

WIRRAL COUNCIL

CABINET

19 JUNE 2014

SUBJECT	WIRRAL COUNCIL & MAGENTA LIVING – COMMUNITY FUND
WARD/S AFFECTED	ALL
REPORT OF	DIRECTOR OF RESOURCES
RESPONSIBLE PORTFOLIO HOLDER	COUNCILLOR GEORGE DAVIES
KEY DECISION	NO

1.0 EXECUTIVE SUMMARY

1.1 This report updates Cabinet on the Community Fund which is administered by Magenta Living (formerly Wirral Partnership Homes). It seeks agreement to the release of the Environmental Warranties set-aside within the Fund so that the sum is available for distribution in accord with the operation of the Fund. The liability for any environmental claims, which is considered a low risk, then rests with the Council for which provision has been made within the Council's Insurance Fund.

2.0 BACKGROUND AND KEY ISSUES

2.1 The report to Cabinet on 23 September 2010 provided a comprehensive overview of the management arrangements for the Fund which was established as a consequence of the transfer of the bulk of the Council housing stock to WPH (now Magenta) in February 2005. Subsequent updates have amended the Council representation in managing the Fund and endorsed the representatives to authorise, on behalf of the Council, the release of money from the Fund.

COMMUNITY FUND

2.2 The Community Fund Deed sets out the framework of the purposes for which the Fund can be used and states that the Fund would be overseen by a Joint Working Group (JWG). The Fund is administered by Magenta and is managed by the JWG with the final decision on approving the use of the Fund being by Magenta.

2.3 The JWG comprises equal membership from the Council and Magenta. The Council representatives are Councillor George Davies (Cabinet Member for Neighbourhoods, Housing and Engagement), Ian Platt (Head of Housing and Community Safety) and Tom Sault (Head of Financial Services). To comply with banking requirements sums released from the Community Fund require a formal bank mandate and the representative are the Council's authorised signatories.

- 2.4 The Fund was expected to reach £30 million over a ten year period. Income to the Fund increases as the development programme continues with eligible VAT is reclaimed and is dependent upon the rate of progress of the programme. It was initially agreed to set aside £2.5 million to cover any potential environmental warranties and the level of this set aside has now been reviewed (see below). The Fund is allocated 50:50 between the Council:Magenta to support approved schemes.
- 2.5 The approved schemes are subject to a submission to the JWG which is assessed against the purposes of the Community Fund Deed and the charitable objects of Magenta (see the Appendix) with Magenta receiving advice from Anthony Collins their appointed legal advisors. A recommendation is then made to the Magenta Board. Those schemes approved are the subject of a formal grant agreement with progress monitored by the JWG.

ENVIRONMENTAL WARRANTIES

- 2.6 A number of warranties were given to WPH (now Magenta) and its funders under the 2005 agreement to transfer the Council's housing stock. These included Environmental Warranties and the advice of the appointed legal advisors, Wright Hassall, was that in the LSVT (Large Scale Voluntary Transfer) sector funders would expect environmental warranties of at least for the term of the loan (normally 30 years).
- 2.7 In advance of the transfer the Council commissioned a desktop Environmental Survey from WSP Environmental Limited (WSP). The company categorised each parcel of land to be transferred as carrying a potentially low, medium or high risk of environmental pollution. WSP assessed over 95% of the transferred properties to be in the low category and the likely cost of remedial works, should that potential risk be realised, at £1.5 million although commenting that the payments could be above / below this figure.
- 2.8 The Council elected not to obtain insurance as this was not the most cost-effective method of meeting any potential risk as the degree of risk identified in the WSP report was relatively small, Officers were not aware of any previous claims brought against the Council in respect of environmental pollution and the maximum amount of cover (including timeframes) the insurance market could provide was limited.
- 2.9 It was agreed that any liability which might arise would be dealt with through an agreed mechanism under which the Council and WPH would identify whether a potential claim could be met through a claim against a third party, a contingency set out in the Stock Condition Survey, budgets in WPH's business plan, any existing insurance policies or the Community Fund. The Council's then insurance brokers (Aon UK) advised this was a reasonable approach and provided a larger source of potential finance than was available through the commercial insurance market. It was expected that should any liability arise it would most likely be in the first 7 years of the investment programme.

2.10 The arrangement has now been in place for over 9 years. During this period Magenta has implemented a significant programme of investment and re-development. Neither the Council nor Magenta are aware of any claims for environmental pollution having been made.

2.11 It is therefore recommended that the sum held in the Community Fund for Environmental Warranties be released to the Council and Magenta. As a result any potential future claims for environmental impairment relating to the transferred land that might be made during the remainder of the warranty period would have to be met from the Council's resources.

3.0 RELEVANT RISKS

3.1 The Fund is available to meet services which comply with the Objects of Magenta. These submissions provide the opportunity for the Council to access the Fund and are subject to review by the Magenta legal advisors as to compliance.

3.2 The Fund is a time-limited resource and so if services are to continue into the future then consideration will have to be given to building the costs into the Council budget.

3.3 There is a risk that claims for environmental impairment could be made and such claims would have to be met from the Council's own resources. The risk of claims is considered to be low and to mitigate this there is a provision within the Council Insurance Fund there for Contaminated Land claims.

4.0 OTHER OPTIONS CONSIDERED

4.1 In respect of services then, if funding is not provided from the Fund the Council would have to either identify additional resources or cease providing the services concerned. The Council Budget Projections anticipate that Community Fund resources will be available until 2014/15 with the Council having to identify funding from 2015/16 if the services are to continue.

4.2 For the environmental warranties a further desktop environmental survey be commissioned to re-examine the risk of environmental pollution. The cost would be in the order of £25,000. As relatively little risk was identified in the original study and if claims were to materialise it is likely that they would have been generated by the works undertaken in connection with the investment programme. A further survey is unlikely to add to the original survey findings so would not represent a good use of resources.

4.3 The retention of £2.5 million, or a lesser sum, in the Fund for the Environmental Warranties. There are significant opportunity costs for both organisations associated with this action measured against the likelihood of potential claims.

5.0 CONSULTATION

5.1 The services provided by the relevant Directorates involve consultation with partners and users but are not directly related to this report.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 The relevant Directorates work with the sector in delivering services but there are no direct opportunities from this report.

7.0 RESOURCE IMPLICATIONS

7.1 The Community Fund represents a finite and time-limited resource to support schemes in line with the Community Fund Deed and the charitable objects of Magenta. Income is dependent upon the improvement works undertaken by Magenta. At 31 March 2014 the total receipts to the Fund were £33 million, some £3 million above the initial projections of £30 million. Future income will be minimal in comparison and cannot be guaranteed.

7.2 The Fund position as at 31 March 2014 was:-

COMMUNITY FUND	£m	£m
Income to the Fund		
VAT recovery on eligible works	24.8	
Former Housing Revenue Account balances	5.1	
Interest earned	1.4	
Other including shares of house sales	1.4	32.7
Less:		
Environmental Warranties set-aside	2.5	
Central heating works agreed pre-transfer	1.3	
*Your Wirral Fund	1.8	-5.6
Balance available to Council:Magenta		27.1

* JWG on 13 May 2014 confirmed the sum allocated in 2013/14 of £250,000 with a decision deferred on any allocation for 2014/15.

7.3 Of the Council share of £13.5 million £12.6 million has been allocated:-

WIRRAL COUNCIL SCHEMES		Grant
Description	Time Period	£000
Community Asset Transfer	*2009/15	4,500
Regeneration Investment	2008/11	2,561
Housing Support	2008/11	1,000
Housing Support Services	2011/14	1,200
Private Sector Housing	2011/14	1,800
Vulnerable Families	2011/14	1,500
Total Grants allocated		12,561

* extended to 31 March 2015 at JWG on 13 May 2014.

7.4 At the JWG on 13 May 2014 it was agreed to release the Environmental Warranties set-aside, subject to Council approval. As £1 million was set-aside pending resolution of an outstanding taxation issue £1.5 million was released for distribution. The funding available to the Council therefore totalled around £1.5 million and the JWG agreed the following which fully utilises the Council share of the presently available Community Fund resources:-

WIRRAL COUNCIL SCHEMES		Grant
New approvals	Time Period	£000
Housing Support Services	2014/15.	400
Private Sector Housing	2014/15	600
Vulnerable Families	2014/15	500
Total for 2014/15		1,500

7.5 Looking beyond 2014/15 income to the Fund is reliant upon the progression of outstanding eligible works by Magenta and there are presently discussions with Her Majesty's Revenues & Customs over the tax position. At this stage there is no remaining share due to the Council and the services supported through the Community Fund have been identified as potential growth bids in the Council Budget Projections for 2015/16.

7.6 Staff within the Regeneration and Environment Directorate working on the above schemes are funded from this time-limited source of funding.

8.0 LEGAL IMPLICATIONS

8.1 The Council is required to appoint three representatives to the Community Fund Joint Working Group with approval to act as authorised signatories for the release of Community Fund monies.

8.2 Part II of the Environmental Protection Act 2000 places a liability upon the Council in respect of Environmental Warranties notwithstanding that it may have parted with the property.

9.0 EQUALITIES IMPLICATIONS

9.1 There are none arising from this report.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 There are none arising directly from this report.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 There are none arising directly from this report.

12.0 RECOMMENDATIONS

- 12.1 The Council position regarding Environmental Warranties is acknowledged and the release of the set-aside in the Community Fund is confirmed.
- 12.2 The liability of the Council in respect of Environmental Warranties is recognised with provision for this liability made within the Council's Insurance Fund.
- 12.3 The availability of Community Fund Grant support of £1.5 million for 2014/15 to finance the services identified in Section 7.4 is noted.
- 12.4 Having regard to the financial position of the Community Fund the services supported by the Fund in 2014/15 it is noted that these services are included as potential growth in the Budget Projections for 2015/16.

13.0 REASONS FOR RECOMMENDATIONS

- 13.1 The Community Fund is administered by Magenta and can only be used for activities that comply with the Objects of Magenta. The release of the set-aside for Environmental Warranties places the financial risk, regarded as low, upon the Council. The release of this sum is then available and used to support the funding of £1.5 million of Council services in 2014/15. The Community Fund is a time-limited finite resource and the Council has now utilised its share of the Fund at 31 March 2014.

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SUBJECT HISTORY

Council Meeting	Date
Cabinet – Wirral Council and Wirral Partnership Homes – Community Fund	23 September 2010
Cabinet – Wirral Council and Wirral Partnership Homes – Community Fund	3 February 2011
Cabinet – Wirral Council and Wirral Partnership Homes – Community Fund	8 December 2011
Executive Member Decision - Wirral Council and Wirral Partnership Homes – Community Fund	3 May 2013