarised at paragraph 3.2 of the report be noted; and**
- (2) The Director of Law and Governance be authorised to progress the necessary steps to transfer the Company’s undertaking to the Council, including the cancellation of the current contract with the Company and to consider all appropriate options for the future deployment or disposal of the Company.**

12 ESENTIAL CIC ANNUAL BUSINESS PLANS FOR 2021-22 AND 2022-23

The Head of Legal Services introduced a report that sought approval to waive the requirement under the Shareholders Agreement for Edsential CIC (‘the Company’) to deliver a Business Plan for 2021 – 2022 due to service delivery being substantially altered by the lockdown imposed by Government in response to the COVID-19 pandemic. This made the following the Draft Annual Business Plan for 2021 – 2022 impracticable. The report also sought approval of the Annual Business Plan for 2022 – 2023, as required by the Shareholders Agreement.

The Chair of Edsential CIC, Mark Parkinson and the Company’s Managing Director, Ian McGrady attended the meeting and spoke to the Annual Business Plan for 2022 – 2023.

During the course of the debate on this item, Councillor Yvonne Nolan indicated that she would like to ask a question on the information held within the exempt Appendix 1 to this report, and on a motion by the Chair, seconded by Councillor Yvonne Nolan, it was then –

Resolved – That, under section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined by paragraph 3 of Part I of Schedule 12A (as amended) to that Act. The Public Interest test has been applied and favours exclusion.

Members asked questions of the representatives of the Company and discussed the facilities available to Wirral children and to children with special needs.

On a motion by the Chair and seconded by Councillor Mary Jordan, it was –

Resolved – That:

- (1) The obligation of Edsentials CIC under the Shareholders Agreement to submit an Annual Business Plan for 2021-2022 be waived; and**
- (2) The Annual Business Plan for 2022-2023 presented by Edsential CIC in accordance with the requirements of the Shareholders Agreement be approved.**
- (3) The exempt appendices to the Edsential CIC Annual Business Plans for 2021-22 and 2022-23 report, be noted.**

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SHAREHOLDER BOARD

21 MARCH 2024

REPORT TITLE:	EDSENTIAL BOARD COMPOSITION AND NON-EXECUTIVE DIRECTOR SUCCESSION PLANNING
REPORT OF:	DIRECTOR OF LAW AND CORPORATE SERVICES

REPORT SUMMARY

This report sets out the proposals made by Edsential CIC (“Edsential”) for the alignment of the composition of its board with the provisions of the Shareholder Agreement, the rotation of non-executive directors of the company and the future strengthening of its board to more accurately reflect the sectors served by it.

This supports the,

- Early Help for Children and Families;
- Promoting Independence and Healthier Lives;
- Protect our Environment; and
- Safe, Resilient and Engaged Communities

Themes set out in Wirral Working Together – a Council Plan for 2023 - 2027.

This matter affects all wards within the Borough.

This matter is not a Key Decision.

RECOMMENDATION/S

Shareholder Board is recommended to authorise: -

- (1) the board of the Edsential to
 - (a) implement the changes to the composition of its board set out in paragraph 3.9 of this report; and
 - (b) adopt, so far as is practicable, the proposals to rotate, replace and appoint its directors of the company as summarised at paragraph 3.10 of this report;

(2) the Director of Law and Corporate Services to progress all necessary steps to settle and perfect a document reflecting the agreed changes so as to amend the terms of the relevant Shareholder Agreement made between the Council, Cheshire West and Chester Council and Edsential

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The minor variations to the terms of the Shareholder Agreement sought by the Edsential as set out in this report will establish conformity between the current composition of the board and the composition as set out in the Shareholder Agreement and a clear and accepted path to the cyclical refreshing of the board.
- 1.2 The proposals set out in in the attached report have already been accepted by Cheshire West and Chester Council (“CWAC”).
- 1.3 The requirement for any appointment of a director to the board of the company for whatever reason to be unanimously approved by both shareholders of the company remains unchanged and any future appointment will require formal approval of both CWAC and the council as a reserved matter under the Shareholder Agreement.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The proposals set out in the report attached are considered to be reasonable, appropriate, relevant and practical. The option of rejecting some or all of the proposals has been disregarded as doing so would merely perpetuate the anomalies that have arisen and would be contrary to the interests of good governance.

3.0 BACKGROUND INFORMATION

- 3.1 The Council and CWAC established Edsential in April 2015 as a private company limited by shares with Wirral Council and CWAC as joint equal shareholders. Revised Articles, appropriate for a Community Interest Company, were adopted in October 2015.
- 3.2 The company delivers a range of services including catering, cleaning, and residential education opportunities, to support educational establishments locally and to a limited extent more broadly.
- 3.3 A shareholder agreement was agreed when the company was established which sets out how the parties have agreed to manage the affairs of the Company.
- 3.4 The Council and CWAC each own half of the shares in this company. Both shareholders entered into a shareholder agreement (Shareholder Agreement) with the company when the company was first established.

- 3.5 The Shareholder Agreement sets out a number of provisions to regulate the internal and external governance arrangement of the company, including, the composition of its board of directors.
- 3.6 The Shareholder Board discharges the shareholder function of the Council in accordance with the Council’s Constitution.
- 3.7 When the company was originally set up, its board was not established as set out in the Shareholder Agreement. Whilst the shareholders have both accepted and sanctioned this position, to date, it is good practice to ensure that the composition of the board is the same in practice as it is set in the Shareholder Agreement.
- 3.8 As a consequence of the operational difficulties engendered by the COVID-19 and the challenges faced by the company as a consequence of the cost of living crisis it was considered that the continuity of the Board with non-executive directors with their skills, experience and understanding of the needs of the company alongside the needs of customers, justified the suspension of the arrangements, set out in the Shareholder Agreement, for the periodic rotation of the non-executive directors of the company.
- 3.9 Edsential has prepared a report to its shareholders set out as Appendix 1 headed “Edsential Board Composition and Non-Executive Director Succession Planning”. Within the report it sets out proposals for the revision of the Shareholders Agreements so that
- (1) the Board shall consist of the following Directors, each of whom shall be agreed jointly by the Shareholders (acting by a majority):

Executive Directors	between 1 and 3	who shall not be employed by, or an elected member of, any Shareholder;
Non-Executive Directors	2 (in total)	one such Non-Executive Director being employed by CWAC and one being employed by the Council
Non-Executive Directors	4	who shall be head or deputy head teachers, drawn from primary, secondary and special schools and employed as such in the administrative area of each of the Shareholders

Non-Executive Director	1	who shall be the CEO, Chair or equivalent of an Academy Trust and employed as such in the administrative area of each of the Shareholders
Non-Executive Director	1	who shall be drawn from the Independent School Sector with recent and relevant skills and experience as a head teacher, deputy head teacher or business/finance manager
Non-Executive Director	1	who shall be a governor of a school located in the administrative area of each of the Shareholders and not be employed by, or an elected member of, a Shareholder, or a head or deputy head teacher
Chair of the Board	1	Who shall be a Non-Executive Director with recent and relevant skills and experience within the administrative area of each of the Shareholders. They should not be a currently serving head or deputy head teacher, or employed by, or an elected member of, any Shareholder

(2) the Non-Executive Directors shall have suitable experience and skills to provide independent challenge and input into the Board decisions.

3.10 Edsential within the above report has also proposed that its Articles of Association be amended so that

- One-third of the Non-Executive Directors appointed from time to time, or if their number is not three or a multiple of three, the number nearest to one-third,

shall retire from office at each annual general meeting. These provisions shall apply with effect from the second annual general meeting; and

- The Non-Executive Directors required to retire by rotation shall be those Non-Executive Directors who have been the longest in office since their last appointment. If any two or more Non-Executive Directors became or were appointed Non-Executive Directors on the same day, those required to retire by rotation shall (unless they otherwise agree among themselves) be determined by random selection in such manner as is determined by the shareholders acting by a majority.

3.11 The proposals do not require any modification to the provisions regulating the appointment of directors. The current arrangements are that, in the event of a vacancy, the company will undertake a recruitment process and present a preferred candidate to the shareholders for approval. Only when such approval has been received may a new director be appointed by the company.

3.12 It is recommended that the above proposals be endorsed by the Shareholder Board in the interests of transparency, good management and governance of Edsential.

4.0 FINANCIAL IMPLICATIONS

4.1 The positions of non-executive director are not remunerated, and the matters set out in this report impose no financial burden on the Council.

5.0 LEGAL IMPLICATIONS

5.1 Edsential CIC was established with the appropriate Certificate of Incorporation for a Private Limited Company with associated articles in April 2015.

5.2 The shareholder agreement was agreed and entered into on the 1st December 2015.

5.3 The activities of the Company as a trading vehicle of the Council are governed by various legislative provisions including the Local Authorities (Goods and Services) Act 1970, the Local Government Act 1999, the Local Government Act 2003 and the Localism Act 2011.

5.4 The company, CWAC and the Council are parties to the Shareholder Agreement which requires, as a 'reserved matter' and as far as lawfully possible, that the company does not appoint or remove directors without consent of the shareholder.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no direct implications to staffing, ICT or Assets.

7.0 RELEVANT RISKS

7.1 The Council as one of the shareholders has an obligation to ensure that the company is run in an appropriate fashion. Making the adjustments recommended in this report will mitigate against this risk.

7.2 There is a risk that any officer appointed to serve as a director of the company may be challenged for an act or omission causing loss to a third party or the shareholder. This risk is effectively mitigated by the dormant status of the company and by the indemnity offered by the Council to cover actions taken honestly and in good faith by council officers under the Local Authorities (Indemnities for Members and Officers) Order 2004

8.0 ENGAGEMENT/CONSULTATION

8.1 The proposals set out in this report has been discussed with the company and the other shareholder in the company. It does not concern any third parties.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help Council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

9.2 There are no direct equality implications.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment and climate implications.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 There are no community wealth implications.

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APPENDIX

Appendix 1- Edsential Board Composition and Non-Executive Director Succession Planning

BACKGROUND PAPERS

Edsential Shareholder Agreement

Local Authorities (Indemnities for Members and Officers) Order 2004

Companies Act 2006

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
None	

Edsential Board Composition and Non-Executive Director Succession Planning

1. The arrangements for the composition of the Board of Edsential and the retirement and replacement of NEDs are set out in:
 - The Articles of Association (dated October 2015)
 - The Shareholders' Agreement (dated December 2015)

Composition of the Board

2. Sections 6.1 to 6.3 of the Shareholders' Agreement set out the role of the Shareholders in the appointment, removal, and indemnification of company directors.
3. Section 6.4 sets out the composition of the Board, as follows:

6.4	The Shareholders agree that the Board shall consist of the following Directors, each of whom shall be agreed jointly by the Shareholders (acting by a majority):	
	6.4.1	at least two, but no more than three Executive Directors who shall not be employed by, or an elected member of, any Shareholder; and
	6.4.2	two Executive Directors (in total), one such Executive Director being employed by CW&C and one being employed by WMBC; and
	6.4.3	three Non-Executive Directors who shall be head or deputy head teachers employed as such in the administrative area of each of the Shareholders; and
	6.4.4	one Non-Executive Director who shall be a governor of a school located in the administrative area of each of the Shareholders and not be employed by, or an elected member of, a Shareholder, or a head or deputy head teacher
6.5	The Shareholders agree that the Non-Executive Directors shall have suitable experience and skills to provide independent challenge and input into the Board decisions and that the Chair of the Board shall be the Non-Executive Director appointed in accordance with clause 6.4.4 unless resolved otherwise by the majority of the Shareholders	

4. The current composition of the Board is broadly compliant with the above but there have been some exceptions, approved by the Board and by the Shareholders. The current composition is set out as follows:

6.4.1	This position is undertaken by IMc
6.4.2	These positions are filled by: <ul style="list-style-type: none"> • HB (CW&C) • JB (Wirral)
6.4.3	These positions are filled by: <ul style="list-style-type: none"> • EMc (Wirral Primary Head) • NW (CW&C Primary Head) • AW (Wirral Secondary Head) • AA (Special School Head, originally employed in CW&C) • SS (drawn from an Independent School)
6.4.4	This position is filled by: <ul style="list-style-type: none"> • JO (Wirral)
6.5	The Chair is filled by: <ul style="list-style-type: none"> • MP (previously Director of Education in CW&C)

- As can be seen from the above, the composition of the Board has changed over the years to better reflect the changing nature of the business and to better reflect the customer base that Edsential now serves.
- 6.4.1 indicates that there should be at least two executive directors. Currently there is only one. Given the current size of the company and the structure of the management of the company there is no plan to increase the number of executive directors. Being an executive director carries significant risk and responsibilities. This would have to be carried out by another member of the management team which would then require some restructure and changes to responsibilities. This cannot be justified or afforded at this time. This situation may change in the future; for example, if the company were to expand significantly. It is proposed that 6.4.2 should be amended to say that there should be between 1 and 3 executive directors.
- 6.4.2 refers to two executive directors, one from each of the shareholder councils. It was always the intention that there should be a director on the Board from each Council drawn from the education or children's services of each Council. The purpose for this was (and remains) to ensure that there is cohesion between the priorities and activities of Edsential and each of the Councils. Through the attendance of these directors, we ensure that we support each Council, and each Council can support and advocate for Edsential both internally and, especially, with head teachers and governors who buy our services. The reference to executive directors should be amended to reflect the more appropriate non-executive status.
- There are now five NEDs included under provision 6.4.3. Two primary head teachers reflect the size of the primary customer base. One secondary head, one special school head and one NED drawn from the independent sector, reflect the other types of school that Edsential serves. **It should be noted that the appointment of the additional two NEDs were both approved by the Shareholders.** It is proposed that section 6 of the Shareholders' Agreement be amended to better reflect the range and nature of the customer base that Edsential serves.

9. The governance of schools has changed a lot since the Shareholder’s Agreement was first drafted and enacted. In particular, the number of academies and Academy Trusts has increased significantly. Increasingly, Edsential is engaging with Trusts rather than with individual schools. The current composition of the Board, as set out in section 6, does not provide the flexibility to add an additional NED to be drawn from a Trust or equivalent. It is proposed that section 6 be amended to include provision for the appointment of a NED who is the CEO or Chair or equivalent of an Academy Trust within the administrative area of each of the Shareholders.
10. There is no proposed change to section 6.4.4.
11. The Chair position was originally filled by the governor director. Since 2020 this has been filled by the ex-Director of Education from CW&C. This variation is compliant with the last clause of paragraph 6.5 and was approved by both Shareholders. However, given the changed nature of leadership and governance in schools and in the councils’ children’s services, the original intention that the chair be the governor NED is restrictive. It would not be appropriate for the chair to be a currently serving head or deputy head teacher, or employed by, or an elected member of, any Shareholder. It is proposed that section 6 be amended to provide better flexibility for the appointment of a Chair with recent and relevant skills and experience.
12. The requirement for the NEDs to be drawn from the administrative area of each of the Shareholders should be noted.
13. Section 6.5 refers to NEDS having suitable experience and skills to provide independent challenge and input into the Board decisions. The improved selection, appointment and induction processes introduced by the Board will enable this to take place.
14. In accordance with the above analysis, **it is proposed that section 6.4 and 6.5 of the Shareholders’ Agreement be amended as follows:**

6.4	The Shareholders agree that the Board shall consist of the following Directors, each of whom shall be agreed jointly by the Shareholders (acting by a majority):	
	6.4.1	between one and three Executive Directors who shall not be employed by, or an elected member of, any Shareholder; and
	6.4.2	two Non-Executive Directors (in total), one such Non-Executive Director being employed by CW&C and one being employed by WMBC; and
	6.4.3	four Non-Executive Directors who shall be head or deputy head teachers, drawn from primary, secondary and special schools and employed as such in the administrative area of each of the Shareholders; and
	6.4.4	one Non-Executive Director who shall be the CEO, Chair or equivalent of an Academy Trust and employed as such in the administrative area of each of the Shareholders; and
	6.4.5	one Non-Executive Director who shall be drawn from the Independent School Sector with recent and relevant skills and experience as a head teacher, deputy head teacher or business/finance manager; and
	6.4.6	one Non-Executive Director who shall be a governor of a school located in the administrative area of each of the Shareholders and not be employed by, or an elected member of, a Shareholder, or a head or deputy head teacher

	6.4.7	the Chair of the Board shall be a Non-Executive Director with recent and relevant skills and experience within the administrative area of each of the Shareholders. They should not be a currently serving head or deputy head teacher, or employed by, or an elected member of, any Shareholder.
6.5		The Shareholders agree that the Non-Executive Directors shall have suitable experience and skills to provide independent challenge and input into the Board decisions.

Succession Planning for Non-Executive Directors

15. The Articles of Association set out in detail:

- Directors; Powers and Responsibilities (sections 8-12)
- Decision-Making by Directors (sections 13-22)
- Appointment and Retirement of Directors (sections 23-26)

16. Section 24.2 and 24.3 set out the arrangements for the retirement, rotation and succession planning of Non-Executive Directors as follows:

24.2	One-third of the Non-Executive Directors appointed from time to time, or if their number is not three or a multiple of three, the number nearest to one-third, shall retire from office at each annual general meeting. These provisions shall apply with effect from the second annual general meeting.
24.3	The Non-Executive Directors required to retire by rotation under Article 24.2 shall be those Non-Executive Directors who have been the longest in office since their last appointment. If any two or more Non-Executive Directors became or were appointed Non-Executive Directors on the same day, those required to retire by rotation shall (unless they otherwise agree among themselves) be determined by random selection in such manner as is determined by the shareholders acting by a majority.

17. We are not compliant with these articles. One of the reasons for this is that, in recent years, with Covid-19 and the challenges of the cost-of-living crisis, it was considered that the continuity of the Board with NEDs with their skills, experience and understanding of the needs of the company alongside the needs of customers, should take priority.

18. It is also worth noting that a report by CW&C in 2022 identified that usual good practice with companies is that NEDs should serve no more than 7 years.

19. Nevertheless, it is now time that a plan for the rotation and succession planning of NEDs be formulated and enacted. There are several NEDs that should retire and be replaced as their tenure is longer than three years. However, the retirement and replacement of a significant proportion of NEDs all at once, bringing in replacements who may have limited experience of being a NED, would not be in the best interests of the company or shareholders.

20. The following plan is therefore designed to bring the Board into compliance with Articles 24.2 and 24.3 within a reasonable timescale. The proposal is that the turnover of NEDs should coincide with the new financial year.

21. The plan also identifies that some NEDs might be drawn from either CW&C or Wirral. When deciding who to propose to the Shareholders, the Board will consider the need to ensure that there is a good balance of NEDs from each of the administrative areas of CW&C and Wirral.
22. Note that the Articles do not preclude the re-appointment of NEDs. However, given the length of service of some NEDs well beyond a three-year tenure, it would seem in the spirit of the Articles to seek as much as possible the replacement with a new NED.

By April 2024	<ul style="list-style-type: none"> • The current governor NED is replaced by another governor NED who could be from a school in CW&C or Wirral • The current Special School NED is replaced by another Special School NED who could be from a school in CW&C or Wirral. Note that whilst the currently serving Special School NED was only appointed in October 2021, she is no longer working in the administrative area of each of the shareholders and therefore replacement is required in accordance with section 6 of the Shareholders' Agreement • The Primary School NED for Wirral is replaced by another Primary School NED from Wirral • A CEO or Chair of an Academy Trust is appointed to the Board
By April 2025	<ul style="list-style-type: none"> • The Primary School NED for CW&C is replaced by another Primary School NED from CE&C • The Secondary School NED is replaced by another Secondary School NED who could be from a school in CW&C or Wirral • The Chair of the Board is replaced • The NED from the Independent Sector is replaced with another NED from the Independent Sector
By April 2026	<ul style="list-style-type: none"> • The Academy Trust NED is replaced or reappointed. This is to enable the turnover of NEDs to comply with a three-year cycle. This does mean that, initially, the Academy Trust NED doesn't serve a full two years; we could make this change in the autumn of 2026 to lessen the loss of tenure.
By April 2027	<p>From this point, the turnover of NEDs would be compliant with the Articles:</p> <ul style="list-style-type: none"> • Governor NED replaced • Special head NED replaced • CW&C Primary head replaced
By April 2028	<ul style="list-style-type: none"> • Wirral Primary head replaced • Secondary head replaced • Chair replaced
By April 2029	<ul style="list-style-type: none"> • Independent School NED replaced • Academy Trust NED replaced

Recommendation

Shareholders are asked to approve the proposals for the composition of the Board and the rotation of NEDs.

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SHAREHOLDER BOARD

Thursday 21st March 2024

REPORT TITLE:	EDSENTIAL DRAFT ANNUAL BUSINESS PLAN 2024 - 2025
REPORT OF:	DIRECTOR OF FINANCE

REPORT SUMMARY

This report invites Shareholder Board to consider and review the Draft Annual Business Plan submitted by Edsential CIC ('Edsential') recording its performance against last year's Annual Business Plan, setting out the current position of the company, its view of the immediate future and steps that it proposes to take to continue trading successfully and compliantly. It seeks approval for the draft Annual Business Plan.

This supports the Early help for children and families; Promoting independence and healthier lives; Protect our environment; and Safe, resilient and engaged communities themes set out in Wirral Working Together – a Council Plan for 2023 - 2027.

The proposals within this report affect all wards.

This is not a Key Decision.

EXEMPT INFORMATION

Appendices 1 and 2 to this report contain exempt information as defined in Schedule 12A of the Local Government Act 1972. It is in the public interest to exclude the press and public under Paragraph 3 'Information relating to the financial or business affairs of any particular person' (including the authority holding the information)."

RECOMMENDATION/S

The Shareholder Board is recommended to approve the draft Annual Business Plan as attached to this report and allow Edsential to continue to trade in the manner proposed in the attached Draft Annual Business Plan

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The proposals contained in the Draft Annual Business Plan are not substantially different to those approved by Policy and Resources Committee on the 12th July 2023 and remain the most realistic chance of leading to the repayment of the currently outstanding loans.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Members could seek amendments to the draft Annual Business Plan but this is not recommended in the context of the satisfactory performance of the company. Members will recall that on the 12th July 2023 Policy and Resources Committee reviewed a detailed option paper and approved the recommendation to accept the draft annual business plan presented therewith.

3.0 BACKGROUND INFORMATION

- 3.1 The Council's Cabinet agreed on 10th September 2015 to the establishment of an educational services company to be known as Edsential. This was following the submission and review of a full business case developed with support from the national government's Cabinet Office, Price Waterhouse Coopers and Council and Cheshire West and Chester Council under the national 'Delivering Things Differently' programme. The company was set up as a community interest company (CIC) with equal joint ownership between the two partner Councils. As a Community Interest Company Edsential is prohibited from making a full distribution of profits to shareholders by way of dividend and must deploy surpluses in accordance with its community interest statement as set out in its Articles. The company was established on a cost recovery basis and apart from modest philanthropic grants has traditionally used surpluses to reduce its debts.
- 3.2 Local management of schools provided schools with independence to determine how and who provided service arrangements. There was significant growth in schools choosing to receive services from external providers. This created financial difficulties for in-house services and there was less control over standards and terms and conditions from external providers. The belief was that as a not-for-profit company Edsential could compete and maintain a public sector ethos with all profit invested into improving outcomes for children. Schools would benefit from receiving higher quality services with both a commercial approach and improved value for money. The Councils would retain a strategic role in the shaping and delivering of high attainment in schools. The new company would support the local economy through the creation of a thriving local business generating employment and skills.
- 3.3 Services and staff transferred to Edsential included:
- School Catering;
 - School Cleaning;
 - Outdoor Education;
 - Governor Support;

- Music Services;
- School Development / Improvement.
- Learning outside the Classroom; and
- Data Support

3.4 The company was intended to be self-funding, to trade on a cost recovery basis and not require subsidy from either council. The business plan did assume that Edsential would incur set-up costs and incur losses in early years and therefore require repayable cash flow funding. Both Councils agreed to provide up to £2m each of repayable cash flow funding charged at a deemed market rate of interest.

3.5 Financial Performance

3.5.1 The company routinely reports to officers in the council’s finance team with quarterly management accounts. Reports of any unsatisfactory position revealed by such accounts or any other financial concerns would be brought to shareholder board for consideration.

3.5.2 The Covid-19 pandemic had a significant detrimental impact upon Edsential. The closure of residential centres and reduction in school activities severely reduced the level of income receivable whilst at the same time incurring unavoidable fixed costs. The table below shows the significant loss of revenue in 2020/21 and 2021/22 which were impacted by Covid-19 restrictions. Revenue levels somewhat recovered in 2022/23 but are now being impacted by the cost-of-living crisis which has slowed down the level of recovery of discretionary spend areas such as residential course income.

Table 1 – Revenue Generation and Profit/Loss (-)

	2020/21	2021/22	2022/23	2023/24 *
	£000	£000	£000	£000
Revenue income	14,085	15,345	18,262	18,300
Profit/Loss (-)	-1,520	-1,667	-560	15

*2023/24 forecast outturn position subject to audit.

3.5.3 The latest reported financial position for the company shows a forecast management account profit for 2023/24 of £15,000 (subject to audit). This forecast excludes movements in the assets and liabilities of the pension fund, which are beyond Edsential’s control. The latest external audit report for Edsential confirmed that the company is a going concern. This opinion was on the basis of the ongoing loan support from shareholders.

3.5.4 Edsential provides a number of services to schools. The company operates in a very competitive market and schools have the choice who to contract with for services. The exempt Appendix 2 provides details of the budgetary forecasts by service area.

3.6 Covid-19 Pandemic

- 3.6.1 The Covid-19 pandemic resulted in losses to the company as outlined in table 1 above. Residential course income was severely curtailed due to lockdown restrictions, whilst similarly restrictions to schools limited service provision and the ability to generate income at a time the company had various fixed costs. A series of meetings took place between the company and shareholders during the pandemic to review the situation and to receive updates on what was a dynamic situation.
- 3.6.2 Policy and Resources Committee of 11th November 2021 agreed to a package of support to assist the company. This consisted of a grant of £643,000 (based on an approximation of what the company may have received from the government's fees and charges support scheme if it had been an in-house operator) and an interest bearing loan of £857,000. The loan principal repayments begin from the end of year 2. The arrangements included measures to be taken by the company to generate the necessary returns to finance repayments, which would require some time for implementation. The Council's grant and loan package was mirrored by Cheshire West and Chester Council with the exact same terms applying.
- 3.6.3 The covid support loan was in addition to the cashflow facility which was previously renewed by both Councils in late 2020 (Policy and Resources 20th December 2020). This provided up to £2m per shareholder in a cash flow loan facility. The loans were interest bearing and even during the most financially challenging times of the pandemic were never fully utilised.
- 3.6.4 Edsential has made good progress in reducing loan balances. Part of this will be due to the application of the covid grants advanced. The current balances are stated in exempt Appendix 2.
- 3.6.5 The ability to repay outstanding loans will be predicated upon Edsential's ability to generate the necessary level of return to service debt. Further losses will inevitably curtail the scope for repayment. This would then risk impacting upon the Council's budgetary position.

3.7 Management Review

- 3.7.1 A visit was undertaken in April 2023 to Edsential offices to review the financial position of the company, the business plan and discuss the issues and challenges that the company faces. This meeting was attended by officers from both shareholders. The review undertaken considered the proposed business plan and longer-term strategy for recovery post Covid. The report was considered in detail in a report taken to Policy and Resources Committee on 12th July 2023.

4.0 FINANCIAL IMPLICATIONS

- 4.1 Edsential currently has outstanding interest-bearing loans as set in in exempt Appendix 2. There is risk that further support could be required should plans not be achieved.

5.0 LEGAL IMPLICATIONS

- 5.1 The Company was established with the appropriate Certificate of Incorporation for a Private Limited Company/Community Interest Company with associated articles on

20 April 2015. The Shareholder Agreement was agreed on the formation of the Company.

- 5.2 The Company was established to provide and carry on activities which benefit all the inhabitants of the administrative areas of Cheshire West and Chester and Wirral Council and elsewhere, and, in particular, schools, educational facilities, children, young people, parents and adults by the provision of educational support services. In addition, the Company may conduct such other business as is set out in its Business Plan.
- 5.3 The Company is required to produce an Annual Business Plan to the Shareholder Board for approval in accordance with the terms of the Shareholder Agreement.
- 5.4 The company and its board of directors have legal responsibilities in respect of the running of the company's financial affairs. The company can operate at a loss as long as there are reasonable grounds for believing these losses can be recovered in future trading periods.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 Edsential is a Community Interest Company employing its own workforce and with its own ICT and asset arrangements. Resources from the Council involve loan finance.

7.0 RELEVANT RISKS

- 7.1 There is financial risk that further finance may be required to support the company should forecast activity plans not be realised. Without a successful delivery plan, the company will find it difficult to repay existing loans.
- 7.2 There is a reputational risk to the Council should the company fail. This would be over a number of areas including workforce, suppliers and clients.
- 7.3 Without a detailed Annual Business Plan the Council as shareholder does not have a clear set of objectives against which to monitor the performance and effectiveness of the Company generally and in particular against the Shareholder Agreement and the Company's Strategy. A comprehensive Annual Business Plan is an important tool in mitigating these risks.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Council officers and officers from Cheshire West and Chester Council have been engaged in briefings with the company in respect of the business plan and the company's financial position.

9.0 EQUALITY IMPLICATIONS

- 9.1 The Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity. There are

no equality and diversity implications arising out of the proposals set out within this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment and climate implications arising from the subject matter of this report.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 The company employs a work force comprising of many local Wirral residents. Edsential strives to be an employer offering terms and conditions which exceed competitors in the challenging market it operates in. This supports community wealth.

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APPENDICES

Exempt Appendix 1 – draft Annual Business Plan 2024 – 2025

Exempt Appendix 2- Further financial information regarding Edsential

Appendices 1 and 2 to this report contain exempt information as defined in Schedule 12A of the Local Government Act 1972. It is in the public interest to exclude the press and public under Paragraph 3 'Information relating to the financial or business affairs of any particular person' (including the authority holding the information).

BACKGROUND PAPERS

Shareholders' Agreement

Annual Business Plan for year 2023 - 2024

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Policy and Resources	12th July 2023

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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of the Local Government Act 1972.

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Shareholder Board – Terms of Reference

A Sub-Committee of three (3) or more members of the Policy and Resources Committee, subject to political balance, with delegated authority to exercise responsibility for the Council's functions as corporate shareholder of a company, or group of companies, or a limited liability partnership. The Sub-Committee will be organised, and will also meet as a working group, alongside officers and advisors in accordance with the Council's adopted Code of Practice for the Governance of Council Interests in Companies at Part 5(7) of this Constitution.

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