



ECONOMY REGENERATION AND DEVELOPMENT COMMITTEE

26 JANUARY 2022

REPORT TITLE	LEGAL INPUT INTO MAJOR REGENERATION PROJECTS
REPORT OF	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

This report is produced further to a request from this Committee at its meeting of October 2021.

The Wirral Plan 2021-2026 sets out the Council's vision to secure the best possible future for our residents, defined by the community prosperity we create and supported by our excellent people and services. This proposal directly supports the following key themes within that plan:

- A prosperous inclusive economy where local people can get good jobs and achieve their aspirations; and
- Safe, vibrant communities where people want to live and raise their families.

This matter has no ward implications.

This is not a key decision as the report is provided to enable the Committee to have oversight of legal progress on various major regeneration projects.

RECOMMENDATIONS

The Economy Regeneration and Development Committee is recommended to receive the contents of this report.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATION

- 1.1 The Economy, Regeneration and Development Committee at its meeting of October 2021 requested (amongst other matters) regular updates on legal risk and project profile, for which the first of these is attached as Appendices 2 and 3 for this Committee's consideration. Appendices 2 and 3 are exempt from publication in accordance with paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (being information relating to the financial or business affairs of any particular person, including the authority holding that information).
- 1.2 The debate and corporate risk profile raised at the above Committee meeting centred on the LGA 'Planning Improvement Peer Challenge – Follow Up Review of July 2020'. This was due to the peer review being referenced on a slide presentation of the timeline to delivery.
- 1.3 The risks associated with the broader regeneration programme have been identified via a series of external reports for Wirral Council. These are the LGA Peer Review of 2019, the Wirral Planning Peer Review (follow up) of July 2020 and the Wirral External Assurance Review of September 2021.
- 1.4 The comments and recommendations have been picked up by the Council, in seeking to meet the legal resource needed in this area and the skills gap that adopting a regeneration programme of this scale and size creates, in acting to bolster the in-house resource for direct services and governance and seek specialist support in managing external legal services.
- 1.5 The approach to resourcing legal support to the various commercial negotiations, procurement exercises and land, development and funding agreements and transactions that will comprise the Left Bank Regeneration Programme has been to develop an 'intelligent client' model for general counsel. Following a procurement process conducted in 2021, this model is supported by a strategic legal partner to better enable the Council to put in place specialist and other support from the wider legal marketplace.
- 1.6 A key component of the approach is forward planning amongst the various professional officers to identify commercial and legal issues in advance and create legal briefs to respond to need and to manage legal delivery, costs and risk. The recommendations within this report are designed to enable the Committee to have a better understanding of the status of the Council's major regeneration projects and the legal input required to bring them forward.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Given that this report is provided at the request of Economy, Regeneration and Development Committee and is for information, no other options are suggested.

3.0 BACKGROUND INFORMATION

- 3.1 A Local Government Association peer review of 2019 contained a recommendation that the Council should, “Ensure appropriate governance to take risk aware approach regarding legal and procurement processes to deliver growth.”
- 3.2 In July 2020 a Wirral Planning Peer Review follow up reported that:
“There has been little progress on this issue. The Peer Team have to report that there remain serious concerns about how the Council’s Legal team continues to support the Wirral Growth agenda and reference is made to the situation deteriorating. This is one of the key risks to the Council achieving its ambitions moving forward.”
- 3.3 An External Assurance Review was commissioned by the Secretary of State and included a Governance report submitted in September 2021. The Council has accepted the comments and recommendations and produced a plan to implement them, an action endorsed by full Council. In the report it is stated in section 7 that:
“An area of risk, however, is ensuring that there is sufficient financial and legal expertise assigned to the very complex and fast-moving delivery and investment vehicles in regeneration. Pleasure at seeing external funding secured and schemes progressing after many years of false starts may be bringing a degree of optimism that clouds a rigorous and healthily sceptical view of the financial risks.”
- 3.4 The Department of Law and Governance has been through a service redesign with associated investment in 2018/19, with recruitment in 2019/20 onwards and a trainee solicitor programme. The re-design places 4 Principal Lawyers (3 appointed) to manage teams in related disciplines supported by a Consultant Lawyer and Practice Manager. Recruitment of Principal Lawyers (managers) has created a more ‘business partner’ focussed set of services. One of the principal lawyers (the Lead Principal Lawyer Regeneration Planning and Property) is tasked with managing the legal input into the overall regeneration programme and be the keystone for the intelligent client role.
- 3.5 However, a high number of vacancies is still an issue and a pressured environment remains, particularly in respect of regeneration, with continuing reliance on less economic or effective use of outsourcing and/or locums as a result. At the time of writing this report there are a number of interviews of candidates for these key roles pending
- 3.6 The Regeneration and Place officers, through and with the assistance of external consultants and Homes England, have produced a list of projects to consider in terms of funding, land ownership, procurement and development needs. This has been developed into a matrix which sets out the current status of the projects and programmes which legal services has been instructed upon. It also provides information about matters on which legal services has not yet been instructed.

- 3.7 The Council to date has had a piecemeal approach to the commissioning of external legal required to support several regeneration projects that are already ongoing. There have in the last two years been as many as eight separate legal firms instructed on eleven projects at any one time. This is not helpful to the overall understanding of the needs of the regeneration programme or of managing on delivery, costs and risk management. This piecemeal approach will, when scaled up, lead to duplication and increased cost. There is a need for a targeted manageable response to meet the needs of Wirral's regeneration requirements as a whole.
- 3.8 The Council has identified the need to develop its role as "intelligent client". The role of the intelligent client is key to the legal success of major projects. The management of external law firms is a central part of a general counsel role to:
- ask the right questions;
 - understand and test the answers;
 - see the gaps or to interpret those answers for the purposes of the culture and understanding of the organisation;
 - challenge, understand and properly manage costs.
- 3.9 In order to enable legal services to have the capacity to fulfil the intelligent client role, it has, with the assistance of the procurement team, obtained the services of a strategic legal partner with a view to it:
- assisting in the development of strategic advice as to the resourcing of projects and a developing road map for future projects including an analysis of resource requirements and a robust approach to risk management;
 - advising the Council on the briefs on which it should be seeking to issue with invitations to tender for the legal work on various regeneration work streams;
 - to assisting the Council in managing and monitoring the output of firms that have been appointed to regeneration work streams; and
 - demonstrating added value to the council in the form of training, secondment opportunities, precedent sharing and know how.
- 3.10 The procurement process ran from early 2021. Group spokespersons from the ERD Committee were invited to a set of interviews with finalist law firms alongside officers of Regeneration and Place and the assessing lawyers. The contract was awarded to Trowers and Hamblins LLP (www.trowers.com).
- 3.11 Trowers and Hamblins have begun working with officers in three key areas:
- (a) To take a view on the forthcoming projects to prioritise required legal input and to prepare a specification to go out to the legal market. As projects develop this will include assisting the in-house team in peer reviewing the work undertaken and the costs charging;
 - (b) To undertake direct work where there is an urgent need and to assist the in-house team where there are capacity gaps, including vacancies, peak flow and skills transfer;

(c) To undertake direct work where there is a need for strategic input from a point of understanding.

3.12 This process outlined in paragraph 3.11 of this report is described in the flowchart attached as Appendix 1 to this report. A key component of the approach is forward preparation between various professional officers to identify legal issues in advance and create briefs to respond to need and to manage legal delivery, costs and risk. This is to be the subject of regular sharing with this Committee, through a reporting matrix. The first of the reporting matrices is attached to this report as Appendix 2. The Legal Brief Matrix with confidential items is attached to this report as Appendix 3. The legal costs relating to the reporting Matrix is attached to this report as Appendix 4.

3.13 Appendices 3 and 4 are exempt from publication in accordance with paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (being information relating to the financial or business affairs of any particular person, including the authority holding that information).

3.14 It is suggested that the information set out within this report should provide the Committee with assurance that sufficient steps have been taken to enable the Council to proceed with its regeneration programmes with appropriate legal support (whether provided internally or with external solicitors or a combination of both).

4.0 FINANCIAL IMPLICATIONS

4.1 The cost incurred in the current financial year terms of both internal and external solicitors and counsel are set out in the exempt appendix 4 to this report.

5.0 LEGAL IMPLICATIONS

5.1 As this report is for information there are no substantive legal implications arising out of the proposals set out within this report.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

6.1 As this report is for information there are no substantive ICT Staffing and Assets implications arising out of the proposals set out within this report.

7.0 RELEVANT RISKS

7.1 The management of risks to the Council come in the form of managing the risks to delivery, as well as managing the commercial and financial risks and the risks for proper governance and legality

7.2 These risks can be managed by having the correct capacity and skill-set available to be 'at the table' and to 'make the deal'. This is distinct from the delivery of restricted legal services or transactional drafting but is about

providing the right legal advice to the Council to capture what risks and eventualities there might be, to mitigate those and to make their management a part of the structure of any agreement.

8.0 ENGAGEMENT/CONSULTATION

8.1 Consultation has not been undertaken on the proposals within this report given that it is essentially for information. .

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. Whilst there are no equality implications arising from this report, the associated actions arising from the project and programmes that legal services are involved with as described within this report may need to be assessed and any equality issues mitigated in terms of any negative impact that may emerge.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no environment or climate implications arising from the proposals set out within this report.

11.0 COMMUNITY WEALTH BUILDING

11.1 There are no Community Wealth Building implications arising from the proposals set out within this report.

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APPENDICES

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| Appendix 1 | Flowchart setting out the initial process to outsourcing of matter as agreed with Trowers and Hamlins |
| Appendix 2 | Legal Brief Matrix |
| Appendix 3 | Legal Brief Matrix with confidential items* |
| Appendix 4 | Costings information relevant to the Legal Brief Matrix*. |

* Appendices 3 and 4 are exempt from publication in accordance with paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (being information relating to the financial or business affairs of any particular person, including the authority holding that information).

Appendix A Flowchart setting out the initial process to outsourcing of matter as agreed with Trowers and Hamlins.

Appendix B Legal Brief Matrix.

Appendix C Legal Brief Matrix with confidential items.*

Appendix D Costings information relevant to the Legal Brief Matrix*.

BACKGROUND PAPERS

LGA peer review of 2019

July 2020 Wirral Planning Peer Review follow up report

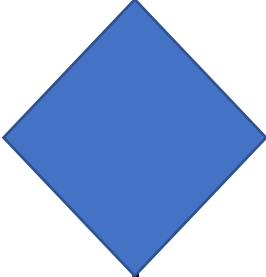
Wirral External Assurance Review

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Economy Regeneration and Development Committee	October 2021

Appendix 1

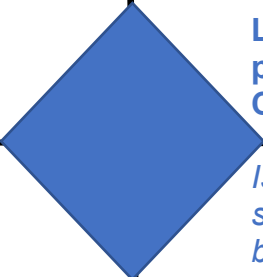
Project or business case being developed.
Referred by Directorate through programme board or ICB for legal input



Initial legal assessment

Is there capacity for this to be dealt with by the in-house legal team?

Managing lawyer authorises Legal Brief to be prepared by in-house regen and legal officers with T&H through triage process – Default to be made ready for marketplace/external legal services



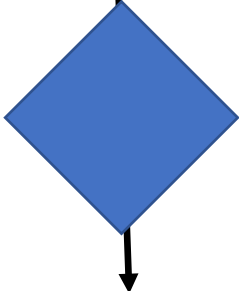
Legal Brief is assessed for procurement from NWL Consortium, CCS or other marketplace

Is this too urgent or requires separate strategic advice or other step before being able to be issued for procurement?

Appoint T&H separately to provide strategic advice work arising out of legal brief.

Appoint T&H separately to carry out urgent work or support in-house team on basis of legal brief (or HoT).

External legal services to achieve the Legal Brief outcomes procured through consortia market by managing lawyer working with regen officers and T&H



Appointment & Review

External legal supplier engaged to conduct the work to the Legal Brief

Appointed lawyers conduct the work according to the Legal Brief on behalf of client officers
Managing Lawyer receives bills for approval and monitoring updates
Managing Lawyer involved again only on exception reporting, closure report or any requirement for decision and/or MO issue.

ECONOMY REGENERATION AND DEVELOPMENT COMMITTEE 26 JANUARY 2022



REGENERATION CURRENT AND ANTICIPATED LEGAL REQUIREMENTS 2022/23

6 January 2021

Ongoing Matters Project Title	Regeneration, Development Programme or Project	Type of legal support and request	Regen Team Contact Officer (internal & external)	Legal Manager (in-house officer with conduct)	External Legal Support	Anticipated additional future support	Legal Risk RAG rating*	Comments / notes on progress & issues (<i>non-exempt information</i>)
Birkenhead Commercial District Offices phase 1	Central Birkenhead	Council to occupy building A1. Lease(s) for Occupiers Building A2 will be required. The lease is unconditional	Sally Shah	Matthew Neal.	DLA completed the agreement for lease. Legal Services dealt with the completion of the lease (once it had gone unconditional) Brabners dealt with	On-going legal support to draft/manage lease issues likely to be generated from Council's management of buildings A1/A2. (A1 included at this stage to cover scenario of both buildings being let on open market.	Green	Managing of buildings A1/A2 will be led by Asset Management with Regeneration support.

					the s106 agreement relating to the hybrid planning consent. associated lease.	The removal of the market from the scope of the proposed development may need an amendment the s106 and/or variation of the planning consent which would need legal advice and representation		
Dock Branch Park	Birkenhead Central	Acquisition of land from Network Rail, advice on any liabilities (e.g., highway bridges over the route of the line), land acquisition strategy including potential CPOL advice, land referencing, planning advice and procurement in terms of contractor appointments, subsidy control advice on any grant funding agreements and back to	Cathy Palmer	Matthew Neal	Internal at present. Internal legal team are carrying out detailed title investigation of the site.	Support on all legal elements identified. It is anticipated that implementing any land assembly strategy will be dealt with by external firm with advice on the brief and procurement approach	Green	The area of Dock Branch Park has upwards of 35 third property land interest.

		back grant funding agreement. Proposal for transport shed with National Museums Liverpool as an end user will need subsidy control advice as well as commercial property support.				being obtained from Trowers.		
Egerton Village (WWIF)	Wirral Waters	Grant Funding Agreement between the Council and Peel Land and Property. Subsidy control advice to ensure that the arrangements are lawful.	Alison Pritchard	Colin Hughes	DWF have advised on subsidy control	Grant funding agreement awaited from Peel.	Green	£1.75m WWIF grant approved. Planning permission in place, Peel speaking to potential contractors re start in early 2022 and drawdown of grant commencing late 21/22.
Hind Street Birkenhead	Birkenhead Central	Advice on legal structure for collaboration, with major landowners and other landowners, including site due diligence and land acquisition strategy. Advice also on subsidy control and grant funding. Acquisition of National Grid land	Sally Shah	Matthew Neal	DWF	Formal collaboration agreement, Conditional sale and purchase contract and any necessary compulsory acquisition.	Green	Further grant funding will be required.
Legacy	Wirral Waters	Agreement for lease and negotiation of a deed of variation to deal with	Sally Shah	Matthew Neal	DWF dealing with deed of variation.	Drawn down of 50-year lease after 10	Green	Council acquiring 50-year lease with initial 10-year

		amendments of various warranties				years from first occupation. Agreement reached as to warranties as to the condition of the dock wall.		leaseback to Peel (Legacy).
Maritime Knowledge Hub	Wirral Waters	Forward Funding Agreement/Agreement for Lease and Lease Subsidy Control Procurement advice Tax advice Inter departmental "loan". Operator appointment/market consultation/procurement	Helen Carney	Colin Hughes	DWF on commercial property, subsidy control and procurement and financial structuring and procurement route.	Grant Funding Agreement for SIF grant from LCRCA is awaited pending evidence being supplied of significant commercial interest in leases for the premises being taken up. Transaction will be dealt with internally Procurement and appointment of Operator when scheme	Green	£23m development. Council acquiring 250yr lease. Planning anticipated in 21/22, start on site anticipated in early 2022. £2.2m WWIF grant approved. Drawdown of grant commencing 21/22 Soft market testing of interest for future operator of the innovation hub has been completed. Operator appointment is dependent on the project proceeding

						nearing completion		and Agreement for lease conditions being satisfied. Grant funding has been secured for ERDF: £965,462 LCRCA SIF: £676,146
New Ferry Regeneration Project	New Ferry	Land assembly and CPO advice and transactions	David Ball	Anne Quirk	Not applicable	Commercial property transactions to acquire land by agreement. CPO proceedings for land not so secured	Green	P and R Committee approved in principle a CPO in March 2021 and commencement of procurement process for Development Partner. Report being brought to ERD seeking authority to appoint development partner in Jan 22 arising from competitive dialogue.
Towns Fund projects x 12	Birkenhead	Grant Funding Agreements and any ongoing subsidy control issues.	Bev Staniford	Andrea Lowe	None as of yet.	Potential Subsidy control issues.	Green	Instructions have been provided and matter is progressing.

Forthcoming Matters Project Title	Regeneration, Development Programme or Project	Type of legal support and request	Regen Team Contact Officer (internal & external)	Legal Manager (in-house officer with conduct)	External Legal Support	Anticipated additional future support	Legal Risk RAG rating*	Comments / notes on progress & issues (<i>non-exempt information</i>)
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District Heat Network	Wirral Waters	District Heating Network Birkenhead. Contract to appoint technical, financial and legal consultants to prepare business case with a view to securing approval to proceed with the development of a heat network. It outlines requirements covering technical, legal, financial and commercial disciplines. Whilst some consultancies may be able to provide relevant expertise in more than one area, it is unlikely that one organisation alone	Emma Hopkins	Matthew Neal	Trowers to produce legal brief with substantive work to be carried out by a firm to be procured. .	Grant funding, Subsidy control, regulatory requirements for energy, commercial property transactions,	Not applicable.	Scoping of project needs completing.
Expo Village	Hamilton Park	Development agreement along with commercial property support in terms of land assembly or collaboration (the land is currently partly owned by the Council and Wirral Methodist Housing Association. Advice on compliance with previous grant funding agreement and potential clawback. Procurement advice on	Cathy Palmer	Matthew Neal	All internal to date.	Other than the identified items, further matters for advice have not yet been scoped.	Not applicable	Officers currently considering delivery options.

		appointment of operator for the Expo. Advice on onward grant funding arrangements to ensure compliance with Towns Fund Grant requirements.						
Land Registry	Waterfront	Acquisition and Heads of Terms, supported by grant funding.	Cathy Palmer	Matthew Neal	None as of yet	Potential land contamination issues and associated warranties or indemnities a part of any commercial property transaction support.	Not applicable.	Heads of Terms have not yet been agreed by ERD / P and R Committee
Sustainability Central Hub	Wirral Waters	Grant funding agreement	Cathy Palmer	Not applicable	Not applicable.	Legal support will be required for Towns Fund grant funding agreement. A decision will be taken in due course as to how to resource that. etc	Not applicable	Site in MEA Park west, part of Towns Fund, grant to Peel L&P – concept stage, requires business case to be developed
Sustainable Urban Drainage	Wirral waters	Land Acquisition	Cathy Palmer	Not applicable	Not applicable	Commercial property work to legally	Not applicable.	Landscape scheme on Beaufort Road/Wallasey

scheme land acquisition						acquire the land.		Bridge Road land needs to be acquired from Network Rail, Peel failed to reach agreement
Woodside Gyratory	Waterfront	Acquisition of land	Cathy Palmer	Matthew Neal	Not yet scoped.	Potential grant funding arrangements.	Not applicable.	Project is at formative stage at present with no substantive legal advice required as of yet.