

POLICY AND RESOURCES COMMITTEE**1 September 2021**

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

REPORT SUMMARY

1. 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 and the means by which the relationship between those representatives and the Council are governed. In particular, members are requested to give consideration to the matter of whether members should be appointed to the Board.
2. The matter affects all Wards within the Borough and is not a Key Decision.

RECOMMENDATIONS

That Policy and Resources Committee:

- (1) approve 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
- (2) gives consideration to the appointment of Council nominee Board Members to fill the remaining 2 vacancies on the Board of the Wirral Growth Company Limited Liability Partnership
- (3) makes appropriate recommendations to Council:
 - (a) having regard to the alternative options for decision making arrangements relating to the Council's function as corporate shareholder of the Wirral Growth Company as referred to at paragraph 3.11 of this report.
 - (b) as regards the size of the decision-making sub committees having regard to the considerations set out in paragraph 3.14 of this report.

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 The options in terms of decision-making arrangements relating to the Council's function as corporate shareholder of the Wirral Growth Company are set out at paragraph 3.10 of this report.
- 2.2 The Council has the option of appointing 2 officers or 2 members to fill the remaining Council nominee vacancies on the Board of the Wirral Growth Company. Either option would be permitted by the Shareholder Agreement. Not appointing members to the Board would avoid the scope for conflicts of interests arising from Councillors being members of the Wirral Growth Company 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. 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. The Wirral Growth Company Limited 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 day-to-day management of the limited liability partnership in 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, 1 member and one vacancy) and four representatives of Muse Councillor. Councillor Tony Jones is the current sole Council Member representative on the Board of the Wirral Growth Company and given his position as Chair of this Committee there is an inherent potential for a conflict of interest in terms of both roles. The current officer appointees on the Board comprise the Council's Assistant Director Finance and Investment and the Director of Children Families and Education.
- 3.4 It was always the intention that there would be a Partnership Shareholder Board (or Sub-Committee) which would mirror that of the Companies Shareholder Board but containing differing membership and access as is more appropriate to the LLP's

affairs and business of regeneration and development. This was reflected in a decision of the Leader of the Council of 20 March 2019 which provided amongst other matters 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 decisions on matters pertaining to the Wirral Growth Company, including onward recommendations.

- 3.5 The role of Partnership Shareholder Board is distinct from the role of decision making and holding the Wirral Growth Company to account in respect of the commitment of Council assets, approval of Site Development Plans and the inputs and outputs of each project which are all a matter for the full Committee.
- 3.6 The development of a Partnership Shareholder Board was interrupted by the need to concentrate on the Council's response to the Covid 19 pandemic and the requirement to revise the constitution so as to move to a Committee system. This has meant that there has been no such board or sub-committee meeting dedicated to:
- performance against the agreed business plan;
 - the LLP's state of financial health;
 - or the social and financial return the LLP provides on the Council's investment; or
 - undertaking governance decisions relating to Corporate Matters reserved to the Council under the Partnership Agreement.
- 3.7 The accounts of the Wirral Growth Company have not been presented to a Member body of the Council. Work to return the Council's relationship with the Wirral Growth Company in this regard has now begun again, not least in being addressed through this report.
- 3.8 Under the new Constitution which came into force in September 2020 there was provision made for a Shareholder Board, being a Sub-Committee of three (3) or more members of the Policy and Resources Committee, subject to politically balance, with delegated authority to exercise responsibility for the Council's functions as corporate shareholder of a company, or group of companies, or a limited liability partnership. The Sub-Committee will be organised, and will also meet as a working group, alongside officers and advisors in accordance with the Council's adopted Code of Practice for the Governance of Council Interests in Companies at Part 5(7) of this Constitution.
- 3.9 It is acknowledged that the constitution which was adopted in September 2020 did not include provision for a mirror Shareholder Board with this being in effect a matter of unfinished business.
- 3.10 On 26 July 2021 Economy Regeneration and Development Committee considered a report of the Director of Law and Governance, which recommended the arrangements by which the Council was represented on the Board of the Wirral Growth Company. The resolved that Policy and Resources Committee be requested to:

(1) approve 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) consider whether Members should be appointed to the Board and discussions take place in the meantime within the political groups and with group leaders.

3.11 This Committee has a choice of:

(a) Retaining the current position as set out in the constitution which would lead to the Shareholder Board being retained, with responsibility for all the Council's companies and the Wirral Growth Company.

(b) Creating a Wirral Growth Company Sub-Committee of the Economy Regeneration and Development Committee, subject to political balance, with delegated authority to exercise responsibility for the Council's functions as a member of the Wirral Growth Company. As with the current Shareholder Board the Wirral Growth Company Sub Committee could also meet as a working group, alongside officers and advisors. This would be in accordance with the Leader decision of 20 March 2019 and would need to be a recommendation to Council along with an adjustment to the Terms of Reference of the Shareholder Board so that it makes no reference to LLPs;

(c) Creating a Wirral Growth Company Sub-Committee of Policy and Resources Committee, subject to political balance, with delegated authority to exercise responsibility for the Council's functions as a member of the Wirral Growth Company. As with the current Shareholder Board the Wirral Growth Company Sub Committee could also meet as a working group, alongside officers and advisors. This would also be in accordance with the Leader decision of 20 March 2019 and would need to be a recommendation to Council along with an adjustment to the Terms of Reference of the Shareholder Board so that it makes no reference to LLPs.

3.12 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 joint venture 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. It is suggested that the role of elected Members as members of the Wirral Growth Company should therefore 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.

3.13 This Committee is requested to endorse the current officer appointees on the Board of the Wirral Growth Company who comprise the Council's Assistant Director Finance and Investment and the Director of Children Families and Education.

Committee is also requested to consider the matter of who should be appointed to also serve as the Board alongside the current officer appointees.

- 3.14 The Shareholder Board's size is set at 3 members for the current municipal year. In order to provide for more cross party membership of both the Shareholder Board and any mirror Sub Committee that members may wish to create to pursuant to the options set out at paragraphs 3.11(b) and (c) of this report, the Sub Committee is recommended to consider increasing the size of such Sub Committees to either 5 or 7. 5 members would result in 3 Labour Members, 2 Conservative Members and 1 Liberal Democrat member; 7 members would result in 3 Labour Members, 2 Conservative Members, 1 Liberal Democrat member and 1 Green Member.

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 Limited Liability Partnership (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 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.
- 5.4 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.

- 5.5 The name of Wirral Growth Company is not an accurate one given that it is in fact a Limited Liability Partnership. The Committee may wish to give thought to whether an alternative name would reflect its true nature and function. 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.
- 5.6 In accordance with the Part 3B of Constitution (Committee Terms of Reference), the Policy and Resources Committee has two main areas of responsibility, which is to provide strategic direction to the operation of the Council, including making decisions on policies and co-ordinating spend not reserved to full Council, and to maintain a strategic overview of outcomes, performance, risk management and budgets.
- 5.7 The Policy and Resources Committee is charged by full Council to provide a co-ordinating role across all other service committees and retain a 'whole-council' view of performance, budget monitoring and risk management. In particular, this includes specific responsibility for a decision regarding companies or limited liability partnerships including acquisition and disposals. As part of the matter of business that was the subject of the report to Economy, Development and Regeneration Committee falls under that responsibility reserved to the Policy and Resources Committee, the Economy, Development and Regeneration Committee's resolution is presented as a recommendation.
- 5.8 As the decision in this matter is the subject of a recommendation from another Committee, the Policy and Resources Committee must take into account the resolution of that Committee and give due regard to the guidance and comments made by its members. The Policy and Resources Committee must not, however, consider itself bound by that Committee's recommendations or otherwise fetter its discretion and its Members must come to their own decision. In doing so, the Committee must satisfy itself that it has been provided with all relevant information or a suitable précis to enable it to comply with its duties and make a lawful decision."

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.

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.

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APPENDICES

Appendix 1: Minute extract from Economy, Regeneration and Development Committee held on 26 July 2021.

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
Economy Regeneration and Development Committee	26/07/21