
Pre-decision Scrutiny: Mutual Investment Model (MIM) Strategic Partnering Agreement

Purpose of the Report

1. To give Members information to assist the pre-decision scrutiny of the report to Cabinet on the proposal to approve a Strategic Partnering Agreement, with WEPCo¹, to utilise the Mutual Investment Model to deliver new build education and community facilities, potentially at Cathays High School and Willows High School, prior to its consideration by Cabinet at their meeting on 16 July 2020.

Structure of the meeting

2. Councillor Sarah Merry (Cabinet Member – Education and Lifelong Learning), and Richard Portas (Programme Director – School Organisation) will be available to answer Members questions. Members will then be able to decide what comments, observations or recommendations they wish to pass on for consideration.

Structure of the Papers

3. To facilitate the scrutiny the following appendices are attached to this report:

Appendix A – Report to Cabinet

Mutual Investment Model (MIM) Strategic Partnering Agreement

The following appendix is attached is to Appendix A:

Appendix 1 – MIM Background Paper – Bevan Britten LLP

¹ WEPCo stands for Welsh Education Partnership Company

Scope of the Scrutiny

4. Full Council established the Covid-19 Scrutiny Panel on 21 May 2020 to provide measured and proportionate scrutiny in the current emergency and to undertake pre-decision scrutiny of reports to Cabinet. The Cabinet will meet on 16 July 2020 to consider a report on utilising the Welsh Government's Mutual Investment Model (MIM) to finance new build schools for Cathays High School and Willows High School.
5. To ensure all previous scrutiny informs the internal challenge, in advance of this meeting all Members of the Children and Young People Scrutiny Committee were consulted, their comments and enquiries collated and passed to Panel members to follow up, in line with the Panel's Terms of Reference.
6. During this scrutiny, Members have the opportunity to test the recommendations to Cabinet and explore the proposals to utilise MIM, including:
 - Strategic Partnering Agreement
 - Role of the Council
 - Governance arrangements
 - Financial implications
 - Risks to the Council
 - Next Steps and Timelines
 - Any issues identified by the Children and Young People Scrutiny Committee.

Background

7. The Welsh Government has established a 21st Century School Programme, with funding available to address issues with sufficiency of places, condition of buildings and suitability of the environment for teaching. Cardiff Council has assessed its education estate using a detailed and robust methodology that aligns with the Welsh Government's strategic objectives for 21st Century Schools. This methodology rates schools from A to D, with D being the worst category, in the three areas of sufficiency, condition and suitability.
8. From 2012-2017, Cardiff Council addressed the most pressing issues identified and submitted bids to Welsh Government for funding under the first tranche of funding available via the 21st Century School Programme, known as Band A. This

resulted in the new build secondary schools, Eastern High School and Western High School, as well as six primary schools.

9. In 2017, Cabinet considered a series of reports outlining the remaining challenges and opportunities facing Cardiff in the development of the education estate and agreed the Council's vision for its next tranche of school improvements, as part of Welsh Government's Band B 21st Century School Strategy.
10. Five secondary schools were included in Band B: Cantonian High School, Fitzalan High School, Cathays High School, Willows High School and Cardiff High School. These received the following ratings for sufficiency and condition of buildings:

High School	Sufficiency Rating	Condition Rating
Cantonian	D	D
Fitzalan	D	D
Cathays	D	C
Willows	D	D
Cardiff	D	C

11. The Council's vision for Band B includes maximising community benefits from investments in schools, by internal facilities such as halls and dance studios and external facilities such as MUGAs and sports pitches. The Council has explicitly identified this as one aspect of its programme to promote children's rights, as a participating member of the UNICEF Child Rights Partner Programme, with this commitment reflected in tender documentation on a project-by-project basis.
12. The estimated cost of the Council's overall Band B programme, which also includes primary schools and special schools, is circa £284 million. The Welsh Government offers two main routes of funding: the Mutual Investment Model, described below; or a capital grant for a percentage of the costs with the local authority needing to fund the remaining costs, for example via external prudential borrowing and/or available capital receipts.

13. The Mutual Investment Model (MIM) is a revenue funded cost-sharing arrangement. Any new schools funded via this route are funded through a public-private partnership, through a Special Purpose Vehicle, in which Welsh Government is represented. This partnership designs and builds the school and maintains the building fabric over a 25-year period. Local Authorities lease the assets created over a period of 25 years, paying an annual lease payment for use of the new school facilities rather than incurring up-front capital costs. At the end of the 25-year period, the assets transfer to the respective local authority. The Welsh Government funds the balance between the costs and the annual lease payment.

14. In March 2019, Cabinet agreed to pursue a dual funding model strategy to fund the 21st Century School Programme, to include the MIM route for the delivery of the proposed Band B schemes at Cathays and Willows High Schools. A copy of the report to Cabinet is available here:

<https://cardiff.moderngov.co.uk/documents/s28240/Cabinet%2021%20March%202019%20SOP%20MIM.pdf?LLL=0>

15. The Cabinet report attached at **Appendix A** explains that Welsh Government has procured Meridiam Investments II SAS as the Private Sector Delivery Partner to deliver education and community facilities via MIM. Meridiam and a subsidiary of the Development Bank of Wales will form a Special Purpose Vehicle, called WEPCo, to deliver the services to participant local authorities and further education institutions. These services include design, project development and professional services to develop MIM-approved projects. The actual delivery of the projects will be by Project Co, which will have a Project Agreement with the relevant Council and contracts to manage the building and facilities contractors.

Issues identified in the Cabinet Report

16. The report to Cabinet seeks approval for the Council to enter into a Strategic Partnering Agreement (SPA) with WEPCo and other participants. At **point 11**, the report to Cabinet states that:

'The SPA provides for how the parties act together over the long term in a collaborative partnering, non-adversarial and open manner to support the effective planning, procurement and delivery of education and community facilities in Wales

and the delivery of infrastructure services. This includes partnering services for the project such as legal, design and technical advice.'

17. The report to Cabinet states that the SPA is a 10-year agreement, with potential to extend by a further 5 years. At this stage, the SPA commits Cardiff Council to services with the contract and not the delivery of capital projects. Welsh Government has appointed Bevan Brittan LLP as legal advisors to advise them on procurement and the Strategic Partnering Agreement; their advice has been included in the report to Cabinet, at **Appendix 1**.

18. At **point 12**, the report to Cabinet states that a Strategic Partnering Board (SPB) will be established to manage the performance of WEPCo. The SPB will include representatives from all participants and will:
 - Approve the Strategic Delivery Plan
 - Ensure project proposals are consistent with the Strategic Delivery Plan
 - Monitor WEPCo's performance against agreed Key Performance Indicators
 - Approve any extension to the SPA term
 - Approve any proposed disposal of interest in share capital resulting in a loss of control by WEPCo (or subsidiary).

19. The report to Cabinet asks Cabinet to note that the Chief Executive will use his delegated authority to make the appointment to the SPB, who will be either the School Organisation Programme Director or Director for Education and Lifelong Learning.

20. At **points 14-16**, the report to Cabinet sets out the anticipated benefits and potential limitations of MIM; these are supplemented by the Financial Implications at **points 23-26**.

21. The report to Cabinet states that Cathays High School and Willows High School are potential MIM schemes. It is expected that proposals for both schemes will be brought forward in Autumn 2020. Willows High School is proposed to form part of the initial batch of new projects. It

22. Further details of the MIM, SPA and SPB are provided in **Appendix 1**.

23. The report to Cabinet recommends giving delegated authority to the Director of Education and Lifelong Learning, in consultation with the Cabinet Member – Education & Lifelong Learning, section 151 officer and Director of Governance & Legal Services, to make minor amendments to the SPA and to agree any further updates required as well as complete any other documents associated with the SPA.

24. The report to Cabinet highlights that further reports on whether or not to proceed on individual projects will be brought to Cabinet for approval.

Proposed Recommendations to Cabinet

25. The report recommends that Cabinet:

- (a) Note the outcome of the Preferred Bidder Stage of the Competitive Dialogue Procedure under the Public Contracts Regulations 2015 as outlined in this report;
- (b) Subject to recommendation (c) and (d), approve the execution, delivery and performance of the Strategic Partnering Agreement with the Welsh Education Partnership Co in Autumn 2020 to facilitate the delivery of a range of infrastructure services and the delivery of education and community facilities;
- (c) Approve the Strategic Partnering Agreement linked to this report and summarised in **Appendix 1** of this report so as to give effect to recommendation (b), subject to recommendation (d) below;
- (d) Give delegated authority to the Director for Education and Lifelong Learning, after consultation with the Cabinet Member for Education, Employment and Skills, Director of Governance and Legal Services and s151 Officer:
 - i) To agree any minor amendments to the Strategic Partnering Agreement approved here as may be necessary, for reasons including but not limited to finalising any outstanding areas and to reflect advice provided; and
 - ii) To approve any further deeds and documents which are ancillary to the Strategic Partnering Agreement approved here
- (e) Notes that the Chief Executive will use his delegated authority to make the appointment of the School Organisation Programme Director or Director for Education and Lifelong Learning as 'Participant Representative' to sit on the Strategic Partnering Board (SPB);
- (f) Notes that in agreeing to the Strategic Partnering Agreement, it is not being asked to decide to proceed with any project. Any decision to proceed with a project will be reported back to Cabinet in future report(s) for decision.

Previous Scrutiny

26. The Children & Young People Scrutiny Committee has undertaken regular scrutiny of the Council's proposals re 21st Century Schools. In December 2017, the Committee scrutinised Band B proposals and following the meeting, Cllr Bridgeman, Chair Children & Young People Scrutiny Committee, wrote to Cllr Sarah Merry, Cabinet Member – Education & Lifelong Learning. The letter² contained the following points:

- The Committee commended the report to Cabinet.
- The Committee considered that communication of Band B plans and projects was critical to their success and sought assurance that all stakeholders would be kept informed of progress, in addition to statutory consultation.
- The Committee expressed concern that the funding of the revenue consequences of proposals would be dependent on significant annual capital financing costs and failure to fund these costs would severely restrict essential improvements to the school estate.
- The Committee recommended a detailed maintenance programme for the school estate be developed and integrated into future school and council budgets.
- The Committee was particularly concerned that communities should benefit from the programme of new builds, with access to community facilities. The Committee recommended that the operational arrangements of the community facilities at Eastern High be kept in-house.

27. In March 2020, the Children & Young People Scrutiny Committee considered a progress report on 21st Century Schools. Following the meeting, Cllr Bridgeman, Chair Children & Young People Scrutiny Committee, wrote to Cllr Sarah Merry, Cabinet Member – Education & Lifelong Learning; the letter³ contained the following points:

² Letter from Cllr Bridgeman, Chair Children & Young People Scrutiny Committee, to Cllr Merry, Cabinet Member Education & Lifelong Learning, dated 13 December 2017

³ Letter from Cllr Bridgeman, Chair Children & Young People Scrutiny Committee, to Cllr Merry, Cabinet Member Education & Lifelong Learning, dated 13 March 2020

- The Committee was very pleased with progress to date
- With regard to the programme being supplemented by £25m funding via capital receipts, the Committee asked for clarification on if this funding would be provided by education only assets or other Council assets
- The Committee were concerned to hear that under the current arrangements of the MIM, the Council has less control over building specifications and the possible implications this could have in terms of community availability. The Committee sought further information on this.

Way Forward

28. Councillor Sarah Merry (Cabinet Member – Education and Lifelong Learning) and Richard Portas (Programme Director, School Organisation), will attend to take questions from Members of the COVID- 19 Scrutiny Panel, representing the Members of all five Cardiff Council Scrutiny Committees.

Legal Implications

29. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers of behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

30. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Panel is recommended to:

- i) Consider the information in this report, its appendices and the information provided during the meeting; and
- ii) Determine whether they would like to make any comments, observations or recommendations for consideration.

DAVINA FIORE

Director, Governance & Legal Services

9 July 2020