



REPORT TITLE:	WIRRAL WATERS ONE-LEGACY DEVELOPMENT
REPORT OF:	ASSISTANT DIRECTOR - CHIEF REGENERATION OFFICER

REPORT SUMMARY

This report provides an update about this project to bring forward 500 residential units in a 1 and 2 bedroom apartment scheme on the East Float of Wirral Waters. It is a joint project between Peel Holdings and Wirral Council, with the Council entering into leases for the apartments for up to 50 years.

The development will be the first large scale purpose built private rented scheme in Wirral and will significantly enhance the housing offer within the local area by providing high quality apartments, on brown field land, on a waterfront location. The scheme will also support further residential and commercial development in Wirral Waters creating a new community within the dockland area.

The scheme originally involved Aviva Investors Commercial Assets GP Limited as the scheme funder. Aviva have withdrawn from the scheme due to changes in their lending criteria and a new funder Pension Insurance Corporation plc ("PIC") has been identified. PIC, has requested some amendments to the commercial arrangements. This report sets out the changes to the original commercial deal including the mitigating steps and explains that the changes do not materially affect the commercial value of the deal to the Council.

The annex and appendices in this report are exempt under paragraph 3 of Part 1 to Schedule 12A of the Local Government Act 1972 due to the commercial sensitivities of the information contained.

This is a key decision and the matter affects all Wards within the Borough.

RECOMMENDATION

That the Director of Regeneration and Place agrees to Pension Insurance Corporation PLC being the funder for the Legacy Development Scheme in substitution for Aviva Investors Commercial Assets GP Limited with the changes to the commercial arrangements as identified in the exempt Appendices 1 and 2 to this report.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Entering into the variations to the overall commercial deal as outlined within this report will enable PIC to commit as the new funder, which will enable the taking of the leases of 500 apartments which will bring forward the first large scale Private Rented Sector development in Wirral. It will also provide an opportunity for the Council to drive the delivery of new homes, meet the housing needs of residents and contribute to economic growth in Wirral.
- 1.2 The recommendations, if approved, will allow the project to proceed as an investment vehicle for the Council which has the potential to deliver a financial return and therefore a long term revenue income stream to the Council which could support wider service delivery and future investment.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Do not agree to the variations- The variations have been subject to detailed negotiation and if they are not agreed there is real risk that the development would not take place.
- 2.2 The Council seek to fund the Scheme directly thereby removing the need for an investor. In order to do this the Council would need to re-open its Housing Revenue Account or deliver the scheme through Wirral Holdings Limited. The Council would need to agree a mechanism to obtain the finance such as use of prudential borrowing. However a higher rate of interest would need to be charged to the developer to comply with subsidy control provision. Taking the above issues into account this is not considered to be a viable option to pursue.

3.0 BACKGROUND INFORMATION

- 3.1 On 1 October 2018 the Council's Cabinet resolved as follows:
 - 1 Approve the Full Business Case for Wirral Waters One thereby agreeing in principle for the Council to enter into a lease of residential units for up to 50 years as an investment vehicle;
 - 2 Thereby authorise the Director of Governance and Assurance, in consultation with the Corporate Director for Business Management and the Director of Finance and Investment, to:
 - (a) enter into an Agreement for Lease between Wirral Council, Peel Legacy (Wirral Waters) Limited and Peel Holdings Land and Property (UK) Limited, on terms that are substantially in accordance with the draft set out at Appendix 2, noting that the Agreement for Lease contains a number of conditions that must be satisfactorily met before the Agreement is deemed to be unconditional;

(b) enter into a 50 year underlease and other ancillary agreements for the residential units with Aviva Investors Commercial Assets GP Limited when the conditions within the Agreement for Lease have been satisfactorily met;
(c) grant a sub under-lease to a Peel Management Company, intended as a single purpose vehicle (SPV), for it to manage the leasehold property and grant the residential tenancies from Years 0–10;
(d) form a wholly owned company limited by shares to operate as a property management business; and (e) grant a sub-underlease to the wholly owned company for it to manage the leasehold property and grant the residential tenancies from the ending of the sub-underlease (referred to at (c) above) to Year 50.

3 Authorise the Corporate Director for Business Management, in consultation with the relevant Cabinet portfolio holder, to determine the relevant approvals granted to the Council in the Agreement for Lease as and when each condition is met to his or her satisfaction.

4 Note that:

(a) the head-lease to be granted by Peel Holdings Land and Property (UK) Limited to Peel Legacy (Wirral Waters) Limited is to be assigned for 250 years to Aviva Investors Commercial Assets GP Limited; and

(b) the Agreement for Lease grants an option to the Council to hold 350 of the residential for the remainder of the 250 year head-lease period and that the decision whether or not to exercise that option to acquire will be made by the Council at the relevant time

3.4 The development will significantly enhance the housing offer within the local area by providing high quality private rented apartments, on brown field land, on a waterfront location. The rental levels for 20% of the apartments will meet the criteria for affordable housing. The scheme will also unlock further residential and commercial development in Wirral Waters creating a new community within the dockland area.

3.5 Wirral Waters is one of the largest regeneration projects in the UK (some 500 acres) with the potential to create over 20,000 permanent jobs and to transform the derelict docklands through a mix of sustainable mixed use development schemes. Housing is a key feature of Wirral Waters, with outline planning permission in place for up to 13,500 units to be developed over the next 22 years. Government Enterprise Zone status was secured in 2011 and the area was awarded Housing Zone status in 2017 – recognising the opportunity for housing growth within the scheme.

3.6 The Legacy scheme of Wirral Waters is a £90m funded project providing 500 apartments in a series of blocks, on a key strategic waterfront site in Wirral Waters. The development is the first large scale purpose built private rented scheme in Wirral and will significantly enhance the housing offer within the local area by providing high quality private rented apartments on brownfield land. The apartments will be of 1 or 2

bedrooms, with 100 apartments being designated as affordable. This scheme includes provision for 20% of the apartments to be affordable.

- 3.7 The Council's participation in the scheme is on an investment basis which has been assessed as having the potential to deliver an acceptable rate of return on the investment. This is outlined in a Market Economy Operator Principle Report (MEOP) which has been prepared by a specialist external advisor. MEOP is a concept which determines whether a transaction entered into by a public sector organisation gives a selective advantage to a private sector organisation and therefore falls within the Subsidy Control rules. In broad terms an economic transaction carried out by a public sector body does not constitute an unlawful subsidy if it is in line with normal market conditions and a market operator, of similar standing, could have been prompted to enter into the transaction on the same terms. The MEOP report that was produced for this project confirms that it is in line with these principles.
- 3.8 Peel Legacy (Wirral Waters) Limited will take on two 250 year leases from Peel Holdings and will build the development. The scheme will be financed by a funder who will take two 250 year lease from Peel Legacy. The Council will commit to taking two 50 year underleases of the 500 residential units and to pay the funder a fixed rent (increasing with RPI) and estate service charges to secure repayment of the loan with interest. The first set of leases will be of 150 apartments and the second set of leases will be of the remaining 350 apartments, thereby allowing the developer to bring forward the development in two phases with sectional completion.
- 3.9 The Council will simultaneously with completion of their 50/55 year underleases grant sub-underleases (one for the 150 apartments and a second for the 350 apartments) to a Peel Management Company who will manage the apartments for years 0-10/0-15 and take on the Council's rental obligations during that initial period. This Peel Management Company will make rental payments to the Council at a level which is equal to the Council's payments to a funder in accordance with the Council's underlease. A Peel company of substance will provide a guarantee of the Company's rent payments to the Council. From Years 11-50 the commercial risks will be transferred to the Council with the Council's special purpose vehicle, Wirral Holding Limited being responsible for letting out the properties, managing the apartments and for securing the rental payments for the Council. The Council will be responsible for the payments to the funder for the whole of the underlease term but it is intended that Wirral Holding Limited cover this liability as Tenant under the underleases granted to cover the remaining 40 years of each of the underleases.
- 3.10 At the end of the 50/55 year underlease periods the Council will have the ability to take up an option to acquire a lease for 200 years at a peppercorn rent from the funder of the second phase of the development being 350 of the residential units and Peel will have a similar option for 150 units. The Council's residential units will be contained in specific blocks thereby making any future decisions fairly straightforward at the end of the 50 year period, be that continuing to rent them out or selling them on. For the period after completion of the first block of 150 apartments and before the second phase of 350 apartments is complete, the Council will hold the benefit of an option

over the first 150 apartments. This is as security in case the second phase of the apartments is not delivered.

- 3.11 The Council's commitment is its rental obligations, together with service charge payments made by the Council's SPV, from years 11-50. In addition up-front Stamp Duty Land Tax (SDLT) will be payable in respect of the grant of the under leases. Peel will be taking two sub under leases for the first ten years and have agreed to cover the cost of the SDLT. This agreement is in line with the conditions contained in the MEOP report.
- 3.12 An Agreement for Lease has been negotiated.. This sets out the legal structure of the project, including termination rights, as well as issues such as the requirements relating to the environment, building quality, insurance, services, and asset management. It includes a number of conditions. The Council will not progress with taking the underlease until all conditions within the Agreement for Lease are met.
- 3.13 There is a need for an officer decision because of the change of the funder (which in itself is not a substantive matter) and also because of the fact that PIC have requested a number of changes to the legal documentation. The changes range from minor points and two substantive points. The substantive points have been satisfactorily mitigated and details of the issues are set out in Appendix 1 to this report. Appendix 1 is commercially confidential and exempt from publication in accordance with Part 1 of Paragraph 3 of Schedule 12A to the Local Government Act 1972.
- 3.14 There are a number of other more minor changes to the documentation which have been satisfactorily mitigated. The full set of amendments are set out in Appendix 2 to this report. Appendix 2 is commercially confidential and exempt from publication in accordance with Part 1 of Paragraph 3 of Schedule 12A to the Local Government Act 1972.
- 3.15 It is the opinion of the Chief Regeneration Officer that the changes to the commercial arrangements as set out within this report do not materially affect the overall value to the Council of the Legacy scheme in view of the effective mitigation of risks as outlined within the report and the exempt appendices.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The finances of this project have been structured on the requirement that the Council uses its covenant strength through taking two leases on the 500 residential units for 50 years. As a result there is no need for public sector funding and / or grants to deliver the scheme. The strength of the Council's covenant is critical in enabling investment in the scheme which would not otherwise come forward at a rate that would be financially viable for the development to progress. The project is financially viable.
- 4.2 Peel will manage the apartments for years 0-10 and take on the Council's rental obligations, thereby guaranteeing rental payments to the Council at a level which will

cover the Council's payments to the funder. From years 11-50 the commercial risks will be transferred to the Council with the Council's SPV being responsible for letting out the properties, managing the apartments and for securing the rental payments for the Council. The Council will therefore be responsible for making the payments to the funder for the remaining 40 years.

- 4.3 In addition to the potential income from the rental payments from years 11-50, the scheme will result in increased income to the Council from the following sources:
- Council Tax and Business Rate income upon completion of the development and associated commercial units;
 - The Legacy Foundation will provide £100,000 for investment in activities for young people.
- 4.4 Costs related to the payment of SDLT will be met by Peel.
- 4.5 A financial assessment of the revised position may be required to ensure the risks remain unchanged or still at a level acceptable agreed with the original funder and lease. The phasing of build may result in some additional risk if the build was not progressed to stage 2, however the break clause included within the agreement at year 5 would mitigate any significant adverse financial change. Prior to year 5, in the event that the further 350 units have not been constructed, a financial assessment will be required to inform a decision on whether to exercise the break clause.

5.0 LEGAL IMPLICATIONS

- 5.1 This is a private sector development and does not involve any local authority direct provision of housing. It is to be considered in terms of the Council's powers to acquire and dispose of land under the Local Government Act 1972. In order to privately let housing accommodation on assured shorthold tenancies the Council must facilitate this through a Council owned company set up under Section 1 of the Localism Act 2011. Wirral Holding Limited has been established for such purpose.
- 5.2 The rules on Subsidy Control prohibit the Council from using public money in any way that would give Peel or its Funder, a commercial advantage over its competitors. The scheme must therefore meet a test whereby the Council can prove that an investor would equally consider the expected rate of return on the investment to be sufficient to compensate for the risk of financial losses. The Council has previously engaged specialist advisors and the MEOP report that they provided in 2018 considered that a private sector investor, in comparable circumstances to the Council, would take the same investment decision as that currently being considered by the Council.
- 5.4 The MEOP opinion was contingent upon a number of factors being satisfied. These matters are set out as conditions within the Agreement for Lease and will need to be met before the Agreement for Lease can be considered to be unconditional. The Council will not be bound to enter into the underlease with the Funder unless the Agreement for Lease becomes unconditional.

5.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The taking of the underlease by the Council will involve a financial liability with regards to Stamp Duty Land Tax. Peel have agreed that they will meet the costs of the SDLT as part of the development.
- 6.2 The oversight of Wirral Holding Limited to hold the 50 year leases and to manage the properties will incur operational costs. These will be minimal for the first ten years as Peel Legacy will be carrying out the management function for this period. Costs for this period can be met from existing budgets.
- 6.3 Resource will be required in order to monitor the detailed design work to meet the specification as set out in the Agreement for Lease. This will be met from existing staff resource. It is proposed that external expertise will need to be procured in order to advise the Council on the technical content of the tender process and award. There will also be a requirement for post contract construction monitoring. These costs can be met from existing departmental budgets.

7.0 RELEVANT RISKS

- 7.1 The risks and mitigations arising from the changes to the documentation are set out in the exempt appendices 1 and 2.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 There are no engagement/consultation implications arising from the proposals set out within this report.

9.0 EQUALITY IMPLICATIONS

- 9.1 The public sector equality duty applies to all council decisions. The duty requires due regard to the need to:
- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 There are no significant equality and diversity implications arising from the proposals set out within this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 There are no significant environment or climate change implications arising from the proposals within this report.

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APPENDICES

Appendix 1- Summary of significant changes to the commercial arrangements in relation to the Legacy Project

Appendix 2- Overview of all changes to the commercial arrangements in relation to the Legacy Project

Appendices 1 and 2 are commercially confidential and exempt from publication in accordance with Part 1 of Paragraph 3 of Schedule 12A to the Local Government Act 1972.

BACKGROUND PAPERS

Agreement for lease between Wirral Council, Peel Legacy (Wirral Waters) Limited and Peel Holdings Land and Property (UK) Limited (exempt).

SUBJECT HISTORY

Council Meeting	Date
Cabinet Report – Wirral Waters Legacy Project	1 October 2018