

## Audit, Risk & Assurance Committee

<b>Date</b>	4 October 2023
<b>Report title</b>	Summary of WMCA Arm's Length Companies
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<b>Report has been considered by</b>	WMCA Executive Board

**Recommendation(s) for action or decision:**

**Audit, Risk and Assurance Committee recommended to:**

- (1) Note the information provided in this report.
- (2) Note that the Executive Board is reviewing monitoring arrangements for each of the companies and invites ARAC members to make suggestions for consideration.
- (3) Agree that the monitoring arrangements proposed will be reported to a future ARAC committee

## 1. Purpose

- 1.1 To inform ARAC of the companies in which WMCA has an interest, as previously requested by the committee.
- 1.2 To enable ARAC to share thoughts on appropriate monitoring arrangements for the companies.

## 2. Background

2.1 ARAC has previously requested that a summary of companies in which WMCA has an interest should be brought before the committee. This arose from concerns about other authorities who had been involved in well publicised failures of public authority owned companies.

2.2 There is ongoing work within the legal & governance and finance teams of the WMCA to review the arrangements for all the wholly owned companies, including review of shareholder agreements where necessary. This will include consideration of appropriate reporting mechanisms and monitoring of the companies. It is likely that the subsequent recommendation will be that an annual report in respect of the companies, highlighting any specific issues or risks, should be brought to ARAC towards the end of each municipal year.

2.3 The Grant Thornton Report from September 2022 entitled “Lessons from Public Interest Reports and other interventions”<sup>1</sup> refers to potential difficulties with public owned companies. The Report identified a number of issues that they had come across:

- A **lack of understanding** of roles and responsibilities
- A **lack of strategic rationale** surrounding the creation of companies
- A **lack of skills** around commercial decision making
- An **optimism bias** that does not reflect the true position or performance of a company or a lack of an appropriate business case.
- **Inadequate financial governance and monitoring** of group entities.
- A **lack of scrutiny** over investment or loan decisions to companies
- A **reluctance** from some members and senior officers **to listen to challenges**

2.4 The report made a number of recommendations which perhaps have some relevance to the companies referred to in this Report.

- If entering into complex or large company arrangements, focus on accessing the **right financial and legal advice**. This should include advice on Companies Act, tax and group accounting requirements. This advice should be from a suitably qualified party with no interest in or relationship with the deal and include a suitably comprehensive appraisal of all risk factors.
- **Provide formal training in external companies** and update this regularly, for both members and officers.
- Assess whether the **directors appointed to a company are equipped with suitable skills**. Directors should be able to interrogate management accounts and

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<sup>1</sup> [Grant Thornton Report from September 2022 entitled “Lessons from Public Interest Reports and other interventions” - Search \(bing.com\)](#)

the assumptions upon which the cashflow and any profit is founded. Members should then be able to hold a company to account through the shareholder or service commissioning functions.

- There should be **explicit shareholder agreements** in place and the appointment of nominated shareholder representatives. Where these are already in place, consider whether they continue to reflect current circumstances.
- Consider whether the **focus of reporting on the work and activities of companies is appropriate**. Is there an appropriate separation of the strategic oversight from operational service delivery reporting? Governance arrangements over companies should be regularly reviewed to ensure they remain appropriate for the size

### 3. Details of companies

#### 3.1 WM5G Ltd – Company Limited by Guarantee (amount is not exceeding £1)

WM5G was established to deliver and develop 5G infrastructure in the West Midlands. It aims to be the regional technology catalyst, developing the case for 5G in the area.

WM5G was incorporated on 26 February 2019. The Directors are listed at Companies House as Robert Alan Franks, Ninder Johal, Ian Martin, Mark Stansfield, Tracey Westhall.

WMCA is a person with significant control and has the right directly or indirectly to remove the majority of the Board of Directors. There is a Member's Agreement dated 23 May 2019 which was subsequently amended via a Deed of Amendment and Reinstatement dated 3 August 2022.

The Member is WMCA, and there is a regular shareholder meeting.

#### 3.2 Midland Metro Ltd (MML) - private company limited by Shares (100 shares with a total value of £100)

This company is responsible for the operation of the tram network, and for developing and expanding the network over the coming years. As the network grows, it will continue to ensure customers remain the forefront of its plans, delivering a safe and secure, reliable, and sustainable tram service which meets and exceeds expectation.

The current directors of MML are Sophie Allison, Linda Horne and Laura Shoaf.

The Shareholder representative is the Director of Law and Governance

The Shareholder's agreement states that *"The Shareholder will appoint one Director who is not an employee of the Shareholder as the Chair of the Board. The Chair will be entitled to vote at meetings of the Directors. In the event of a deadlock, the Chair's vote shall be discounted"*. A recruitment process for an Independent Chair is currently underway.

The shareholder agreement is about to be reviewed.

### **3.3 West Midlands Development Capital Ltd (WMDC) - Private Company Limited by shares (100 shares with a total value of £100)**

The directors are John Handley, Linda Horne, Suzanne Summers.

WMDC is a wholly owned subsidiary of WMCA, and in turn sub-contracts with Frontier Development Capital for support and advice.

### **3.4 West Midlands Growth Company Ltd- Private company limited by guarantee without share capital (not exceeding £1)**

The West Midlands Growth Company is owned by the West Midlands Combined Authority and its Constituent Members. It uses its core local authority funding to attract additional funding from the private sector and other sources.

Its aim is to be the leading regional investment promotion and economic development agency, unlocking potential for the West Midlands and the UK and build a region of choice which attracts investment and grows the economy through partnership across all sectors.

It was incorporated on 26 April 1982 and was known by other names prior to April 2017. There are currently 20 Directors. There are Company Members and Directors of the Board, a distinction which needs to be made. Company Members are:

#### **A Members:**

WMCA  
Birmingham City Council  
Coventry City Council  
Dudley MBC  
Solihull MBC  
Sandwell MBC  
Walsall  
City of Wolverhampton Council

#### **B Members**

Aston University  
Birmingham City University  
University of Birmingham  
University of Warwick  
University of Wolverhampton  
Stratford Upon Avon DC.

**A** Members each appoint a Director to the Board and collectively, the **B** Members appoint 3 Directors. In addition, **A** Members are entitled to appoint further Directors (so the total number of **A** Directors is not exceeding 22). All are entitled and invited to attend General Meetings but it is only Members of the Company who are allowed to vote on reserved matters. Such reserved matters are set out in the Articles of Association. Currently the Directors are as follows:

## **A Directors**

Cllr Ian Ward (Birmingham)  
Vacant (Wolverhampton)  
Cllr Patrick Harley (Dudley)  
Tim Johnson (Wolverhampton)  
Andy Williams (Coventry)  
Laura Shoaf (WMCA)  
Mary Morrissey (Solihull)

Matt Hammond (PwC)  
Rob Valentine (Bruntwood)  
Sally Scott (Advanced)  
Paul Thandi (NEC Group)  
Andrew Lovett (Black County Living Museum)  
Tom Westley (The Westley Group)  
Charlotte Horobin (Make UK)  
Jane Whitlock (Deloitte)

## **B Directors**

Cllr Tony Jefferson  
Prof Adam Tickell (University of Birmingham)  
Prof Philip Plowden (BCU)

The AGM is the formal appointment process for directors but that the Nominations and Remunerations Committee at WMGC receive and review the nominations, subsequently making a recommendation to the Board. As the appointment and the removal of Directors is a reserved matter to Members, only Members are allowed to vote on such items (the other Directors may be present but would not vote).

**3.5 Midlands Development Capital Ltd - Private company limited by shares (100 = £100)**  
Only one director which is Linda Horne. This is a dormant company.

**3.6 Network West Midlands Ltd – Private company limited by shares (100 = £100)**  
Directors are Pete Bond, Linda Horne and Laura Shoaf. This is a dormant company

**3.7 West Midlands Rail Limited - Private company limited by guarantee without share capital. Not for profit.**

West Midlands Rail Executive (WMRE) is a not-for-profit company owned by local authorities in the region. It works with the Department for Transport, Network Rail and other organisations and its roles:

- specify and manage the **West Midlands Railway** train service contract
- upgrade train stations and build new ones on behalf of **Transport for West Midlands** and other partners
- support improvements for passenger and freight train services
- plan future network improvements in the region
- maximise the benefits of the rail network for local communities.

It works closely with Network Rail, the Department for Transport and Midlands Connect to plan improvements to the region's rail network. It does not operate stations or run the trains.

Incorporated 10 April 2014 and currently has the following directors:

Councillor Pervez Akhtar – Director

Cllr Adrian Andrews – Director

Michael Bird – Director

Vacant – Director

Peter Butlin – Director

Andrea Goddard – Director

Cllr Ian Courts – Director

John Harrington – Director

Kenneth Hawkins – Director

Christopher Hitchener – Director

Peter Hughes – Director

Phillip Larratt – Director

Richard Marshall – Director

James O'Boyle – Director

Richard Overton – Director

Simon Phipps – Director

Michael Rouse – Director

Cllr Isabelle Seccombe – Director

Stephen Simkins – Director

Philip White – Director

David Williams – Director

The Mayor of WMCA is the Chair and is entitled to speak at the meetings but not vote.

An Audit Report in May 2020 led to a Governance note and SLA being approved by the WMR Board in March 2022. The Governance Note and process says that:

1. Any matters affecting the strategic interests of the WMCA that are in contemplation of a decision paper for the WMR Board shall be reported in to WMCA through the SLT and considered for additional reporting where appropriate.
2. The WMCA SLT will act both as a critical forum and as an enabler to ensure all proposals going forward will be in a form capable of achieving approval by the Board. The Director of the WMR is a member of the SLT and will be responsible for bringing matters before that body for discussion.
3. The WMCA will, as required, undertake an examination of the operation of the decision making and governance processes operated with WMR through a scrutiny exercise undertaken by the WMCA utilising one of its scrutiny Committees or its Audit and Risk Assurance Committee and resulting recommendations will be implemented to ensure good governance at all times.

There is a Service Level Agreement (SLA) with the WMCA for the provision of certain support services particularly in respect of governance, finance and legal services. WMCA will provide services for the arrangements and conduct of its WMR board meetings.

### **3.8 Black Country Innovative Manufacturing Organisation Ltd (BCIMO) – Private Limited Company by guarantee without share capital use of 'Limited' exemption**

BCIMO) is a not-for-profit company limited by guarantee and the driving force behind a state-of-the-art research and development facility based in Dudley. This multi-purpose centre, situated at the heart of the Black Country, offers a host of unique facilities including a Rail Development and Test Site, Engineering Laboratories, Serviced Offices and an Events Suite.

TfWM has been registered as a person of significant control (this should have been WMCA and will be corrected at Companies House). Sandeep Shingadia has recently replaced Malcolm Holmes as a director.

There are currently discussions underway with Dudley (also listed as a person with significant control) and the company, about its future operating model.

### **3.9 Help to Own - H2O1 Incorporated 3 March 2021 and H2O2 on 9 March 2021 both as Limited Liability Partnership**

H2O1 LLP is “the Group”. A Limited Liability Partnership and H2O2 LLP is the vehicle that carries out the Marches development and investment in 100 homes at The Marches.

Ian Martin acts as Chair for the HTO meeting. Ian Martin and Carl Pearson are appointed as Member Representatives. The Members are Wolverhampton City Council and WMCA for each LLP, which is owned and run by its Members. Neither of the member representatives have any fiduciary duty to the LLP but rather there is an appointed manager who administers such activity and the Member representatives rely upon their reports.

It is reported on Housing and Land dashboards received by Investment Board on a monthly basis, and anything significantly outside the approved business plan is taken back to Investment Board for decision.

### **3.10 WMCA JV Ltd**

This company was recently established (incorporated in March 2023) as a vehicle for the investments into WM Co-Investment Fund. Its directors are Ian Martin and Carl Pearson.

## **4. Strategic Aims and Objectives**

4.1 Not applicable

## **5. Financial Implications**

5.1 WMCA’s Finance team are involved with the wholly owned companies, to differing levels, as appropriate in the circumstances. There are no specific finance implications to this report.

## **6. Legal Implications**

- 6.1 When companies have been established, legal advice has been provided whether by the WMCA internal legal team, or in some cases by external lawyers. Legal advice is sought and given on any matters affecting the companies or the WMCA in relation to the companies, as appropriate. Companies are established only when it is not possible to achieve the required outcomes through WMCA. There are no specific legal implications to this report.

## **7. Single Assurance Framework Implications**

- 7.1 Not applicable

## **8. Equalities Implications**

- 8.1 Not applicable

## **9. Inclusive Growth Implications**

- 9.1 Not applicable

## **10. Geographical Area of Report's Implications**

- 10.1 The companies identified in this report work across and relate to the whole of the geographic area of WMCA.

## **11. Other Implications**

- 11.1 None

## **12. Schedule of Background Papers**

- 12.1 None