

OFFICER DECISION FORM

DECISION TO BE TAKEN BY: DIRECTOR OF LAW AND GOVERNANCE

KEY DECISION NO

DIRECTORATE: LAW AND GOVERNANCE

WARDS AFFECTED: All Wards

SUBJECT: WIRRAL GROWTH COMPANY - GOVERNANCE ARRANGEMENTS

1.0 DECISION:

The Director of Law and Governance approves that Councillor Jean Robinson and Councillor Jeff Green be the nominated Councillor Representatives on the Joint Venture Board of Wirral Growth Company.

2.0 REASONS FOR THE DECISION

- 2.1 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.
- 2.2 To ensure that appropriate corporate oversight is given to the plans, strategies and proposals of the Wirral Growth Company

3.0 STATEMENT OF COMPLIANCE

- 3.1 The recommendations are made further to legal advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been completed. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

4.0 DECLARATION OF INTEREST

- 4.1 None

Signed:

Officer: Philip McCourt

Title: Director of Law and Governance

Date:

A list of background papers on this issue is held with:

Contact Officer: Matthew Neal, Lead Principal Lawyer Property, Planning and
Regeneration.

Date: 20/12/2021

Date of Publication:

Date of Expiry of Call-In Period: Not applicable.

Report Title:	WIRRAL GROWTH COMPANY - GOVERNANCE ARRANGEMENT
Report of:	HEAD OF LEGAL SERVICES

REPORT SUMMARY

This report recommends the arrangements by which the Council is represented on the Board of the Wirral Growth Company Limited Liability Partnership. The proposals will ensure that the business of the Wirral Growth Company and its relationship with the Council be established on a proper footing so that its business can be despatched expeditiously. The proposals will ensure that appropriate corporate oversight is given to the plans and strategies of the Wirral Growth Company

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

RECOMMENDATIONS

The Director of Law and Governance is recommended to approve that Councillor Jean Robinson and Councillor Jeff Green be the nominated Councillor Representatives on the Joint Venture Board of Wirral Growth Company.

OFFICER DECISION NOTICE

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 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.
- 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 No other options are suggested as this report seeks to enact the wishes of Group Leaders.

2.0 BACKGROUND INFORMATION

- 3.1 On 19 June 2017 the Cabinet agreed to establish a joint venture company to lead the regeneration of key sites within the Borough.
- 3.2 On 28 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. Subsequent to the May 2021 elections Councillor Tony Jones was the sole Council Member representative on the Board of the Wirral Growth Company and given his position as Chair of this Committee there was 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 On 1 September 2021 Policy and Resources Committee resolved (amongst other matters) that the vacancies for the 2 Councillor Representatives on the Wirral Growth Company Joint Venture Board be filled by two Councillors (one Labour, one Conservative) with names to be provided to the Director of Law and Governance by the political groups. The Labour and Conservative Group Leaders have respectively nominated Councillor Robinson and Councillor Green to be the Councillor representatives on the Wirral Growth Company Joint Venture Board.

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.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND 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 The Labour and Conservative Group Leaders have respectively nominated Councillor Robinson and Councillor Green to be the Councillor representatives on the Wirral Growth Company Joint Venture Board.

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

None

BACKGROUND PAPERS

Wirral Growth Company/Wirral Borough Council - 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
Economy Regeneration and Development Committee- Wirral Growth Company- Proposed Governance Arrangements	26/07/21

Policy and Resources Committee – Wirral Growth
Company Proposed Governance Arrangements

1/09/21