

**BY SUBMITTING THIS REPORT TO THE CABINET OFFICE, I, NICK BATCHELAR, DIRECTOR EDUCATION AM CONFIRMING THAT THE RELEVANT CABINET MEMBER(S) ARE BRIEFED ON THIS REPORT**

**THIS REPORT MUST BE ACCOMPANIED BY THE REPORT AUTHORISATION FORM 4.C.214**

**CARDIFF COUNCIL  
CYNGOR CAERDYDD**

**CABINET MEETING: 16 JULY 2020**

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**MUTUAL INVESTMENT MODEL (MIM) STRATEGIC PARTNERING AGREEMENT**

**EDUCATION, EMPLOYMENT & SKILLS (COUNCILLOR SARAH MERRY)**

**AGENDA ITEM:**

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**Reason for this Report**

1. For Cabinet to approve the Strategic Partnering Agreement (SPA) with Welsh Education Partnership Co to facilitate the delivery of education and community facilities through Welsh Government's Mutual Investment Model (MIM), subject to minor amendments which will be delegated to the Director for Education and Lifelong Learning. A link to the SPA can be found [here](#).
2. To ask Cabinet to note 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.

**Background**

3. At its meeting on the 14th December 2017, the Cabinet received a report which:
  - Outlined the priority schemes to be undertaken as part of Cardiff's Band B 21st Century Schools Programme;

- Requested members note the approval in principle by WG of the Strategic Outline Case submitted by Cardiff Council for Band B of the 21st Century Schools Programme and to authorise discussion with the WG to secure business case approval for individual schemes.
4. This report set out the sufficiency, suitability and condition issues in Cardiff and which form were the basis of the funding request from Cardiff to WG under the Band B programme.
  5. Support for Cardiff' programme was secured in principle to enable the Council to:
    - Remove all "D" condition, end of life, school properties;
    - Address the 8 form of entry sufficiency issue in the English medium secondary sector in the central area of the City;
    - Address the sufficiency, condition and suitability issues in the Special Sector, in both primary & secondary settings;
    - Address local sufficiency issues in Welsh medium primary schools in the East & West of the City;
    - Address local sufficiency issues in English medium primary schools in Cardiff Bay & West of the City.
  6. In developing its outline programme for 21st Century Schools Band B, the Council considered a range of options and prioritised a list of projects and schemes. This work was undertaken in conjunction with external cost consultants to ensure the robustness of indicative costs. The Council utilised standardised construction cost rates as provided by WG.
  7. The indicative cost of the Council's outline Band B programme was £284 million. This cost represented the full "rolled-up" cost of all schemes within the preferred programme. At the point of submission, external cost consultants confirmed that delivering the programme was possible within the overall envelope identified.
  8. As set out in the December 2017 report, the WG's approach to Band B is slightly different to Band A as there are two funding models available to support Local Authorities to finance their investment; traditional capital and MIM. MIM is a national scheme to borrow funds via the private sector to design and build schools, and maintain the building fabric over a 25 year period.
  9. The Cabinet's initial position regarding MIM (following consideration of the overall cost of MIM; the WG's proposed contribution rate at 75:25 and the overall level of risk exposure) was to express an interest in the traditional capital funding model only, when submitting its Strategic Outline Business Case. However, following further consideration in the 21 March 2019 report, Cabinet agreed to pursue a dual funding model strategy to fund the 21st Century Schools Programme to include the

MIM route for the delivery of our proposed Band B schemes at Cathays and Willows (including 3FE primary). The Cabinet were keen to use the MIM new build programme as a vehicle to transform teaching and learning and local communities. This aligned with Welsh Government's proposed contribution rate alteration to 81:19.

## Issues

10. Welsh Government has been procuring a Private Sector Delivery Partner (PSDP) to work with it on the delivery of education and community facilities. The PSDP and a subsidiary of the Development Bank of Wales will be required to form a Special Purpose Vehicle (SPV) called WEPCo, which will deliver the services to participants. Welsh Government have also appointed Bevan Brittan LLP as legal advisors to advise them in respect of the procurement and Strategic Partnering Agreement (referred to below). The advice is provided on the basis that it can also be relied upon/used by participants. Their advice has been included in this report.
11. Cardiff Council, along with other local authorities and further education institutions, will be a participant to the arrangements. The participants and WEPCo will enter into a Strategic Partnering Agreement (SPA). 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.
12. The SPA is a 10 year agreement with a potential to extend a further 5 years between WEPCo and all participating local authorities and further education institutions. The enclosed MIM Background Paper in **Appendix 1** provides a more detailed summary of the SPA. WEPCo's performance is managed through the Strategic Partnering Board (SPB). Participant representation is required on the SPB. The SPB's role will be to approve the Strategic Delivery Plan (**SDP**); ensure any new project proposals are consistent with the SDP; monitor WEPCo's performance against agreed KPIs; approve any extension to the SPA term; and approve any proposed disposal of interest in share capital resulting in a loss of control by WEPCo (or subsidiary). **Appendix 1** also provides a more detailed summary of the role of the SPB.
13. WEPCo will undertake all partnering services (i.e. the design, project development and professional services). Approved MIM Projects will be developed by WEPCo, but delivered (including hard facilities management) by Project Co which will enter into a Project Agreement with the Council to deliver the relevant MIM Project. The Council will be a contracting party with Project Co which will have contracts in place to manage the building and facilities contractors. The Council will be responsible for payment of the relevant proportion of the monthly unitary

charge (debt repayments) which forms 19% of the capital and 100% of the hard facilities management costs.

14. Evaluating the full financial and non-financial impact of funding projects via the MIM route is challenging and the following is largely based on information and financial modelling provided by WG. The anticipated benefits of MIM are as follows:

- Potential for earlier delivery of schemes, particularly in the context of the slowdown of the traditional capital funded model schemes.
- Earlier delivery would assist with the avoidance of part of the significant cost that will be required to maintain Condition D schools before the new schools are constructed.
- A school asset that is maintained at a high level during the 25 year lease period, with the WG contributing towards 81% of the maintenance costs.
- The Council and schools concerned will have full control over the day to day operation of the building, including soft facilities management and use of the building and its facilities.
- Engagement with the MIM route may provide an opportunity to reconsider the scope of schemes that could potentially be funded via MIM.

15. There are also potential limitations of the MIM funding model, these are set out below:

- The suitability of MIM is limited to complete new builds only, projects that include refurbishment or extensions are not deemed suitable.
- Projects (or a group of similar projects in a local authority area) would need to have a capital value of £15 million or more to be funded through this route.
- MIM is not deemed suitable for small primary schools, PRUs or special schools.
- Statutory consultation needs to have been completed beforehand with no outstanding or complicated land issues.
- The scope of schemes needs to be clearly defined in advance of commencing a MIM scheme with changes to scope being problematic once the scheme is underway.
- The capital, revenue and associated borrowing costs are unknown until the projects have been procured by ProjectCo. However, all will be procured within agreed benchmarked parameters.
- Cardiff Council will not directly manage the procurement and design process, but it will be an important stakeholder to ensure the project meets the local needs and there are clear checkpoints throughout the process. Further information can be found in the enclosed MIM Background Paper in **Appendix 1** alongside general question and answers.

16. Councils will still need to undertake and fund some capital works, including work to develop the school specific brief, and will also be required to undertake and where required fund some works connected to FFE; management and lifecycle of 3G pitches; soft facilities management; catering and ICT. It is envisaged at this stage that where required separate procurement processes will take place.
17. Cardiff Council has only two schemes that have been identified as potential MIM schemes. These are Cathays High School and Willows High School.
18. Willows High School project has been identified as potential Pathfinder projects and will therefore form part of the initial batches of new projects to be taken forward. The process for new projects is set out in Schedule 5 of the SPA and the enclosed MIM Background Paper in **Appendix 1** provides a more detailed summary of the Approval Process for New Projects under the SPA. It is expected that proposals for both schemes will be brought forward in autumn 2020.
19. Welsh Government has completed the procurement process for the Private Sector Delivery Partner (PSDP) and the highest ranked bidder with a score of 91.57% Meridiam Investments II SAS. Meridiam will be appointed as the Selected Bidder on expiry of the Standstill Period. It is an international organisation with vast experience in this field. Meridiam will be supported educationally by the Learning Crowd.
20. The next stage is to enter into the Strategic Partnering Agreement (SPA) with WEPCo in order for the Pathfinder projects to progress. At this stage the agreement of the SPA only commits Cardiff Council to services with the contract and not the delivery of capital projects.

### **Reasons for Recommendations**

21. Reasons for Cabinet to approve the Strategic Partnering Agreement (SPA) with Welsh Education Partnership Co to facilitate the delivery of education and community facilities through Welsh Government's Mutual Investment Model (MIM) are that:
  - The Welsh Government's Mutual Investment Model (MIM) is a delivery model that is deemed value for money;
  - The Strategic Partnering Agreement (SPA) with Welsh Education Partnership Co to facilitate the delivery of education and community facilities is a consistent with other Local Authorities across Wales and provides the required services to deliver future projects;
  - There is limited commercial risk to the Council until projects are progressed under the New Project Approval Process.
22. It is proposed to delegate to the Director of Education and Lifelong learning as set out in recommendation d. This is to allow any minor amendments to the SPA as indicated in the footnotes in **Appendix 1**

and any further updates to reflect advice provided as well as complete any other documents associated with the SPA.

### **Financial Implications**

23. Under the Mutual Investment Model (MIM) new schools will be constructed via a Special Purpose Vehicle and the Council will make a net contribution of 19% (with WG providing 81% of the revenue funding required) towards the annual unitary charge for a period of 25 years. The funding required for the Council's contribution will be made available via the SOP Revenue Reserve, which also meets revenue costs arising in relation to programme delivery and capital financing.
24. Other capital costs arising will be outside of the scope of MIM funding. These costs will include those directly connected to the new school, such as FFE and ICT, as well as other costs not directly connected to the new building. These costs are still within the scope of the 21<sup>st</sup> Century Schools Programme and will be funded via the traditional capital route, with WG contributing towards 65% of the costs.
25. An updated analysis of the options has been completed, including inflationary uplift and changes in scope, to assess the whole life costs of the two projects. When comparing MIM and standard Band B funding the total revenue cost over the 25-year period is broadly similar, with the estimates suggesting that MIM would result in lower costs over the life of the financial model.
26. The analysis compared the traditional Band B funding (with a 65% WG intervention rate) to the MIM model (81% WG intervention rate). In reality, the overall envelope for Band B is already under significant pressure and the pathfinder MIM schemes would no longer be affordable within Band B. The MIM scheme provides value for money based on the high-level analysis completed to date. Given the limited options available the only other route available for these schemes currently would be to push these schemes into Band C or reprioritise the Band B programme in its entirety.

### **Legal Implications**

27. Approval to enter into the Strategic Partnering Agreement (SPA) is an executive function requiring a decision of the Cabinet.
28. To enter into and participate in the SPA referred to in this report, the Council will be relying upon a number of statutory powers:
  - i. the "well-being" powers contained in section 2 Local Government Act 2000;
  - ii. powers contained in the Education Acts 1996 and 2002;

- iii. the “incidental” provisions of section 111 Local Government Act 1972.

The well-being powers contained in section 2 Local Government Act 2000 permit the Council to do anything which it considers is likely to achieve any one or more of the following objects:

- (a) the promotion or improvement of the economic well-being of their area;
  - (b) the promotion or improvement of the social well-being of their area, and
  - (c) the promotion or improvement of the environmental well-being of their area
29. In exercising this power the Council has had regard to the requirements of the Well-Being of Future Generation (Wales) Act 2015 (‘the Act’). 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.
  30. 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 Cabinet 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.
  31. 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 the Cabinet 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:
    - (a) Look to the long term
    - (b) Focus on prevention by understanding the root causes of problems
    - (c) Deliver an integrated approach to achieving the 7 national well-being goals
    - (d) Work in collaboration with others to find shared sustainable solutions

- (e) Involve people from all sections of the community in the decisions which affect them
32. The Cabinet 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 here: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>
33. The incidental provisions of section 111 Local Government Act 1972 permit the Council to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
34. Entering into the SPA does not bind the Council in any way. However, the Council will be required to appoint a representative to act on its behalf in relation to the SPA. The identity of the representative may change at any time following written notice to WEPCo and all other Participants. Each representative may also at any time, by written notice to WEPCo, authorise others to exercise the functions and powers of the Council.
35. The power to appoint an individual to the Strategic Partnering Board (SPB) pursuant to Schedule 2 Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 is delegated to the Chief Executive in consultation with the relevant Cabinet member for the appointment of officer representatives, in accordance with Part 3 Section 3 of the Constitution. As set out in this report, the Cabinet is asked to take this decision in place of the Chief Executive as part of the recommendations contained herein.
36. The SPA is to be executed as a deed and attested in accordance with Article 13.5 of the Constitution.
37. This report details proposed Pathfinder projects at Willows High School and Cathays High School. It is noted that to proceed with these projects, Cabinet authority will be required to approve the use of the Approval Process for New Projects as set out in Schedule 5 of the SPA. Any decision to proceed to deliver any new project including a Pathfinder Project, and to enter into associated legal documentation to facilitate the same including a Project Agreement, will be reported back to Cabinet in future report(s) for decision.
38. The Cabinet should be satisfied that the procurement is in accordance within the financial and budgetary policy and represents value for money for the Council.
39. The Cabinet 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.



## **Equalities Implications**

40. 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.
41. 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.
42. Proposals on a project by project basis will address equalities implications as necessary, and reports back to Cabinet on any individual projects to be taken forward will contain appropriate Equality Impact Assessments.

## **HR Implications**

43. Further information will be required about the operation of the MIM scheme in order to fully assess any HR implications which may arise. This could be as a result of changes in responsibilities for Hard and Soft FM arrangements as well as the management of any facilities proposed for community use. In addition, at the appropriate time an assessment of any TUPE implications under the Transfer of Undertakings (Protection of Employment) Regulations 2006 will need to take place. Full dialogue with any affected staff and trade union colleagues will need to be undertaken during this assessment process.
44. The Education Directorate may also need to consider its capacity for any additional responsibilities which arise as a result of the operation of a MIM scheme.

## **Appendices**

Appendix 1: MIM Background Paper

## **RECOMMENDATIONS**

45. The Cabinet is recommended to:
- (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 projects will be reported back to Cabinet in future report(s) for decision.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>NICK BATCHELAR</b> <b>Director of Education &amp; Lifelong Learning</b>
	July 2020