

Finance Sub-Committee

Date of Meeting:	9 November 2022
Report Title:	Governance of the Cheshire & Warrington DF (GP) Ltd
Report of:	Alex Thompson, Director of Finance & Customer Services
Report Reference No:	FSC/19/22-23
Ward(s) Affected:	All Wards

1. Purpose of Report

- 1.1.** The purpose of the report is to ask the Sub-Committee to make an appointment to the Board of Cheshire and Warrington DF (GP) Limited (“C&W”), a wholly-owned company of Cheshire East Council, set up on behalf of the Cheshire and Warrington Local Enterprise Partnership (LEP) as part of a Limited Partnership structure required for Evergreen 3.
- 1.2.** The company was established as part of a ‘Limited Partnership’ arrangement, being a structure required to manage the investment of European Regional Development Fund (ERDF) monies in local projects (“Evergreen 3”). Evergreen 3 contributes to the Council’s strategic priority of making Cheshire East “a thriving and sustainable place” and in particular making it a great place to live, work and visit, and have “thriving urban and rural economies”.
- 1.3.** The report also seeks approval to make arrangements for the appointment of another director to the Board of the Company, in order to ensure representation across the Cheshire and Warrington sub-region.

2. Executive Summary

- 2.1.** The Council acts as entrusted entity for a development fund on behalf of the LEP. Up to £20m funding is available, provided by ERDF, and the Authority is the signatory to the related grant funding agreement with the Department for Levelling Up, Housing and Communities (DLUHC), formerly the Ministry of Housing, Communities and Local Government (MHCLG).

- 2.2. The development fund operates via a Limited Partnership (referred to as “the Cheshire and Warrington Development Limited Partnership” or “the Partnership”), comprised of the Council and C&W. All funding decisions take place within C&W; C&W receiving advice and support as to its funding decisions from CBRE, a fund manager experienced in regeneration/ property investments.
- 2.3. Finance Sub-Committee is the shareholder representative for the Council’s interests in its wholly owned companies. In the absence of any current delegation in this regard, it is Finance Sub-Committee that needs to appoint directors to the board of C&W.
- 2.4. The former Executive Director Place was the Council’s first appointee as director of the company, who resigned on his departure from the Council. Currently, the sole director appointed is Philip Cox, Chief Executive of the LEP.
- 2.5. It is proposed that, along with approving the appointment of Jayne Traverse to be a director of C&W (as the Council’s incumbent Executive Director Place), the Sub-Committee also appoints an appropriate officer, (in the form of the equivalent director of growth) from Warrington Borough Council so as to provide representation for the wider sub region on the board.
- 2.6. A delegation is sought to enable the appointment in due course of a Cheshire East officer to represent the Council as regards the operation of Cheshire and Warrington Development Limited Partnership.

3. Recommendations

- 3.1. It is recommended that Finance Sub-Committee:
- 3.2. Appoint Jayne Traverse, the Executive Director Place, as the Council’s director on the Board of Cheshire and Warrington DF (GP) Limited.
- 3.3. Approve the appointment of Steve Park, Director of Growth at Warrington Borough Council as a director of the Cheshire and Warrington DF (GP) Limited.
- 3.4. Delegate to the Executive Director Place the authority to name a representative of Cheshire East Council to act on its behalf with all matters relating to the Cheshire and Warrington Development Limited Partnership.
- 3.5. Authorise the Section 151 Officer to take all steps necessary to ensure that the Authority complies with the funding agreement entered into with DLUHC, formerly MHCLG.

4. Reasons for Recommendations

- 4.1. At the present time and following the departure of the former Executive Director of Place, there is only one serving director of the Cheshire and

Warrington DF (GP) Limited, being the Chief Executive from the LEP. It is therefore necessary to appoint another director.

- 4.2. Also, as the purpose of the fund is to make investments across the Cheshire and Warrington sub region, it is also important to consider enabling other senior colleagues from partner councils to have representation on the board. Both Cheshire West and Chester, and Warrington Borough Councils were approached but only Warrington expressed a requirement to have a director on the Board.
- 4.3. Finally, there are day to day governance tasks within the Council relating to the business of the Partnership that need to be managed and actioned. Delegating authority to the Section 151 Officer will allow this to happen.

5. Other Options Considered

- 5.1. Corporate governance rules require that director appointments need to be made by the shareholders. As Finance Sub Committee is the shareholder representative these decisions rest with the Sub Committee. There may be an option where authority to appoint directors is delegated to officers, or to the Board of the Limited Company itself. However, it is noted that although this is ostensibly a LEP-led, sub regional project, the legal and statutory responsibilities lie with the Council, as entrusted entity of the partnership and sole shareholder of the company.

6. Background

- 6.1. In February 2019 Council approved the creation of a Cheshire and Warrington Development Fund and the applying for, and acceptance of, associated ERDF funding. In June 2019 Cabinet considered and approved the governance steps necessary to reflect the formation of the resulting Cheshire and Warrington LEP Development Fund, with the Council acting as Entrusted Entity for an up to £20m ERDF funded scheme, being administered and run by the LEP on a day-to-day basis.
- 6.2. An 'Entrusted Entity' is effectively the Accountable Body for the programme. According to ERDF rules, this has to be a public sector body such as a Local Authority. The role of the Entrusted Entity is to ultimately be accountable for the ERDF investment.
- 6.3. As part of the necessary arrangements to manage the funds and investments, a Limited Partnership (Cheshire and Warrington Development Limited Partnership) was established. A limited company (Cheshire and Warrington DF (GP) Limited); owned by the Council; was set up as the general partner. The Council is the sole shareholder in the Limited Company and is the 'limited partner' in the Partnership.
- 6.4. To apply for and subsequently draw down and account for ERDF funds, the monies are paid to the Council as Entrusted Entity; investments from the Development Fund are managed by an experienced Fund Manager. The

Development Fund Manager (CBRE) was procured as part of a full OJEU and ERDF-compliant process.

- 6.5. On the advice of the Fund Manager, the appointed Board signs off on investments, drawdowns and all matters relating to the Fund, and takes all steps necessary to comply with the Funding Agreement entered into with the then MHCLG (now DLUHC).
- 6.6. The former Executive Director Place was the Council's original appointed director on the board of the Limited Company. It is necessary to appoint a replacement, and also to consider appointing other directors to ensure representation across the sub region.
- 6.7. Finance Sub Committee is now responsible for representing the Council's interests in its wholly owned entities. Under company law, and in the absence of any delegations in this instance, it is the shareholder/s who are responsible for appointing directors.

7. Implications

7.1. Legal

- 7.1.1. Vacancies on the board of C&W require the Council to make suitable director appointments. C&W is in effect solely a vehicle to process funding decisions for project to whom Evergreen 3 funding is to be awarded. It is noted that in making these decisions the board will be reviewing recommendations as to suitable projects made by CBRE. Whereas the business of C&W is tightly focussed; those individuals undertaking a director role should be aware of and bear in mind their legal duties. Set out in the Appendix to this report is a note on Director Duties as an aide memoire.
- 7.1.2. It should be borne in mind that as advised by Addleshaws the Council's appointee(s) to the board of C&W should be different from those acting on behalf of the Council in its capacity as limited partner so as to mitigate any risk that the Council is taking a direct hand in the day-to-day management of the LP.

7.2. Finance

- 7.2.1. These decisions have no direct finance implications other than they improve the general risk management and governance issues around the development funds. This therefore reduces the risk of financial error or penalty.

7.3. Policy

- 7.3.1. It contributes to the strategic priority of making Cheshire East "a thriving and sustainable place" and in particular making it a great place to live, work and visit, and have "thriving urban and rural economies".

7.4. Equality

- 7.4.1.** The nature of the Fund will not entail any staff being directly employed. Through introducing new capital to the sub region it is likely that positive benefits will be evident. The principal procurements will reflect the Council's commitment to equality and diversity. Equally, whilst investment decisions will be based upon best fit and need there will be an awareness of the Authority's position on equality.

7.5. Human Resources

- 7.5.1.** The decision does not have any particular human resource implications. Officers from Finance, Legal, Procurement and Audit Services will be involved as necessary in ongoing administration and support with regard to the Fund, in order to fulfil our obligations as Entrusted Entity.

7.6. Risk Management

- 7.6.1.** The recommendations will help to ensure that Cheshire East Council, and senior officers from partners in the sub region, will be fully represented on the company board and therefore that the risks and benefits of the investments proposed by CBRE as professional fund managers will be fully considered.

7.7. Rural Communities

- 7.7.1.** There are no direct implications for rural communities.

7.8. Children and Young People/Cared for Children

- 7.8.1.** There are no direct implications for children and young people.

7.9. Public Health

- 7.9.1.** There are no direct implications for public health.

7.10. Climate Change

- 7.10.1.** The recommendations will improve the governance of the Development Fund and ensure that a Cheshire East representative is able to participate and influence decision making. The ERDF funding of up to £20m covers three priority areas: 1,3 and 4. Priority 4 which is up to £8m and is the largest, is "Promoting the production and distribution of energy derived from renewable sources". There are therefore obvious synergies the Council's ambition to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

Access to Information

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Appendices:	Directors' Duties - Summary
Background Papers:	11 June 2019 Cabinet Paper: Formation of a Cheshire and Warrington LEP Urban Development Fund Portfolio Holder: Portfolio Holder Finance & Communication