



<b>Report Title:</b>	<b>APPOINTMENT OF ADDITIONAL NON-EXECUTIVE DIRECTORS TO THE BOARD OF WIRRAL EVOLUTIONS LIMITED</b>
<b>Report of:</b>	<b>LEAD PRINCIPAL LAWYER</b>

## **REPORT SUMMARY**

This report follows the decision made by Shareholder Board on 25 March 2022 to note and endorse the decision of Adult Social Care and Public Health Committee made on 3 March 2022 to restore the delivery of services supporting adults with a learning disability to an in-house provision by the Council. It seeks approval to appoint selected senior Council officers to serve as non-executive directors on the board of Wirral Evolutions Limited to support and facilitate the transition of services to in-house provision by the Council.

The Wirral Plan 2021 - 2026 sets out the Council's vision to secure the best possible future for the Council's residents and covers the following five themes:

- A thriving and inclusive economy, creating jobs and opportunities for all;
- A clean-energy, sustainable, borough, leading the way in tackling the environment crisis;
- Brighter futures for all regardless of their background;
- Safe and pleasant communities that our residents are proud of; and
- Healthy and active lives for all, with the right care, at the right time.

This report aligns with the themes of brighter futures for all regardless of their background; safe and pleasant communities that our residents are proud of and healthy and active lives for all, with the right care, at the right time.

This is not a Key Decision. This affects all wards.

## **RECOMMENDATION**

The Head of Legal Services is recommended to approve that :

- (1) the following council officers shall be appointed as Directors of Wirral Evolutions Limited with immediate effect and that notification of the appointments is made to the Registrar of Companies as soon as reasonably practicable:
  - Shaer Halewood, Director of Resources (S151 Officer);

- Graham Robert Hodkinson, Director of Adults, Health and Strategic Commissioning; and
  - Robert Jason Oxley, Assistant Director (Care & Health Commissioning); and
- (2) suitable Directors' and Officers' Liability Insurance is effected in the event that the policy currently offered by the Company lapses or fails for any reason.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 On 3 March 2022 Adult Social Care and Public Health Committee resolved that 'the transition of services currently delivered by Wirral Evolutions Limited to an in-house model of delivery by the Council be approved starting as soon as reasonably practicable with the intention that those services will be fully transferred back within six months of the 1 April 2022'. This decision was noted and endorsed by Shareholder Board on 25 March 2022.
- 1.2 The recommendations within this report (if approved) will facilitate the transfer of the Wirral Evolution's Limited's (the Company's) undertaking and ensure continuity of service to service users. The appointment of additional directors is important to enable necessary actions to effectively transfer the undertaking of the Company to the Council by 1 November 2022 including:
- contract and lease terminations,
  - the transfer to the Council of all relevant supply and service contracts entered into by the Company,
  - the transfer of all Company Employees to the Council in accordance with the Transfer or Undertakings (Protection of Employment) Regulations 2006,
  - that the transfer of software licences and all other intellectual properties (including the trading style 'Wirral Evolutions') are effectively discharged within the projected timescale of six months from 1 April 2022.
- 1.3 The Board of the Company currently comprises three directors. The Managing Director who is an employee of the Company is the only executive director. The remaining two directors are not employees of the Company and serve in a non-executive capacity.
- 1.4 The appointment of further non-executive directors with relevant experience and skill sets will provide appropriate strategic direction to the Company and support transition activities.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 Maintaining the current number of directors is an option. However, this would not provide the required support to the Company and its Managing Director in transition activities.
- 2.2 Appointing additional external directors is an option. It is not proposed as the transition period is short and external directors would not have the necessary and experience and skill sets to effectively support the transition of services to an in-house provision by the Council.

### **3.0 BACKGROUND INFORMATION**

- 3.1 The Company is generally well regarded by people that use its services, carers and staff, however, the rationale for delivering services via the current delivery model and the added value of such a model to the Council and service users is no longer clear. The decision made by the Adult Social Care and Public Health committee on 3 March 2022 related to a change to the delivery model which will sustain and improve services for the Council's service users and safeguard staff, whilst seizing opportunities as they emerge in connection with the health and care transformation agenda.
- 3.2 Bringing the service currently delivered by the Company in-house will enable a closer correlation between strategy development and operational delivery which will bring additional value to the current delivery arrangements and is identified as the best means of delivering day care services for adults.
- 3.3 The Council, as shareholder, has entered into a Shareholder Agreement with the Company. This Shareholder Agreement gives the Council effective and complete control over the Company. Appointment of additional non-executive directors to the board of Wirral Evolutions Limited in accordance with the provisions of the Shareholder Agreement will support and facilitate the transition of services to in-house provision by the Council.
- 3.4 The Director of Law and Governance will provide a further report to a future Shareholder Board meeting to update on the transfer of the Company's undertaking to the Council with recommendations for the future deployment of the Company, its dissolution or mothballing.

### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications directly arising from the subject matter of this report.

### **5.0 LEGAL IMPLICATIONS**

- 5.1 The activities of the Company as a trading vehicle of the Council are governed by various legislative provisions including the Local Authorities (Goods and Services) Act 1970, the Local Government Act 1999, the Local Government Act 2003 and the Localism Act 2011.

- 5.2 The transfer of the Company's existing employees to the in-house service to be delivered by the Council is governed by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') which regulate the transfer of personnel from the outgoing provider to the incoming provider. TUPE stipulates that all terms and conditions of employment (apart from existing pension rights) in force immediately prior to the transfer, are protected as is continuity of employment for the transferring employees.
- 5.3 Compliance will be required with the provisions of the Companies Act 2006 in terms of the closure of the Company as a trading entity, its dissolution and/or re-classification of as a dormant company.
- 5.4 The Council as shareholder has entered into a Shareholder Agreement with the Company. The Company has ongoing supply contracts with miscellaneous providers of goods and services. The provisions of the Shareholder Agreement and of the Companies Act 2006 and the Council's status as owner of all the issued shares in the Company give the Council effective and complete control over the Company including all steps necessary to effectively transfer the undertaking of the Company to the Council.
- 5.5 The appointment of additional non-executive directors will ensure that Council orientated strategic decisions can be made without undue delay and that the executive function of the Managing Director receives appropriate support in effecting the transfer of the Company's undertaking to an in-house provision.
- 5.6 The Local Authorities (Indemnities for Members and Officers) Order 2004 and the Council's Constitution ( Part5 – Codes and Protocols Section 8 – Code of Governance on Council Interests in Companies) sanction the offering of indemnity cover to officers serving as directors of a company. The Company already has a suitable policy in place, but in the event that this lapses alternative cover is easily obtainable.
- 5.7 There is no legal requirement to appoint a named officer as Company Secretary and the duties of such role will be carried out by relevant staff within Legal Services.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 There are no direct implications to ICT or Assets arising from the subject matter of this report.
- 6.2 The only potential implication to staffing is the expenditure of senior officers' time in attending board meetings. However, as it is anticipated that such meetings will be brief and infrequent they will not impact significantly on officers' time.

## **7.0 RELEVANT RISKS**

- 7.1 There is no risk that the Council will fail in its statutory duty to meet needs of people requiring services due to the contents and recommendations in this report
- 7.2 There is the potential for reputational risk to the Council if the transition of services to an in-house model is delayed. Appointment of additional non-executive directors will effectively mitigate this risk.
- 7.3 There is a risk that the officers who are appointed as a result of this decision subsequently incur liability for financial loss and other risks as defined in the Zurich Insurance – Directors’ and Officers’ Indemnity policy. This risk is mitigated by the cover that is provided by the Zurich Insurance - Directors’ and Officers’ indemnity insurance policy that is held by the Company. In the event that the policy currently offered by the company lapses or fails for any reason the Council will arrange for appropriate insurance/indemnity cover to be provided

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 The current directors have been advised of the proposal to appoint additional non-executive directors to support the transition process.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 There are no direct equality implications arising from the subject matter of this report.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 There are no direct environment and climate implications arising from the subject matter of this report.

## **11.0 COMMUNITY WEALTH IMPLICATIONS**

- 11.1 It is anticipated that the content and/or recommendations contained within this report will not have any negative impact on Community Wealth.

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### **APPENDICES**

Not applicable.

### **BACKGROUND PAPERS**

**Shareholder Agreement  
Zurich Insurance – Directors’ and Officers’ Indemnity policy**

**SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Adult Social Care and Public Health Committee - Wirral Evolutions Limited Value for Money Review Report-</b>	<b>3 March 2022</b>
<b>Shareholder Board</b>	<b>25 March 2022</b>