



ECONOMY, REGENERATION AND DEVELOPMENT COMMITTEE

26 July 2021

REPORT TITLE:	WIRRAL GROWTH COMPANY - GOVERNANCE ARRANGEMENTS
REPORT OF:	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

The purpose of this report is to recommend the arrangements by which the Council is represented on the Board of the Wirral Growth Company Limited Liability Partnership.

The matter affects all Wards within the Borough and is not a Key Decision.

RECOMMENDATIONS

That Economy, Regeneration and Development Committee:

- (1) approves that the officers holding the post for the time being of Assistant Director Finance and Investment and the Director of Children Families and Education continue to be the Council's officer appointments to the Board of the Wirral Growth Company Limited Liability Partnership 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 post as officer of the Council; and
- (2) nominates 2 members to be appointed to fill the remaining 2 vacancies on the Board of the Wirral Growth Company Limited Liability Partnership.

SUPPORTING INFORMATION

1.0 REASON FOR RECOMMENDATIONS

- 1.1 To ensure that the business of the Wirral Growth Company Limited Liability Partnership (Wirral Growth Company) 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.
- 1.2 To ensure that appropriate corporate oversight is given to the plans, strategies and proposals of the Wirral Growth Company.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 An alternative option would be to not appoint members to the Board of the Wirral Growth Company but to nominate a further 2 officers. This would be permitted by the Shareholder Agreement and would avoid the scope for conflicts of interests arising from Councillors being members of the Wirral Growth Company Board. Whilst this is not currently the recommendation it is something that could be considered upon further work being carried out in order to investigate the options for appointing to the 2 vacancies which to date have been member appointments.

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. The decision included the formation of a joint venture in the form of a Limited Liability Partnership (LLP) with Muse, which is a separate legal entity from both the Council and Muse, the business of which is governed by a partnership agreement. The Wirral Growth Company is a joint venture controlled in equal parts by the Council and by its private sector partner, Muse.
- 3.3 The board of the Wirral Growth Company is responsible for the management of the LLP accordance with the business plans to be approved by the Council and Muse. The Wirral Growth Company Board comprises of four representatives of the Council (currently 2 officers and 2 members) and four representatives of Muse.
- 3.4 Since the recent May 2021 local government election, Councillor Tony Jones is the current sole Council Member representative and given his position as Chair of this Committee there is an inherent potential for a conflict of interest in terms of both roles. Committee is requested to consider the matter of which members should be appointed to serve as the Council's two member representatives on the Wirral Growth Company. This Committee is also requested to endorse the current officer appointees who comprise the Council's Assistant Director Finance and Investment and the Director of Children Families and Education.
- 3.5 In looking at the governance of the Wirral Growth Company, regard should be had to the Council's Code of Corporate Governance on Council Interests in Companies, set

out in Part 5(8) of the Constitution, which has a number of parallels with, and refers to, the ownership of Limited Liability Partnerships (“LLPs”). The Code suggests that a LLP will be run by its board members, who will participate directly in the activities of the LLP which will then be answerable to the partners in accordance with a partnership agreement. This level of operation and relationship and the accompanying conflict of interests that may arise means that officers are better placed to fulfil this role. Notwithstanding the current recommendations within this report, it is suggested that the role of elected Members as members of the Wirral Growth Company should be reviewed in the light of the move to the committee system and what that means for both the Council and the Wirral Growth Company.

3.6 Members who are appointed onto the Wirral Growth Company Board would not be able to vote on Local Plan issues. Members of the Local Plan Sub-Committee should therefore not be appointed onto the Board.

3.7 The Council has commissioned 4Ps to undertake a stage review of the operation of Wirral Growth Company and the issues outlined in this report may form a part of a review of the role of elected members as Board members.

4.0 FINANCIAL IMPLICATIONS

4.1 There are no significant financial implications arising from the proposals set out within this report.

5.0 LEGAL IMPLICATIONS

5.1 A LLP is a separate corporate entity which, in this case, is made up of two corporate members namely Muse and the Council. The corporate members then appoint Representatives to form the Board. The duties owed by the Representatives are governed by the Partnership Agreement between the LLP’s members but are similar to those duties owed by company directors. Because of the degree of control the Representatives are able to exercise over the conduct of the LLP’s business, they owe fiduciary duties to the LLP which override the duties owed by those representatives to their appointing corporate member.

5.2 Wirral Growth Company Joint Venture (JV) Agreement provides that a Representative shall owe a duty to the LLP to act in the way they consider, 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. Duties of Representatives are exclusively to the LLP but they must withdraw from Board Meetings if a decision has to be made that may conflict with the interests of those of the Partner that appointed them. This creates a potential conflict of interest which will need to be monitored, with advice from the Director of Law and Governance.

5.3 All decisions by Council representatives at meetings of the Wirral Growth Company 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.

- 5.4 It is relevant to note that the Terms of Reference of this Committee include “The Council’s functions and partnerships regarding the promotion of economic growth and the establishment and development of business”.
- 5.5 As a partnership, the Wirral Growth Company is not bound by the rules pertaining to local authority ownership of a company. Conversely, it does not have the benefit of the financial and legal freedoms of a local authority interest company and must, instead, abide by the full set of limitations imposed by local government law on its powers and functions, including that it may not operate for a commercial purpose.
- 5.6 The name of Wirral Growth Company is not an accurate one given that it is in fact a LLP. The concept was, and remains, to bring together Council assets and community planning with the development and financing expertise of a private sector body as a partnership established to create economic generation and new and sustainable homes and businesses focussed purely on and for Wirral.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING & ASSETS

- 6.1 The need for Council appointees to serve on the Board of the Wirral Growth Company and attend joint meetings with Muse creates a demand for staff resources particularly in terms of officers with financial, economic and legal expertise and in terms of the need for the Council to advise and support the councillor appointees.

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 the Wirral Growth Company and for the decision making to be transparent with democratic accountability. The proposals within this report aid in striking that balance and will enable the Council to comply with its duty to follow good governance processes.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Consultation has taken place with the Chair and Spokespersons of this Committee in terms of the contents of this report.

9.0 EQUALITY IMPLICATIONS

- 9.1 The Council is not aware of any 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.

11.0 COMMUNITY WEALTH IMPLICATIONS

- 11.1 The recommendations contained within this report are expected to have no impact in terms of Community Wealth.

REPORT AUTHOR: Matthew Neal
Lead Principal Lawyer
e-mail: matthewneal@wirral.gov.uk

BACKGROUND PAPERS

Joint Venture Option Agreement (Exempt)
Wirral Growth Company Y1-3 Partnership Business Plan approved (Exempt)
Background working papers as referred to in the Partnership Business Plan (Exempt)
Partnership Agreement (Exempt)

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet -Draft BCD Business Case and Staff Relocation	26/11/18
Leader Decision -Wirral Growth Company LLP Proposed Governance Arrangements	19/03/19
Leader Decision -Wirral Growth Company	3/09/19
Leader Decision -Directorship of Wirral Growth Company	9/01/20
Cabinet - Wirral Growth Company	24/02/20
Cabinet – Lease for New Offices in BCD	27/07/20