

# Pecyn Dogfen Gyhoeddus

Gareth Owens LL.B Barrister/Bargyfreithiwr

Chief Officer (Governance)

Prif Swyddog (Llywodraethu)



Swyddog Cyswllt:

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At: Cllr Teresa Carberry (Cadeirydd)

Y Cyngorwyr: Bill Crease, Paul Cunningham, Gladys Healey, Andy Hughes, Gina Maddison, Dave Mackie, Ryan McKeown, Andrew Parkhurst, Carolyn Preece, David Richardson a Jason Shallcross

**Aelodau Cyfetholedig:**

Lynn Bartlett a Wendy White

Dydd Llun, 25 Gorffennaf 2022

Annwyl Gynghorydd

**RHYBUDD O GYFARFOD RHITHIOL**  
**PWYLLGOR TROSOLWG A CHRAFFU ADDYSG, IEUENCTID A DIWYLLIANT**  
**DYDD GWENER, 29AIN GORFFENNAF, 2022 AM 2.00 PM**

Yn gywir

Steven Goodrum

Rheolwr Gwasanaethau Democratiadd

Bydd y cyfarfod yn cael ei ffrydio'n fyw ar wefan y Cyngor. Bydd y ffrydio byw yn dod i ben pan fydd unrhyw eitemau cyfrinachol yn cael eu hystyried. Bydd recordiad o'r cyfarfod ar gael yn fuan ar ôl y cyfarfod ar <https://flintshire.publici.tv/core/portal/home>

Os oes gennych unrhyw ymholiadau, cysylltwch ag aelod o'r Tîm Gwasanaethau Democrataidd ar 01352 702345.

## R H A G L E N

### 1 YMDDIHEURIADAU

**Pwrpas:** I dderbyn unrhyw ymddiheuriadau.

### 2 DATGAN CYSYLLTIAD (GAN GYNNWYS DATGANIADAU CHWIPIO)

**Pwrpas:** I dderbyn unrhyw ddatganiad o gysylltiad a chynghori'r Aelodau yn unol a hynny.

### 3 YSTYRIED MATER A ATGYFEIRIWYD AT A PWYLLGOR YN UNOL A'R TREFNIADAU GALW I MEWN (Tudalennau 3 - 6)

**Pwrpas:** Mae penderfyniad y cyfarfod Cabinet ar 12 Gorffennaf 2022 yn ymwneud â Cymunedau Cynaliadwy ar gyfer Dysgu - Model Buddsoddi Cydfuddiannol (MIM) - Cau Ariannol ar gyfer Prosiect Campws 3-16, Mynydd Isa wedi cael ei alw i mewn. Atodir copi o'r weithdrefn ar gyfer delio ag eitem sydd wedi'i galw i mewn.

### 4 CYMUNEDAU CYNALIADWY AR GYFER DYSGU - MODEL BUDDSODDI CYDFUDDIANNOL (MIM) - CAU ARIANNOL AR GYFER PROSIECT CAMPWS 3-16, MYNYDD ISA (Tudalennau 7 - 24)

**Pwrpas:** Adroddiad Prif Swyddog (Addysg ac Ieuencid) - Arweinydd y Cyngor a'r Aelod Cabinet Addysg, y Gymraeg, Diwylliant a Hamdden.

Atodir y dogfennau canlynol i gynorthwyo Aelodau:

- Copi o adroddiad - Cynaliadwy ar gyfer Dysgu - Model Buddsoddi Cydfuddiannol (MIM) - Cau Ariannol ar gyfer Prosiect Campws 3-16, Mynydd Isa
- Copi o'r Cofnod o Benderfyniad
- Copy o'r Hysbysiad Galw i Mewn

### DEDDF LLYWODRAETH LEOL (MYNEDIAD I WYBODAETH) 1985 - YSTYRIED GWAHARDD Y WASG A'R CYHOEDD

Mae'r eitem a ganlyn yn cael ei hystyried yn eitem eithriedig yn rhinwedd Paragraff(au) 14 Rhan 4 Atodiad 12A o Ddeddf Llywodraeth Leol 1972 (fel y cafodd ei diwygio)

Mae'r atodiadau'n cynnwys manylion am contractau arfaethedig ac mae budd y cyhoedd o gadw'r wybodaeth yn ôl yn drech na'r budd i'r cyhoedd o ddatgelu hyd nes y bydd y contractau wedi'u dyfarnu.

### ATODIADAU CYFRINACHOL I EITEM AGENDA RHIF 24: CYMUNEDAU CYNALIADWY AR GYFER DYSGU - MODEL BUDDSODDI CYDFUDDIANNOL (MIM) - CAU ARIANNOL AR GYFER PROSIECT CAMPWS 3-16, MYNYDD ISA (Page 25 - 886)

*Sylwch, efallai y bydd egwyl o 10 munud os yw'r cyfarfod yn para'n hirach na dwy awr.*

## FLINTSHIRE COUNTY COUNCIL

### OVERVIEW & SCRUTINY

### CALL IN ARRANGEMENTS

#### **1. Background**

The arrangements for calling in a decision are to be found in paragraph 16 of the Overview & Scrutiny Procedure Rules contained within the Council's Constitution. The legal authority is within section 21 (3) of the Local Government Act 2000. This note summarises the provisions in the Constitution and identifies changes required due to the pandemic and our holding Remote Attendance Meetings.

#### **2. Decision of the Cabinet**

When a decision is made by the Cabinet, the Head of Democratic Services publishes a record of those decisions within two days of them being made. This record is emailed to all Members of the County Council.

The decision record is dated the day it was published and specifies that

- the decision will come into force, and may be implemented on the expiry of five working days after the publication of the decision.
- unless it is called in within 5 working days after the publication of the decision

#### **3. Calling in a Decision**

For a call in to be initiated, the Chief Officer (Governance) or Head of Democratic Services must receive a request from the Chair of the relevant Overview & Scrutiny committee or at least four Members of the Council.

The call in email should be sent via a Flintshire.gov.uk email address to the Head of Democratic Services, stating the reason for call in. The first signatory should include the words 'call in' as the subject and should copy in the other proposed signatories. Those signatories should then email the Head of Democratic Services, using their Flintshire email addresses, saying 'I endorse the call in of record of Decision No XX'

This will ensure that there is an audit trail of signatories, in writing, of the call in, electronically signed (and from their Flintshire email addresses) by all parties. The Head of Democratic Services will notify the decision taker of the call in, and then arrange a meeting of the Committee within seven working days of the decision to call in. (The last working day before Christmas day and the three non-public holiday days between Christmas and New Year will not be counted as working days for the purposes of this paragraph).

#### **4. The Call in Meeting**

By their nature, call in meetings can often be held at short notice (i.e. within seven working days of the call in decision) and the only item of business to be transacted would normally be to deal with the call in. However, from time to time it is expedient to consider a call in at a meeting which has already been convened.

It is suggested that the procedure outlined below be used at such a meeting.

#### **5. Procedure for a Call in Meeting**

- (i) The Chair will invite the Head of Democratic Services or Overview & Scrutiny Facilitator to briefly outline the call in procedure for Members of the Committee, explaining the time constraints within the Constitution. The Officer should also outline the ideal procedure, set out below, for an Overview & Scrutiny Committee to deal with a call in meeting.
- (ii) The Chairman will then invite the initiators of the call in to explain and clarify their reasons for calling in the decision. This can be by means of a spokesman, or by several Members contributing.
- (iii) The decision makers will then have the opportunity to respond to the issues raised by those initiating the call in and provide further information if they believe that it will assist the Committee's understanding of the decision.
- (iv) The Chair will then invite questions from Members, and the decision-makers and call in initiators will be invited to answer the questions.
- (v) At the end of Members' questions, the Chair will ask the initiators of the call in and the decision makers to sum up their respective cases.
- (vi) The Chair will then invite the Head of Democratic Services or Overview & Scrutiny Facilitator to explain the Committee's options for decision contained in the Constitution. The decision should include one of the four options given below, which are contained in the Constitution.

##### Option 1

If, having considered the decision, the Overview & Scrutiny Committee is satisfied with the explanation which it has received, it will indicate as such, in order for the decision to be implemented.

### Option 2

If, having considered the decision, the Overview & Scrutiny Committee is 'no longer concerned', having received the explanations, but is not minded to indicate that it is 'satisfied with the explanation', then it is in order for the Committee to resolve that 'the explanation be accepted but not endorsed by the Overview & Scrutiny Committee'.

### Option 3

If, having considered the decision, the Overview & Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns. If referred to the decision maker then the decision maker shall then reconsider, at the earliest scheduled meeting, amending the decision or not, before adopting a final decision.

### Option 4

If, having considered the decision, the Overview & Scrutiny Committee is still concerned about it, then it may refer the matter to full Council. If referred to full Council, the Council shall meet to consider the referral within 10 working days unless there is a scheduled meeting of the full Council at which the matter may be considered within the expiry of a further 5 working days.

#### Note:

If either Option 1 or Option 2 is decided upon, the Cabinet decision can be implemented after the Overview & Scrutiny meeting. If either Option 3 or 4 is decided upon, the Cabinet decision cannot be implemented after the Overview & Scrutiny meeting until it has received further consideration by either the Cabinet or Council.

- (viii) The Committee will then discuss the matter and following debate, reach a decision.

If it is apparent from the discussion that there is a clear preference for a particular option, it may be possible for the officer advising the chair to indicate whether they object or wish to abstain. However, it may be necessary to conduct a 'roll call' vote (similar to a recorded vote, but a quicker process with 12 members on a committee)

Mae'r dudalen hon yn wag yn bwrpasol

# Eitem ar gyfer y Rhaglen 4



## CABINET

<b>Date of Meeting</b>	Tuesday, 12 <sup>th</sup> July 2022
<b>Report Subject</b>	Sustainable Communities for Learning - Mutual Investment Model (MIM) – Financial Close for the 3-16 Campus Project, Mynydd Isa.
<b>Cabinet Member</b>	Leader of the Council and Cabinet Member for Education, Welsh Language, Culture and Leisure
<b>Report Author</b>	Chief Officer (Education and Youth)
<b>Type of Report</b>	Operational

### EXECUTIVE SUMMARY

This report follows previous updates to Cabinet on Welsh Government's (WG) Sustainable Communities for Learning (formerly 21st Century Schools Investment Programme, Band B) Mutual Investment Model (MIM) for the proposed 3-16 Campus project at Mynydd Isa.

The report provides the background to MIM and progress the project (post Cabinet approval) has made through the WG business case process and the design development process to cost certainty.

The report goes on to provide details of the capital and revenue liabilities and asks Cabinet to review and approve, the annual Service payment and to enter into a Project Agreement and associated legal documentation for the construction phase, finance and maintenance of the buildings and associated infrastructure for the years 3- 6 campus project. This is based a maximum financial cap set by WG to overcome the challenges the construction sector/supply chain are currently experiencing, the complexities of MIM and in order to keep to project timeline on track.

Given the nature of Public Private Partnership (PPP) the report is written in part to ensure funders' requirements are met, as a consequence the report contains technical and legal wording which has been simplified as much as it is possible.

## RECOMMENDATIONS

1	Approve the execution, delivery and performance of the MIM Project Agreement with Project Co (to be established by the Welsh Education Partnership Co Limited) together with the Funders' Direct Agreement, the Collateral Agreements, the Independent Tester Contract and the Insurance Proceeds Account Agreement, Clerk of Works Appointment, Independent M&E Commissioning Manager Agreement (together the “ <b>Agreements</b> ”) (and any documents to be delivered by the Agreements pursuant thereto) to facilitate the delivery of the Project;
2	Approve the Project Agreement at Appendix 1a, together with Appendix 1b Schedule 14 Payment Mechanism which shall be incorporated into the Project Agreement, and which is summarised in Appendix 2 and 3 of this report; so as to give effect to recommendation (3), subject to recommendation (f) below;
3	Approve the Funders' Direct Agreement, the Collateral Agreements, the Independent Tester Contract, and the Insurance Proceeds Account Agreement (also as Schedules of the Project Agreement), and other legal documentation at Appendix 4a – 4f of this report so as to give effect to recommendation (1), subject to recommendation (4) below;
4	<p>Note that the Monitoring Officer shall complete the Agreements for execution and is approved to:</p> <ul style="list-style-type: none"><li>i. complete all information gaps including but not limited to confirmation of financial obligations (including the Annual Service Charge and Monthly Service Payment) and commitments of the Council and programme dates; and</li><li>ii. make any further genuine project specific drafting changes to the Agreements, as may be required</li></ul> <p>and that by the act of execution any final changes are approved;</p>
5	Give delegated authority to the Monitoring Officer to approve any further deeds and documents for execution by the Council which are ancillary to the Agreements approved here; and
6	Note that the Chief Executive, the S151 Officer, or the Monitoring Officer will complete and sign the certificates under the Local Government (Contracts) Act 1997 and agree to indemnify this officer in the act of doing so.



## REPORT DETAILS

1.00	BACKGROUND
1.01	<p>Mutual Investment Model (MIM) is a new form of Public Private Partnership (PPP). It enables Welsh Government to deliver infrastructure projects beyond that set by present UK Government borrowing limits.</p> <p>A private sector contractor is appointed via a new Welsh Government framework (Welsh Education Partnership Company, WEPCo) and the contractor finances, constructs and provides a 25 year 'life cycled' building product. This means that responsibility for funding and constructing the building, and then repairing and maintaining the building for 25 years once built, remains with the contractor. This results in buildings funded by MIM being maintained at a consistently high level for 25 years.</p> <p>The Council pays an annual charge which is funded from revenue similar to a rental payment called the 'service payment'. Through this programme councils will receive intervention rate funding from Welsh Government for a period of 25 years, thereafter the building is handed over to the Council. The funding from Welsh Government will be received in the form of a specific grant.</p> <p>The intervention rate for MIM is set at 81% WG and 19% Council.</p>
1.02	<p>In March 2020, Cabinet agreed to amend the Council's nominated MIM project to the proposed 3-16 campus project in Mynydd Isa and provided a mandate to officers to engage with WEPCo.</p>
1.03	<p>In July 2020, Cabinet agreed to enter into a Strategic Partnering Agreement (SPA) with WEPCo to facilitate the delivery of education and community facilities, which is the only platform through which MIM projects within Wales can be delivered through the Sustainable Communities for Learning programme.</p>
1.04	<p>A further brief update on the proposed project was provided to Cabinet 16<sup>th</sup> March 2021 as part of report on School Modernisation.</p>
1.05	<p>Thereafter, for the past twelve months, officers and the schools concerned have been involved in detail design development process with WEPCo, WG, the technical appointed teams and Robertson Construction, whom are the second selected contractor for WEPCo on this proposed project.</p>
1.06	<p>Robertson FM have been selected by WEPCo as the hard Facilities Management (FM) provider for the project.</p>
1.07	<p>Planning permission was granted for the 3-16 Campus project in 12<sup>th</sup> January 2022.</p>
1.08	<p>The WG are currently considering the Council's Full Business Case (FBC), submission, therefore, subject to Cabinet approval the project will only proceed upon receipt of WG and Ministerial approval.</p>

1.09	Previous Cabinet reports had referenced centralised WG support around contract management. Whilst, the detail of how this will work in practise yet to be finalised, WG has reaffirmed its commitment towards the provision of a centralised support service for the contract management functions of MIM projects across Wales.
1.10	Subject to Cabinet Agreement, the anticipated construction start is August 2022, with Building occupation planned for the start of the new academic year, September 2024, thereafter external works will follow, starting with the demolition of the existing Argoed High school. Any delay to the anticipated start may result in a significant project delay and associated cost increases.
1.11	Cabinet approval of the recommendations contained in the report, allows completion of the funding package for the project and enable the Agreements to be entered into and works to commence in line with the programme.
1.12	<p>Over the past twenty four to thirty months, various global issues have been impacting prices in the construction market. The key causes are Brexit, Covid 19 pandemic and now the war in Ukraine. These causes have conflated with the impact being:</p> <ul style="list-style-type: none"> <li>• an increase in demand for construction (post Covid);</li> <li>• Supply chain disruption and an ongoing energy crisis. The consequences of this are: the lack of construction materials;</li> <li>• high inflation and price volatility;</li> <li>• high raw material prices;</li> <li>• high energy prices and increased uncertainty.</li> </ul>
1.13	The impact on the construction sector is that: Construction companies unable to fulfil contracts on time; Gaps are emerging between already signed prices and the real cost of materials; and contractors are beginning to refuse to sign contracts with fixed prices. Design and Build (D&B) contractors already have significant exposure under current fixed price contracts that they are currently delivering. In the present market they are now more risk averse when pricing work packages. Some D&B contractors have publicly stated that they will no longer sign fixed price contracts. This scenario was underpinned by the previously selected contractor withdrawing from the process, with WEPCo having to go back out to market to procure another contractor. Previously accepted market practice of D&B Contractors fixing a construction price for a significant period is no longer viable.
1.14	Further to this, the MIM Project Agreement and the associated subcontracts require a higher level of risk transfer than traditional New Engineering Contract (NEC) or Joint Contracts Tribunal (JCT ) construction contracts due to the obligation for the contractor to take the design and performance risk of the building over 25 years. The present market conditions together with the level of risk transfer required to successfully deliver MIM means that WEPCo has been challenged with supply chain assembly.

1.15	Analysis of the market by industry professionals is suggesting that nothing is likely to improve in terms of prices dropping or even levelling out in the foreseeable future. Consequently to ensure that this project can be delivered financial close needs to be reached as soon as possible.
1.16	To facilitate this and allow the project to progress The WG MIM team with their commissioned experts have set a funding cap, which sets the estimated maximum annual service charge. This estimate maximum cap, is a direct result of the current market, inflation and supply chain issues faced by the construction industry presently and is a reflection of where the project currently sits in the granular market testing/cost certainty process. However, it is anticipated that the project figure will be confirmed as lower as the project moves towards financial close in July/August 2022.
1.17	The annual service charge cap is set at a maximum figure of £6, 750, 000 (inclusive of Net Zero Carbon NZC) of which Welsh Government contribution is 82.4%, this equates to £5, 563, 000. The Council contribution is at 17.6% which equates to £1, 187, 000. The WG percentage uplift relates from the standard intervention rate, specifically to the prior agreement on delivering a NZC project.
1.18	As Furniture, Fixtures & Equipment (FF&E) and Information and Communications Technology (ICT) are separated from the MIM funded model. Therefore, capital funding is still required to fund FF&E and ICT elements of this project. The capital costs of FF&E and ICT for the project is £2,312,000 which has an agreed intervention rate of 65% WG: 35% Council. Based on this intervention rate the WG funded element for FF&E and ICT is at £1,502,800 and the Council's financial commitment £809,200.
1.19	The Full Business Case to WG also seeks agreement from WG to cap the Council's annual service charge contribution to a maximum value of £1,000, 000 per annum.
1.20	However, it is anticipated that the project figure will be lower than the maximum capped figure as the project moves towards financial close anticipated in July/August 2022. Should the project figure be confirmed as lower, this would reduce the annual service charge figure accordingly to the benefit of both WG and the Council.
1.21	<b>MIM PROJECT AGREEMENT</b> The MIM Project Agreement ("MIM PA") at Appendix 1a (and which shall incorporate Schedule 14 Payment Mechanism at Appendix 1b) is to be entered into by a special purpose vehicle (Project Co) and the Council for the design, build, finance and maintenance of the schools and associated infrastructure. The MIM PA is based on a standard form template to the MIM Strategic Partnering Agreement which Cabinet approved on 14 July 2020. A summary of the MIM PA is provided at Appendix 2.
1.22	The MIM PA is drafted to include any project specific issues for each scheme. The process of populating the template MIM PA for a scheme allows the Council and/or WEPCo to put forward any project specific derogations. Appendix 3 details the derogations to the template MIM PA

applicable to this project which have been approved by Welsh Government and incorporated into the MIM PA.

1.23

**ADDITIONAL LEGAL DOCUMENTATION**

The additional legal documents to be entered into are set out in Appendix 4a – 4f of this report. The legal documents proposed for approval by Cabinet are:

Note: \*Agreements are also Schedules to the MIM PA and to the template Project Agreement previously approved by Cabinet on 14 July 2020.

Legal Agreement	Purpose
Funders' Direct Agreement*	The Funders' Direct Agreement governs the relationship between the Authority and the lenders in the event of termination or threatened termination of the MIM PA. The lender has the right to "step in" to the role of Project Co under the MIM PA if Project Co is in default or if the project is in distress. This gives the lender the opportunity to rescue the project and rectify any defaults.
Collateral Agreements*	The Council will enter into collateral warranties with the Construction Contractor and the Facilities Management Services Provider, Professional Team, Principal Building Subcontractor creating a direct contractual relationship between them and giving direct claims and the ability to step-in to the relevant sub-contracts in some circumstances. The Council's primary recourse is and remains against Project Co, but the collateral warranties give the Council some protection in the event the MIM PA terminates.
Independent Tester Contract*	Project Co and the Council jointly appoint an independent tester whose role is to undertake certification of the completion of the Works, in accordance with the completion tests and terms of the MIM PA. The Independent Tester's fees are payable by Project Co.
Insurance Proceeds Account Agreement*	This is an agreement between the Council, Project Co, the Account Bank and the Security Trustee. Insurance proceeds from the physical damage policies are payable into the Insurance Proceeds Account, and are applied in accordance with the terms of the MIM PA and the Insurance Proceeds Account Agreement.
Clerk of Works Appointment	The Council together with Project Co appoints the Clerk of Works to oversee the performance of the Works on site during the course of the Project.
Independent Commissioning Agreement M&E Manager	This is an agreement between the Council, Project Co and the Independent M&E Commissioning Manager to oversee the performance of the Mechanical and Electrical Commissioning by Project Co.

1.24	<p><b>CERTIFICATES UNDER LOCAL GOVERNMENT (Contracts) ACT 1997</b>  The Local Government (Contracts) Act 1997 (the “1997 Act”) provides a certification scheme whereby a contractor may be assured that his contract with a local authority will not be treated as being outside the authority’s powers or improperly entered into. For a contract to be certifiable, the contractor must be obliged to provide services for a period of at least five years and his doing so must enable the local authority to discharge its functions or be a contract with a financier or their insurers or trustees where the financier has, in connection with such a contract, made a loan to another party.</p>
1.25	<p>A certificate is generally required for private finance contracts (such as MIM) with the Council. In this instance certificates are required (i) for the MIM Project Agreement, which falls under s4(3) of the 1997 Act as a “provision” contract, for the provision of services for the purpose of the Council discharging its functions for a period of at least 5 years; and (ii) for the Funders’ Direct Agreement, which falls under s4(4) of the 1997 Act as a finance contract in connection with a contract falling within s.4(3) (i.e. in connection with the MIM Project Agreement).</p>
1.26	<p>In accordance with Regulation 7 of the Local Authorities (Contracts) Regulations 1997, the certificates may be signed by a chief or deputy chief officer. It is proposed that the certificates be signed by either the Chief Executive, the S151 Officer, or the Monitoring Officer. Any officer signing a contracts certificate is potentially exposed to personal liability if the information within it were to be incorrect because they are signing it in their personal capacity. Accordingly, the Cabinet is requested to agree to indemnify the certifying officer pursuant to the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006.</p>
1.27	<p><b>LEGAL CONSIDERATIONS</b>  Approval to enter into the MIM Project Agreement at Appendix 1a and the additional legal documents at Appendix 4a – 4f is an Executive function requiring a Member decision. As a key decision and a decision of significance, this is reserved to the Cabinet to determine under Section 5 of the Council’s Constitution. Furthermore, in accordance with the Contract Procedure Rules (CPR) at Section 18 of the Council’s Constitution, approval of projects with a capital value that exceeds £2 million is the responsibility of the Cabinet (CPR 5.5.4).</p>
1.28	<p>The 3-16 campus, is a WG pathfinder project for MIM, it will be the first true NZC school in both construction and operation in Wales. The benefits of the project are noted in Appendix 5.</p>

2.00	RESOURCE IMPLICATIONS
2.01	The capital costs of FF&E and ICT for the project is £2,312,000 which has an agreed intervention rate of 65% WG: 35% Flintshire County Council. Based on this intervention rate the WG funded element for FF&E and ICT is at £1,502,800 and the Councils element is £809, 200. The Councils element is accounted for in the MTFS.
2.02	The annual service charge cap is set at a maximum figure of £6, 750, 000 (inclusive of Net Zero Carbon NZC) of which Welsh Government contribution is 82.4%, this equates to £5, 563, 000. The Council's contribution is at 17.6% which equates to £1, 187, 000. This is an uplift from the MIM standard intervention rates and specifically relates to the prior agreement with WG on delivering a NZC project.
2.03	As the project has moved through the granular process, the MTFS commitments has been updated accordingly. However, Council's commitment based on the maximum capped figure, exceeds the last updated estimate by circa £336,000pa. This is for the reasons explained in paragraphs 1.12 to 1.16.
2.04	As stated earlier in the report, it is anticipated that the project figure will be confirmed as lower the maximum capped figure as the project moves towards financial close anticipated in July/August 2022, leading to a reduction in Annual service charge commitment.
2.05	Having consulted with the Councils treasury management advisors, it is possible to restructure the debt over a longer period that of the current contract. This is common across all our large investment projects, whereby borrowing period is linked to the building life expectancy. Restructuring debt and managing cash flow, enables in year pressure to be reduced to the levels estimated within the MTFS. An important point to underpin, is the proposed 3-16 Campus is life-cycled, therefore its condition will still be "condition A" at year twenty five.
2.06	Despite the higher than anticipated costs of the project, it still constitutes value for the Council this is based on the fact that WG intervention is 82.4%. The school is built to a high specification based on the WG specification which is part of the SPA and will be constructed to NZC and will be maintained as NZC in operation and as mentioned previously is life-cycled.
2.07	Should the Council not proceed with the project then it would be liable for the abortive fees to date. This would be in the region of £2.7m, this would be a revenue pressure because technically if a project does not exist it cannot be capitalised.

<b>3.00</b>	<b>IMPACT ASSESSMENT AND RISK MANAGEMENT</b>
3.01	All projects are managed using a risk register. Risks are managed accordingly, and financial risks are managed through a project contingency. Any high level risk which cannot be managed with the projects/programme will be incorporated into the risk register for the Education and Youth Portfolio.
3.02	WG have an 82.4% stake in the project, and will be providing centralised resource to support contract management for MIM projects in Wales for the contract duration (25yrs). The MIM Project Agreement and the associated subcontracts transfers a higher level of risk transfer to the contractor than other forms of traditional contract.
3.03	There is an independency on the delivery of the 3-16 Campus Project and the delivery of new Welsh Medium start up provision in the area, as new Welsh Medium provision is reliant on the release of a primary site. Funding for both Capital and revenue for the Welsh Medium Start up provision has been approved in principle by WG.

<b>4.00</b>	<b>CONSULTATIONS REQUIRED/CARRIED OUT</b>
4.01	In additional to the specific reports aforementioned in this report. Further reports on the Strategic Outline Programme for 21st Century school investment Programme have previously been received at Education & Youth Overview and Scrutiny Committee and Cabinet.
4.02	Consultation took place the planning application process, Planning consent was gained in January 2022.

<b>5.00</b>	<b>APPENDICES</b>
5.01	<p>Appendices 1a to 4f are commercially sensitive documents</p> <p>Appendix 1a – Project Agreement  Appendix 1b - Schedule 14 Payment Mechanism  Appendix 2 – Project Agreement Summary  Appendix 3 – Business case Report &amp; Derogations Summary  Appendix 4a - Funders' Direct Agreement  Appendix 4b - The Collateral Agreements  Appendix 4c - Independent Tester Contract  Appendix 4d - Clerk of Works Appointment  Appendix 4e - Independent M&amp;E Commissioning Manager Appointment  Appendix 4f – Insurance Proceeds Account Agreement  Appendix 5 – Project Benefits</p>

<b>6.0</b>	<b>LIST OF ACCESSIBLE BACKGROUND DOCUMENTS</b>
6.01	<p>Link to Cabinet report, 4th July 2020:-</p> <p><a href="https://committeemeetings.flintshire.gov.uk/documents/s59963/21st%20Century%20Schools%20-%20Mutual%20Investment%20Model%20Update.pdf?LLL=0">https://committeemeetings.flintshire.gov.uk/documents/s59963/21st%20Century%20Schools%20-%20Mutual%20Investment%20Model%20Update.pdf?LLL=0</a></p>

<b>7.00</b>	<b>CONTACT OFFICER DETAILS</b>
7.01	<p><b>Contact Officer:</b> Damian Hughes, Corporate Manager, Capital Programme &amp; Assets  <b>Telephone:</b> 01352 704135  <b>E-mail:</b> <a href="mailto:damian.hughes@flintshire.gov.uk">damian.hughes@flintshire.gov.uk</a></p>

<b>8.00</b>	<b>GLOSSARY OF TERMS</b>
8.01	<p><b>Sustainable Communities Programme</b> (Formerly 21st Century Schools Programme) - Is a collaboration between the Welsh Government (WELSH GOVERNMENT), the Welsh Local Government Association (WLGA) and local authorities. It is a major, long-term and strategic capital investment programme with the aim of creating a generation of 21st century schools in Wales.</p> <p><b>Capital Funding</b> - Capital funding is usually linked to acquiring or improving a long-term asset such as equipment or buildings.</p> <p><b>Revenue Funding</b> - Is linked to items that will be used within a year. Examples include salaries, heating, lighting, services and small items of equipment. Routine repairs are revenue expenditures and can include significant repairs that do not extend the life of the asset or do not improve the asset (the repairs merely return the asset to its previous condition).</p> <p><b>MIM – Mutual Investment Model</b> - MIM is a new form of Public Private Partnership (PPP). MIM is funded by revenue and is an alternative to traditional capital funding.</p> <p><b>WEPco</b> – A private Sector Partner and subsidiary of the Development Bank of Wales (known as Welsh Government co) will be required to form WEPco, which will deliver infrastructure services to Participant ( i.e. the Council) in Wales</p>



### 3-16 Campus project – Benefits

At the outset of the WG's Sustainable Communities schools investment programme (Band B), the Council made the strategic decision to include MIM within its Strategic investment Programme, this was to position our ambitious programme to gain maximum external investment in our schools estate.

The project compliments both national policy and local policy/strategy and matches WG MIM criteria and has distinct advantage around sustainability of pupil numbers in the area, and takes into consideration pupil projections for the area, and the impact of housing developments as a consequence of the Council's Local Development Plan.

The project will increase the number of primary places by 87, and increase the number of secondary places by 120.

In summary the project will:-

- Demolish Argoed High School;
- Remove temporary mobile classrooms and reduce rental costs by £13,000 per annum;
- Reduce repair and maintenance backlog costs by £729,061.00 across three schools
- Create a 700 place English medium secondary school;
- Create a 600 places English medium primary school (plus nursery);
- Address shortfalls in specialist curriculum areas;
- Address all Suitability, Sufficiency and Condition issues across the existing three sites
- Provide appropriate enhanced provision for ALN needs for both primary and secondary;
- Complete the programme for the removal of split site provision (infants and Junior) within Flintshire
- Redevelop of external areas to provide suitable play provision;
- Provide ATP provision;
- Ensure Accessibility compliance;
- Provide improved traffic management arrangements, including suitable car parking and drop/pick up off facilities;

- Provide a secure external environment;
- Reduce the number of assets from three to one, with the potential to generate; a capital receipt to support wider funding investment;
- Release a site for new Welsh Medium Start up provision in Mynydd Isa;
- Optimise resources on one single site, aiding pupil transition from Primary to Secondary;
- Be sustainable energy efficient and target Net Zero Carbon during both construction and operation and assist with the Council's recently adopted Carbon Strategy.
- The Campus will be life-cycled and this is covered in our annual service charge commitment. Meaning the condition will be maintained to A standard through the life of the contract.
- Energy usage will be monitored by the FM provider to ensure adherence to the KPI's on energy usage.
- The investment and principles are in compliance with the Future Generations Act
- Social Value and community benefits will be realised over a 25 year period, rather than at construction phase.

This investment will provide learners and teachers with buildings and facilities which adhere to Welsh Government's Sustainable Communities School standards and will provide a high quality educational provision, in line with current requirements for curriculum delivery.

**FLINTSHIRE COUNTY COUNCIL**

**CABINET RECORD OF DECISION**

**DATE OF MEETING:**                    **12 JULY 2022**                    **AGENDA ITEM NO. 24**

**REPORT OF:**                            **Chief Officer (Education and Youth)**

**SUBJECT:**                                **SUSTAINABLE COMMUNITIES FOR LEARNING -  
MUTUAL INVESTMENT MODEL (MIM) - FINANCIAL  
CLOSE FOR THE 3-16 CAMPUS PROJECT,  
MYNYDD ISA**

- RECOMMENDATIONS OF REPORT:**
- (1) Approve the execution, delivery and performance of the MIM Project Agreement with Project Co (to be established by the Welsh Education Partnership Co Limited) together with the Funders' Direct Agreement, the Collateral Agreements, the Independent Tester Contract and the Insurance Proceeds Account Agreement, Clerk of Works Appointment, Independent M&E Commissioning Manager Agreement (together the "**Agreements**") (and any documents to be delivered by the Agreements pursuant thereto) to facilitate the delivery of the Project;
  - (2) Approve the Project Agreement at Appendix 1a, together with Appendix 1b Schedule 14 Payment Mechanism which shall be incorporated into the Project Agreement, and which is summarised in Appendix 2 and 3 of this report; so as to give effect to recommendation (3), subject to recommendation (f) below;
  - (3) Approve the Funders' Direct Agreement, the Collateral Agreements, the Independent Tester Contract, and the Insurance Proceeds Account Agreement (also as Schedules of the Project Agreement), and other legal documentation at Appendix

4a – 4f of this report so as to give effect to recommendation (1), subject to recommendation (4) below;

- (4) Note that the Monitoring Officer shall complete the Agreements for execution and is approved to:
- i. complete all information gaps including but not limited to confirmation of financial obligations (including the Annual Service Charge and Monthly Service Payment) and commitments of the Council and programme dates; and
  - ii. make any further genuine project specific drafting changes to the Agreements, as may be required and that by the act of execution any final changes are approved;
- (5) Give delegated authority to the Monitoring Officer to approve any further deeds and documents for execution by the Council which are ancillary to the Agreements approved here; and
- (6) Note that the Chief Executive, the S151 Officer, or the Monitoring Officer will complete and sign the certificates under the Local Government (Contracts) Act 1997 and agree to indemnify this officer in the act of doing so.

**DECISION:**

As detailed in the recommendations.

**REASON FOR DECISION:**

As in the report.

**CONSULTATIONS  
REQUIRED/CARRIED OUT:**

In addition to the specific reports aforementioned in this report. Further reports on the Strategic Outline Programme for 21st Century school investment Programme have previously been received at Education & Youth Overview and Scrutiny Committee and Cabinet.

Consultation took place the planning application process, Planning consent was gained in January 2022.

**RESOURCE IMPLICATIONS:**

The capital costs of FF&E and ICT for the project is £2,312,000 which has an agreed intervention rate of 65% WG: 35% Flintshire County Council. Based on this intervention rate the WG funded element for FF&E and ICT is at £1,502,800 and the Councils element is £809, 200. The Councils element is accounted for in the MTFS.

The annual service charge cap is set at a maximum figure of £6, 750, 000 (inclusive of Net Zero Carbon NZC) of which Welsh Government contribution is 82.4%, this equates to £5, 563, 000. The Council's contribution is at 17.6% which equates to £1, 187, 000. This is an uplift from the MIM standard intervention rates and specifically relates to the prior agreement with WG on delivering a NZC project.

As the project has moved through the granular process, the MTFS commitments has been updated accordingly. However, Council's commitment based on the maximum capped figure, exceeds the last updated estimate by circa £336,000pa. This is for the reasons explained in paragraphs 1.12 to 1.16.

As stated earlier in the report, it is anticipated that the project figure will be confirmed as lower the maximum capped figure as the project moves towards financial close anticipated in July/August 2022, leading to a reduction in Annual service charge commitment.

Having consulted with the Councils treasury management advisors, it is

possible to restructure the debt over a longer period than of the current contract. This is common across all our large investment projects, whereby borrowing period is linked to the building life expectancy. Restructuring debt and managing cash flow, enables in year pressure to be reduced to the levels estimated within the MTFS. An important point to underpin, is the proposed 3-16 Campus is life-cycled, therefore its condition will still be "condition A" at year twenty five.

Despite the higher than anticipated costs of the project, it still constitutes value for the Council this is based on the fact that WG intervention is 82.4%. The school is built to a high specification based on the WG specification which is part of the SPA and will be constructed to NZC and will be maintained as NZC in operation and as mentioned previously is lifecycled.

Should the Council not proceed with the project then it would be liable for the abortive fees to date. This would be in the region of £2.7m, this would be a revenue pressure because technically if a project does not exist it cannot be capitalised.

**DECLARATIONS OF INTEREST:**

None.

**DISPENSATIONS**

None.

**DATE PUBLISHED:**

13<sup>th</sup> July 2022

**SIGNED**



**Democratic Services Manager**

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**Endorsement of Call in of Record of Decision No 4001 - Sustainable Communities for Learning - Mutual Investment Model (MIM) - Financial Close for the 3-16 Campus Project, Mynydd Isa**

Reasons for call-in:

1. As the effect upon the revenue budget is significant now and into the future, there needs to be a full and precise account of the benefit, considering education, financial and social Implications towards understanding value for money.
2. Scrutiny has had little opportunity to consider the use of MIM as the method for funding the project and Cabinet did not offer any assurance or comment considering the significant increase in cost.

<b>No</b>	<b>Name of Councillor</b>	<b>Date of endorsement email</b>	<b>Time of endorsement email</b>
1	Bernie Attridge	15/07/22	18.07
2	Helen Brown	18/07/22	16.25
3	Richard Jones	18/07/22	18.12
4	Mike Peers	20/07/22	09.47
5	David Mackie	18/07/22	22.43

Mae'r dudalen hon yn wag yn bwrpasol



# Atodiad i'r Rhaglen

Yn rhinwedd paragraff(au) 14 of Part 4 of Schedule 12A  
o Ddeddf Llywodraeth Leol 1972.

Dogfen Gyfyngedig - Ni ddylid ei chyhoeddi

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