

**OVERVIEW OF THE PRINCIPAL LEGAL DOCUMENTS
FOR THE WIRRAL GROWTH COMPANY LLP**

UPDATED 14 NOVEMBER 2018

NOTE

This overview is not an exhaustive list of all points raised in the principal legal documentation nor is it a substitute for considering the principal legal documents themselves in full. The principal legal documents are currently confidential. Terms defined in the principal legal documentation have the same meaning in this overview.

The position set out below reflects the position of the Council to be reflected in the latest iterations of the legal documents which are to be circulated on behalf of the Council during the week commencing 19th November 2018.

OVERARCHING PRINCIPLES

The joint venture provides an opportunity for the JV Partners to harness private sector funding and expertise with Sites currently owned by the Council (and others) to help deliver the holistic long term physical development and regeneration of Wirral with associated benefits that contribute to the social and environmental improvement of the area and provide community benefits.

The first principles for the LLP (the **JV Objectives**) are:

- in relation to the Council, to:
 - secure local economic growth;
 - make a positive contribution towards delivery of the Council'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 streams;
 - positively contribute towards the Council's Medium/Long Term Financial Strategy (LTFS);
 - improve the environment;
 - ensure the Council is not exposed to undue financial risk;
 - comply with the Council's obligation to obtain best consideration reasonably obtainable on a disposal of its land;
 - to ensure and encourage additional private sector investment, capacity and capability which is enabled to support the broad regeneration objectives of the Council.
 - (together the **Council Objectives**); and
- in relation to the JV's business to deliver the **LLP's Objectives**, being:
 - to bring forward, in a timely manner and responding to market demand, the development of the indicative Sites and potentially to undertake other site development;

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- to bring forward, responding to market demand, the development of Sites which are considered more difficult to develop at a comparable rate with Sites which are considered easier to develop;
- to make strategic and opportunistic acquisitions, in particular interventions that support the implementation of the Council's Growth Plan or the development of an improved retail, commercial and public sector offer in Birkenhead and other Wirral town centres;
- to secure an adequate return to the JV Partners commensurate to their investment and the level of risk in respect of such investment to maximise the profits made by the LLP (this is the **Mandatory JV Objective**); and
- to support the Council in pursuit of its wider objectives by identifying and helping deliver favourable solutions that balance financial, economic and social returns.

The LLP may develop Sites directly or enable the delivery of major development schemes in partnership with others (such as at Woodside). The most appropriate approach may vary on a site by site basis, or may vary over time. The Procurement Strategy provides the framework to enable the LLP to procure works and services for each development.

All projects to be delivered by the LLP will be assessed by reference to the JV Objectives, as set out in the Partnership Business Plan and Partnership Agreement. The Partnership Business Plan will be approved by the Council and the Private Sector Partner annually on a 3 year rolling basis. Sites for development may change, depending upon title, collaboration or market conditions from time to time and as Sites are drawn down for development. Both the Council and the PSP will need to approve changes to the Sites (and Non-Council Sites) to be developed in the Partnership Business Plan from time to time.

PRINCIPAL PARTIES

The principal parties to this joint venture are:

- the Council
- the PSP (Muse Developments Limited)
- the joint venture company, to be structured as a limited liability partnership (LLP) with wholly-owned development subsidiaries underneath the main JV vehicle (currently Wirral Growth 2018 LLP to be renamed Wirral Growth Company LLP)
- the PSP Guarantor (Morgan Sindall Group plc)
- the Development Manager (Muse Developments Limited)

LEGAL STRUCTURE

The Council and the PSP will be the JV Partners (i.e. members) in a limited liability partnership for an initial term of ten years with an option to renew for a further five years. The LLP will be structured as a 50/50 deadlocked vehicle in which the JV Partners will each hold an equal interest.

ISSUE	SUMMARY OF PRINCIPAL LEGAL DOCUMENTS
<u>BASIC INFORMATION</u>	
Principal legal documents and parties	<p>Partnership Agreement – between the Council, the PSP and the LLP, regulating the conduct and affairs of each party. This includes the Procurement Strategy and the Delegation Policy, the process for drawdown of sites and drafting / content / approval / and revision of both the overarching Partnership Business Plan and site specific Site Development Plans, and how decisions will be made.</p> <p>Parent Company Guarantee – the PSP Guarantor, the LLP and the Council, with</p>

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	<p>the PSP Guarantor guaranteeing the obligations of the PSP.</p> <p>Loan Note Instruments – for working capital provided to the LLP either before the drawdown of a Site (Initial Loan Notes), upon draw down of a Site (Council/PSP Loan Notes) or otherwise as needed (Additional Loan Notes). The intention is that these Loan Note Instruments will be near identical, save potentially for the interest rate applied. To the extent working capital is drawn down to Development Subsidiary level, there will also be a Development Subsidiary Loan Note Instrument, which will again, as far as possible, mirror the terms of the Loan Note Instrument executed by the LLP.</p> <p>Security Agreements - relating to the Council, PSP and Development Subsidiary. So long as the various LLP Loan Notes remain outstanding, they shall be secured by the LLP in favour of the Council / PSP by charging the property, rights and assets of the LLP. This will equally apply to any Development Subsidiary which will charge in favour of the LLP the property, rights and assets of the Development Subsidiary. Any security granted to the LLP, Council and the PSP will, in time, be subject to any security granted with priority in favour of a senior funder.</p> <p>Deed of Priorities – between the Council, the PSP and the LLP ensuring that the Council and the PSP rank equally for repayments of amounts secured by the Security Agreements.</p> <p>Option Agreement – between the Council (as the current holder of the relevant Sites) and the LLP. Specified pre-conditions will need to be satisfied before the LLP is able to exercise an Option in respect of any Site. The LLP can exercise the option for itself or for a Development Subsidiary.</p> <p>Transfer / Lease – if an Option is exercised, the Option Agreement allows for transfer of the Site by way of a freehold transfer or grant of a long lease to the LLP or Development Subsidiary, as the case may be. The lease will be for a term of 250 years or such shorter or longer period as indicated in the Site Development Plan. Long lease terms are typically between 99 and 250 years for non-residential properties and 999 years for residential properties.</p> <p>Development Management Agreement – between the LLP and the PSP as Development Manager relating to the services to be provided by the Development Manager.</p> <p>Pre-Construction Agreement, Development Agreement and Building/Construction Contract – between the Council and the LLP (or Development Subsidiary) or the LLP (or Development Subsidiary) and the relevant developer, contractor or consultant, with appropriate collateral warranties and assignment of IP rights.</p> <p>Corporate Services Agreement – between the LLP and the PSP as corporate services provider, relating to the provision of various corporate services such as accountancy services; administration of the loan notes; company secretarial services.</p>
Name of the LLP	Wirral Growth Company LLP
BUSINESS	
"Business" of the LLP	<p>The "Business" of the LLP will be defined in the Partnership Agreement as:</p> <ul style="list-style-type: none"> • during any period for which a Partnership Business Plan has been adopted and is in force, to undertake such business(es) as is or are set out in that Partnership Business Plan; • during any period for which a Site Development Plan has been adopted and is in force, to undertake such business(es) as is or are set out in that Site Development Plan; and • to undertake such other business(es) as the JV Partners may from time to time

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	<p>unanimously agree,</p> <p>provided in all circumstances that such business(es) promote the achievement of the JV Objectives.</p> <p>Development activities may be carried out through separately incorporated Development Subsidiaries which are wholly-owned by the LLP (for risk and debt security ring-fencing reasons).</p> <p>The LLP's business will be framed by a Partnership Business Plan and individual Site Development Plans.</p>
<p><u>FUNDING THE LLP</u></p>	
<p>How will the Site development funding needs of the LLP be met?</p>	<p>Funding requirements for a Site will be agreed and set out in the Site Development Plan and the Partnership Business Plan.</p> <p>In advance of Site transfer or lease (where a Site is to transfer or be leased to the LLP or to a Development Subsidiary):</p> <ul style="list-style-type: none"> • for cost efficiency reasons, the Council could undertake title and other initial site investigations/ preliminary checks and may take action such as advertising open space and appropriating the land between different purposes for the creation of Site Development Plans. • it is envisaged that the Council and the PSP will provide initial working capital to enable LLP to develop proposals and Site Development Plans. If agreed in the Partnership Business Plan the Council may also provide cash or assets to the LLP if the LLP's costs can be reduced more effectively by the Council doing so. Interest will accrue on the initial funding. • Planning application/permission costs to be borne by the LLP. <p>Upon Site transfer or lease (where a Site is to transfer or is to be leased to the LLP or to a Development Subsidiary):</p> <ul style="list-style-type: none"> • Initial Loan Notes, value of assets (if any) provided by the Council and the market value of the Site (which for many Sites will be the residual land value) crystallised into the Council Loan Note. • PSP to match the value of the Council's Loan Note through the PSP Loan Note (the Initial Loan Note funding provided by the PSP, including in relation to planning costs in advance of Site transfer counts towards the value matching obligation). • Third party funding obtained for Site development, if required. • Where the development of a Site is not viable without a subsidy (an Affordability Gap), the Council the intention is to seek grant funding from other sources, such as City Region funds, to cover some or all of the Affordability Gap on a Site, Where grant or other funding is not available the Council may fund the Affordability Gap, and such amount is not treated as a loan to the LLP. • Additional finance may be provided by the JV Partners if unanimously agreed. • Interest will accrue on JV Partner Loans at a rate to be agreed between the JV Partners and state aid compliant. Senior funding and JV Partner Loans to be secured and subject to any deeds of priority entered into between the JV Partners and/or the JV Partners and the senior funder(s). • Upon the realisation of a Site, the amount of Council Loan Notes to be repaid, will be varied to reflect the amount of Super Profit if any on a Site. The Super Profit is the amount of profit on a Site remaining after payment of the interest on the JV Partner Loan Notes, the relevant price for the Site, the development costs incurred (including any senior lender's debt), and the LLP's Return for that Site. On some sites Super Profit may be insufficient to repay the Council

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	<p>Loan Notes in full, and the amount to be repaid on the Council Loan Notes is reduced to the balance of Super Profit remaining, which may be nil on other sites it may exceed the value of the Council Loan Notes.</p> <p>The Council recognises the PSP's risk in respect of initial schemes if aborted when the LLP has no reserves (and the JV Partners have not received returns which can be reinvested). Accordingly, if no Site Development Plan has been approved prior to the second anniversary of the Partnership Agreement, the Council is prepared to underwrite a percentage of the LLP's costs will be 50% of the abortive costs. The overall limit of the Council's exposure will be set by the value of pre-transfer costs which can be incurred on a given scheme, as agreed in the Partnership Business Plan, or as subsequently may be agreed between the Council and the PSP.</p>
<p><u>SITES</u></p>	
<p>How many Sites are involved?</p>	<ul style="list-style-type: none"> • The Option Agreement relates to a list of 12] Priority Sites and 20 further sites. • Other opportunities may? arise during the JV lifetime from Council and third party sites, including ?some sites that have already been acquired by the Council, such as the Europa Building in Birkenhead.
<p>Approval process for a Site Development Plan in relation to a Site</p>	<p>A template Site Development Plan governing all future Sites (including those within the Priority Sites) will be scheduled to the Partnership Agreement. Going forward, Site Development Plans are prepared and agreed via a four stage process set out in Schedule 2 of the Partnership Agreement:</p> <ul style="list-style-type: none"> • Draft Indicative SDP – the LLP prepares, and the JV Board considers whether the Draft Indicative SDP meets at least three Council Objectives, the Mandatory LLP Objective and at least two other of the LLP's Objectives. This may be an iterative process requiring more than one consideration by the JV Board. • Approved Indicative SDP - Upon the JV Board approving the Draft Indicative SDP, the JV Board shall as soon as reasonably practicable but in any event within five Business Days, circulate the same to JV Partners for approval. Within 20 Business Days of the JV Partners receiving the Draft Indicative SDP from the JV Board, a meeting of the JV Partners shall be convened for them to consider and, if thought fit, approve the Draft Indicative SDP. Upon the JV Partners approving the Draft Indicative SDP, it shall become the Approved Indicative SDP. • Draft Formal SDP – Upon the JV Partners approving the Draft Indicative SDP, the LLP prepares the planning application for the Site. Once Satisfactory Planning Permission has been received, the LLP prepares a fully costed and complete site development plan, which is the Draft Formal SDP. The LLP prepares, and the JV Board considers whether the Draft Formal SDP meets the same objective test at the Draft Indicative SDP and whether the scheme will be financially viable and will satisfy the Viability Test in the Option Agreement. Again this may be an iterative process requiring more than one consideration by the JV Board. • Site Development Plan – Upon the JV Board approving the Draft Formal SDP, the JV Board shall as soon as reasonably practicable but in any event within five Business Days, circulate the same to JV Partners for approval. Within 20 Business Days of the JV Partners receiving the Draft Formal SDP from the JV Board, a meeting of the JV Partners shall be convened for them to consider and, if thought fit, approve the Draft Formal SDP. Upon the JV Partners approving the Draft Formal SDP, the Draft Formal SDP shall be immediately deemed to have been adopted by the LLP as a Site Development Plan. <p>Any non-material variation to a Site Development Plan requires the approval of the JV Board. The JV Board shall refer any proposed variation to the JV Partners if all</p>

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	Representatives appointed by at least one JV Partner request that the variation be referred to the JV Partners. Any material variation to a Site Development Plan (including any variation referred to the JV Partners by the JV Board) requires the approval of both JV Partners as a reserved matter.
Can other Council and non-Council sites be considered for redevelopment by the LLP?	Yes – the approval process is broadly the same set out above (i.e. preparation and approval of a Site Development Plan).
Conditions to transfer of Site to the LLP	<p>Common conditions – e.g. approval of Partnership Business Plan and Site Development Plan, agreement/determination of best consideration and financial objectives and vacant possession.</p> <p>Specific conditions – as may be set out in the relevant Site Development Plan (e.g. funding, viability, construction and an acceptable planning permission) and in the Option Agreement – planning, funding, business plan, statutory consents, construction and viability</p>
Timing of land transfers in to or leases to the LLP	<p>At any time during the Option Periods (3 years for the Priority Sites and 10 years for the Further Sites) subject to the terms of the approved Site Development Plan and satisfaction of conditions in relation to a particular Site as stated in the Option Agreement.</p> <p>Transfers or leases of the Sites may be made in different ways depending upon the nature of the development in question (for example, a building agreement and lease, then direct sale to an investor (such as the Merseyside Pension Fund) or transfer to a Development Subsidiary for retention by the Development Subsidiary, or onward sale of the Development Subsidiary itself</p>
Valuation principles for Council's land/Sitestransferring in to the LLP	Market valuation (in accordance with the principles of the RICS Valuation and Standards Manual (Red Book) based on a residual value method of valuation or such other method as may be appropriate and carried out by an independent valuer at or immediately prior to the Draft Formal SDP being submitted to the JV Partners for approval - subject always to the Council being satisfied that the figure reached satisfies its statutory obligation relating to disposal of the Site(s) , including the obligation to obtain best consideration.
Procurement of works and services by the LLP	This will be subject to the Procurement Strategy contained in the Partnership Agreement. Some works and services will be delivered by the PSP group companies included in the tender process – others will be tendered through the Chest or otherwise in accordance with the Procurement Strategy.
Use of proceeds of Site sales / profits	<p>Save to the extent otherwise expressly agreed in writing by the JV Partners, net profits remaining after repayment of senior funding and any retention shall first be used by the LLP to make certain repayments in accordance with the following descending priority of repayments (unless otherwise agreed by the JV Partners in writing):</p> <ul style="list-style-type: none"> • repayment to the Council and the PSP of any outstanding Initial Council Loan Notes and Initial PSP Loan Notes (plus, in each case, any interest accrued thereon); • repayment to the Council and the PSP of any outstanding Council Loan Notes and PSP Loan Notes (plus, in each case, any interest accrued thereon). <p>Any remaining distributable profits after the LLP has made all repayments pursuant to the above shall be apportioned between the JV Partners in proportion to their capital contributions and credited to their respective current accounts accordingly.</p>

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<u>GOVERNANCE</u>	
Composition of the JV Board	<p>Four representatives appointed by each JV Partner, comprising in the case of the Council, two Council Officers and two Members.</p> <p>The JV Board should not be too big or too small to manage to the business of the LLP. Alternates will be permitted. The right commercial people need to be appointed to the JV Board so that the JV Board is a viable commercial decision-making entity.</p> <p>The Chair of the JV Board will be appointed on an annual rotating basis and drawn from the representatives. He/she has no second or casting vote.</p>
Decision-making	<p>Matters reserved to the JV Partners in the Delegation Policy will be passed if approved by both JV Partners.</p> <p>At JV Board level, each representative will have one vote and a decision of the JV Board will be passed if approved by a majority of representatives. If not all of a JV Partner's JV Board representatives are present at a JV Board meeting, that representative(s) present may cast the votes of absent representatives, thereby ensuring a board deadlock position can be preserved.</p> <p>The Partnership Agreement will contain provisions relating to conflicts of interest to ensure, as far as possible, that the LLP is at an arm's length to the JV Partners.</p>
Deadlock	<p>Escalation to senior persons within the PSP and Council organisations, followed by mediation followed by either expert determination and/or winding up (depending on nature of deadlocked matter and whether the deadlocked matter can ultimately be resolved).</p>
<u>MISCELLANEOUS</u>	
Transfers by JV Partners of interests in the LLP	<p>No transfers at any time are permitted to unsuitable persons. Subject to this, no transfer of a JV Partner's interests without consent of the other JV Partner except for certain "intra-group" permitted transfers.</p> <p>A transfer of interests in the LLP will include a transfer of the benefit and burden of any loans made to the LLP.</p>
Default	<p>Default events will include a failure to approve the first Partnership Business Plan within 3 months of the date of the Partnership Agreement, breach of certain key project 'milestones', change of control, insolvency, material or persistent breach. The PSP will also be in default if the PSP Guarantor suffers or commits a default event including if it breaches a specified net asset value threshold.</p> <p>Whilst a breach remains unremedied (if it is remediable), the defaulting JV Partner and any Representatives appointed by it are excluded from decision-making and may not receive any distributions of profits referable to the period of the default subsisting.</p> <p>On a default under the Partnership Agreement, the "non-defaulting Member" has the option (but not the obligation) to buy out the other (defaulting) JV Partner's interests in the LLP at a 5% discount to market value, if it gives notice within 10 Business Days following service of a Default Notice.</p> <p>If the option to buy out the other is not exercised, the LLP is to be wound up.</p>
Duration of joint venture	<p>Unless terminated early, the joint venture will last for 10 years with option to renew for further five years.</p>
Winding up	<p>Standard winding up events (i.e. both JV Partners agreeing, insolvency of the LLP,</p>

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	<p>unresolved deadlock, change in law, duration of the LLP expiring).</p> <p>Developments on Sites which have been commenced at the time of the winding up of the LLP are to be completed.</p> <p>A winding up event will also terminate any outstanding options and entitle the Council to:</p> <ul style="list-style-type: none">• repurchase Site(s) out of the LLP (where the development supply chain has not been appointed) at their then market value;• purchase intellectual property rights vesting in the LLP in relation to any Sites, to ensure that it can benefit from such rights to continue to pursue the proposed development on the relevant Site. <p>After payment of all expenses, loan notes and third party creditor costs, any surplus distributed between the JV Partners will be:</p> <ul style="list-style-type: none">• where there has been no default event, on a 50:50 basis; and• where the termination follows a default event, 45% to the defaulting party and 55% to the non-defaulting party.
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