

WIRRAL COUNCIL

CABINET

5 November 2015

SUBJECT:	DAY SERVICES LOCAL AUTHORITY COMPANY (LAC) WIRRAL EVOLUTIONS - UPDATE
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF ADULT SOCIAL SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR CHRISTINE JONES, ADULT SOCIAL CARE AND PUBLIC HEALTH
KEY DECISION?	YES

1 EXECUTIVE SUMMARY

- 1.1 Wirral Evolutions is a new Local Authority Trading Company. Cabinet originally agreed to the development on 19 March 2014 as a response to shrinking resources, and concerns about the sustainability of day services for people with Disabilities. Services were down sized to increase efficiency and reduce costs. There was however, a strong user and carer voice that these services were very highly valued and that they could contribute to both the design and running of an alternative more cost effective model.
- 1.2 The service links strongly to the following Wirral Plan Pledges; enabling people with disabilities to live independently, realising the personal assets that people with disabilities have and working directly with them to release their full potential. Greater job opportunities for Wirral, Wirral Evolutions have based their business plan on growth which will increase employment opportunities, "Best Bites" and other employment schemes enable people to develop the skills that they need to get into employment rather than care.
- 1.3 This report brings together progress in relation to creating Wirral Evolutions. It covers the formal arrangements and key documents that have been developed in order for the company to effectively operate, and for the commissioner (DASS) to move from direct provider to a client of the service.
- 1.4 There have been challenges and changes relating to the original financial assumptions that were taken into account by cabinet in 2014. These are covered in the report to provide a contemporary view. The 5 year formal Business Plan, developed by the company is a key document that sets out confirmation of the companies plan for viability, sustainability and growth. *It has been subject to review and challenge from the Council client side and Section 151 Officer. A copy of this can be found at Appendix 1 of the report (exempt).

1.5 Cabinet are asked to note the progress made, to support the approach taken to business planning, and the formal transfer and company start date of 1 December 2015.

1.6 Exempt Information

This report contains **exempt** information at Appendix 1 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*' the information contained in the appendix is commercially sensitive.

2 BACKGROUND AND KEY ISSUES

Progress to date

2.1 Following Cabinet approval in 2014, an Internal Challenge process and an Independent Review of the Strategic Business Case were undertaken. The outcome of the Internal Challenge was that the model was approved by the Cabinet Portfolio Holder for Governance, Commissioning and Improvement and the Chief Executive.

- The company was developed as the most viable option because it could achieve savings and generate income from other sources such as direct payments, private funders and potentially other contracts from outside of the Council. This will help drive services to become more commercial and more efficient
- Has the potential to provide leadership in a relatively disparate market which could help to manage quality issues in the external market. This ensures that the Council can continue to meet its legal obligations in the event of market failures.

2.2 In April 2015 an independent review was carried out by Capita who were commissioned by the Strategic Director for Transformation & Resources and Head of Legal Services. The final report from Capita was accepted by the Strategic Leadership team as confirmation of the feasibility and sustainability of the business case and concluded the following:

'This is now a robust decision making document, because it demonstrates where you have derived evidence and includes sufficient metrics to make the case for the establishment of next steps in your journey. It also makes clear that there are areas of work to be developed before the company can become fully fledged, which I know you had already recognised and were building a programme of work to deliver'

2.3 In September 2015 the contract value was established to cover the core cost of company operation. This has enabled the company to establish a profit and loss account, which forms a vital part of the 5 year business plan. A service contract agreement for the provision of day services has been developed (Appendix 3) the remainder of planned efficiencies as well as to set out key expectations in relation to how the company will deliver the service on behalf of Adult Social Care

2.4 The Company was registered with companies house on 15 May 2015 and will be subject to an annual audit of its accounts. The Articles of Association sets out the board and key appointments;

- The Board of Directors includes two Executive Directors a chair and two Non-Executive Directors
- Executive Directors - Company Director (Christine Beyga) and Finance Director (Sandra Thomas), both secondments from DASS.
- Chair (Carey Bamber)
- None Executive Directors (Mike Naden) independent businessman, and (Councillor Phil Davies)

The first formal statutory board meeting took place on Friday 19 May, as required this confirmed Articles of Association, incorporation, appointment of statutory directors etc

2.5 **Project Implementation Board and Workstreams**

A Project Implementation Board has been in place and active since 14 January 2014. This has cross Council attendance and participation including Trade Unions. Four workstreams report into the project board, these are:

- HR (including pensions)
- ICT
- Finance
- Asset Management

Status reports generated for each board meeting which are then fed into DASS SLT meetings and SSG meetings. The board has achieved the following outcomes:

- Developed robust leasing arrangements and contracts in relation to buildings and premises that will be used by the company
- Formulated arrangements for the TUPE transfer of 145 staff from the Council into Wirral Evolutions
- Supported Wirral Evolutions to develop new independent financial systems
- Supported Wirral Evolutions to identify and implement an ICT infrastructure suitable to meet the needs of a small to medium sized enterprise
- Developed support services specifications for Finance, Legal, HR and IT services and identified future requirements and 'buy back' requirements of the company

The Project Implementation Board will continue to meet post transfer to oversee the remaining transition arrangements; it will cease to meet after December 2015.

2.6 Shareholder Scrutiny Group

Has been established and meeting monthly, membership is as follows:

- Strategic Director Transformation and resources (Chair);
- Strategic Director families and Wellbeing
- Portfolio Holder
- Section 151 Officer
- Director of Adult Services
- Council's Monitoring Officer
- Strategic Commissioner/Director of Public Health
- Two Parent/Carer representatives

Terms of reference were established and agreed. The Shareholder Scrutiny Group (SSG) will operate across phases to do the following:

- To oversee the establishment of the LAC (April to December 2015)
- To provide overview and scrutiny of the company as the sole shareholder (from December 2015 – March 2019)

At the end of this period The SSG will cease to function and the Council will move into a commissioning and partnership agreement/function with the company.

2.7 Council/Client Implementation Group

A 'Council side' implementation group was formed to progress practical arrangements from the client side perspective. This is chaired by the Director of Adult Social Services and included officers from finance, legal services, HR and change team.

2.7.1 Purpose and Function

- To maintain a clear grip on the development of the Local Authority Company
- To represent and protect the Council's interests
- To take day-to-day decisions in relation to support and resources for the company
- To develop proposals and recommendations for further decisions making by either Benefits Realisation Group or Shareholder Scrutiny Group as appropriate
- To develop and embed an effective client function

2.7.2 Key responsibilities

- Review and challenge proposals developed by the company in relation to the business plan and operating model.
- Secure resources required to implement the Local Authority Company
- Review and challenge how risks are identified, defined, evaluated and managed, including the plausibility of mitigating actions.
- Strengthen accountability for use of resources across the Local Authority Company.

2.8 Management Posts (Secondments)

The task of setting up of a Local Authority Company (LAC) for Day Services and Daytime Opportunities was a new and innovative change of direction for the Council. A dedicated management team was put in place this included seconding an Acting Managing Director and Acting Head of Finance. These roles were key to the success of the initial setting up of the company, ensuring it is fit for purpose and offers a sustainable business model.

Both roles were appointed to on a temporary basis from 7 April 2015. Wirral Evolutions Board will consider longer term arrangements post transfer with a focus on what the company's requirements are from 2016 onwards.

2.9 Marketing and branding

Work was commenced earlier this year to develop a brand identity for Wirral Evolutions, working closely with the Codesign reference groups and the staff group. Social Media channels are now well developed using Twitter, Facebook and LinkedIn. All social media channels are functioning and performing well with a growing following. The Company website is in production and will go live in late November. In addition the company will be working to a marketing plan and associated growth strategy to develop the business going forward. Historically the services available have never been publicised or marketed as there has not been an impetus to extend the customer base outside of those in receipt of Council funding. The business plan is predicated on such growth in order to achieve a sustainable model going forward

2.10 Workforce Development

Wirral Evolutions has a commitment to all staff; the Wirral Evolutions Employee Charter clearly states the commitment to its workforce as an ethical employer (see Appendix 2 of this report) The charter sets out the commitment to the living wage, access to pensions, staff representation and reasonable terms and conditions. In addition the company is committed to an apprenticeship scheme which will provide employment opportunities for local people including people with disabilities currently accessing services to provide them with an employment pathway previously not available to them.

In addition Wirral Evolutions is currently in the process of becoming an accredited Living Wage Service Provider through the Living Wage Foundation; this is a national recognition and benchmark showing best practice in employment.

2.11 Development of Centre's of Excellence

The Council's capital programme has an amount of £615,000 for the transformation of day Services. In addition £1.2M has been set aside in the 2016-17 programme in order to improve and extend facilities at the Pensby Wood Centre. Pensby currently provides services for people with profound and multiple disabilities. This grant will enable increased capacity for high quality services and a broader more integrated offer at Pensby. Planned improvements include an upgraded hydrotherapy pool/spa therapeutic facility, extension and enhancement of existing facilities including a large conservatory and access to a sensory garden and improved outside area to provide more physical activities.

Other recent improvements and investments made by the Council to improve people's experience of support include:

- Extensive improvements at Eastham Centre including a new roof, kitchen and windows
- Development of a brand new service at Oakenholt to provide a touch base service in the Moreton Community enabling the old building to be demolished and the site cleared.
- Extension of facilities at Dale Farm and Royden Park to provide outside classrooms to enable greater engagement and access

3.0 RELEVANT RISKS

3.1 The company business plan identifies key risks and strategies to manage risk including an exit strategy and business continuity plans. Risks include:

- **Appropriate and proportionate funding for services from Council at a time when available resources are reducing**
- The Business Plan reflects the outstanding efficiency reduction of £500,000 and assumes the current contract funding will continue over the life of the plan. In addition, future profitability of the company will secure further cost reductions for the Council. Significant changes from this position may impact on viability and the anticipation of Council funded growth of £1.2m over the life of the contract remains high risk.
- **The ability of the company to attract new customers and access markets.**
- The Company strategy is to become sustainable through growth, to expand into new markets and to ensure that the business offer is flexible enough to broaden the range of customers. The Business Plan (appendix 1) (**exempt**) is a key document setting out the relevant markets to be exploited, expected growth levels and assumptions in relation to new business and income. The plan shows analysis of the market and trends, together with an outline of how growth is expected to be achieved, based on demand through demographic change and new market opportunities. Whilst the potential income from expansion into new markets is not included in the Business Plan it does anticipate growth through self-funders and other users of £1m over 5 years. The risks associated with this cornerstone of the plan mean that growth must be actively promoted and kept closely under review.

3.2 Market competition and alternative provision.

The market is relatively fragmented and there are few alternative providers. The customer base has remained relatively consistent with ongoing annual new demand for provision. The block service contract agreement (appendix 3) reflects the Commissioners commitment to the budget for the next three years which gives the company opportunity to develop its offer and to begin to compete with the sector on a more equal basis. This approach reduces risks giving a predictable contract value for 3 years.

3.3 Increased costs as a result of the National Living Wage and pension arrangements for staff.

The Living Wage has already been implemented by the Council, whilst this is an issue that is being considered by all care sectors, the changes are not thought likely to distort the business plan in the short term. Proposals for dealing with additional pension costs are dealt with later in this report.

4.0 OTHER OPTIONS CONSIDERED

4.1 Previous reports to Cabinet have identified and completed full options appraisals, concluding that the LAC model was the most appropriate and proportionate response given that Wirral Council, like other Councils, faces the challenge of ensuring the quality of adult social care provision amid increasing and more complex demand and severe financial constraints. There are a number of reasons why the current model of service delivery for the services within scope is not an option. These are listed and briefly outlined below:

- Demographic pressures means that services cannot stay the same
- Financial constraints means these services have high MTP commitments
- The Company model enables new markets to be exploited outside of the requirements of adult social care the new delivery model offers greater scope than direct service provision through adults.

5.0 CONSULTATION

5.1 Staff, carers and people that use services have been very closely involved in service design through a staff forum focussed on innovation in practice. A co-design reference group made up of users and carers is closely involved in agreeing future direction and key aspects of service provision that they see as critical.

5.2 Formal Consultation has been undertaken with all staff and Trade Unions in relation to the company model and the TUPE transfer and will continue.

5.3 Wirral Evolutions will recognise Trade Unions.

6.0 OUTSTANDING PREVIOUSLY APPROVED ACTIONS

6.1 None arising as a direct result of this report.

7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

7.1 No negative impacts arising as a direct result of this report.

8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

8.1 Following the decision to create the company, the acting Managing Director and Acting Director of Finance have led the development of a business plan

8.2 Business Plan

The business plan demonstrates a viable business going forward with anticipated turnover of £5.5m growing to £7m over a 5 year period. There are some material updates to assumptions since the original Business Case was drafted including a revised staffing structure, contract efficiencies and assumptions about growth in income. The changes that have been incorporated into the business plan are being brought back to Cabinet for final approval.

8.3 The following table provides a high level comparison between the original financial projections in the Business Case and those now presented in the Business Plan

Retained Profit/(Loss)	Year 1 £	Year 2 £	Year 3 £	Year 4 £	Year 5 £
Original Business Case – September 2014	21,611	241,261	489,954	N/A	N/A
Business Plan – October 2015	(256,600)	(113,400)	60,200	193,800	325,600

8.4 The key points from this financial analysis are:

- Evolutions are expected to be profitable and to break even by its 3rd year
- The surpluses generated have reduced to reflect revised estimates of the company's costs base and income growth but still show a positive return by year 3.

The main changes from the original Business Case are:

- Revised staffing costs and structures
- Changes in Pensions, National Insurance and pay awards
- Revised assumptions about Support Service costs and savings
- The exclusion of service user transport
- Revised / increased income projections
- Changes in the operation of some services since the business case
- The inclusion of cash flow and pension bond costs

8.5 **Cash Flow**

As is common with new Council owned companies Evolutions will require support from the Council in the form of a loan / overdraft arrangement to underpin its cash flow over its early years. At present it is anticipated that the overdraft / loan could be up to £300k in the second year, decreasing over the remaining life of the Business Plan. The company will be charged a commercial interest rate for this facility, which is reflected in the Business Plan.

8.6 **Support Services**

Existing Council services operate on a full cost recovery basis, parts of which are in support of Day Services. The creation of Evolutions exposes the Council to a potential cost unless this contribution is maintained by the company. In response to this Evolutions have agreed to continue to buy back support services (currently £458,400) for a period of 3 to 5 years. The services provided form part of a service contract agreement for Finance, Legal, HR, IT support. The current value of this support has been reflected in the service contract. As the company develops and may choose to purchase support services from the market rather than the Council, but this will be a business decision made by Wirral Evolutions going forward in partnership with the Council.

8.7 **Budget provision / Contract value**

In 2012, in anticipation of developing a new delivery vehicle for day services an overall saving of £2m was agreed for day services, this was a predicated on a model of downsizing and reduction. The model has been revisited, revised and modified but in summary the following performance has been achieved over the last three years:

- **£1.5m** budget efficiencies over last 3 years (2013/14, 2014/15, 2015/16)
- Total budget reduction of **28%** over last 3 years (£7.6m to £5.5m)
- **30%** reduction in workforce (full time equivalent) from 179.6 fte to 126.2 fte

8.8 Of the original £2m saving target, £500K is still to be achieved through day service savings. It has not been possible to make this in 2015, the saving has therefore slipped into 2016. The contract value reduces in 2016 by 500K in order to ensure that the company carries forward the requirement to deliver this efficiency as set out in the table below.

In year 1 2016-17 the contract value is £4,635,800.

8.9 **Anticipated contract growth**

Over the life of the business plan it is anticipated that demands on the services provided will continue to increase annually. The business plan includes an expectation of additional demand for placements by the Council for service users that by 2020-21 totals an additional £1.2m. This additional pressure will be reflected in financial planning decisions for the Adult Social Care budget within the Council's Medium Term Financial Plan.

- 8.10 The company has incurred start-up costs including staff costs funded by DASS to be funded through the Transformation Fund of £250,000.
- 8.11 **Pensions**
The Company's pension arrangements are based on a fully funded transfer (where deficits on previous pensionable service for employees transferring to the company will remain with the Council.)
- 8.12 Information from the Merseyside Pension Fund's actuary indicate that the transfer will increase pension contributions rate from 13.6% to 17.2% if the scheme remains open, or 20.2% if the scheme is closed. The rates are based on the actuary' assessment of staff transferring into the company and the recent and future levels anticipated for investment performance. Overall the additional costs are £132,000 pa for an open scheme and £177,000 pa if the scheme is closed.
- 8.13 A formal admission agreement for the company will be drawn up with MPF. The Council will be required to guarantee any potential unfunded liabilities for deferred benefits or early retirement strain costs, for which the company will pay the equivalent of a commercial bond rte.
- 8.14 A possibility that was considered was to pool the company's pension rate with the Councils. This would give the company the advantage of a lower initial cost. However whilst these are the pension costs for staff who are currently included within Wirral this option is not recommended. The rate is significantly below the rate determined by the actuary and therefore would be seen as an unfair and anti-competitive subsidy.
- 8.15 The option that is recommended is to close the local government pension scheme to new employees. This is initially a more expensive proposal; however over time as the workforce changes costs will reduce bringing the company's pension arrangements more in line with the external market.
- 8.16 New employees will be placed in a Qualifying Workplace Pension Scheme, with contributions both from the employer and the employee. The scheme will meet all minimum statutory requirements for a workplace pension. Being less costly to the employer it will reduce future liabilities both for the company and the Council. However this is also reflected in the final pension benefit package for staff. Overall company pension costs will increase by £177,000 in year 1 and this will be reflected in the contract with Evolutions. Previous budget assumptions for the Council anticipated that workforce pension costs will increase from 2017-18, this brings forward part of that change into next year's budget, where an appropriate provision will need to be made.

9.0 LEGAL IMPLICATIONS

The European rules prohibiting state aid to the company will not apply to the extent that the company is only competing for local business and with competitors based in the UK and not in other European countries. UK legislation prohibits local authorities from subsidising the costs incurred by companies which they control. The company will also be subject to the equal pay legislation as it will be associated with the Council by virtue of the latter's control and its employees will be able to choose as comparators employees of the opposite sex employed by the Council in appropriate cases.

9.1 TUPE

TUPE applies in two sets of circumstances:

- i. When there is the transfer from one organisation to another of an economic entity that retains its identity. An economic entity is defined as "an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary";

and / or

- ii. Where a specific employee or dedicated group of employees provide a service to a client, and the identity of the service provider changes. The change in service provider may be from 'in house' to a third party provider (which may include another public sector body); from one third party provider to another; or from a third party provider back 'in house'.

9.2 TUPE generally applies where a public authority outsources its service delivery, provided the conditions set out in paragraph 2 above are satisfied. As there is a dedicated group of employees working on the activities to be outsourced then TUPE will apply.

9.3 As pension rights that relate to old age, health or survivors do not transfer under TUPE, the Best Value Authorities Staff Transfer (Pension) Direction 2007 compels the local authority to ensure the contract with the new service provider requires that each transferring employee has rights to acquire pension rights that are the same as those prior to transfer.

9.4 The Operational and legal process for Wirral Evolution to gain admittance to Merseyside Pension Fund to participate in the LGPS is in progress in compliance with this statutory requirement.

9.5 Growth assumptions have been made on the basis of the company remaining Teckal compliant, initially the service contract agreement is in the form of a block contract with the company moving onto the standard day service framework after 3 years.

9.6 Agreement has been reached for the lease of assets and buildings. A service contract agreement is in place for all repairs and maintenance.

10.0 EQUALITIES IMPLICATIONS

10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) Yes and previous impact review is attached.

11.0 CARBON REDUCTION AND ENVIRONMENTAL IMPLICATIONS

11.1 None identified.

12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

12.1 None identified.

13.0 RECOMMENDATIONS

13.1 It is requested that Cabinet:

- a) Note the contents of this report and acknowledge the progress made by officers to develop and establish Wirral Evolutions as a sustainable and viable alternative delivery model for services previously provided directly by the Council.
- b) Approve the Business Plan of Wirral Evolutions
- c) Approve the contractual position set out in the service contract agreement
- d) Approve staff transfer into Wirral Evolutions and company start date of 1 December 2015.
- e) Agree to receive further annual reports to the Council as shareholder of the company
- f) Agree the decision regarding pensions, delegating final arrangements to the Section 151 Officer
- g) Support the use of the re-modelling reserve to meet set up costs

14.0 REASON/S FOR RECOMMENDATION/S

14.1 Cabinet is requested to support the recommendations of this report in order to achieve a solution that is mutually supportive and acceptable to both the Council and the company and that will provide a future sustainable delivery model for day services.

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APPENDICES

Appendix 1 – Wirral Evolutions 5 Year Business Plan (**Exempt**)

Appendix 2 – Wirral Evolutions Employee Charter

Appendix 3 – Service Contract Agreement

BACKGROUND PAPERS/REFERENCE MATERIAL

BRIEFING NOTES HISTORY

Briefing Note	Date
N/A	

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	20 December 2012
Health & Wellbeing Overview & Scrutiny Committee	4 December 2012
Health & Wellbeing Overview & Scrutiny Committee	14 January 2013
Cabinet	18 February 2013
Council (Budget)	5 March 2013
Cabinet	10 December 2013
Cabinet	13 March 2014
Cabinet	19 June 2014