

EXECUTIVE MEMBER DECISION
SHAREHOLDER BOARD 19 MARCH 2019

REPORT TITLE	<i>WIRRAL GROWTH COMPANY LLP PROPOSED GOVERNANCE ARRANGEMENTS</i>
REPORT OF	<i>DIRECTOR: GOVERNANCE AND ASSURANCE</i>

REPORT SUMMARY

1. The purpose of this report is to recommend to the Leader the arrangements by which the Council is represented on the Board of the Wirral Growth Company Limited Liability Partnership (LLP) and the means by which the relationship between those representatives and Leader and remainder of the Cabinet and Council are governed.
2. It affects all Wards within the Borough.
3. It does not call for a key decision.

RECOMMENDATIONS

1. That:
 - (a) the Member for the time being holding the Cabinet portfolio of Deputy Leader;
 - (b) the Member for the time being holding the relevant Cabinet portfolio for jobs and growth;
 - (c) the Assistant Director: Finance and Investment; and
 - (d) the Corporate Director for Children's Servicesbe appointed to the Board of the Wirral Growth Company Limited Liability Partnership (LLP) as the Council's four Representatives and that those persons (and their successors) remain so appointed until they resign, are removed by subsequent decision or until they cease to hold such a role within the Cabinet or post as officer of the Council.
2. That a Partnership Shareholder Board be established as a separate decision making body to the Companies Shareholder Board, with suitably amended terms of reference and membership, at which the Leader (or delegated Cabinet member) will make decisions on matters pertaining to the LLP, including recommendations to full Cabinet and committees of the Council.
3. That appointment of observer status, at both the Partnership Shareholder Board and meetings of the LLP, be considered in respect of non-executive Members.
4. That senior representatives, to attend formal meetings under the Partnership Agreement between the Council and Muse Development Ltd and to make or

recommend decisions accordingly, be appointed at such time as they may considered to be required.

SUPPORTING INFORMATION

1.0 REASONS FOR THE RECOMMENDATIONS.

To ensure that the business of the LLP and its relationship with the Council be established on a proper footing so that its business can be despatched expeditiously but in accordance with the Council's Constitution.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 All matters relating to LLP that require the approval of the Executive could be reserved to the Cabinet.
- 2.2 This option was rejected because it was incompatible with the requirement for swift decision making in the Partnership Agreement and because it would be a disproportionate response in relation to the many non-controversial issues that may need to be decided.
- 2.3 The option of establishing a committee of the Cabinet to make decision on all matters relating to LLP was rejected for the same reasons.
- 2.4 The option of referring all executive decisions to senior officers was rejected because of the perceived need for democratic accountability which can be better secured by reserving decisions to the Leader in consultation with the Shareholder Board.

3.0 BACKGROUND INFORMATION

- 3.1 On 19th June 2017 the Cabinet agreed to establish a joint venture company to lead the regeneration of key sites within the Borough.
- 3.2 On 28th February 2018 the Cabinet decided to award a works concession to Muse Development Ltd (Muse) after the conclusion of a competitive dialogue tendering process.
- 3.3 The decision included the formation of a joint venture in the form of a limited liability partnership with Muse, which is a separate legal entity from both the Council and Muse the business of which is governed by a partnership agreement.
- 3.4 The principal terms of the partnership agreement were determined at the conclusion of the competitive dialogue announced at the Cabinet meeting of February 2018. Remaining terms were delegated to the Corporate Director for Business Management and have been the subject of continuing discussions with Muse, on which agreement has now been reached.
- 3.5 The board of LLP is responsible for the day to day management of the limited liability partnership in accordance with the business plans to be approved by the Council's Cabinet and Muse.
- 3.6 The LLP Board will comprise of four representatives of the Council (officers and/or executive members) and four of Muse.

- 3.7 It is proposed that the Council's representatives are:
- (a) the Member for the time being holding the Cabinet portfolio of Deputy Leader, currently Cllr George Davies;
 - (b) the Member for the time being holding the relevant Cabinet portfolio for jobs and growth, currently Cllr Angela Davies;
 - (c) the Assistant Director: Finance and Investment, currently Mr Daniel Kirwan; and
 - (d) the Corporate Director for Children's Services, currently Mr Paul Boyce.
- 3.8 It is important to note that the Council representatives must act in the way that is most likely to promote the success of the LLP for the benefit of the Council and Muse as a whole. That duty is not necessarily in all cases consistent with the interests of the Council, but equally the Council's interests as a partner should always be considered alongside those of Muse so that a proper balance is struck for the benefit of both.
- 3.9 The Partnership Agreement sets out the LLP's delegation policy. Certain matters of strategic importance to the Council and Muse are reserved to the corporate members for decision and removed from the power of the LLP Board and the Development Manager (Muse).
- 3.10 It is proposed that the Leader (or other Cabinet member with delegation) will receive information and either make decisions or, in respect of decisions reserved or considered to be best made at Cabinet (such as agreeing business Plans, Site Development Plans and land transfers), make recommendations only when sitting as part of a Partnership Shareholder Board.
- 3.11 The terms of reference of the Partnership Shareholder Board will mirror that of the Companies Shareholder Board, but contain differing membership and access as is more appropriate to the LLP's affairs and business of regeneration and development. The Code of Practice for the Governance of Council interests in companies (as proposed to be adopted), and which refers to LLP's also, provides "inter alia" for unconflicted members of the Cabinet, senior officers and, where required, external advisors to be in attendance when the Leader makes a relevant decision. Also invited to meetings of the Partnership Shareholder Board will be observers from the relevant Overview and Scrutiny Committees.
- 3.12 There are certain matters which are referred to by the LLP Board to the corporate members (the Council and Muse) at meetings which include representatives of both partners for decision. They include by way of example:
- (a) Draft Partnership Business Plans.
 - (b) Approval of draft, approved and formal draft site development plans (the contents of these plans will include the terms on which sites owned by the Council are transferred to WGC and the detail of the proposed developments).
- 3.13 Meetings of the partners can be called at 20 business days' notice and are to be attended by 2 representatives of the Council and 2 representatives of Muse. In every

case unanimity is sought but there are provisions in the Partnership Agreement to deal with deadlock including referral to an expert for determination and in the last resort termination of the partnership.

- 3.14 As such meetings are likely to be rarely required, it is proposed that the Council's representatives at the JV partnership meetings will be appointed from time to time by the Leader depending on the nature of the matters to be discussed. The Leader will decide (in accordance with the Constitution) at that time what powers, if any, to delegate to those representatives and who will usually comprise at least one senior officer with expertise in those matters to be considered.
- 3.15 It should be noted, as above, that some of the decisions to be taken may be key decisions in which case it is intended that such decisions will not be made by the Leader at the Partnership Shareholder Board but by Cabinet, which will need to be on the Forward Plan at least 28 days before the decision will be made. Such decisions will include the agreement of the LLP's Business Plan, of Site Development Plans and land transfers. Key decisions will be subject to call in by members of the Council in accordance with the Council's Constitution so that a Scrutiny Committee may exercise its functions in relation to that decision.

4.0 FINANCIAL IMPLICATIONS

Financial implications have been highlighted in previous reports in relation to the establishment of the JV LLP and those in relation to individual and future will be addressed in related reports to be published for decision at Cabinet or by the Leader at the proposed Partnership Shareholder Board.

5.0 LEGAL IMPLICATIONS

- 5.1 The recommendations regarding governance must comply with The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 5.2 A Limited Liability Partnership is a separate corporate entity which, in this case, is made up of two corporate members. The corporate members then appoint Representatives to form the Board of the LLP. The duties owed by the Representatives are governed by the Partnership Agreement between the LLP's members but, in default, are similar to those duties owed by company directors. A key example is that the courts (*F&C Alternative Investments (Holdings) Limited v Francois Barthelemy (1) Anthony Culligan (2)* [2011] EWHC 1731) have determined that, because of the degree of control the Representatives are able to exercise over the conduct of the LLP's business, they owed fiduciary duties to the LLP which overrode the duties owed by those representatives to their appointing corporate member.
- 5.3 Wirral Growth Company LLP's Joint Venture (JV) Agreement provides that:

"14.5.1 A Representative shall owe a duty to the LLP to act in the way he considers, in good faith, would be most likely to promote the success of the LLP for the benefit of the JV Partners as a whole and in furtherance of the Partnership JV Objectives, the Business Plans and this Agreement."

- 5.4 This creates a conflict of interest requiring a separation between the Representatives and the Council's Cabinet, which is why the Shareholder Board for companies is proposed to be replicated, in an amended form, to manage the relationship and divisions established in respect of the LLP.
- 5.5 All decisions by the Leader and Council representatives at meetings with Muse must be in accordance with the Council's budget and comply with the Council's legal duties to carry out any necessary prior consultation with representatives of any service users and local tax payers to obtain value for money and to comply with the Public Sector Equality Duty.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1. The appointment of Senior Council Officers to serve on the Board of WGC and the requirement for officers to advise Members on the Shareholder Board and at joint meetings with Muse will in particular increase the demand for officers with financial, economic and legal expertise.
- 6.2 It is difficult to quantify what the increase will be but it will be substantial.

7.0 RELEVANT RISKS

- 7.1 A balance has to be struck between the need for the Council to act in a commercial and expeditious fashion in relation to the business of WGC and for the decision making to be transparent with democratic accountability.

8.0 EQUALITY IMPLICATIONS

- 8.1 There are none arising from this report.

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