

**CARDIFF HEAT NETWORK SPECIAL PURPOSE VEHICLE - FULL  
BUSINESS CASE APPROVAL**

**CLEAN STREETS, RECYCLING & ENVIRONMENT (COUNCILLOR  
MICHAEL MICHAEL)**

**AGENDA ITEM: 4**

---

**APPENDIX 1, 2 AND 4 TO THIS REPORT ARE NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPHS 14 OF SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 AS IT CONTAINS INFORMATION CLASSIFIED AS EXEMPT UNDER SCHEDULE 12A THAT IT CONTAINS INFORMATION RELATING TO THE FINANCIAL OR BUSINESS AFFAIRS OF ANY PARTICULAR PERSON (INCLUDING THE AUTHORITY HOLDING THAT INFORMATION). IN ALL THE CIRCUMSTANCES OF THE CASE, THE PUBLIC INTEREST IN MAINTAINING THE EXEMPTION OUTWEIGHS THE PUBLIC INTEREST IN DISCLOSING THE INFORMATION**

**APPENDIX 3 TO THIS REPORT IS NOT FOR PUBLICATION BY VIRTUE OF THE PROVISIONS OF SCHEDULE 12A PARAGRAPH [16] (INFORMATION IN RESPECT OF WHICH A CLAIM TO LEGAL PROFESSIONAL PRIVILEGE COULD BE MAINTAINED IN LEGAL PROCEEDINGS) TO THE LOCAL GOVERNMENT ACT 1972**

**Reason for this Report**

1. To enable Cabinet to consider and approve: the Final Business Case for Phase 1 of the Cardiff Heat Network; establishment of the project's Special Purpose Vehicle (SPV); on-granting of grant funding to the SPV; on-lending of Welsh Government loans to the SPV; and delegation of powers to the Director of Environment, Planning and Transport to agree the SPV entering into all required agreements to implement the project, including the design, build, operate and maintain (DBOM) contract.

**Background**

2. *The Council's Capital Ambitions document commits the Council to develop Sustainable Heat network proposals for the City. This ambition relates to our climate change and carbon reduction commitments, especially the Welsh Government target for all public sector organisations in Wales to be carbon neutral by 2030. Furthermore, establishment of a heat network is one of the key elements of the Council's One Planet Cardiff Strategy.*
3. Following an extensive feasibility study and other related workstreams, the Outline Business Case (OBC) for the Cardiff Heat Network (CHN), based on the supply of heat from the Trident Park Energy Recovery Facility (ERF), was approved by Cabinet on the 19<sup>th</sup> April 2018 following presentation to the

Environmental Scrutiny Committee on the 17<sup>th</sup> April. The OBC was developed utilising the Office of Government Commerce “Five Case Model” which is seen as best practice for the public sector:

- Strategic Case
- Economic Case
- Financial Case
- Commercial Case/Management Case

4. The Decision to approve the OBC authorized the further development of a Final Business Case for cabinet approval subject to securing the appropriate funding.
5. Capital grant funding of £6.628m for Phase 1 of the CHN (see figure below) has been obtained from the Department of Business, Energy and Industrial Strategy (BEIS) Heat Network Investment Project (HNIP), following a successful application in January 2020. Phase 1 of the network will supply heat to existing buildings owned/operated by the Council, Senedd Cymru, Wales Millennium Centre and Cardiff and Vale College (see figure below). As part of the application for HNIP Capital funding, the Council committed to ensuring the proposed new indoor Arena is connected to the heat network and this will also be connected to Phase 1. As well as these core building connections, the network includes significant scope for expansion and target heat connections have also been identified in the immediate vicinity of the Phase 1 network. Further potential also exists (for example, as part of Phase 2) to extend the network north of the main Cardiff to London railway line, as well as east towards Newport Road though this would be subject to new funding and business model assessments.

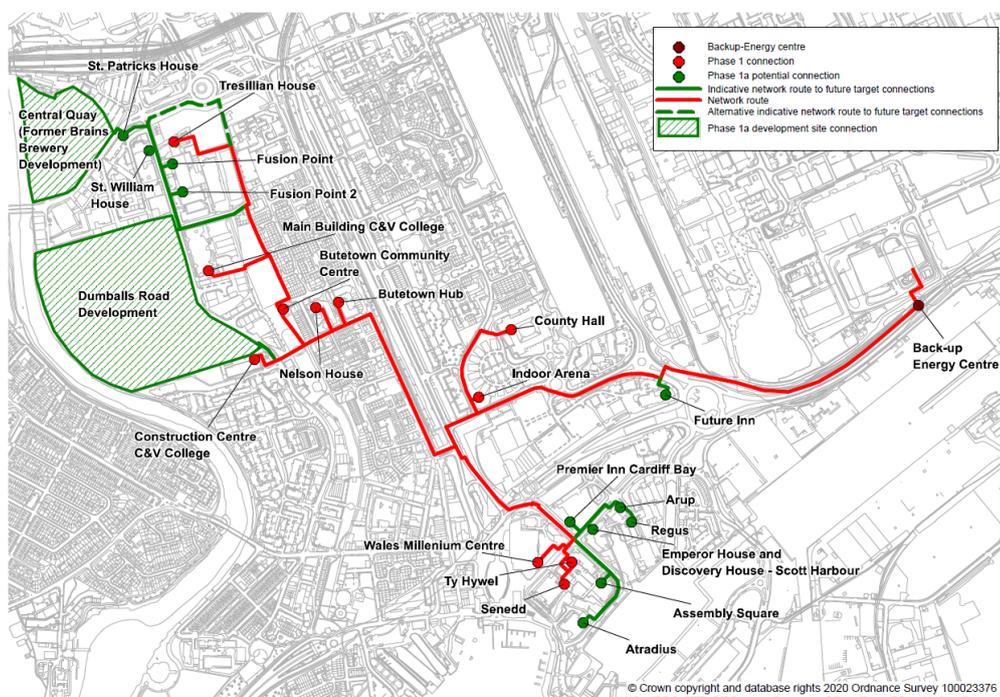


Figure 1: Phase 1 of Cardiff Heat Network

6. Following approval by the Director of Planning, Transport and Environment of an Officer Decision Report (ODR) seeking approval to accept the terms of the HNIP capital grant funding offer, the Funding Agreement with HNIP was

agreed by the Council Legal Department on the 12th August 2020. The Council is required to submit the Funding Request for the drawdown of funds by 28 February 2021 at the latest.

7. Furthermore, an £8.6m interest free loan over 35 years has also been agreed in principle with Welsh Government following ministerial sign off. Repayments for this will start in 2025, two years following practical completion of the whole Phase 1 network.
8. In approving the OBC, Cabinet also delegated authority to the Director for Planning, Transport and Environment in consultation with the Cabinet Member for Clean Streets, Recycling and Environment and the S151 and Monitoring Officer to:
  - Finalise the procurement strategy and commence procurement of a design, build, operate and maintain (DBOM) contractor for the project, generally deal with all aspects of the project and award the DBOM contract after Cabinet has approved the Final Business Case and
  - Agree minor amendments to the OBC which the Director in consultation with those referred to above view as desirable in the interests of the Council provided that if in either case the nature of the project is substantially altered from that set out in the OBC that the matter be referred back to Cabinet.
9. The DBOM procurement was launched on the 30 June 2020 with the publication of a notice entitled Cardiff Heat Network (CHN) (Reference Number ERFX1006800) in the Official Journal of the European Union (OJEU). Following external legal advice, the procurement has used the *Negotiated Procedure with prior call for competition under the Utilities Contract Regulations 2016*, following a two-stage procurement process. Following a deadline of 31<sup>st</sup> July 2020 for the submission of pre-qualification questionnaires, 11 companies were invited to tender
10. The Authority intends to apply the criteria stated in the procurement documentation's Evaluation Methodology to identify the Successful Bidder(s).
11. 7 bids were received at Stage 1. Stage 2 involves an element of negotiation, focused mainly on clarifying detailed design and implementation points with a view to removing or reducing as many risk elements as possible. Stage 2 will close after the date of the Cabinet meeting to consider this report and the final contractor(s) for the scheme are unlikely to be known until then. However there is a pressing need to make progress on key Cabinet decisions in advance of the close of Stage 2 to ensure that the wide range of commercial and other agreements needed for project closure can proceed in line with the grant funding draw down requirements.
12. Prices received at the end of stage 1 provide a robust basis for inclusion in the Final Business Case (FBC). The tendered costs from companies proceeding into Stage 1 have been used to prepare the Final Business Case for Phase 1 of the CHN; thus, providing a robust cost affordability envelope within which Cabinet can make a decision on whether or not to approve the FBC.

13. As part of the OBC Commercial Case, the full range of delivery options were considered, from wholly public sector led models through concession and joint venture models to wholly private sector models and potential variants. A Council Delivery Model with the use of a Special Purpose Vehicle (SPV) was identified as the preferred option.
14. It is proposed that the SPV, which will be wholly owned by the Council, be known as the Cardiff Heat Network. The SPV Business Case is entirely based on the Business Case for the Cardiff Heat Network. Appendix 1 contains the updated Business Case. It should also be noted that the terms of the HNIP funding require the Heat Network to be structured in this way. In formulating the plans for the SPV, the Council has taken legal advice to avoid any of the governance issues that arose with the Robin Hood Energy Company.
15. This Cabinet report provides an overview of the main issues arising from:
  - approving the Final Business Case;
  - establishing the heat network special purpose vehicle;
  - Approving the Shareholder agreement between the Council and the SPV;
  - Accepting the £8.6m Welsh Government interest free loan to the Council and the on-lending of this to the SPV on back-to-back terms;
  - Drawing down the £6.628m HNIP grant and on-lending of this to the SPV; and
  - other related matters.
16. It also considers the proposed delegation of powers to the Director of Transport, Environment and Planning to:
  - Approve the finalised Shareholder Agreement between the Council and the SPV
  - Establish the special purpose vehicle
  - Approve the on-granting (HNIP) agreement between the Council and the SPV
  - Approve the on-lending (WG) agreement between the Council and the SPV
  - Agree the Special Purpose Vehicle entering into agreements with third parties including but not limited to:
    - Sign the design, build, operate and maintain (DBOM) contracts for construction and operation of the network
    - Sign the final bulk heat supply agreement with Viridor
    - Sign the Heat Supply Agreements with customers
    - Sign Utility agreements for gas and electricity at the back up energy centre
    - Sign Easements to cross private land
    - Approve the Business Plan of the SPV

## **Issues**

### Final Business Case for the Cardiff Heat Network Special Purpose Vehicle

17. Building on the OBC for Cardiff Heat Network, a FBC for the Cardiff Heat

Network Special Purpose Vehicle is set out in Appendix 1. This does not revisit the strategic case for establishing the CHN, as this was extensively set out and agreed by Cabinet at the OBC. Instead this concentrates on the financial viability of the scheme taking in to account updated capital costs, projected revenues and operating costs. It considers the revenue from Phase 1 and the potential for expansion of the core scheme.

18. The total capital costs for Phase 1 of the network have been estimated using the outcome from Stage 1 of the procurement of design, build, operate and maintain (DBOM) contractors. Taking in to account, supply and installation of the pipe network, building thermal sub-stations and back-up energy centre, together with the cost of steam to hot water heat exchangers at Trident Park Energy Recovery Facility (ERF), the maximum total capital cost of the CHN is as stated in Table 2 of the confidential FBC. This takes in to account the oversizing of the distribution pipework spine to allow future expansion and includes a small general contingency sum of 5% as well as a contractor's fixed price contingency sum relating specifically unexpected issues arising from excavations for pipe laying.
19. The heat network pipes themselves are expected to have an operational life span in excess of 50 years. However, with good maintenance and the future integration of additional heat sources and customers this could be significantly extended.
20. The FBC is based on capital funding for the project of a £6.628m grant from the Heat Network Investment Project (HNIP) and a £8.592m loan from Welsh Government, administered via Salix. At the time of the OBC was approved by Cabinet, a £4M Council Invest to Save loan allocation was expected, together with a £5.4m HNIP grant funding and £5M Welsh Government funding. The reduced Council input has arisen as a result of Welsh Government making additional zero interest funding available via the loan facility, together with a greater capital grant from HNIP than envisaged at the time of the OBC.
21. Updated forecast cash inflows and outflows for Phase 1 have been prepared using the techno-economic model for the project. This demonstrates that the net cash in year before debt is sufficient to repay the WG annuity. Furthermore, as the repayment of the WG loan will not commence until 2025, this allows a surplus of cash to be built up which will provide a buffer for the project's cash flow. While the net cash in year post debt will become negative between year 5 and year 12, the cumulative net cash in year, taking the early years surplus into account, remains positive throughout. Furthermore it is fully expected that significant growth of the network will occur, with the scheme increasing in size by 75% by 2025 through the connection of 5 private sector loads. Expansion will be further underpinned by encouraging developers to connect through the planning system.
22. The model has also conducted some sensitivity analysis on major risks. One of the most significant of these is the scenario where the Arena project fails to be delivered. If the Arena did not proceed, and only moderate expansion is achieved, the net cash in-year post all debt would be negative between 2025 and 2035. The cumulative net cash in post all debt in this scenario would also be negative between 2026 and 2044. Hence, without further expansion (beyond the moderate expansion) the project would need revenue support,

estimated at circa £60k per annum for 10 years, to maintain a cumulative net cash positive position. However, significant expansion, beyond the moderate expansion scenario, is envisaged.

23. Within the SPV techno-economic model allowance has been made for the cost of staffing the SPV. It is proposed that an Officer of the Council is seconded on a part time basis to the SPV (estimated at 1 day per week), with the Council being paid at cost by the SPV for the loss of time.
24. This report seeks approval of the Final Business Case for the Cardiff Heat Network.

#### Establishment of the Heat Network Special Purpose Vehicle and Governance

25. For local authority-controlled projects where the project capex is greater than £2.4m HNIP requires that the project must be off the National Accounts, such as through the use of a special purpose vehicle (SPV). The HNIP application was made on this basis and the Cardiff HNIP Funding Agreement contains a Condition Precedent requiring the Council to provide evidence that the investment vehicle has been incorporated before the funding request is made. The last date for requesting the draw-down of funds is 28 February 2021.
26. The SPV will be the operating company for the heat network. It will own the infrastructure assets, have contractual relationships with heat supplier(s) (Viridor) and customers and steer the day to day running and expansion of the network. It will also be the “client” for the design, build, operate and maintain contracts
27. Although the creation of a special purpose vehicle is a requirement of the grant funding, it also provides a number of other key benefits including:
  - Limited liability to reduce risk exposure for the Council
  - Defines clear boundaries between the Council and the heat network project
  - Provides a mechanism for allowing future investment in the SPV (subject to Welsh Government Loan Funding being fully repaid) and Council approval as the SPV shareholder.
  - Provides some certainty to the Heat network and commercial customers in the context of potential unforeseen future structural or finance changes at the Local Authority level.
28. Legal Advisors to the project have prepared a Shareholder Agreement between the Council, as the shareholder, and the Company. This sets out details of the structure and governance arrangements, further details of which are provided in paragraph 32 below. This Agreement (which is attached as Appendix 2) regulates the operation and management of the Company and certain aspects of the relationship between the Council and the Company in relation to the development, delivery and operation of the heat network.
29. The Shareholder Agreement contains a list of Reserved Matters (in Schedule 2) which the SPV cannot do without the consent of the Council. This effectively defines the boundary of the operational freedom the Council is

devolving to the SPV management. This draws a line to allow the SPV's board of directors to operate the SPV in the agreed "business as usual" mode without reference back to the Council (although the Council's Directors will be involved throughout and will be reporting back to the Council). If the SPV wishes to borrow money to expand the network (for example, to develop Phase 2) this decision is a reserved matter. Given the impact this could have on the timescales for repayment of the Welsh Government Loan (and the potential for a reduced repayment timeframe), the Council will also need to consult Welsh Government on such proposals.

30. A requirement is also included in the Shareholder Agreement for the SPV to comply with certain specified Council policies. The Council also has the ability to impose additional or amended policies in the future.
31. The board of directors of the Company will have responsibility for managing the Company and will shape the vision and the values of the organisation. The Council, being the sole shareholder, will appoint (and remove) directors to run the company. Directors to be appointed will need to have the relevant skills and experience to deliver the business plan for the Cardiff Heat Network. The Shareholders' Agreement allows the Council to appoint and remove any of the directors (see paragraph 32 below for list of directors).
32. The board of directors of the Company will meet as set out in the Articles of Association. The Managing Director of the Company will produce an:
  - Annual budget
  - Annual business plan
  - Annual report and other documents required to set the strategic direction of the company.
33. The board of directors will approve these strategic documents on an annual basis and as and when required with one of the Council Director acting specifically as the "Shareholder Representative". The Shareholder Representative will be the principal channel of communication between the SPV Board and the Council and monitoring the operation of the SPV and reporting back to the Council. (Note: Shareholder representative means a representative of the shareholder (i.e. the Council) appointed to the Board of Directors pursuant to the Share Agreement.)
34. In order for the Council to maintain control of the company the Council will maintain a majority of directors on the board. Decisions of the directors will be decided by simple majority. It is proposed that the Company Board of Directors shall comprise:
  - Chairman – Director in Council
  - Managing Director – To be appointed
  - Director – recruited from Council with project experience
  - Director – recruited from industry with commercial experience of heat networks
  - Company Secretary – Finance Officer
35. The appointment of the Directors to the SPV will be done formally by the Chief Executive of the Council in consultation with the Cabinet Member for

Clean Streets, Recycling and Environment. The Appointment of an external Director (see bullet 4 above) would be subject to later approval by Full Council.

36. The Council Directors, like all directors, will have to act independently in the best interests of the SPV, however they will also have the role of representing the Council's views at meetings of the board of directors. They may also be subject to other duties owed to the Council in their capacity as Council officers. The scope for potential conflicts between the duties owed to the Council and the duties owed to the SPV have been considered and these are considered manageable under the terms set out in the Shareholder Agreement.
37. Therefore, this report seeks approval for the establishment of the SPV.

#### Approval of on-granting HNIP grant

38. The application for capital grant funding from HNIP was made on the basis that the capital grant received from the programme by the Council is on-granted to the Cardiff Heat Network SPV on the same back to back terms on which it was provided to the Council. A legal agreement between the Council and SPV is being prepared by the project's legal advisors. For information this on-granting is a requirement of the Grant Conditions since HNIP only make grants available to Local Authorities.
39. This cabinet report seeks agreement for the on-granting of the HNIP grant to the SPV and delegates Authority to the Director of Planning, Transport and Environment to agree and execute the on-granting agreement between the Council and the SPV.
40. Note: Legal advice received by the Council has confirmed that the HNIP grant and WG interest free loan (see section below) can be put into the project, while still complying with state aid regulations.

#### Approval of on-lending WG Loan

41. The request for a 35-year interest free loan from WG was made on the basis that the loan received from WG by the Council is on-lent to the SPV on the same back to back terms it is provided to the Council.
42. The draft agreement with WG contains a provision requiring the loan to be repaid over a shorter period should the net cash in year post debt of the SPV rise above £50k per annum i.e. all net cash in year post debt above £50k but less than £200k will be paid to WG to ensure quicker repayment of the loan. Above £200k per annum, 50% of the net cash in year post debt will be used for additional repayments with the remainder staying with the SPV for future expansion and resilience etc.
43. Legal advice has been received on the terms offered in the Welsh Government Agreement and feedback provided. This agreement is being updated by Welsh Government to address the comments provided by the Council.
44. Once the agreement between the Council and Welsh Government is

finalized, a legal agreement between the Council and the SPV will be prepared on the same back-to-back terms.

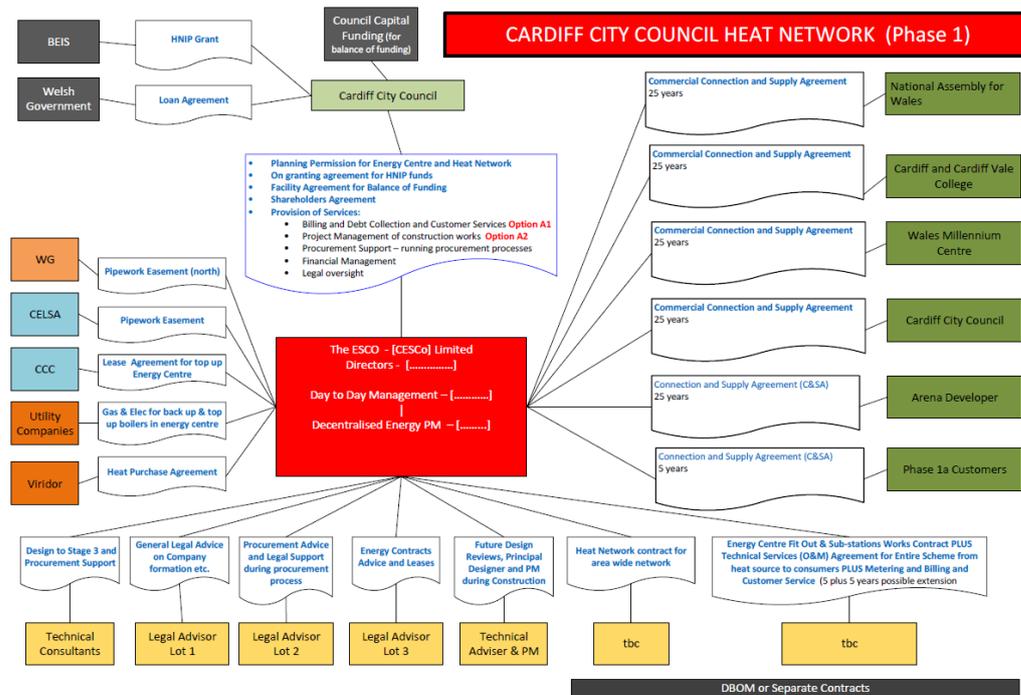
45. This cabinet report seeks agreement for the on-lending of the WG loan to the SPV and delegates Authority to the Director of Planning, Transport and Environment to agree and execute the loan agreement between the Council and WG and on-lending agreement between the Council and the SPV.

#### Other

46. At the time of the OBC a £4M Council contribution was expected, together with £5.4m HNIP grant funding and £5M Welsh Government funding. However, as additional interest free loan funding was obtained from WG there is no longer a requirement for direct Council capital input. However, as outlined above a small annual revenue sum may be needed to support cashflows in the early days operation of the network when fewer customers are connected.
47. This report seeks approval for the Council's contribution to the project.

#### Commercial Agreements between the SPV and third parties

48. The establishment of the Heat Network relies on a wide range of commercial agreements in respect of:
  - Design, build, operate and maintain contracts
  - heat purchase from the ERF Plant,
  - heat supply to customers,
  - easements to cross private land,
  - lease arrangements for the back-up energy centre site
  - planning consent.
49. These are shown in the Agreement Map below - boxes with a curved lower edge represent agreements. The different customer heat sale agreements are shown on the right of the map. The bulk heat supply agreement, together with other agreements necessary to the implementation of the project are shown on the left of the map. The capital funding sources and route by which these flow down through the council into the SPV are shown in the top left section.



50. For each of these areas the project team has discussed and negotiated “heads of terms” positions with the third parties and, where necessary, signed further Memoranda of Understanding etc to bring more certainty to the project as it has developed. Legal advisors have also been commissioned to draft detailed legal agreements in respect of each and these are being considered by the third parties in anticipation of final signing following the Council’s approval of the FBC. The HNIP grant conditions requires these to be in place as conditions precedent to the draw-down of grant funding, the deadline for which is 28<sup>th</sup> February 2021.
51. The agreement to be entered into with Viridor is underpinned by a Summary of Commercial Arrangements (SoCA) document which was signed by the Council and Viridor in September 2019. It should be noted that detailed negotiations are ongoing with Viridor and the scheme is dependent on satisfactory resolution of a final Bulk Heat Purchase Agreement based on the principles of the signed SoCA. It will be for Viridor to separately agree with Prosiect Gwyrdd the change mechanism to allow the Trident Park ERF to operate in heat extraction mode.
52. The agreements to be signed with the Phase 1 customers (Senedd Cymru, Wales Millennium Centre and Cardiff and Vale College) are underpinned by Memoranda of Understanding signed by the Council and each customer in 2019. Full heat sales agreements are being drafted by the Council’s Legal Advisors and will be executed by the SPV once it has been incorporated.
53. This cabinet report seeks to delegate authority to the Director of Planning, Transport and Environment to agree on behalf of the Council, as the sole shareholder, the SPV entering in to all necessary agreements to implement the project.

Other considerations

54. An initial Equality risk assessment has been undertaken on the proposals

and indicated that any risks were low. A full Equality Impact Assessment will be undertaken if Cabinet agrees to the SPV being established.

### Key Risks and Mitigation

55. One of the main risks relates to the ERF plant availability. When the ERF plant is off the heat for the network has to be provided by the gas boilers in the back up energy centre. The cost of producing heat in these boilers is significantly higher than that from the ERF. To account for this risk, the techno-economic model makes assumptions that the ERF will be off-line for a certain set number of hours per annum. If the ERF was off for a significantly longer period this would undermine the economic operation of the heat network. However, it is in Viridor's own interest to ensure that the plant remains operational and various safeguard contractual obligations underpinning its long term operation are provided in the Prosiect Gwyrdd agreement.
56. The connection of the heat network to the ERF requires the pipes to cross over a private railway on land owned by a manufacturing company. Detailed discussions have been held with the company over a sustained period of time and a draft easement has been prepared. While constructive discussions continue the easement is not yet signed and a number of issues remain to be finalized. However a contingency has been allocated in the model to accommodate a final resolution.
57. The construction of the heat pipe network will involve considerable excavation in areas known to be congested. Bidders were required to provide a fixed price in their tender returns to cover reasonable variations to the installation as a result of these.
58. Other risks, opportunities and mitigation in relation to fewer or more connections being made than anticipated are discussed in the Financial Case.

### **Local Member consultation**

59. Local Members have been informed about the generalities of the scheme

### **Reason for Recommendations**

60. To enable Cabinet to consider and approve: the Final Business Case for Phase 1 of the Cardiff Heat Network; establishment of the project's Special Purpose Vehicle (SPV); on-granting of grant funding to the SPV; and on-lending of Welsh Government loans to the SPV and the delegation of Authority to the Director of Planning, Transport and Environment to agree and execute the various agreements required to implement the project.

### **Financial Implications**

61. The procurement process is ongoing and subsequently final prices are not yet available, therefore it is proposed that an affordability envelope for the capital costs are approved based on the tendered prices submitted as part of

stage 1 of the procurement process. Further analysis will be required as these prices are not yet confirmed and if the capital costs are higher than the affordability envelope proposed this will potentially have a detrimental impact to the financial business case proposed. Operating costs have been estimated within the financial business case however further work is required to gain greater clarity on some of the assumptions made which could result in increased costs.

62. VAT advice in relation to transactions between the SPV and the council are in the process of being sought and early indications suggest that there are no significant issues that would cause adverse implications to the council, a report is currently being drafted from external specialists to this effect. In addition, a further understanding is being sought from external specialists in relation to the structure of the Special Purpose Vehicle, particularly from an accountancy viewpoint and any adverse implications to the council arising from this will need to be clearly set out

### **Legal Implications**

63. The grant funding from BEIS and the loan funding from the Welsh Ministers are being provided to the Council in the first instance, which is then providing them to the SPV on essentially back-to-back terms. This means the Council is, and will remain, responsible for the performance of its obligations under the relevant agreements with BEIS and Welsh Ministers. For example, if the SPV is unable to comply with the terms of the on-loan agreement between the Council and the SPV (eg because project revenues are less than anticipated), the Council will nonetheless remain liable to perform its obligations (eg repayment) in the Facility Agreement with Welsh Ministers.
64. The Council controls the SPV and provides the funding it requires to establish and operate its business. The Council must ensure that the SPV is well managed with a view to it becoming, and remaining, a profitable self-sustaining business. Appropriate mechanisms are included in the Shareholder Agreement and other constitutional documents for the SPV to provide the Council with access to the information it needs periodically to review the SPV's performance and take action where appropriate. The Council must include regular oversight of the SPV's activities into the Council's governance processes for trading subsidiaries to ensure that it is in a position to exercise the controls it has over the SPV if and when required.
65. The Grant Thornton Report in the Public Interest for Robin Hood Energy Ltd includes a number of findings relevant to the governance arrangements for Cardiff's ESCo, which can be summarised as follows:
- a successful relationship between a local authority and its subsidiary companies relies on achieving an appropriate balance between the authority on the one hand being sufficiently involved to hold the company to account and on the other hand giving it freedom to manage itself. Ordinarily, a council would set the overall aims of a company and approve its business plan and significant variations from it, and then monitor performance against this business plan by means of an agreed framework

- generally, it is not good practice for councillors to be on the boards of local authority companies, and other mechanisms should be used to ensure that the company meets the council's policy objectives. Having councillors on company boards can lead to a failure to separate properly two sets of interests – those of the company and those of the council.
  - a properly defined shareholder representative role should be the focus for that relationship and the channel through which the subsidiary trading company is held to account by the council
  - the council should ensure that it has in place within its own governance structure appropriate bodies to oversee the operation of the trading company.
66. The Shareholder's Agreement for the SPV is consistent with these recommendations.
67. External legal advisers undertook a legal compliance check (attached at Appendix 3). This confirmed that the project is legally compliant and identified no other material legal implications.  
Equality Duty.
68. The Council has to satisfy its public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of 'protected characteristics'. The 'Protected characteristics' are: • Age • Gender reassignment • Sex • Race – including ethnic or national origin, colour or nationality • Disability • Pregnancy and maternity • Marriage and civil partnership • Sexual orientation • Religion or belief – including lack of belief.
69. Where a decision is likely to result in a detrimental impact on any group sharing a Protected Characteristic, consideration must be given to possible ways to mitigate the harm. If the harm cannot be avoided, the decision maker must balance the detrimental impact against the strength of the legitimate public need to pursue the recommended approach. The decision maker must be satisfied that having regard to all the relevant circumstances and the PSED, the proposals can be justified, and that all reasonable efforts have been made to mitigate the harm.

#### Well Being of Future Generations (Wales) Act 2015 - Standard legal imps

70. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
71. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2019-22. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This

means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

72. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

73. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:

<http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

#### General

74. The decision maker should be satisfied that the recommendations are in accordance within the financial and budgetary policy and represents value for money for the council.

75. The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

#### **HR Implications**

76. As the employees will remain employed by the Council on their existing salaries and terms and conditions of employment, there are no HR implications to the proposal to create a wholly owned Local Authority Trading Company as set out in this report, as nothing will change with the exception that the time they spend working for the SPV will be charged to the SPV.

#### **Property Implications**

77. Strategic Estates note the Heat Network proposals and direct alignment with the Built Environment stream of the One Planet Strategy. It is important that the planning, forecasting and individual property impacts proposed by Heat Network are carefully considered together with Strategic

Estates. This process has already begun by exchanging term sheets and outline design considerations.

78. This report does not include any specific, immediate property implications. Any property decisions relevant to Heat Network will need to be undertaken through the agreed asset management processes and in collaboration with Strategic Estates and relevant managing service areas.

## RECOMMENDATIONS

Cabinet is recommended to:

1. Approve the Final Business Case for the Cardiff Heat Network (including the project's Special Purpose Vehicle) attached to this report, subject to the capital costs affordability envelope arising from the design, build, operate and maintain (DBOM) procurement not exceeding the total capital cost stated in Table 2 of the confidential FBC.
2. Approve the Shareholder Agreement between the Council and the Special Purpose Vehicle, and delegate authority to the Director of Planning, Transport and Environment to make minor amendments to this.
3. Approve the establishment of the Council's wholly owned Special Purpose Vehicle, to be known as the Cardiff Heat Network, under the terms of the Shareholder Agreement which contains the formal Governance Arrangements as generally described in this report.
4. Agree the on-granting of the HNIP grant to the SPV and delegate Authority to the Director of Planning, Transport and Environment to agree and execute the on-granting agreement between the Council and the SPV
5. Agree the on-lending of the WG loan to the SPV and delegate Authority to the Director of Planning, Transport and Environment to agree and execute the loan agreement between the Council and WG and the on-lending agreement between the Council and the SPV.
6. Delegate authority to the Director of Planning, Transport and Environment to agree on behalf of the Council, as the sole shareholder, the SPV entering in to all necessary agreements to implement the project, including but not limited to:
  - The design, build, operate and maintain (DBOM) contracts for construction and operation of the network
  - The bulk heat supply agreement with Viridor
  - The Heat Supply Agreements with customers
  - Utility agreements for gas and electricity at the back up energy centre
  - Easements to cross private land
  - Lease agreement for land for back-up energy centre
7. Delegate authority to the Director of Planning, Transport and Environment , in consultation with the Cabinet Member for Clean Streets, Recycling and Environment and the Council's S151 Officer, to agree on behalf of the Council, as the sole shareholder, updates to the SPV Business Plan and consent to any Reserved Matters as required by the Shareholder's

Agreement (subject to any matter referable to Full Council).

8. Note that the Director of Planning, Transport and Environment already has delegated Authority under the April 2018 OBC approval to award the DBOM contract after Cabinet has approved the Final Business Case.
9. Delegate Authority to the Director of Planning, Transport and Environment to agree all other documents required relating to the constitution and governance and operations of the Special Purpose Vehicle and its relations with the Council.
10. Note that a further report will be taken to Council in due course to approve the appointment of the external non-executive director of the SPV.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>Andrew Gregory</b> Director of Planning, Transport & Environment
	11 December 2020

*The following confidential appendices are attached:*

- Appendix 1 – Cardiff Heat Network Special Purpose Vehicle Final
- Appendix 2 – Shareholder’s Agreement between Council and [Cardiff Heat Network SPV] Limited
- Appendix 3 – Legal Advisor’s Compliance Check
- Appendix 4 – Financial Implications

