



Shareholder Board

Date: Friday, 25 March 2022

Time: 2.00 p.m.

Venue: Floral Pavilion

Contact Officer: Bryn Griffiths
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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. PUBLIC AND MEMBER QUESTIONS

- 4.1 Public Questions

Notice of question to be given in writing or by email by 12 noon, Tuesday, 22 March 2022 to the Council's Monitoring Officer (committeeservices@wirral.gov.uk) 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](#)

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

4.2 **Statements and Petitions**

Notice of representations to be given in writing or by email by 12 noon, Tuesday, 22 March 2022 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. The person presenting the petition will be allowed to address the meeting briefly (not exceeding one 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. Please give notice of petitions to committeeservices@wirral.gov.uk in advance of the meeting.

Please telephone the Committee Services Officer if you have not received an acknowledgement of your statement/petition by the deadline for submission

4.3 **Questions by Members**

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

5. **WIRRAL EVOLUTIONS LIMITED - CONTRACT TERMINATION (Pages 1 - 8)**
6. **EDSENTIAL CIC ANNUAL BUSINESS PLANS FOR 2021-22 AND 2022-23 (Pages 9 - 12)**
7. **EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC**

The following item contains exempt information.

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 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.

8. **EXEMPT APPENDICES - EDSENTIAL CIC ANNUAL BUSINESS PLANS FOR 2021-22 AND 2022-23 (Pages 13 - 32)**

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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SHAREHOLDER BOARD

Friday 25 March 2022

REPORT TITLE:	WIRRAL EVOLUTIONS LIMITED - CONTRACT TERMINATION
REPORT OF:	DIRECTOR OF DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

Wirral Council has 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 currently supplied by the Company to the Council by 31 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 Wirral Plan 2021 - 2026 sets out the Council's vision to secure the best possible future for the Council's residents and covers the following five themes:

- A thriving and inclusive economy, creating jobs and opportunities for all;
- A clean-energy, sustainable, borough, leading the way in tackling the environment crisis;
- Brighter futures for all regardless of their background;
- Safe and pleasant communities that our residents are proud of; and
- Healthy and active lives for all, with the right care, at the right time.

This report aligns with the themes of brighter futures for all regardless of their background; safe and pleasant communities that our residents are proud of and healthy and active lives for all, with the right care, at the right time.

This affects all wards.

This is not a key decision.

RECOMMENDATIONS

The Shareholder Board is recommended to:

- (1) note 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 this report; and
- (2) authorise the Director of Law and Governance 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.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Shareholder Board discharges the shareholder function of the Council in accordance with the Council's Constitution should formally note the decision of the Adult Social Care and Public Health Committee to terminate the contract for day services for people with learning disabilities currently being delivered by the Company to the Council.
- 1.2 To facilitate the transfer of the Company's undertaking and ensure continuity of service to service users it is important that all necessary actions to effectively transfer the undertaking of the Company to the Council including such matters as contract and lease terminations, the transfer to the Council of all relevant supply and service contracts entered into by the Company, to effect the transfer of all Company Employees to the Council in accordance with the Transfer or Undertakings (Protection of Employment) Regulations 2006, transfer of software licences and all other intellectual properties (including the trading style 'Wirral Evolutions') are effectively discharged within the projected timescale of six months from 1 April 2022.
- 1.3 So as to update Shareholder Board on the progress of the transfer of the Company's undertaking a detailed project and actions time plan is being developed by officers and this will be the subject of a progress report to be delivered to Shareholder Board at a future date.
- 1.4 As it is imperative to engage with all relevant parties a consultative board will be established to ensure that service users, cares and parents are engaged in the transformation process.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 As this report requests Shareholder Board to give effect to a decision of the Adult Social Care and Public Health Committee, no other options have been considered.

3.0 BACKGROUND INFORMATION

- 3.1 The contract to provide services to support adults with a learning disability was first awarded to the Company in 2015 and has been renewed continuously with minor variations since then.
- 3.2 The Company is generally well regarded by people that use its services, carers and staff, however, the rationale for delivering services via the current delivery model and the added value of such a model to the Council and service users is no longer clear. This is in no way a criticism of the quality of services delivered by the Company, the dedication of its staff and management team nor the commitment of the Board of Directors to service users. The focus of the decision made by the Adult Social Care and Public Health committee at its meeting on 3 March 2022 related to a change to the delivery model which will sustain and improve services for the Council's service users and safeguard staff, whilst seizing opportunities as they emerge in connection with the health and care transformation agenda. An extract from the Minutes of Adult

Social Care and Public Health committee meeting is attached at Appendix 1. The second recommendation within this report is from the Adult Social Care and Public Health Committee and is relevant to the Council's status as shareholder to the Company.

- 3.3 Bringing the service currently delivered by the Company in-house will enable a closer correlation between strategy development and operational delivery which will bring additional value to the current delivery arrangements and is identified as the best means of delivering day care services for adults.
- 3.4 The Council, as shareholder, has entered into a Shareholder Agreement with the Company. This Shareholder Agreement gives the Council effective and complete control over the Company.
- 3.5 The Director of Law and Governance will provide a further report to a future Shareholder Board meeting to update on the transfer of the Company's undertaking to the Council with recommendations for the future deployment of the Company, its dissolution or mothballing.
- 3.6 The Company has, in accordance with its obligations under the shareholder agreement, produced a draft annual business plan for review. The transfer of the Company's undertaking to the Council renders further consideration of this plan unnecessary.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications directly arising from the subject matter of this report.

5.0 LEGAL IMPLICATIONS

- 5.1 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.
- 5.2 The transfer of the Company's existing employees to the in-house service to be delivered by the Council is governed by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') which regulate the transfer of personnel from the outgoing provider to the incoming provider. TUPE stipulates that all terms and conditions of employment (apart from existing pension rights) in force immediately prior to the transfer, are protected as is continuity of employment for the transferring employees.
- 5.3 Compliance will be required with the provisions of the Companies Act 2006 in terms of the closure of the Company as a trading entity, its dissolution and/or re-classification of as a dormant company.
- 5.4 The Council as shareholder has entered into a Shareholder Agreement with the Company. The Company has ongoing supply contracts with miscellaneous providers of goods and services. The provisions of the Shareholder Agreement and of the

Companies Act 2006 and the Council's status as owner of all the issued shares in the Company give the Council effective and complete control over the Company including all steps necessary to effectively transfer the undertaking of the Company to the Council.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no direct implications to staffing, ICT or Assets arising from the subject matter of this report.

7.0 RELEVANT RISKS

7.1 There is no risk that the Council will fail in its statutory duty to meet needs of people requiring services due to the contents and recommendations in this report

7.2 There is the potential for reputational risk to the Council if stakeholders are not adequately consulted on the proposed changes. The establishment of a Consultative Board will effectively mitigate this risk.

8.0 ENGAGEMENT/CONSULTATION

8.1 The directors and senior employees of the Company have had an opportunity to comment on the content of this report prior to publication.

8.2 Consultation with the Trades Union will be required as part of the TUPE transfer process.

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 arising from the subject matter of 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 It is anticipated that the content and/or recommendations contained within this report will not have any negative impact on Community Wealth.

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APPENDICES

Appendix 1 - Extract from Minutes of Adult Social Care and Public Health Committee meeting on Thursday, 3 March 2022

BACKGROUND PAPERS

Shareholder Agreement

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Adult Social Care and Public Health Committee: Wirral Evolutions Limited Value for Money Review Report	3 March 2022

APPENDIX 1

Extract from Minutes of Adult Social Care and Public Health Committee meeting on Thursday, 3 March 2022

101 WIRRAL EVOLUTIONS VALUE FOR MONEY REPORT

The Director of Adults, Health and Strategic Commissioning introduced his report which detailed a Value review instigated by Wirral Council between November 2021 and January 2022, following a request initiated at the Adult Social Care and Public Health Committee on 18th January 2021. The objectives of the review used several criteria to determine value for money, which included, economy, efficiency, stakeholder value and achievability. In addition, stakeholder views were gathered from staff, people accessing the service, their families, carers, and charitable bodies, throughout November and December 2021. The report set out proposals for the insourcing of the services currently carried out by Wirral Evolutions Limited. The review had been prompted by a number of reports about the company not being able to deliver services within the contract price, although there was no criticism of the quality of services which was well regarded and would not change even if the work was taken in-house. The review concluded that delivery did not justify the costs and bureaucratic burden and none of the expected expansion had been achieved. Staff would be transferred and savings would result from reduced office costs and more direct actions. A consultative board would be formed including users and staff to maintain quality and let them have a say in development of services.

Members expressed regret at the loss of Wirral Evolutions which had been set up in hope of growth and they asked questions about the savings to be achieved. They were reassured that the consultative board would maintain quality and satisfaction.

Resolved - That:

- (1) the Director of Care and Health be authorised to extend the contract to provide services to support adults with a learning disability currently held by Wirral Evolutions Limited for a limited period not exceeding six months from the 1 April 2022 so as to enable the effective implementation of transition of services currently supplied by the company to the Council.**
- (2) the transition of services which are currently delivered by Wirral Evolutions Limited to an in-house model of delivery by the Council be approved starting as soon as reasonably practicable with the intention that those services will be fully transferred back into the Council within six months of the 1 April 2022.**
- (3) the Director of Care and Health be authorised to terminate or allow to expire the contract to provide services to support adults with a learning disability currently held by Wirral Evolutions Limited as soon as**

practicable after the complete and effective transfer of services currently supplied by the company to the Council.

- (4) a Consultative Board be established with stakeholder and staff membership tasked with oversight of the provision of personalised day services and opportunities for adults with a wide range of learning and physical disabilities, enabling people who access the service and their representatives to have a greater input into the delivery of the service.**
- (5) the Director of Care and Health be authorised to make all necessary arrangements to insource the services carried out by Wirral Evolutions Limited.**
- (6) it be recommended to the Shareholder Board that the Director of Law and Governance be authorised to progress the necessary steps to transfer Wirral Evolutions Limited's undertaking to the Council, including the cancellation of the current contract with Wirral Evolutions Limited and to consider all appropriate options for the future deployment or disposal of Wirral Evolutions Limited.**
- (7) the Director of Care and Health provide a further report to a future Adult Social Care and Public Health Committee to update on the service transition arrangements.**



SHAREHOLDER BOARD

Friday, 25 March 2022

REPORT TITLE:	EDSENTIAL CIC ANNUAL BUSINESS PLANS FOR 2021 – 2022 AND 2022 – 2023
REPORT OF:	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

This report seeks approval to waive the requirement under the Shareholders Agreement for Edsential CIC ('the Company') to deliver a Business Plan for 2021 – 2022 and to approve the Annual Business Plan for 2022 - 2023 for the Company, as required by the Shareholders Agreement.

The Wirral Plan 2021 - 2026 sets out the Council's vision to secure the best possible future for the Council's residents and covers the following five themes:

- A thriving and inclusive economy, creating jobs and opportunities for all;
- A clean-energy, sustainable, borough, leading the way in tackling the environment crisis;
- Brighter futures for all regardless of their background;
- Safe and pleasant communities that our residents are proud of; and
- Healthy and active lives for all, with the right care, at the right time.

This report aligns with the themes of brighter futures for all regardless of their background; safe and pleasant communities that our residents are proud of and healthy and active lives for all, with the right care, at the right time.

This matter affects all wards within the Borough.

This matter is not a Key Decision.

RECOMMENDATIONS

The Shareholder Board is recommended to;

- 1 Waive the obligation of Edsential CIC under the Shareholders Agreement to submit an Annual Business Plan for 2021 – 2022; and
- 2 Approve the Annual Business Plan for 2022 – 2023 presented by Edsential CIC in accordance with the requirements of the Shareholders Agreement.

SUPPORTING INFORMATION

1.0 REASON FOR RECOMMENDATION/S

- 1.1 The Annual Business Plan for 2021 – 2022 was under discussion when service delivery by the Company was first interrupted and/or substantially altered by the lockdown imposed by Government in response to the COVID-19 pandemic. The Draft Annual Business Plan prepared for 2021 – 2022 became impracticable to follow and, because circumstances and the frequently and rapidly changing backdrop for service delivery meant that no meaningful revised Draft Annual Business Plan for 2021 – 2022 could be produced. The commercial position was managed by board reports and meetings. The Council is represented on the board of the Company.
- 1.2 The recommendations within this report enable the Shareholder Board to waive the obligation in the Shareholders Agreement to deliver an Annual Business Plan for 2021 – 2022 for approval and to consider and approve the Annual Business Plan for 2022-2023 (Appendix 1). This fulfils a requirement of the Shareholders Agreement between the Council and the Company. The appendices to this report contain exempt information as defined in Schedule 12 A of the Local Government Act 1972 as they contain commercially sensitive information.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 As the Annual Business Plan is for Shareholder information only, no other options have been considered.

3.0 BACKGROUND INFORMATION

- 3.1 The Council, Cheshire West and Chester Council and the Company are parties to a Shareholders Agreement dated 1 December 2015. This provides that the Company shall provide each shareholder a Business Plan for each financial year for approval. In terms of the Council's Constitution this responsibility rests with the Shareholder Board.
- 3.2 The Annual Business Plan of the Company for 2022 - 2023 (attached at Appendix 1) with associated Budget Commentary (attached at Appendix 2) sets out:
- (a) the objectives, plans and targets for the Company for the financial year commencing 1st April 2022 to 31st March 2023;
 - (b) a strategy review; and
 - (c) a financial summary/analysis.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications directly arising from the subject matter of this report.

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 Shareholders 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.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are no direct implications to staffing, ICT or Assets arising from the subject matter of this report.

7.0 RELEVANT RISKS

- 7.1 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.
- 7.2 There is a reputational risk for the Council over the performance of its partially owned company.
- 7.3 A comprehensive Annual Business Plan is an important tool in mitigating these risks.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 The directors and senior employees of the Company have had an opportunity to comment on the content of this report prior to publication.

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 arising from the subject matter of 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 A well drafted and appropriate Business Plan is one of the hallmarks of a successful company. A well run and successful company and community support organisation will contribute to the development of a resilient local community.

REPORT AUTHOR: Steven Krempel, Senior Solicitor
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APPENDICES

Appendix 1 – Annual Business Plan EXEMPT
Appendix 2 - Budget Commentary EXEMPT

BACKGROUND PAPERS

Shareholders Agreement

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

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

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