



REPORT TO THE NORTH WALES ECONOMIC AMBITION BOARD
26 MARCH, 2021

TITLE: *Commercial Principles for the North Wales Growth Deal*

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1. PURPOSE OF THE REPORT

- 1.1. To present a set of Commercial Principles that if adopted; would be used by the Portfolio Management Office to negotiate commercial opportunities relating to Growth Deal projects.

2. DECISION SOUGHT

- 2.1. To agree the Commercial Principles as set out in section 5 of the report.
- 2.2. To note that the rationale for adopting a specific commercial position will be clearly set out alongside project business cases for the Board to consider.

3. REASONS FOR THE DECISION

- 3.1. To provide a clear negotiating platform for the Portfolio Management Office.

4. BACKGROUND AND EXISTING COMMITMENTS

- 4.1. The North Wales Economic Ambition Board is committed to maximising the impact of the North Wales Growth Deal on the region. This position was confirmed in the Portfolio Business Case.
- 4.2. The primary driver for all projects within the Growth Deal is to deliver economic and social benefits to North Wales in line with the strategic outcomes set out in the portfolio business case – create 3,400-4,200 net additional jobs, generate £2-2.5bn in net additional GVA and attract a total investment of £1.1bn into the North Wales economy by 2036.
- 4.3. The Growth Deal aims to maximise the direct private sector investment in projects and to maximise the wider private sector leverage enabled through the portfolio.
- 4.4. There is a recognition of the difference between those not-for-profit project sponsors whose objectives are in line with the principles of the Ambition Board and those which operate in commercially and this will be reflected in the application of these principles.
- 4.5. Any return on investment to the North Wales Economic Ambition Board generated through the Growth Deal is to be reinvested within the portfolio.

5. COMMERCIAL PRINCIPLES

- 5.1. The following commercial principles are proposed:

- **Commercial Principle 1 – Sustainability and Re-investment**
The Portfolio Management Office will seek to secure a return on investment from projects that generate a direct commercial return for project sponsors to enable funding to be recycled and reinvested in the region.
- **Commercial Principle 2 – Subsidy Control (State Aid)**
The Portfolio Management Office will commission subsidy control (state aid) advice on all projects at the Outline Business Case stage and may result in specific funding models being applied to projects where there are no exceptions applicable e.g. commercial loan rate.
- **Commercial Principle 3 – Reinvestment of financial surplus or profit generated by not-for-profit project sponsors**
Consideration will be given during negotiation to not pursuing or considering a reduced commercial return from not-for-profit project sponsors, where it can be demonstrated that any direct financial surplus or profit generated through the projects will be reinvested in North Wales in areas that align to the delivery of the Growth Vision, notably economic growth and skills development. This may require specific agreements to be put in place between the NWEAB and the project sponsor to secure this investment.
- **Commercial Principle 4 – Gap funding will be considered where there is a viability or market failure issue**
Consideration will be given during negotiation to not pursuing a commercial return where the project sponsor or developer can demonstrate that there are viability or market failure issues with the project and that the project would not proceed without gap funding. In such instances, the Portfolio Management Office will weigh the risk of the project not proceeding against any potential return on investment or the timing or criteria for that return.
- **Commercial Principle 5 – Contractual arrangements will protect the North Wales Economic Ambition Board’s long-term interests**
Contractual arrangements will protect the interest of the North Wales Economic Ambition Board and partners from future changes in ownership or operating models that could reduce the benefit to North Wales.

6. APPLYING THE PRINCIPLES TO PROJECTS

- 6.1. The Portfolio Management Office will lead on negotiations with project sponsors, supported by the Monitoring Officer and external legal support to deliver the best deal for North Wales. These principles will be applied proportionately on a case by case basis for each project.
- 6.2. The rationale for pursuing a specific commercial model will be clearly set out in a report to the North Wales Economic Ambition Board alongside the project business case and will have been challenged by the relevant Programme Board and the Portfolio Board before being recommended to the NWEAB for consideration.
- 6.3. In all cases, the ability to create effective contractual models to achieve and sustain the outputs will be a key consideration in the approach taken.

7. FINANCIAL IMPLICATIONS

- 7.1. There are no direct financial implications from adopting the principles.
- 7.2. Adopting the Commercial Principles will provide a clear negotiating platform for the Portfolio Management Office to seek to maximise the return to North Wales from each project business case.

8. LEGAL IMPLICATIONS

- 8.1. The provision of support to Projects through the mechanism of Growth Deal will involve the completion of a formal legal agreement with the relevant Project Sponsor. That agreement will incorporate the terms of conditions of that funding and may, where appropriated be supported by security for any commitments. The principles set out in the report provide a basis for agreeing the funding conditions for this investment of public funds and, allow for an element of re-cycling and re-investment where supported Projects generate financial profits from public funding. Where that arrangement allows e.g. for an agreed re-investment by the Project Sponsor this will also need to be reflected in the funding agreement so as to ensure that any commitments are defined and delivered.
- 8.2. The provision of Growth Deal Funding is also subject to the law in relation to State Aid or subsidy control law. Whilst this area of law is currently developing following the formal end of the Transition Period in relation to the departure from the European Union it is a key consideration for funding decisions and arrangements. Whilst there are a range of identified exemptions where those cannot be relied upon it is likely to mean that the models for providing support would have to be provided on commercial terms. That assessment remains a key component of the Business Case process.

9. STAFFING IMPLICATIONS

- 9.1. None.

10. IMPACT ON EQUALITIES

- 10.1. None.

11. CONSULTATIONS UNDERTAKEN

- 11.1. The Commercial Principles have been discussed with the Executive Officer Group (Portfolio Board) and were endorsed on 12 March, 2021.

STATUTORY OFFICERS RESPONSE:

i. Monitoring Officer – Host Authority:

“I have had an opportunity to advise on the report. As noted these principles and aims. The detailed work and outputs will derive from the Business Case process and the financing conditions.”

ii. Statutory Finance Officer (the Host Authority’s Section 151 Officer):

“The commercial principles presented here appear to be reasonable, but the nature of the “commercial return” (referred to in “Commercial Principle 1”) is going to depend on the project, and will need to be negotiated and agreed with the individual commercial project sponsors before formalizing it within the relevant financing agreements.”