



AUDIT AND RISK MANAGEMENT COMMITTEE

Wednesday, 26 October 2022

REPORT TITLE:	ASSURANCE ON REGENERATION SCHEMES
REPORT OF:	DIRECTOR OF RESOURCES

REPORT SUMMARY

This report updates members on the financial guarantees which the Council has entered into on a number of regeneration projects. The Council's external auditors, Grant Thornton have recommended that the guarantees are closely monitored and reported to Members.

This report supports the Wirral plan aim of a thriving and inclusive economy, creating jobs and opportunities for all.

This matter affects all wards in the Borough.

RECOMMENDATION

The Audit and Risk Management Committee is recommended to note the report.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To provide the Members with assurance that the Council is taking appropriate measures to ensure that the Council's resources are being protected and that project risks are being effectively reviewed and managed.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 There is the option not to provide an update on assurance matters. This would however not be in accordance with the advice from the Council's external auditors.

3.0 BACKGROUND INFORMATION

- 3.1 The Council is engaged in a number of regeneration initiatives which make use of its covenant strength underpinned by financial guarantees. In its role of external auditor Grant Thornton made a number of comments and recommendations in its Annual Report on Wirral Council 2020-21 that was presented to Audit and Risk Management Committee in July 2022.
- 3.2 Grant Thornton noted that the guarantees were significant in scale and the Council would need to significantly strengthen monitoring arrangements in respect of financial guarantees and asset acquisitions. It was recommended that detailed accounting advice be received before entering into any future complex financial arrangements. In its response, the Council confirmed that no further guarantees had been issued beyond those covered in the report and presently there was no intention for further guarantees to be issued. Detailed accounting advice will be obtained in advance were there to be future transactions of this nature.
- 3.3 As context to the financial guarantees, the Birkenhead 2040 Framework sets out the Council's regeneration programme which delivers against the outcomes as set out in the Wirral Plan 2021-26. The Framework is a key supporting document for the draft Local Plan approved by Council on the 21st March 2022 and which will be submitted to Government by November 2022. A key policy within the draft Local Plan is for development to come forward on brown field sites and this is reflected in the comprehensive regeneration programme that is being progressed.
- 3.4 There are a number of approaches that the Council adopts in order to enable growth and development on brown field sites. This includes securing external grant funding from Central Government, Homes England, the Liverpool City Region Combined Authority and other funders to drive development. Currently the regeneration programme is supported by funding that includes the Future High Streets Fund, the Town Deal Fund, the Levelling Up Fund, the Brownfield Land Fund and other funding streams. Private sector funding is also a key part of the programme and private sector match funding is a requirement for the majority of grant programmes.
- 3.5 The Council has provided financial guarantees to attract investment and to enable three key developments to progress. These are Millers Quay at Wirral Waters, the offices in the Birkenhead Commercial District and the Hythe office development

where financial guarantees are in place in respect to the leases or acquisition of premises. Details of the guarantees follow below. Appendix 1 provides additional information and is exempt from publication pursuant to 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).

Birkenhead Commercial District

- 3.6 The Birkenhead Commercial District (BCD) office development has been taken forward by the Wirral Growth Company (WGC) which is a 50/50 Joint Venture between Wirral Council and Muse Developments on land owned by the Council within the town centre. As part of the WGC process a Site Development Plan (SDP) for Phase 1 of the BCD was brought forward and agreed by the Economy, Regeneration and Development Committee on the 26th July 2021. This set out the details of the two office buildings that would be developed on that site by the WGC. Both offices would be leased by the Council – one for occupation by Council staff and the other for leasing to other organisations on commercial terms.
- 3.7 Construction work commenced in December 2021 on an open book arm's length basis underwritten by a guaranteed maximum price. This was tested by external quantity surveyors against industry benchmark. The buildings are scheduled for practical completion to Category A (shell and core) in September 2023.
- 3.8 In respect of the Terms of Agreement for Lease between the Council and Canada Life, the Council retain the freehold of the buildings and have granted 250 year long leasehold interests to Canada Life. The Council has entered into an Agreement for Lease with Canada Life for a term of 43 years covering the construction and rental period for both buildings plus contingency for delay. Rent will be payable from practical completion for 35 years. After 35 years the rent reduces to a peppercorn with a 'put and call' option for the Council to purchase the asset for £1 and Canada Life have the right to return the asset to the Council for £1.
- 3.9 There are both downside and upside risks to the Council relating to this guarantee which are being managed. The downside risk is that the Council could be required to fund any shortfall in headlease costs not covered by savings from exiting buildings or insufficient letting income. The upside risk is that all income received above the headlease cost would belong to the Council whilst there should also be additional national non-domestic rates income receivable from tenants.

Millers Quay, Wirral Waters

- 3.10 This is a residential development at Millers Quay in Wirral Waters that is being taken forward by Peel Holdings as landowner and developer. The project will bring forward 500 one and two bed apartments and represents a step change to the residential offer in the East Wirral Housing Market. The project is catalytic in that it forms part of a new, sustainable 'neighbourhood' for Wirral offering new typologies of housing, unlocking further residential and commercial development in Wirral Waters and creating a brand new community within the dockland area.
- 3.11 On 1st October 2018, Cabinet agreed to enter into an Agreement for Lease of the 500 residential units for up to 50 years. At the end of the 50 year lease period the

Council will have the ability to take up an option to acquire a lease for 200 years at a peppercorn rent from Pension Insurance Corporation (PIC) for 350 of the residential units. It was also agreed that a sub under-lease would be granted to Peel for it to manage and grant residential tenancies for the first 10 years and take on the Council's rental obligations.

- 3.12 The scheme will be funded by (PIC) who will take a 250 year lease from Peel Holdings. The Council will to take a 50 year underlease of the 500 residential units and to pay PIC a fixed rent (increasing with RPI) and estate service charges to secure repayment of the loan with interest.
- 3.13 From Years 11-50 the commercial risks will be transferred to the Council with the Council's Management Company being responsible for letting out the properties, managing the apartments and for securing the rental payments for the Council.
- 3.14 As with the Birkenhead Commercial District there are downside and upside risks relating to the guarantee. A downside risk being that from year 11 a shortfall of income against the headlease rental would fall on the Council housing company. The upside risk would be any rental income received above the headlease payment would all be payable as income to the company and there would be an increase in council tax income from these new properties.

The Hythe

- 3.15 This 30,000 sq. ft Building Research Establishment Environmental Assessment Method(BREEAM) excellent Grade A office building is being taken forward by Peel Land and Property. Construction was completed in December 2021 and internal fit out is underway with tenant occupation due to start in November 2022.
- 3.16 In September 2019, Members agreed for the Council to use its covenant strength via a mechanism known as a PUT/CALL option to help to de-risk the construction of the Hythe. The PUT/CALL arrangement worked by both parties entering into an option agreement that allows for Peel to require the Council to purchase from them after an agreed period of time (in this case three years from practical completion of The Hythe i.e. December 2024) the building at the pre-determined purchase price (the PUT option of £4.98m) or for the Council to require Peel to sell them the property in the same timescale at the same pre-determined price (the CALL option).
- 3.17 The value of the completed building was determined by a detailed scheme appraisal that was carried out by the Combined Authority as part of Peel's application for Strategic Investment Fund (SIF) grant. This application was agreed to support the development. The triggering of the PUT/CALL option is not obligatory on either side and will have a definitive end date for accountancy purposes. If during the 3 years post practical completion period the Hythe is valued at a sum equal or greater than the PUT option price then the Council's obligation to Peel immediately falls away.
- 3.18 It was agreed as part of the option arrangement that the valuation process should be undertaken by independent valuers, on an annual basis from the date of practical completion of the building in December 2021. Notwithstanding this scenario and depending on valuation Peel can only trigger the PUT option at 3 years from practical completion of the building. The Council has however negotiated the right for it to exercise its CALL option anytime during the 3 years and without the obligation falling away. This means that if market conditions strengthen over this

period and the value of the completed development increases, the Council has the right to purchase the asset from Peel for the lower pre-determined price.

- 3.19 Given that the first anniversary of the building's practical completion is now approaching, the Council is working with Peel Land and Property to commission the first independent value of the Hythe. The project has been a huge success with a letting already secured for the top floor and a draft lease agreed with another company which wishes to lease the entirety of the second floor. If this proven demand for the building is reflected in the valuation and it exceeds the option price then the Council's obligation to buy the Hythe falls away, however the option to purchase the building at potentially an increased value remains with the Council until December 2024 – three years post practical completion of the Office scheme.
- 3.20 The upside and downside risks associated with this guarantee are the aforementioned potential opportunity or obligation to purchase the building at a set price which could be above or below market value and is predicated on a number of conditions being met.

Accounting Advice

- 3.21 The Council has commissioned Arlingclose to provide technical accounting advice and to undertake a full review and report on each of the current projects. This review includes the accounting within the single entity accounts of the companies, Wirral Council and group accounts. Due to the complexity of some of the arrangements, a workshop with key officers took place in August and further information was provided to Arlingclose after the workshop. Their report is due to be received within the next month and an update will be brought to the committee in January 2023 detailing their advice and or recommendations.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from this report. The report however details the financial guarantees that the council has entered into and activation of any one of these could have significant financial implications.

5.0 LEGAL IMPLICATIONS

- 5.1 This report provides details of the financial guarantees. The individual guarantees by their nature involve a number of legal obligations that may be invoked depending upon the circumstances of each development.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are no direct resource implications arising from the report. However, the financial guarantees relate to assets being constructed which include the Birkenhead Commercial District.

7.0 RELEVANT RISKS

- 7.1 This report is an update on the financial guarantees. The guarantees if invoked could involve significant sums being expended from the Council's budget.

8.0 ENGAGEMENT/CONSULTATION

8.1 The financial arrangements for guarantees were agreed by members via reports to the appropriate committees. There has been no further engagement or consultation in respect of the guarantees.

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 this report

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no environmental and climate direct implications arising from this report.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 There are no direct community wealth implications from the report. The schemes the guarantees relate to are aimed to regenerate the borough and bring financial and social benefit to the borough.

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APPENDIX

Appendix 1: Financial Guarantees Risks and Mitigations

Appendix 1 is 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).

BACKGROUND PAPERS

Grant Thornton Annual Report on Wirral Council 2020-21 and appendices

Project papers and legal agreements in respect of:

- Wirral Growth Company Birkenhead Commercial District
- Wirral Waters Miller's Quay (previously known as Legacy)
- The Hythe

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Audit and Risk Management Committee	20 th July 2022