

CYNGOR SIR POWYS COUNTY COUNCIL.

**CABINET EXECUTIVE
15 September 2020**

**REPORT AUTHOR: County Councillor Phyl Davies
Portfolio Holder for Property and Education**

**REPORT TITLE: MIM 21ST CENTURY SCHOOLS WELSH EDUCATION
PARTNERSHIP – STRATEGIC PARTNERING
AGREEMENT**

REPORT FOR: Decision

1. PURPOSE

1.1 The purpose of this report is to explain the process and seek Cabinet approval to enter into a Strategic Partnering Agreement (SPA) with Welsh Education Partnership Co (WEPCo). Entering SPA will give Powys County Council the opportunity to deliver a 21st Century Schools Programme education and community facilities project via The Mutual Investment Model revenue funding stream.

1.2 To approve the appointment of the Chief Executive as the Programme SRO and 'Participant Representative' to sit on the Strategic Partnering Board.

1.3 To give delegated authority to Chief Executive in consultation with the monitoring officer, to agree the final terms of the SPA and make any necessary amendments to it, should these be required.

1.4 Annexes:

ANNEX 1: STRATEGIC PARTNERING AGREEMENT – REDACTED

ANNEX 2: STRATEGIC PARTNERING AGREEMENT SUMMARY

ANNEX 3: STRATEGIC PARTNERING BOARD SUMMARY

**ANNEX 4: APPROVAL PROCESS FOR NEW PROJECTS
SUMMARY**

2 BACKGROUND

- 2.1 Since 2016, Powys County Council's 21st Century Schools Programme has to date delivered 10 projects, with 1 project in construction and a further 8 either in design or in early development. All projects to date have been funded through capital funding through a combination of supported borrowing, prudential borrowing, and use of reserves.
- 2.2 In February 2017, Welsh Government formally launched the Mutual Investment Model "MIM" as a platform for delivery of the "Taking Wales Forward" agenda. The MIM has been designed to finance major capital projects due to a scarcity of capital funding.
- 2.3 With the establishment of the MIM 21st Century Schools Programme, local authorities will be able to access two funding streams to deliver qualifying and pipeline projects. One stream will remain as capital, whilst the MIM will be a revenue funding stream.
- 2.4 The MIM is intended to support additional investment in social and economic infrastructure projects and help to improve public services in Wales. Under the MIM, the private sector partners will build and maintain public assets, and in return the Council supported by funding from the Welsh Government will pay a fee to the private partner, which will cover the cost of construction, maintenance and financing the project. At the end of the contract the asset reverts to the Council.
- 2.5 The Welsh Government has been engaged in a competitive dialogue tender process working to the procurement of a private sector partner to work with it on the delivery of education and community facilities in Wales, under the MIM 21st Century Schools Programme. It will be the only means of delivering revenue funded Band B projects. The Welsh Government has selected and appointed a preferred bidder. The successful private sector partner and a subsidiary of the Development Bank of Wales (known as WGCo) will be required to form **WEPCo**, which will deliver infrastructure services to the Participants in Wales. If a Participant receives funding for a 21st Century Schools and Colleges Band B MIM Programme project, WEPCo has the exclusive right to develop proposals for the delivery of that project (Project Development Partnering Services) within the first 10 years of the SPA.
- 2.6 A MIM project would enable the Council to work with the WEPCo to deliver a qualifying scheme; the WEPCo contractor would lead on design and construction of a new-build education and community facility, whilst also being responsible for the maintenance and lifecycle of the building for a period of 25 years, when the maintenance responsibilities would revert to the Council.

2.7 Not all 21st Century Schools projects will qualify to become a MIM project. The projects **must**:

- be 100% new build Primary, Secondary or Further Education Institution project (special schools, PRU's, and very small primary schools are exempt from accessing MIM funding), and;
- have capital value of more than £15million (either as one facility or a group of facilities such as several primary schools to be delivered within a single Local Authority area under a single project agreement

2.8 To enable the Council to easily participate in the MIMS scheme, the Council must enter into a Strategic Partnering Agreement (“SPA”) in the manner set out in Annex 1 by 25th September 2020. The final form or wording for the SPA has not yet been concluded and minor amendments may be made. To enable the Council to approve entering the SPA without the need for a further meeting (bearing in mind the deadline to enter the SPA by 25th September 2020) it is recommended that delegated is given to the Chief Executive, in consultation with the Monitoring officer, to approve minor amendments to the SPA.

2.9 A more detailed summary of the SPA provided by Bevan Brittan is set out in Annex 2, but for ease of reference the SPA commits the Participants and WEPCo to work to the following nine (9) key principles:

- 2.9.1 to develop close working relationships between WEPCo and the Participants at all levels;
- 2.9.2 to focus on achieving the best value for money operational performance within agreed timescales;
- 2.9.3 to set in place business and cultural processes to enable the Participants and WEPCo to establish and agree challenging time and performance objectives and to meet or better them;
- 2.9.4 to recognise each other's needs, constraints, limitations, capabilities, roles and responsibilities to achieve mutually beneficial outcomes;
- 2.9.5 to identify by regular monitoring, weaknesses, and strengths in the relationship between and amongst the Participants and WEPCo and to work together to overcome the weaknesses and to build on the strengths;
- 2.9.6 to commit to the early recognition and resolution of differences, conflicts and disputes between and amongst the Participants and WEPCo in a 'no surprises' environment;

- 2.9.7 to appoint within each of the Participants and WEPCo co-ordinators at senior level who will support, defend and promote the long term strategic partnership between them and its principles of operation;
- 2.9.8 to develop openness and trust in a transparent information and data sharing environment; and
- 2.9.9 in accordance with the Equality Requirements to positively promote equal opportunities and the Ethical Employment Code by combating discrimination on the grounds of race, ethnicity, religion, nationality, gender, disability, age or sexuality and promoting good relations between all sections of the community in 'everything we do' including:
- a) Delivering high quality Education Sector Services and (where relevant) Community Services for end users; and
 - b) Working with the local community and partners in the public, private or voluntary sectors.
- 2.10 The Strategic Partnering Board (**SPB**) is the guardian vehicle of these commitments. The SPB will act as the primary mechanism for managing WEPCo's performance. The SPB will be the central forum in which the Participants can work together with WEPCo, Welsh Government and Stakeholder Representatives to ensure that the key principles of the SPA are met. Participant representation will be required on the SPB.
- 2.11 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 Key Performance Indicators; 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).
- 2.12 A more detailed description of the role of the SPB provided by Bevan Brittan is set out in Annex 3.
- 2.13 By entering the Strategic Partnering Agreement with WEPCo, Powys County Council is securing (a) easy access to the MIMS scheme; (b) membership on the Strategic Partnering Board. This will allow the Council to access revenue funding for Band B, or any education and community infrastructure projects, from Welsh Government in the future through the Mutual Investment Model (MIM) to access the funding and WEPCo for delivery. It does not commit the Council to using the MIM.
- 2.14 Any future MIM project that will be delivered via WEPCo would follow the HM Treasury 5 Business Case Model and would require business case approval from cabinet. Options and benefits

appraisals of funding options would be included within the project Strategic Outline Business Case.

2.15 The successful private sector partner and a subsidiary of the Development Bank of Wales (known as WGCo) will be required to form WEPCo, which will deliver infrastructure services to the Participants (Local Authorities) in Wales.

2.16 The Participants to the arrangements will be Local Authorities and Further Education Institutions. The Participants and WEPCo will enter into a Strategic Partnering Agreement. Under the Strategic Partnering Agreement, WEPCo will be required to provide partnering services to the Participants, including (i) project development and delivery; and (ii) supply chain assembly and management. This may lead to the delivery of revenue supported Band B projects pursuant to a separate Project Agreement or, in due course, capital funded projects could be delivered through this contract structure.

2.17 The MIM is based on traditional PPP structures but with the following core principles embedded:

2.17.1 an emphasis on wider community benefits;

2.17.2 enhanced stakeholder involvement;

2.17.3 public sector equity investment;

2.17.4 no soft services; and

2.17.5 effective and efficient contract management by the public sector.

2.18 The Welsh Government has been procuring a private sector partner to work with it on the delivery of education and community facilities in Wales, under the MIM 21st Century Schools Programme, and a preferred bidder has been appointed. It will be the only means of delivering revenue funded Band B projects. The successful private sector partner and a subsidiary of the Development Bank of Wales (known as WGCo) will be required to form **WEPCo**, which will deliver infrastructure services to the Participants in Wales.

3 ALTERNATIVE OPTIONS CONSIDERED

3.1 The Council understands that if it wishes to access revenue funding for Band B projects from the Welsh Government then it will need to use the Mutual Investment Model to access the funding and WEPCo for delivery. There are no alternative delivery options for such funding.

4 ADVICE

4.1 In April 2020, the Leader of the Council approved the new Transforming Education Strategy. The Strategy is based on four Strategic Aims:

- Strategic Aim 1: We will improve learner entitlement and experience
- Strategic Aim 2: We will improve learner entitlement and experience for post-16 learners
- Strategic Aim 3: We will improve access to Welsh-medium provision across all key stages
- Strategic Aim 4: We will improve the provision for learners with SEN/ALN

4.2 To deliver the new Strategy, there is a requirement for a major capital investment programme that will ensure that schools in Powys have inspiring, environmentally sustainable buildings that can provide opportunities for wider community activity. This will also include developing a reliable, high quality digital infrastructure.

4.3 To deliver this ambitious Strategy requires future capital investment of approximately £350m in addition to the £202m Band A and B investment which will completely transform the county's school's estate.

4.4 Entering the Strategic Partnering Agreement (SPA) secures Powys County Council membership on the Strategic Partnering Board, the board that will oversee the WEPCo. This does not automatically mean that the council 'signs up' to the Mutual Investment Model at this stage. If a qualifying pathfinder project is identified in the future, a Strategic Outline Business Case, detailing the option of progressing with a MIM project, will be developed, and the final decision will be made by the cabinet.

4.5 It is recommended that Cabinet approves this report and enters the Strategic Partnering Agreement to ensure that Powys County Council has the option of funding the ambitious 21st Century Schools Programme through the Mutual Investment Model in the future.

5. **Resource Implications**

5.1 Financial Capital

5.1.1 The 21st Century Schools Programme is currently financed through a combination of supported borrowing, prudential borrowing, and use of reserves. The intervention rate for Welsh Government funding for Band A is 50% but has increased to 65% for Band B and 75% for special schools' projects.

5.1.2 The Council's contribution to the Band A schemes is £30m to date, the borrowing element of this amounted to £27.4m. This has cost the council over £1m per year to cover borrowing costs.

- 5.1.3 The Council's commitments to future Band A and Band B schemes is £45m, all of which will be borrowing. It is estimated that the cost the council will £2.6m per year to cover borrowing costs once all schemes are completed. There is uncertainty around future interest rates, so a prudent figure is presented.
- 5.1.4 The Welsh Government intervention rate for the MIM is 81%.
- 5.1.5 The MIM scheme will be a revenue commitment for the council and would include the construction and ongoing running costs of any new school built under this scheme.
- 5.1.6 Where new schemes are eligible for MIM funding a full costing model would be provided in the business case together with the Welsh government capital grant funding route used in Bands A and B. The Council can then decide on the preferred funding option on a scheme by scheme basis.

5.2 Financial Revenue

- 5.2.1 The schools running and maintenance costs are currently funded by individual delegated budgets allocated via the Schools Funding Formula which forms part of the Council's revenue budget.
- 5.2.2 If used, the MIM will create revenue maintenance and lifecycle financial liabilities. It is not currently clear from which budget these costs will be funded. This element needs to be considered as the funding model is explored further. The School Funding regulations dictate the way in which funding is delegated to schools and changes to the Schools Funding Formula will need to be considered to accommodate the MIM liabilities. Other Authorities are already using this model and we discuss how they are accommodating these costs.
- 5.2.3 Each Project would be subject to an individual options and benefits appraisal to decide the appropriate funding route. The council is currently undertaking financial modelling work in comparing the revenue and capital funding streams.
- 5.2.4 The head of Finance (Section 151 Officer) supports the recommendation. Entering the Strategic Partnering Agreement (SPA) secures Powys County Council membership on the Strategic Partnering Board, the board that will oversees the WEPCo. Entering the SPA grants the council a seat on the Strategic Partnering Board; this does not automatically mean that the council 'signs up' to the Mutual Investment Model at this stage. Each Project would be subject to an individual options and benefits appraisal to decide the appropriate funding route, this includes a full assessment of the revenue impact, how that is funded and the implications on the schools delegated budget and schools funding formula

5.3 Procurement

- 5.3.1 If the Council were to choose not to sign the SPA or the DoA and then wanted in the future to access Partnering Services or Project Services from WEPCo, it will not be able to do so in a procurement safe manner. Whilst there is a mechanism within the SPA that will allow for those Participants (named in the OJEU) to sign up after 25th September 2020 by way of a deed of adherence (**DoA**), this will (a) require all existing parties to re-execute the SPA. This will require all Participants to take further decisions to re-enter the SPA, creating delays in the delivery ; and (b) create a procurement risk in entering into the DoA, based on time elapsed argument, if the DoA is not entered into within 6 months
- 5.3.2 Similarly, with regards to 21st Century Schools and Colleges Band B funding, if a Participant were to choose not to sign the SPA or the DoA but then wanted to utilise WEPCo to deliver a Band B funded project (whether capital or revenue) in the future, it will also not be able to do so in a procurement safe manner.
- 5.3.3 Should for example, a Participant secure MIM Band B funding downstream from the Welsh Government for a project not currently identified and it was required to use WEPCo, it would not be able to do so in a procurement safe manner if it had not signed the SPA or the DoA. WEPCo has the exclusive right to develop proposals for the delivery of a 21st Century Schools and Colleges Band B MIM Programme project (Project Development Partnering Services) within the first 10 years of the SPA.
- 5.3.4 It is therefore recommended that Cabinet approve entering into the SPA as set out this report to ensure that the SPA can be completed in the Autumn as planned and that the Council is able to utilize the SPA from its go-live date.

5.4 Corporate Property

- 5.4.1 There are no resource implications in entering the Strategic Partnering Agreement.
- 5.4.2 However, if a pathfinder project qualifies for MIM funding and WEPCo delivery in the future, the maintenance and lifecycle costs of the new building will be the responsibility of the WEPCo contractor for the duration of the contract, which would be 25 years. Corporate Property as corporate landlord would engage with the school and WEPCo contractor in maintaining the new facility and a full analysis of implications and benefits would be done on a case by case basis and highlighted in the project business case.

6. Legal implications

6.1. Approval to enter into the Strategic Partnering Agreement (SPA) is an executive function requiring a decision of the Cabinet.

6.2 To enter and participate in the SPA referred to in this report, the Council will be relying upon several statutory powers:

6.2.1 the “well-being” powers contained in section 2 Local Government Act 2000;

6.2.2 powers contained in the Education Acts 1996 and 2002;

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

6.3 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

6.4 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.

6.5 The programme will need to operate in line with the Well-being of Future Generations (Wales) Act 2015. The Act sets a framework of seven goals to develop and protect the social, economic, development and cultural well-being of Wales and five ways of working to achieve sustainable development.

6.6 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.

6.7 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 reserved to the Cabinet. Cabinet is asked to recommend the

Chief Executive for appointment as 'Participant Representative' to sit on the Strategic Partnering Board (SPB).

6.8 Whilst a preferred bidder has now been appointed, it is recognised that Cabinet is being asked to agree to enter into the SPA before the document is in its final form. It is recommended that delegated authority is given to the Council's [insert relevant] Director, in consultation with the monitoring officer, to agree the final terms of the SPA and make any necessary minor amendments to it, should these be required.

6.9 At a future date, if a pathfinder project qualifies for MIM funding and WEPCo delivery, there will be implications on HOWPS contract, which will need to be considered by cabinet at the appropriate time.

6.10 The Head of Legal and Democratic Services (Monitoring Officer) has commented as follows: "I note the legal comment and have nothing to add to the report".

7. Data protection

7.1 Data Protection Officer comment: "This proposal does not involve the processing of personal data at this stage."

8. Comment from local member(s)

8.1 N/A

9. Integrated Impact Assessment

9.1 Impact assessment is not required at this stage.

10. Recommendation

- Cabinet approves the Strategic Partnering Agreement with Welsh Education Partnership Co (WEPCo) to facilitate the delivery of education and community facilities.
- Cabinet approves the appointment of the Chief executive as Programme SRO as 'Participant Representative' to sit on the Strategic Partnering Board.
- To give delegated authority is given to Chief Executive in consultation with the monitoring officer, to agree the final terms of the SPA and make any necessary minor amendments to it, should these be required.

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