



CABINET
28 FEBRUARY 2018

WIRRAL GROWTH COMPANY

Councillor Phil Davies, Leader of Wirral Council, said:

“The Wirral Growth Company will create **thousands of jobs** for local people. It will drive huge **growth in the local economy** and it will help **fund local public services** by bringing income to the council.

The Growth Company is perhaps the most ambitious, entrepreneurial and impactful programme the council has ever embarked upon and makes a significant step in achieving a host of the council’s 20/20 pledges.

It will help us create jobs. It will stimulate economic growth, build new houses, kick-start regeneration at key sites throughout the borough, and provide a long-term, substantial revenue stream to help us replace some of the funding we have lost through austerity policies.

This programme will, over the next few years, help create more than 3,000 new jobs for local residents. Jobs in construction, retail, hospitality and tourism will see a huge boost throughout our borough as our regeneration plans are kick started through the Growth Company.

It is also vital to help us support our existing local services, which have been decimated by austerity policies since 2010. The Growth Company will facilitate millions of pounds of new investment into the borough, of which the council will directly benefit through its participation in the Growth Company. New money will be brought into the council every year, money which will be immediately reinvested into local services and making sure Wirral remains a fantastic place to live and visit.

The Growth Company is a Joint Venture Partnership – we have the land and buildings, our partner will bring investment and expertise. In essence, we will pool our resources, get new developments built and share the benefits.

These developments- in Birkenhead Town Centre, Bromborough, Bebington, Moreton and Wallasey – cannot be developed by the council alone. We do not have the resources, the skills or the capacity to achieve regeneration on this scale without a major developer working alongside us. Wirral Growth Company will also bring new ideas and energy to delivering regeneration in New Ferry, devastated by the gas explosion nearly a year ago and still awaiting any offer of support from central government

The Growth Company will be able to use these sites and develop them. It will see us be able to create new retail centres, housing developments, leisure facilities; bringing with them hundreds of jobs in the construction phase and then even more when they open their doors to the public.

This programme will provide real benefits for the council, the borough and the entire City Region. We are now in the position to take a leading role in creating the Wirral we want to see for our residents.”

1. REPORT SUMMARY

- 1.1 The purpose of this report is to inform Cabinet of the progress made in regard to the procurement process for the appointment of a Joint Venture partner and to make an award to the winning bidder to join the council to establish the proposed Limited Liability Partnership to be named Wirral Growth Company.
- 1.2 On 19th June 2017, Cabinet agreed to establish a Joint Venture (JV) company to lead the regeneration of key sites within the borough. Cabinet recognised that by utilising the council’s asset base, there was potential to leverage considerable investment, capacity and expertise to fund a significant programme of regeneration across a range of key strategic development sites.
- 1.3 It was agreed that the council would form a joint venture with a partner in the form of a Limited Liability Partnership (LLP) which would involve each party holding equal ownership within governance arrangements that protect the council’s statutory duties to receive best consideration for land, ensure transparency/accountability and take public law decisions unfettered. There would be an asset transfer between the council and the JV in respect of the council’s investment properties & land and in consideration, the council would receive equity to be matched by the partner and a secure loan note structure in respect of the balance of its investment. The council’s development sites would then be transferred to the JV on a site by site basis subject to the satisfaction of pre-development conditions around viability, achieving best consideration and the council’s strategic regeneration framework. The JV would deliver the development sites through a combination of funding streams including equity funding from the partner, recycled returns from other sites and third party development finance. The council would also receive financial returns in accordance with the loan note structure, land receipts and the performance of the JV.
- 1.4 Following Cabinet approval, the council has undertaken an OJEU procurement process for the appointment of a JV partner using a works concession based on competitive dialogue. Through this process and following a pre-qualification stage, two short-listed bidders (with sufficient experience, capability and capacity for the JV model) have participated in the detailed dialogue stage and developed and refined their proposals for the JV. The competitive dialogue stage was formally

closed on 15th December 2017, and the two bidders were invited to submit their final tenders by 3rd January 2018.

- 1.5 As part of the dialogue process, bidders were required to prepare, refine and submit the following documents:
- Business Plan for the JV
 - Site specific proposals for 11 key sites sited in Birkenhead, Bromborough, Bebington, Moreton and Wallasey
 - Funding proposal for a Commercial Centre in Birkenhead
 - Full legal mark up of all the proposed company documentation
 - Mobilisation Plan
 - Financial Model
- 1.6 The bids received have been evaluated by the council's project team comprising representatives from Finance, Legal, Procurement, Assets, Growth and Transformation in conjunction with the council's external advisors Bevan Britten (legal) and GVA (commercial, finance and property).
- 1.7 The Invitation to Submit Final Tender specification can be found at [Appendix A](#). Twenty six questions were asked of bidders through a set of criteria that were weighted towards those questions that were judged to be most important. There was a 70/30 split between Quality (70) and Finance (30) and this reflected the ambition to create a broad purpose regeneration company rather than one based on simply creating profit.
- 1.8 On completion of this process, the council and its external advisors have undertaken a review of the integrity of the OJEU procurement process and robustness of the decision to recommend Bidder A as the preferred partner to establish a joint venture partnership.
- 1.9 In light of recent changes in the market place, the council has undertaken a further due diligence assessment on Bidder A. Therefore, assessments of the preferred bidder and its directors have been made by Standard & Poor, Moody's and Experian. The preferred bidder is judged to have a very strong financial standing.
- 1.10 Subject to the standstill period, the council would then execute the documentation with Bidder A, work up the proposals for specific sites further and refine the Business Plan by the end of May 2018 to allow planning applications for the first tranche of sites to be submitted in the summer.

2. RECOMMENDATION/S

It is recommended that Cabinet:

1. Award the works concession to Bidder A to form a JV LLP with Wirral Borough Council and following standstill, delegate responsibility to the Director for Corporate Resources & Reform to conclude and to deal with any issues arising out of the procurement process.
2. Note that the new joint venture vehicle in the form of a limited liability partnership, will be called 'Wirral Growth Company' (WGC).
3. Authorises Director of Law and Governance to sign the documentation establishing the WGC and affix the Council's seal once the standstill period has completed.
4. Requests officers to bring forward for Cabinet approval within three months:
 - (a) the business plan for the first 3 years of operation of the WGC, recognising that the number and identity of initial sites brought forward may be different from the 11 priority sites tested during the procurement process;
 - (b) the Site Development Plans for the sites to be developed initially, particularly those that are capable of being progressed immediately with a view to transferring them to WGC (or an appropriate subsidiary) through relevant disposal arrangements to include freehold, building lease and licence as appropriate at the relevant time, subject to best consideration and any necessary approvals or consents and vacant possession being obtained;
 - (c) the acquisition of land and assets should any further land be required for development at this stage;
5. Approve the grant of insurance and an indemnity to the Council's Directors appointed onto the Board of WGC from time to time.
6. So as to provide for appointments which are in furtherance of the exercise of an executive function, including the appointment of representatives on the WGC, recommend to Council that Paragraph 16 of Responsibility For Local Choice Functions at Table 1 of Part 3 of the Council's Constitution be amended so that the decision making body for the appointment to a body or office reads 'The Council or in respect of executive functions the Leader or Cabinet '
7. Approve the release of up to £3m of capital funding already approved for strategic acquisitions to be invested in the JV.
8. To note the requirement set out in Section 6 to fund additional council resources in the planning, transport, growth and transformation teams and to agree that this is met from the future WGC distributions to the council and is supported from contingencies/balances pending anticipated distributions.
9. Note that the Leader will approve any reserved matters that may require Cabinet approval from time to time.

3. EXEMPT INFORMATION

- 3.1 This report contains exempt information in the Background Paper 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).
- 3.2 Background Paper A includes the preferred bid and is commercially sensitive.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The procurement process for the JV partner, the appointment of a preferred bidder and the subsequent establishment of an LLP to be called Wirral Growth Company will enable the council to form a partnership with the selected partner utilising the council's asset base, the partner's equity funding and expertise plus third party finance to deliver key regeneration and financial benefits to the Borough in accordance with the key objectives of the Growth Strategy.
- 1.2 Wirral Growth Company will deliver significant economic regeneration benefits for the borough and provide significant social value. It will provide more than £1m for investment to make use of underused assets ahead of redevelopment (meanwhile uses) and provide the council with a sustainable long-term income stream. Additionally this initiative will support the delivery of numerous 20/20 pledges.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The council could decide not to continue the procurement process and not to appoint a preferred bidder. However the abandonment of the procurement process would not deliver the council's strategic objectives or regeneration benefits for the borough as detailed in this report.
- 2.2 The alternative options to the procurement and establishment of a JV were considered and rejected by Cabinet on 19th June 2017. None of these options would deliver the same level of benefits for the borough or within the same timescales as the proposed JV.
- 2.3 In particular, it was recognised that the council does not have the skills, resources or finance to undertake the planned scale of development on its own.

3.0 BACKGROUND INFORMATION

- 3.1 On 19th June 2017, Cabinet considered and approved a Full Business Case to create a Joint Venture Property Company. The Director of Corporate Resources and Reform was authorised to commence and conduct an OJEU works concession competitive dialogue process to identify a partner.
- 3.2 The Competitive Dialogue procedure was chosen because it is the most suitable procurement approach where there is a need for the buying organisation (the council) to discuss aspects of the proposed solution with bidders. Its use is limited to 'particularly complex' contracts where the council cannot define in absolute terms what its requirements are.
- 3.3 The Competitive Dialogue Board was established to oversee the procurement process chaired by the Director of Corporate Resources & Reform. The Board has included senior staff and officers drawn from the bid assessment team. All aspects of the procurement process have been overseen by the council's procurement and legal teams supported by external legal advice from Bevan Brittan. The Chest has been used to communicate with bidders and all competitive dialogue meetings have been minuted.

3.4 The bid assessment team included staff from the council's growth, legal, procurement, transformation and finance teams supplemented by advisors from GVA and Bevan Brittan.

3.5 An OJEU Concession Notice was issued on 4th July 2017 and a four stage procurement process commenced as follows;

1. Selection Questionnaire (SQ)
2. Invitation to Participate in Dialogue (ITPD)
3. Invitation to Continue Dialogue (ITCD)
4. Invitation to Submit Final Tender (ISFT)

Part One - Selection Questionnaire Stage

3.6 On 21st August 2017, four consortia responded to the OJEU Concession Notice. All were of significant scale both in terms of development ability and investment strength. Ahead of scoring the questionnaires, a comprehensive due diligence exercise was undertaken. This involved a range of agencies including Standard & Poor, Moodys and Experian. The due diligence assessed company performance, financial standing and the conduct of directors. Additionally a review was undertaken of the bidders Health & Safety and Social Value track record. No issues were identified with any of the bidders, in fact they were judged to be some of Strongest UK and International regeneration specialists.

3.7 The bids were scored as follows

Bidder	A	B	C	D
Score	70.66%	66.48%	65.60%	59.02%

3.8 Following completion of SQ scoring, it was agreed that all four bidders be invited to proceed to the next stage of the process.

Part Two – Invitation to Participate in Dialogue (ITPD) Stage

3.9 Bidders were issued with an Invitation to Participate in Dialogue (ITPD) on 31st August 2017. The ITPD restated the needs and requirements of the council based around weighted criteria and an evaluation methodology.

3.10 The ITPD was weighted 70% on quality and 30% on finance. The proportion of scores allocated to these categories was determined by the objectives set for the JV. These were drawn from the WBC Growth Strategy and Strategic Regeneration Framework and included;

- Secure local economic growth, job creation and training and skills development opportunities for Wirral residents
- Make a positive contribution towards delivery of the local authority's Asset Transformation Programme.
- Contribute to ensuring that businesses encouraged to invest in the Wirral have access to property that meets their needs and delivers business rate growth.

- Better utilise the Council's assets to drive socio-economic change to secure a sustainable future for the benefit of the community.
- Maximise the Council's financial return from the disposal of its land and property assets, with a preference to generate secure revenue income streams.
- Positively contribute towards the Councils Medium/Long Term Financial Strategy (LTFS).
- Improve the environment.
- Ensure the Council is not exposed to undue financial risk.
- Comply with its obligation to obtain best consideration reasonably obtainable on a disposal of its land.
- To ensure and encourage additional private sector investment, capacity and capability is enabled to support the broad regeneration objectives of the Council.

ITPD: Quality Evaluation

- 3.11 The criteria within the tender were weighted on the basis of the attributes and outcomes that were most important to the council. Emphasis was placed on partnering, a test of the bidders track record to date in partnering with public sector organisations to deliver tangible outcomes. The quality of master-plans for the key priority sites was also prioritised and these plans, in addition to the proposed overall financial model enabled bidders to complete a business plan that would form the starting point for the first three years of development activity.
- 3.12 A fourth key criterion was social value. Here the council was assessing a bidders commitment to recruiting local labour and using local supply chains. The council was looking for progressive working practices such as adoption of quality skills training & accreditation programmes, apprenticeships and adoption of the living wage.

ITPD: Financial Evaluation

- 3.13 Bidders were required to submit financial proposals in respect of the JV. These proposals were in the form of a financial model that would detail quantum, quality and phasing of the initial priority site developments to be undertaken by the JV. Bidders were asked to detail the infrastructure costs to be incurred and the assumptions that underpinned their development costs. The council was seeking to secure a partner that could provide a robust and credible financial approach with shared risk and reward. In order to be able to compare financial models, 11 priority sites were identified and bidders were asked to base their financial models on only these sites. The 11 sites were based in Birkenhead, Moreton, Bromborough, Bebington and Wallasey. These sites enabled the council to assess how the bidder would approach retail, commercial, industrial and residential development in addition to specialist development such as leisure and extra-care. Boundary line plans for these sites can be found in Appendix B.
- 3.14 On 31st August 2017, all bidders were invited to submit an initial tender. Ahead of the tenders being received, one bidder voluntarily withdrew from the process. On 26th October 2017, three consortia submitted bids. The following scores were agreed.

Bidder	A	B	C
Score	59.46%	52.11%	49.31%

3.15 On 8th November, Bidder C was advised that they would not be proceeding to the next stage of the process.

Part Three - Invitation to Continue Dialogue (ITCD) Stage

3.16 The two short-listed bidders were issued with an ITCD and competitive dialogue commenced on 10th November 2017. The schedule of competitive dialogue meetings was used to ensure that bidders understood the council's objectives and to ensure that the council evaluation team tested all aspects of the bidders approach to the JV. The schedule of meetings was as follows.

Ref	Date	Bidder Co Name	Purpose of Meeting
ITCD001	10/11/2017	Bidder A	Competitive Dialogue: ITPD Debrief
ITCD002	10/11/2017	Bidder B	Competitive Dialogue: ITPD Debrief
ITCD003	15/11/2017	Bidder A	Competitive Dialogue: Masterplanning
ITCD004	17/11/2017	Bidder B	Competitive Dialogue: Masterplanning
ITCD005	20/11/2017	Bidder A	Competitive Dialogue: SIF, Grants and Funding discussion
ITCD006	22/11/2017	Bidder B	Competitive Dialogue: SIF, Grants and Funding discussion
ITCD007	24/11/2017	Bidder A	Competitive Dialogue: Masterplanning & Meanwhile Uses
ITCD008	27/11/2017	Bidder A	Competitive Dialogue: Finance
ITCD009	29/11/2017	Bidder B	Competitive Dialogue: Finance
ITCD010	01/12/2017	Bidder B	Competitive Dialogue: Clarifications
ITCD011	04/12/2017	Bidder A	Competitive Dialogue: Finance and Masterplanning

ITCD012	06/12/2017	Bidder B	Competitive Dialogue: Infrastructure & Meanwhile Uses Session
---------	------------	----------	---

- 3.17 During the competitive dialogue phase, in addition to the core bid assessment team, further council staff were included in the dialogue sessions. These staff were drawn from the growth, planning and transport functions to provide additional assurance that the council fully understood all impacts of the bidder's proposals.
- 3.18 Competitive dialogue was closed on 8th December and both bidders were invited to proceed to the next stage (ISFT).

Part Four - Invitation to Submit Final Tender (ISFT) Stage

- 3.19 On 3rd January 2018, Final Tenders were received from both bidders. The bid assessment team analysed and scored the bids over four weeks. The following scores were agreed:

Bidder	A	B
Score	64.55%	59.45%

- 3.20 On 9 February 2018, a recommendation was made to the Competitive Dialogue Board to proceed with Bidder A as the preferred bidder and this was agreed. Some of the key attributes of the preferred bid were;

ISFT: Quality Submission

- 3.21 Bidder A evidenced that it had a strong track record in delivering successful partnerships with the public sector and it would bring the skills, experience and learning from those other partnerships to Wirral. The assessment team identified that Bidder A had a very clear resourcing strategy and in particular their approach to supply chain management and procurement was strong.
- 3.22 Bidder A demonstrated a greater level of detail in respect of the project planning for both pre- and on-site construction phases. In addition their KPIs were comprehensive and robust.
- 3.23 Both bidders submitted masterplans that exceeded expectations. Bidder A set out a number of innovative and ambitious proposals and had a particularly strong proposal around meanwhile uses. A number of Bidder A's proposals offered flexibility to adapt to emerging changes in the market place.
- 3.24 Bidder A had a stronger proposal for the wider Birkenhead regeneration providing a clear vision for the town centre. These proposals presented a balance around creating a 'destination' alongside a revitalised town centre and thoughtful strategy around transport improvements.

ISFT: Financial Submission

- 3.25 At the outset of competitive dialogue, the council clearly stated that a key objective, in establishing the JV, was to enable development across the borough including areas where development may not be currently commercially viable but where there were clear regeneration benefits. It was anticipated that bidders would seek to address the viability challenges through how they structured their business plan propositions.
- 3.26 Bidder A's approach to the viability challenge was to promote a cross-subsidisation mechanism, in particular using the value driven through the Birkenhead Commercial District to support wider development across the borough and in particular, sites in Wallasey. The assessment team considered that this strategy was commercially robust and aligned with the objectives of the council.
- 3.27 Bidder A submitted a robust and coherent Business Plan that was well set out and evidenced. It included most of the elements that would be expected from a Business Plan. There were robust and consistent links between the masterplan, delivery programme and explanation as to how the phasing and drawdown of additional sites could add value to the JV. The overall business plan is predicated on a clear 50/50 joint venture arrangement in all aspects of finance and delivery. This bid was very clear about what the bidder was expecting from the Council in support of the JV.
- 3.28 The key outputs from the 11 phase one priority sites from the preferred bidder are:
- 334,000sqft Grade A office floorspace (with ground floor retail uses)
 - 51,000sqft market facility
 - New cinema and leisure facility
 - 920 spaces within 2x Multi-Storey Car Parks
 - 150 family houses, 52 town houses, 60 apartments (262 units in total)
 - 312,000sqft industrial floorspace
 - An extra care development at Moreton
- 3.29 Bidder A proposed a greater quantum of development within Phase 1, although it was noted that completion in 2022 was one year later than Bidder B.
- 3.30 The funding strategy submitted by Bidder A requires the council to provide equity on a 50/50 basis for each development. On the premise that the council has the ability to provide this cash injection then this strategy allows the council to generate a margin between the rates that it is able to borrow at and the commercial rates that it would lend into the JV. This will be a revenue return to the council as opposed to Capital which would be beneficial to the council given the revenue budget constraints that it is facing.
- 3.31 Bidder A proposed the development of 353,705sqft of commercial office floorspace in addition to the office space to be accommodated by civic users. The bid

assessment team considered that this demonstrated considerable leverage and an ability to attract other occupiers.

- 3.32 Based on the business plans submitted, Bidder A requires a Council cash injection whereas Bidder B requires land investment as security for the cash equity that it would put into the JV on the Council's behalf. In terms of the peak exposure, Bidder B had a peak security requirement of £7.5m whereas the peak cash requirement from Bidder A is only £3.96m. Therefore, under the worst case scenario where the market crashes and the developments stall then Bidder A's proposal has a lower peak risk exposure.
- 3.33 The total returns from the proposed development of the 11 priority sites assessed under Bidder A's proposals is c£30.4m. This is broken down as follows:
- Land Value (Capital) - £17.7m
 - Profit (Revenue) - £11.7m
 - Loan Note Interest - £0.8m
- 3.34 The majority of the financial returns from Bidder A are delivered to the council in the first couple of years of the JV being established. In fact, £27.8m would be received by 2021.
- 3.35 Within 3 months, council officers will bring a report back to Cabinet which sets out the business plan for the operation of the WGC. This will provide a detailed analysis and will set out the council's financial commitments during this early stage.
- 3.36 During the competitive dialogue stage the council's legal advisors, Bevan Brittan set out the full range of documents referred to in the attached Overview of the Principal Legal Documents. During the dialogue stage bidders were asked to itemise the acceptance of the council's terms or propose amendments to those terms, based on: those that were of most importance to the bidder; those they would wish to have changed; and the minor or consequential changes the bidder would like to see reflected in the documentation.
- 3.37 In a couple of places the bidders were required to negotiate figures for the interest rate on loans to the WGC and the share of WGC capital it would contribute should the JVLLP fail for any reason.
- 3.38 In their final submissions, bidders were required to reflect the situation reached at the end of the dialogue stage and the position statement posted by the council on the Chest to confirm the parts of the documents that the council agreed could be changed by each bidder. Through this process each bidder ends up with a set of documentation that is bespoke to them.
- 3.39 During the preferred bidder stage the council confirmed that the bidder would sign up to the documentation as agreed through the competitive dialogue and final tender stages.

Summary

- 3.40 The council has set out a compelling case for economic growth in the Wirral through its Growth Strategy and Strategic Regeneration Framework. Both of these documents shaped the case that was made in previous Cabinet papers to establish a Growth company in order to lead the achievement of these ambitions. This paper sets out the process to secure a preferred partner and recommends that Bidder A be awarded a contract.
- 3.41 The work on refining what is developed and where will begin in the next phase and this process will involve considerable consultation with residents, communities, partners, businesses and elected members.

4.0 FINANCIAL IMPLICATIONS

- 4.1 Entering into this partnership will bring significant financial benefits in terms of capital receipts and company dividend. The WGC enables the council to generate its own resources to support sustainability and financial resilience for the longer term. The 2018/19 budget is underpinned by a significant use of one-off resources to protect front-line services and to manage service demand in support of our 20 pledges. The income receivable from the Growth Company is intended to 'pay back' these resources to ensure the council remains financially resilient.
- 4.2 Additional business rates and council tax receipts will be generated as a result of the direct investment of the WGC. This will provide sustainable funding to support of the key strategic priorities; the 20 pledges and service pressures. The quantum and timing of these will be dependent upon the Business Plan which will be subject to future member approval.
- 4.3 There will be no impact on the council's budget with regard to the staff working on behalf of the Growth Company as these will all be funded from the income it generates and in return will realise social, economic and financial benefits for the council.
- 4.4 The Growth Company will enable the creation of a civic campus in central Birkenhead. This will increase footfall creating a positive impact on businesses and help to further regenerate the town centre. The Civic campus will enable efficiencies to be made to the cost of running the council estate. This will be subject to a future separate report to members.
- 4.5 To realise the benefits the council will need to carry some significant risk. The Birkenhead Commercial District proposal requires the council to enter into a head lease rental agreement. This involves the council acting as guarantor for a quantum of development whereby the council would be required to make good any rental void arising from unlet office space. Conversely, the council will have the opportunity to make a return from rent levels above the head lease rent. The head lease will also leverage additional private sector investment to support wider and accelerated regeneration of otherwise unviable sites. The risk may be mitigated as the council will decide on the acceptable level of space to be underwritten and by working with other public sector partners and seeking commercial opportunities to determine the viability of development and in maximising occupancy levels.

5.0 LEGAL IMPLICATIONS

- 5.1 The Council has a duty to efficiently manage its assets and has wide powers to acquire, hold, appropriate, develop and dispose of land under Sections 120 – 123 of the Local Government Act 1972, Part 2 of the Housing Act 1985, the Local Authorities (Land) Act 1963 and the Town and Country Planning Act 1990 (amongst other powers). Section 1 of the Local Government Act 2011 also contains the Council general power of competence to do anything that an individual may do, providing this is not constrained by legislation. These powers are also supported by section 111 Local Government Act 1972, the power to do anything that is calculated to facilitate or is conducive or incidental to the exercise of any of the council's functions. This power is often used to support the form of any delivery vehicle, or in the alternative section 1 Localism Act, whether that be a company or an LLP.
- 5.2 Section 4 Localism Act 2011 provides that if an authority is exercising the general power of competence in section 1 for "a commercial purpose" then the local authority must do it via a company rather than an LLP. In the last few weeks there has been some helpful judicial interpretation of "commercial purpose" in the case of *Gordon Peters v London Borough of Haringey with Lendlease Europe Holdings Limited as an interested party* [2018] EWHC 192 (Admin) 8 February 2018. That case challenged Haringey's powers to enter into a corporate JV structured as an LLP. However, the High Court ruled that LLPs can lawfully be used where the local authority's primary or dominant purpose is not a "commercial purpose". Although it was anticipated that the joint venture LLP with Lendlease would generate profits for Haringey, the primary purposes for entering the JV LLP were much broader, including bringing much needed finance, experience and expertise to the task of developing the Council's land for its better use, to achieve the Council's strategic aims in housing, affordable housing and employment.
- 5.3 There were also challenges based on failure to properly consult under s3 Local Government Act 1999 (which was considered to be out of time), breach of the Public Sector Equality Duty and an allegation that the decisions should have been taken by Council not the Cabinet under the Functions & Responsibilities Regulations 2000 (all of which were dismissed by the Judge). Whilst the judgment is welcomed the Council must ensure that it continues to act in accordance with its statutory duties, particularly in connection with its equalities and consultation obligations when individual sites come forward for development.
- 5.4 In this instance Wirral council is progressing this project for the strategic objectives set in February 2017 and underpinning the decision to procure a partner of 19th June 2017, providing an 'opportunity for the council to drive economic growth in the Wirral by playing a leading role in the redevelopment of a number of sites across the area', and the primary purposes of the project are not therefore commercial within the meaning of section 4. The objectives are also included in the attached ISFT at Q2.1.
- 5.5 A Limited Liability Partnership is a corporate entity in which two or more partners agree to go into partnership with a view to making a profit. LLPs are regulated by legislation in a similar way to a company, e.g. an LLP must file annual accounts and details of membership with Companies House. In an LLP the members have the

benefit of limited liability: that is, protection from personal liability for any debts or claims made against the LLP provided they act within the powers and the constitution of the LLP.

- 5.6 To enter into this proposed LLP it will be necessary to enter into binding legal agreement with the Partner which set out the terms of the partnership. The Partnership Agreement will commit both parties to a number of obligations in terms of establishing management and decision-making structures, but it does not commit the council to make any financial commitment to the LLP.
- 5.7 Whilst the duties of the type owed by directors of a limited company are not owed by the members of an Limited Liability Partnership (LLP), council officers and Members nominated to the WGC LLP Board will owe general fiduciary duties to the LLP, such as a duty to avoid conflict and duty not to profit personally from being a member of the LLP. It is normal for such obligations to be imposed on the members, via the Partnership Agreement, to act in the best interests of the LLP and not to act in conflict with its interests. While these duties will legally be owned directly by the members of the LLP, the persons administering the LLP on behalf of the council will need to act in accordance with these duties. Therefore, careful consideration should be given to the appropriate skills required for these roles.
- 5.8 It should be noted that the Partnership Agreement provides flexibility for nominees to be removed and replaced at any time by the council if this is required.
- 5.9 In light of their position on the WGC LLP Board, all individuals should, when engaged in business, make appropriate declarations as to their interest in the Wirral Growth Company LLP and refrain from decision-making on matters relating to the affairs of the WGC LLP if they are on the board.
- 5.10 Currently, the Council's Constitution at Paragraph 16 of Table 1 (Responsibility For Local Choice Functions) of Part 3, states that the "appointment of any individual:-
- (a) to any office other than an office in which he is employed by the authority;
 - (b) to any body other than:-
 - (i) the authority;
 - (ii) a joint committee of two or more authorities; or
 - (c) to any committee or sub-committee of such a body,

and the revocation of any such appointment "is a decision to be made by full Council. As a local choice function It is open to the Council to determine that this is a decision that may be made by the Council, the cabinet (executive leader) or, as suggested in this report, for the purposes of executive functions the Leader or Cabinet.

- 5.11 The council's insurance and indemnity arrangements will need to be extended to cover any actions or inaction of Member and Officer representatives of the LLP pursuant to section 39 of the Local Government (Miscellaneous Provisions) Act 1976, section 265 of the Public Health Act 1875, section 101 of the Local

Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) Order 2004.

- 5.12 In relation to specific projects that the LLP may take forward, every potential asset disposal or development will need to be assessed individually to ensure legal compliance and this will happen as sites are brought forward for development through the site development planning process set out in the business case presented to Cabinet in June 2017.
- 5.13 An overview of the Principal Legal Documents can be found at [Appendix C](#).

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The JV will have an impact on Council staff. The scale of developments proposed will increase the work of the planning, transport and asset management teams in particular. There will also be an increase in demands to develop SIF bids for transport infrastructure projects. Given the nature of the JV's proposals, there is a need to consider the creation of a Major Developments Team to coordinate activity in relation to the JV. Although the council will generate increased planning fee income as a result of this work, this will not be sufficient to fund the additional posts that will be required. It is proposed that additional posts are funded from the annual dividend that is received from the JV.
- 6.2 No council staff will be transferred to the JV.
- 6.3 Subject to Cabinet approval, assets will be drawn down into the JV. However this will be done after site development plans and business cases are completed and will be subject to Cabinet approval.
- 6.4 It should be noted that the preferred bidder (and reserve bidder) identified additional council sites within their submission that it considers to be important in delivering "more comprehensive regeneration". Further work on these sites will be undertaken and again will be subject to Cabinet approval.

7.0 RELEVANT RISKS

- 7.1 There is a positive opportunity risk for the council and its partner to significantly regenerate the borough, unlocking currently uneconomical sites. This will improve the borough's long term economic viability, providing future sustainable income streams.
- 7.2 The council in entering into a joint venture partnership will be taking inherent financial risk, although this can be reduced through effective mitigations. Of particular significance is the head lease risk outlined under financial implications. Other financial risks could impact the viability of development sites particularly unexpected interest rate fluctuations; lower than anticipated land values; and uncertainty over market demand. These risks are mitigated through thorough investment appraisal, market analysis and procurement of independent specialist advice as part of development plan approval.

- 7.3 Once approved, individual development plans are exposed to further financial risk potentially through cost overrun and programme slippage. These risks again will be assessed as part of developing the business plan and can be mitigated through JV board governance, effective performance and programme management, contingency planning and a responsive partnership working at pace.
- 7.4 Subject to the approval of the recommendation we will enter a 10 clear calendar day standstill (Alcatel) period. As with all procurement processes there is a risk that during this period the decision of the preferred bidder is challenged. This risk has been mitigated by ensuring that robust and transparent procurement processes have been followed throughout and an additional review of the process carried out. A summary of the process followed is detailed in Section 3.
- 7.5 Further risks to the Programme were identified in the business case agreed by Cabinet in June 2017.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Wirral Council has undertaken communication and engagement with residents about the proposed Wirral Growth Company.
- 8.2 In addition to media articles and advertisements in local and regional press and Wirral Council's in-house publication, Wirral Constituency Committee organised a series of Town Conversations across the 5 sites identified for early development. These meetings took place in September and October 2017 at the start of the procurement process and a second round of Town Conversations are proposed for spring 2018 when the formal process is complete.
- 8.3 A communications plan has been developed by Wirral Council Marketing and Communications and will use local media, social and digital media as well as other Council controlled channels to continue to inform residents and businesses about Wirral Growth Company.
- 8.4 It is also worth reiterating, any development plan or proposal will also have to be shared with residents and consulted on in accordance with national planning policy guidelines.

9.0 EQUALITY IMPLICATIONS

- 9.1 Equality Impact Assessment can be found at

<\\wa10201\Wa10201Data\Shared\WGC Members Briefing 2018>

REPORT AUTHOR: Sian Hartley
Programme Manager

REPORT SPONSOR: Paul Satoor
Director of Corporate Resources and Reform

APPENDICES

Appendix A – Invitation to Submit Final Tender (ISFT)

Appendix B – 11 Priority Sites Boundary Plans

Appendix C – Overview of Principal Legal Documents

REFERENCE MATERIAL

EXEMPT Background Paper (Bidder A: Final Tender) can be found at –
<\\wa10201\Wa10201Data\Shared\WGC Members Briefing 2018>

Additional background papers can be found at –

<https://www.wirralwellmade.com/downloads/>

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Strategic Options Report to Cabinet	27 th February 2017
Property Company Full Business Case to Cabinet	19 th June 2017