

To: Members of the County Council

Date: 17 February 2014

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Dear Councillor

You are invited to attend a meeting of the **COUNTY COUNCIL** to be held at **10.00 am** on **TUESDAY, 25 FEBRUARY 2014** in **COUNCIL CHAMBER, COUNTY HALL, RUTHIN LL15 1YN**.

Yours sincerely

G Williams  
Head of Legal and Democratic Services

## AGENDA

### **PART 1 - THE PRESS AND PUBLIC ARE INVITED TO ATTEND THIS PART OF THE MEETING**

#### **1 APOLOGIES**

#### **2 DECLARATIONS OF INTEREST**

Members to declare any personal or prejudicial interests in any business identified to be considered at this meeting.

#### **3 URGENT MATTERS AS AGREED BY THE CHAIR**

Notice of items which, in the opinion of the chair, should be considered at the meeting as a matter of urgency pursuant to Section 100B(4) of the Local Government Act, 1972.

#### **4 CHAIRMAN'S DIARY (Pages 5 - 6)**

To note the civic engagements undertaken by the Chairman of the Council (copy attached).

**5 MINUTES (Pages 7 - 16)**

To receive the Minutes of the meeting of the County Council held on 27 January 2014.

**6 APPROVAL OF BUSINESS CASE FOR RHYL NEW SCHOOL PROJECT (Pages 17 - 36)**

To consider a report by Councillor Eryl Williams, Lead Member for Education (copy attached) providing an update of the current position with regard to the Council's submission of the Final Business Case for Rhyl New School to the Welsh Government.

**7 COUNCIL TAX 2014/ 15 AND ASSOCIATED MATTERS (Pages 37 - 50)**

To consider a report by Councillor Julian Thompson-Hill, Lead Member for Finance & Assets (copy attached) for Members to pass further resolutions in a particular form to ensure that the Council Tax and its associated matters are legally valid.

**8 TREASURY MANAGEMENT STRATEGY STATEMENT (TMSS) 2014/ 15 AND PRUDENTIAL INDICATORS 2014/ 15 TO 2016/ 17 (Pages 51 - 74)**

To consider a report by Councillor Julian Thompson-Hill, Lead Member for Finance and Assets (copy attached) for Members to approve the Treasury Management Strategy 2014/15 and the Prudential Indicators 2014/15 to 2016/17.

**9 DOMESTIC ABUSE AND DISCLOSURE & BARRING SERVICE POLICIES (Pages 75 - 154)**

To consider a report by Councillor Barbara Smith, Lead Member for Modernising and Performance (copy attached) presenting the Domestic Abuse Policy and the Disclosure & Barring Policy for adoption.

**10 FLEXIBLE RETIREMENT POLICY**

To consider a report by Councillor Barbara Smith, Lead Member for Modernising and Performance (copy to follow) presenting the Flexible Retirement Policy for adoption.

**11 NORTH WALES RESIDUAL WASTE TREATMENT PROJECT (NWRWTP)**  
(Pages 155 - 510)

To consider a report by Councillor David Smith, Lead Member for Public Realm (copy attached) to obtain Members authorisation for the remaining steps in the process to be completed. **Three confidential appendices included as part of the documentation.**

**12 COMMITTEE TIMETABLE 2014/ 15, ANNUAL REVIEW OF POLITICAL BALANCE AND APPOINTMENT OF SCRUTINY CHAIRS** (Pages 511 - 526)

To consider a report by the Democratic Services Manager (copy attached) seeking decisions on Committee related issues.

**13 COUNTY COUNCIL FORWARD WORK PROGRAMME** (Pages 527 - 530)

To consider the Council's Forward Work Programme.

## **MEMBERSHIP**

### **Councillors**

Councillor Raymond Bartley (Chair)

Ian Armstrong  
Joan Butterfield  
Jeanette Chamberlain-Jones  
Bill Cowie  
Ann Davies  
James Davies  
Meirick Davies  
Richard Davies  
Stuart Davies  
Peter Duffy  
Hugh Evans  
Peter Evans  
Bobby Feeley  
Carys Guy  
Huw Hilditch-Roberts  
Martyn Holland  
Colin Hughes  
Rhys Hughes  
Hugh Irving  
Alice Jones  
Huw Jones

Councillor Brian Blakeley (Vice-Chair)

Geraint Lloyd-Williams  
Margaret McCarroll  
Jason McLellan  
Barry Mellor  
Win Mullen-James  
Bob Murray  
Peter Owen  
Dewi Owens  
Merfyn Parry  
Paul Penlington  
Arwel Roberts  
Gareth Sandilands  
David Simmons  
Barbara Smith  
David Smith  
Bill Tasker  
Julian Thompson-Hill  
Joe Welch  
Cefyn Williams  
Cheryl Williams  
Eryl Williams

Pat Jones  
Gwyneth Kensler

Huw Williams

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# Agenda Item 4

## Digwyddiadau wedi eu mynychu gan y Cadeirydd / Events attended by Chairman

22.01.14 – 18.02.14

Dyddiad / Date	Digwyddiad / Event	Lleoliad / Location
22.01.14	Agoriad swyddogol Llyfrgell Prestatyn Official Opening of Prestatyn Library	
24.01.14	Diwrnod Coffa'r Holocost Holocaust Memorial Day	Rhyl
30.01.14	Ymweliad gan Gyngor 2 Ysgol Gynradd Visit from 2 Primary School Councils	Neuadd y Sir County Hall
30.01.14	Croesawu Gweinidog Tai ac Adfywio i'r Sir Welcome Housing & Regeneration Minister to the County Is Gadeirydd wedi mynychu Vice Chair attended	Rhyl
06.02.14	Ymweliad gan Gyngor 3 Ysgol Gynradd Visit from 3 Primary School Councils	Neuadd y Sir County Hall
14.02.14	Noson Theatr Theatr night	Dinbych Denbigh
17.02.14	Codi Fflag i'r Gymanwlad Fly a Flag for the Commonwealth	Yr Wyddgrug Mold
17.02.14	Lansiad Strategaeth Gwrth-fwllo Anti-Bullying Strategy Launch	Neuadd y Sir County Hall
18.02.14	Agoriad swyddogol 'Marsh Tracks' Official opening Marsh Tracks	Rhyl

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## COUNTY COUNCIL

Minutes of a meeting of the County Council held in Council Chamber, County Hall, Ruthin LL15 1YN on Monday, 27 January 2014 at 2.00 pm.

### PRESENT

Councillors Raymond Bartley (Chair), Brian Blakeley (Vice-Chair), Joan Butterfield, Jeanette Chamberlain-Jones, Bill Cowie, Ann Davies, James Davies, Richard Davies, Stuart Davies, Peter Duffy, Hugh Evans, Peter Evans, Bobby Feeley, Carys Guy, Huw Hilditch-Roberts, Martyn Holland, Colin Hughes, Rhys Hughes, Hugh Irving, Alice Jones, Huw Jones, Gwyneth Kensler, Geraint Lloyd-Williams, Margaret McCarroll, Jason McLellan, Barry Mellor, Win Mullen-James, Bob Murray, Peter Owen, Dewi Owens, Gareth Sandilands, Barbara Smith, David Smith, Bill Tasker, Julian Thompson-Hill, Joe Welch, Cefyn Williams, Eryl Williams and Huw Williams

### ALSO PRESENT

Chief Executive (MM), Corporate Directors: Economic and Community Ambition (RM) and Modernisation and Wellbeing (SE), Head of Legal and Democratic Services and Monitoring Officer (RGW), Head of Finance and Assets (PM), Democratic Services Manager (SP) and Committee Administrator (CIW).

The Chair welcomed everyone to the Council meeting.

A welcome was extended to Councillor Peter Owen following his illness. Councillor Owen thanked Members for the support and best wishes he received during his illness.

### 1 APOLOGIES

Apologies for absence were received from Councillors Ian Armstrong, Meirick Davies, Pat Jones, Merfyn Parry, Paul Penlington, Arwel Roberts, David Simmons and Cheryl Williams

### 2 DECLARATIONS OF INTEREST

No Members declared any personal or prejudicial interests in any business identified to be considered at the meeting.

### 3 URGENT MATTERS AS AGREED BY THE CHAIR

No items were raised which in the opinion of the Chair, should be considered at the meeting as a matter of urgency pursuant to Section 100B(4) of the Local Government Act, 1972.

### 4 CHAIRMAN'S DIARY

A list of civic engagements undertaken for the Council by the Chair and Vice Chair, for the period the 29<sup>th</sup> November, 2013 to 21<sup>st</sup> January, 2014 had been circulated

with the papers for the meeting. The Chair thanked the Vice Chair, Councillor B. Blakeley, for his assistance during the busy Christmas period.

The Chair informed Members that the Chairman's Charity Dinner would be held at Oriel House, St Asaph on the 28<sup>th</sup> March, 2014 and donations were invited towards the raffle prizes.

**RESOLVED** – *that the list of civic engagements undertaken for the Council by the Chair and Vice Chair be received and comments of the Chair be noted.*

## **5 MINUTES**

The minutes of the Council meeting held on the 3<sup>rd</sup> December, 2013 were submitted.

**RESOLVED** – *that the minutes of the Council meeting held on the 3<sup>rd</sup> December, 2013 be confirmed as a correct record.*

## **6 ATTENDANCE BY DR HIGSON, CHAIR OF BOARD, BCUHB**

The Chair provided an introduction and welcomed the Chair, Dr Higson, and Vice Chair, Mrs Margaret Hanson, of the Betsi Cadwaladr University Health Board to the meeting.

Dr Higson thanked Council for the opportunity to address Members and provide details of the Board and Health Services future plans and aims. He referred to the importance of democratic accountability and outlined some of the key challenges for the Health Board. Reference was made to the large scale of rebuilding required and it was explained that some of issues and challenges facing the Health Board were historical and related back to the initiation of the Board in 2009.

The following key areas were highlighted by Dr Higson:-

- The need to restore trust and confidence in the Health Board from the public, patients, staff, partners and stake holders such as Local Authorities.
- The appointment of a new Chief Executive, with invitations being extended to the Leaders of the respective LA's to participate in the appointment process.
- A new Medical Director and Nurse Director had been appointed to the Senior Executive Team. Two Senior Clinical Directors had also been appointed, and it was explained that a new attitude towards providing support for staff.
- Consideration to be afforded to the Quality Improvement Programme at the Board meeting in March. The aim being to improve the quality of service provision by ensuring services were safe and delivered with dignity, respect and compassion.
- A review to be undertaken to assess the impact of changes implemented during the past twelve months.
- A change in focus from just running Hospitals and providing secondary care to generally improving the health of the population.
- The importance of being more open and transparent was emphasised, together with the need to improve communication links.



- The necessity to publicly evidence the improvements being achieved within the service, and to be robust in acknowledging and addressing any mistakes.
- There being a need to develop, through partnership working, a clear strategic vision for the Health Service in North Wales.
- The requirement to reinvigorate and re-engage with primary care and community services.
- Confirmation was provided that each of the major Hospitals would retain their A&E Departments with special services being provided at each of the respective Hospitals. Dr Higson referred to the pending completion of the new A&E Department at Ysbyty Glan Clwyd. Councillor B. Mellor requested that consideration be afforded to the provision of a small A&E Unit at the Alexandra Hospital, Rhyl to assist in relieving the pressures being experienced.
- Dr Higson informed Members that approximately 100 additional beds could be provided if the pressure on the number of beds increased. Councillor S.A. Davies requested that consideration be given to the provision of beds at the new Health Centre in Llangollen.
- Closer working with LA's to be progressed through improved working relationships, particular reference being made to the provision of Social and Health Care and the delivery of a wider range of integrated services.
- Reference was made to Welsh Governments requirement that the Health Board submit a Statement of Intent on the delivery of integrated services. Dr Higson confirmed that all six Local Authorities had signed the Statement of Intent which provided evidence of partnership working by stakeholders in North Wales.

The Vice Chair Mrs M. Hanson informed Council that her portfolio on the Health Board encompassed Mental Health, Community Services and Primary Care Services. Mrs Hanson provided information on the Board and Health Service plans and made reference to the importance and significance of partnership working in addressing health and well-being issues. She explained that key areas pertaining to health matters were incorporated in the Council's portfolios which included Housing, Planning, Transport and Social Services, and emphasised the importance of listening to the views and opinions expressed by the members of the public who reside in the community.

The Chair invited questions from Members and the following responses were provided by Dr. Higson and Mrs Hanson to the matters and issues raised:-

- The value of Hospitals in North Wales was emphasised by Dr Higson. He explained that the recent admissions pressures experienced at Ysbyty Glan Clwyd had not been blamed on elderly persons. The Board had discussed the problem, which had been attributed to patients with complex medical needs, and it had been concluded that the issue of bed capacity and the effective utilisation of resources during the winter period would be reviewed.
- Dr Higson acknowledged that there had been issues of concern relating to community Services, with services being withdrawn prior to the provision of new or replacement services.
- In reply to a question from Councillor E.A. Jones regarding the continued provision of an Emergency Surgery at Ysbyty Glan Clwyd, Dr Higson explained that

there were issues regarding trainees and promised that written responses to any questions to which he was unable to provide a response.

- Members were informed that an analysis of the reasons for patients bypassing the out of hour's services in favour of attending A&E would be undertaken.

- Details of the Seasonal Plan dealing with the period from November to March was provided. Dr Higson explained that the circumstances relating to the suspension of certain categories of surgery had not arisen due to the volume of patients, but the complexity of their medical needs. He confirmed that an announcement had been made to reinstate planned surgery on a phased basis, and details pertaining to how the Health Board's escalation plan had been communicated was provided for Members.

- Issues with closed beds remained as a result of problems encountered with the recruitment of nursing staff, and licensing matters relating to trainee doctors.

- It was explained by Dr Higson that trust in the Health Board could be restored by the provision of open, honest and transparent information through reliable communication channels, and by addressing issues of concern proactively and publically.

- Details pertaining to the National Contract for GP's, negotiated directly by Welsh Government, was highlighted by Dr Higson. In response to concerns regarding access issues to GP's, it was explained that the structure of primary care was changing and work was being undertaken with the practices to face and address the challenges and pressures being presented. The need for further discussion in respect of regional working was accepted, with sections of the community having expressed their preference for increased delegated authority and localism.

- Members were informed that a significant amount of work had been undertaken during the past six months to address the issue of infection rates. Dr Higson agreed to forward information considered by the Board regarding this matter.

- The issue of excessive waiting times had been discussed recently at the Health Board meeting. The need to examine and address productivity was highlighted, together with, the implications of examining prudent care and evaluating work undertaken in the Health Service. Members were informed that work was being undertaken with other Health Boards and Welsh Government to develop a vision and strategic direction.

- The importance of the identity of the Health Board was emphasised by Dr Higson. He highlighted the need to maintain a strong local identity without losing consistency across North Wales. Reference was made to the importance of attracting expertise in various medical spheres and to the best utilisation of available resources through partnership working.

- Members were informed that Mental Health Care service provision had been discussed at the Health Board meeting and the service would be fully reinstated in the near future. Car parking problems at Ysbyty Glan Clwyd were acknowledged by Dr Higson, and he explained that consideration would need to be given to managing the flow of traffic.

- Mrs Hanson responded to questions pertaining to the William Commission Report. She made reference to the difficulties and challenges which could arise from the implementation culture changes.

The Chair thanked Dr Higson and Mrs Hanson for attending the meeting and providing an informative presentation.

**RESOLVED** – *that Council receives and notes the contents of the presentation.*

## **7 BUDGET FOR 2014/2015**

A copy of a report by the Head of Finance and Assets (HFA), which provided an update of the budget setting process and details the proposals to set the council's revenue budget for 2014/15, had been circulated prior to the meeting.

Councillor J. Thompson-Hill introduced the report and explained that an analysis of the Draft Local Government Settlement and the consequences for the Council had indicated that savings of approximately £8.5m would be required, and this had been confirmed in the Final Settlement received in December. The budget process had so far resulted in savings of £1.7m for 2014/15 being approved in September, Phase 1, and £4.7m, Phase 2, in December. Appendix 2 included details of the savings.

The Phase 1 savings were items proposed as part of the 2012/13 and 2013/14 Service Challenge process. Phase 2 savings had been presented to a Member budget workshop in October and each proposal had been presented by Lead Members, providing details of the saving, the impact and an assessment of risk. Subsequently Elected Members had been invited to comment on any of the proposals prior to the Council meeting in December.

Phases 1 and 2 identified savings of £6.459m, leaving a gap of approximately £2.0m which had been the focus of a third budget workshop held in December. The papers had been circulated in advance to all Members and published on Modern.gov.

The key theme of the workshop had been to present details and options to be considered to bridge the £2m budget gap for 2014/15.

The key information presented included:-

- An update of the in-year position of social care and education budgets
- Analysis of school funding
- Options to increase school budgets

- Review of balances and reserves
- Corporate Plan update
- Council Tax options
- Additional Savings Proposals
- A recommendation to balance the budget

Proposals to bridge the £2m gap had been included in appendix 1. The additional saving proposals for 2014/15 related to bringing forward savings previously identified for 2015/16 and total £395k. £95k related to bringing forward restructures in Business Planning and Performance and £300k was the proposed removal of the budgeted contribution to balances one year earlier than originally planned. The recommendation included a proposal to use general balances as part of the budget in 2014/15. Although the workshop had been an informal event, there was general acceptance of the recommendation to balance the budget with further debate required around the level of Council Tax increase.

Final budget proposals and the level of Council Tax for 2014/15 would have to be agreed by Council in February, 2014. At the latest budget workshop views had been expressed informally about the level of Council Tax increase. The options and implications had been included in a table in the report which indicated that a 3.5% increase was balanced. Some Members had requested consideration of a lower level.

The Chief Executive explained that the average level in Wales was 4% and strongly advised against the further utilisation of balances. He emphasised that it would be impossible to achieve a further savings from services in a period of 2 months. Councillor J. Thompson-Hill endorsed the view that the utilisation of money from reserves could exacerbate the budget setting process for next year, and explained that an increase of 3.5% had been considered the most appropriate level.

Appendix 1 detailed the savings proposals and indicated that it would be difficult for services to deliver further savings. This would leave balances as the only source of funding to fill any gap left by a lower Council Tax. Proposals in Appendix 1 included the use of £500k of balances and deletion of the budget which 'tops up' the balances each year. The importance of appropriate levels of balances had been highlighted by major flooding events, severe winter weather and an unexpected major claim from the County's previous insurance company.

The HFA confirmed the use of balances would not solve underlying issues but merely temporarily plug a permanent hole in the Council's finances. The 2014/15 budget would not allow for any service specific cost pressures with inflation having been built into the budget assumptions corporately. Investment in priorities was proposed at a level of £750k and the delivery of the Corporate Plan was dependent on both budget and cash resources to facilitate Prudential Borrowing. The proposed allocation of investment funding for 2014/15 was £650k for Modernising Education/21st Century Schools and £100k for Highways/Road Improvements.

The steps taken by the Authority to protect jobs and services during the budget setting process was emphasised by Councillor H.H. Evans, and he highlighted the

importance of affording consideration to next year's budget when setting this year's budget. Councillor C. Hughes made reference to the need for openness and transparency regarding the implications of the budget in respect of possible future job losses.

The following responses were provided to questions and issues raised by Members:-

- Councillor Thompson-Hill concurred that issues raised by Councillor S.A. Davies relating to the possible withdrawal of funding by the Authority for a Trade Union official, the equitability of funding to the AONB from the respective member Authorities and the level of funding provision to Clwyd Leisure could be debated at a future date. However, due to timescale constraints these issues could not be considered for the 2014/15 budget setting process.
- It was explained that Denbighshire's Settlement had been low as a consequence of the findings of the 2001 Censor. Councillor H.H. Evans explained that the Settlement had been the worst experienced by Denbighshire.
- With regard to Phase 1 and 2 saving proposals 2014/15 in relation to savings within Adult and Business Services, it was explained that significant savings had already been evidenced under Phase 1 savings agreed in September.
- The Chief Executive provided confirmation that the Williams Commission Report had not recommend use of Local Government reserves to fund Local Government reorganisation. However, reference had been made in the Report to one Local Authority having utilised reserves for this purpose.
- It was explained by the Chief Executive that many factors and issues, such as pupil numbers and fluctuations, would influence school funding provision, and he confirmed that Denbighshire were passporting their requirements and protecting the schools project in line with WG expectations.
- Members were informed that work was being undertaken in respect of improving procurement services through the Welsh Purchasing Consortium and partnership working with neighboring Local Authorities. It was explained that Denbighshire had been leading the way in progressing this framework.
- Councillor E.W. Williams explained that accepting an increase of 3% would not guarantee the safety of jobs and might create or expedite unemployment. Members were informed that figures relating to possible job losses resulting from the savings proposals were not available.
- Councillor D.I. Smith informed Council that following the expiration of Taith, funding would be disseminated between the member Authorities. An emergency meeting of Taith would be held on the 29<sup>th</sup> January to consider any implications. Councillor Thompson-Hill confirmed that budget pressures could arise for the Authority as a result of the expiration of Taith.

During the ensuing discussion Councillor T.R. Hughes explained that he would be unable to support the recommendation in the report to approve the budget proposal for 2014/15 as shown in Appendix 1, and the increase of 3.5% in the level of Council Tax for 2014/15. Councillor Hughes proposed an amendment to the recommendation in the report that the £200k funding allocated by Cabinet for Clwyd Leisure be reduced to £50k, and that the remaining £150k be utilised to reduce the level of Council Tax for 2014/15. Councillor J. Butterfield seconded the proposal. However, following a brief adjournment of the meeting she withdrew her support.

Councillor E.A. Jones then seconded Councillor Hughes proposal on democratic grounds.

Councillor H.H. Evans explained that any amendment would need to be supported by the provision of achievable and acceptable alternative proposals. Councillor H.LI. Jones explained that in order to ensure and maintain equality, a reduction in funding for Clwyd Leisure from £200k to £50k would impact on Leisure Centers in the County.

Following further discussion, Councillor T.R. Hughes withdrew his amendment. The recommendations in the report were then put to the vote and carried, and it was:-

**RESOLVED** – *that Council:-*

- (a) *approves the budget proposal for 2014/15 as shown in Appendix 1, and*
- (b) *approves an increase of 3.5% in the level of Council Tax for 2014/15.*

## **8 COUNCIL TAX REDUCTION SCHEME**

A copy of a report by the Head of Finance and Assets (HFA) had been circulated with the papers for the meeting.

Councillor J. Thompson-Hill provided a summary of the report which detailed the adoption of the All Wales Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the All Wales Council Tax Reduction Schemes and Prescribed Requirements (Wales) Amendments Regulations 2014, and the inclusion of additional funding from WG of circa £90k to help support the shortfall in funding of the scheme for 2014/15.

It was explained by Councillor Thompson-Hill that the Welfare Reform Act 2012 contained provisions to abolish council tax benefit in its current form across the UK. Council tax benefit had ceased from the 31<sup>st</sup> March, 2013 and the responsibility for providing support for council tax, and associated funding, had transferred to WG. The WG in partnership with LAs had introduced a new scheme to provide council tax support, to be adopted by the Council in January, 2013. The WG had finalised both sets of regulations in January, 2014 and the new Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013, and amendments Regulations 2014, were required to be adopted by the 31<sup>st</sup> January, 2013.

During 2013/14 WG introduced an initiative giving additional funding to pensioners, who did not qualify for Council Tax Support. This grant was offset against their Council Tax liability. Denbighshire had awarded £132k worth of grants, and in most cases this resulted in a refund for overpaid Council Tax being paid to the customer.

In considering the development of a new scheme for 2014/15 the WG had agreed that the amended scheme should observe the following parameters:-

- To continue with a single nationally defined scheme to providing a consistent level of support to claimants across Wales. Maximum level of support set at 100%.
- To continue providing a small number of discretionary elements, similar to those available under the current scheme, allowing LA's to respond to their differing local circumstances, provided that the costs of any local variation were locally funded.
- To continue to be based on a reform of the previous Council Tax Benefit system, until 2015-16 so that operational risks were managed and that support could continue to be provided.
- Where possible, simplify the existing complex arrangements.
- To remove the sunset clause which limits its lifecycle to one year.
- To include additional Welfare Benefit Payments such as Personal Independence Payments (PIP), Universal Credit (UC) and Armed Forces Independence Payments.

Discretionary Elements for Council decision included:-

- (a) The ability to increase the standard extended payment period of 4 weeks given to people after they return to work, when they had been in receipt of a relevant qualifying benefit for at least 26 weeks.
- (b) Discretion to disregard part or the whole amount of War Disablement pensions and War Widows Pensions when calculating income
- (c) The ability to backdate the application of Council Tax Support awards for working age customers more than the standard period of 3 months prior to the claim.

Members were informed that a further £90k funding had been allocated by WG, which was not ring fenced as they were no longer supporting the additional grant towards pensioners. Initial projections indicated Denbighshire were facing a shortfall in funding for the 2014/15 scheme of circa £480k and it had been suggested the additional grant be used to offset the deficit.

In response to a question from Councillor B.A. Smith, Councillor Thompson-Hill explained that future voting requirements would be dependent on Regulations introduced by WG.

Following further discussion, it was:-

**RESOLVED** – that Council agrees the:-

- (a) adoption of the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Prescribed Requirements (Wales) Amendments Regulations 2014.
- (b) approval of the 3 discretionary elements of the scheme, shown in section 4.1, are continued in 2014/15, and
- (c) approve the allocation of the £90k additional funding, provided by the Welsh Government, to help support the shortfall in continuing with the prescribed scheme in 2014/15.

## 9 COUNTY COUNCIL FORWARD WORK PROGRAMME

The Head of Legal and Democratic Services (HLDS) introduced the Council's Forward Work Programme which had been circulated with the papers for the meeting.

The HLDS informed Members that the agenda for the Council Briefing meeting to be held on Tuesday, 4<sup>th</sup> February, 2014 would include the following items:-

- North Wales Residual Waste Project
- Social Media Training
- Planning Wales Bill

At the request of Councillor H.LI. Jones, Council agreed that the item pertaining to the Denbighshire Talented Athlete Grant be included in the Council Briefing Forward Work Programme for April, 2014.

Members agreed that a Special Council Briefing meeting be convened in early February, 2014 to debate the implications of the Williams Commission Report. It was also agreed that an update information report in respect of Taith be submitted to a future Council Briefing meeting.

**RESOLVED** - that, subject to the above, the Council forward work programme be approved and noted.

*Meeting ended at 4.50 p.m.*



<b>Report To:</b>	<b>Council</b>
<b>Date of Meeting:</b>	<b>25<sup>th</sup> February 2014</b>
<b>Lead Member / Officer:</b>	<b>Councillor Eryl Williams, Lead Member for Education</b>
<b>Report Author:</b>	<b>Head of Customers and Education Support</b>
<b>Title:</b>	<b>Approval of Business Case for Rhyl New School Project</b>

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## **1. What is the report about?**

The report seeks to inform Council of the current position with regard to the Council's submission of the Final Business Case for Rhyl New School to the Welsh Government.

## **2. What is the reason for making this report?**

In September 2013 the Welsh Government approved the Strategic Outline Case for the Rhyl New School project. Following discussions with Welsh Government officials it has been agreed to submit a combined Outline / Final Business Case for their consideration.

## **3. What are the Recommendations?**

To approve the Business Case for Rhyl New School prior to determination by the Welsh Government.

## **4. Report details.**

- 4.1 The Corporate Plan details the Council's ambition to deliver significant investment in the School Building portfolio between 2012-17. A significant element of this work will be the delivery of the Band A projects for the 21<sup>st</sup> Century Schools Programme.
- 4.2 The Welsh Government provided approval in principal for £36.7m as their 50% contribution towards the 21<sup>st</sup> Century Schools Programme in December 2011. Subsequent to this the Welsh Government have worked with all local authorities to ascertain how the overall £1.2 billion investment across Wales can be allocated into deliverable workstreams for individual local authorities. One of these projects was the Rhyl New School. The project will provide a new school building for Rhyl High School to serve up to 1200 pupils in mainstream education whilst also housing approximately 45 pupils from Ysgol Tir Morfa, the community special school in Rhyl.

- 4.3 All projects within the 21<sup>st</sup> Century Schools Programme (21<sup>st</sup> CSP) will be required to follow the guidance for Business Case approvals as defined in the HM Treasury Model. For projects below £5m a Business Justification Case will require approval whilst for projects above £5m, approval of the Strategic Outline Case (SOC), Outline Business Case (OBC) and Full Business Case (FBC) will be required.
- 4.4 Cabinet gave approval in February 2013 for approximately £1.5m to fund Phase 2 (Detailed Design) which would enable the project to be progressed to a stage where approval could be sought for the full business case. The “stage D” design report was submitted in December 2013 by Wilmott Dixon, the Council’s appointed contractor to deliver this project. This is a key document which summarises the feasibility works undertaken over the past 8 months on this project. The key objectives are:
- To give a comprehensive overview of the feasibility undertaken.
  - To understand the education vision and how this has translated into a new community facility.
  - To demonstrate technical proficiency appropriate to the design of the building and site.
  - To present robust costing information which demonstrates that the school can be delivered to an agreed budget.
  - To demonstrate an achievable master programme for the project which reflects possible outcomes of the planning process.
  - To highlight any risks which remain with the project and show these can be mitigated and managed through the next stages of the project.
  - To present a level of information on the feasibility to receive successful Denbighshire / Welsh Government funding approval and to enable the authority to move forward to the detailed stages of the project.
- 4.5 The overall cost for the Wilmott Dixon contracted element of the project within the Stage D report was £22,281,516. This was £38,017 less than the previously estimated sum. The overall cost for the project is presently £24,586,100 which includes Denbighshire costs (client and design fees) and Client contingency sums.
- 4.6 The Business Case as attached is to seek 50% funding from the Welsh Government. This will mean that £12,293,050 will be required from Denbighshire County Council. This sum is covered within the overall Corporate Plan and Capital Plan.
- 4.7 The Council’s Strategic Investment Group considered the Business Case (see Appendix 1 for the executive summary) at its meeting on the 22<sup>nd</sup> January 2014. The group considered a number of issues including the size of the school, the arrangements for safeguarding of pupils within the design of the site layout and the process undertaken to date. Following a lengthy discussion it was recommended that the Business Case be submitted to the Welsh Government for consideration and that approval be sought from Cabinet and Council at their respective meetings in February. Cabinet were scheduled to consider the Business Case at their meeting on the 18<sup>th</sup> February

and a verbal update will be provided on their views. The Business Case was submitted to the Welsh Government at the end of January, 2014 stating it was still subject to the views of Cabinet and Council.

4.8 The following timescales are anticipated for progression of the project:-

Milestone activity	Date
Submit Business Case to WG	Jan 2014
Approval of Business Case by Cabinet / Council	Feb 2014
Assessment of Business Case by WG	Mar 2014
Completion of Phase 2 – Detailed Design	May 2014
Contract Award	June 2014
Phase 3 – Construction	July 2014 – Mar 2016
Final Handover	Mar 2016

#### **5. How does the decision contribute to the Corporate Priorities?**

The development of the 21<sup>st</sup> Century Schools Programme and the wider Modernising Education Programme will be a factor in ensuring that the Council meets its aspiration to improve performance in education and the quality of our school buildings as documented within the Council's 2012 – 2017 Corporate Plan. The Programme will also assist the Priority of Developing the Local Economy as a result of the additional capital investment in the area.

#### **6. What will it cost and how will it affect other services?**

The costs arising from the Rhyl New School project will be approximately £24.6m. The approval of the Business Case will enable a contract to be issued. The funding for this priority within the Corporate Plan will be provided through the use of balances, disposal of assets and through prudential borrowing.

Following the receipt of a condition survey it has been agreed that the existing Leisure Centre will continue to be used by Rhyl High School and by Ysgol Tir Morfa for the delivery of the PE curriculum. This will enable the focus to be on improving the existing facilities rather than building another asset.

#### **7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report.**

The equality impact assessment states the proposal will have a positive impact on children and young people who share protected characteristics. The impact will be monitored during the lifetime of the project.

## **8. What consultations have been carried out with Scrutiny and others?**

There has been extensive consultation with the school communities of Rhyl High School and Ysgol Tir Morfa in the development of the project to date. This has included a number of neighbourhood consultation meetings to discuss the emerging designs for the new school buildings. There has also been engagement with the Rhyl Member Area Group and Rhyl Town Council on the progression of the project.

## **9. Chief Finance Officer Statement**

This is a key strategic project both in 21<sup>st</sup> Century Schools and the Council's corporate plan. The council has already committed around £1.5m to the initial works which have led to this proposal. There is sufficient capital funding available to deliver the project at the projected cost.

This is the largest single capital project ever undertaken by the Council and as such carries financial risk. Good project management is therefore key to this and the project must be carefully monitored. It is the first of the major school projects to be undertaken and more are likely to follow.

At each stage the Council must be convinced that each project represents value for money and that the programme overall is affordable and deliverable. At this stage in the programme it is deliverable and affordable.

## **10. What risks are there and is there anything we can do to reduce them?**

The Cabinet has previously agreed to progress this project at risk subject to the approval of the Business Case. Should the project fail to receive approval there is a risk that the work undertaken to date will not be progressed any further. The approval of the Strategic Outline Case for this project in September 2013 could be seen to lessen the risk that the project failing to receive final approval from the Welsh Government. To mitigate this there has been regular discussions with the Welsh Government on the progression of the Rhyl New School project.

The overall project is being managed by an experienced Project Manager with clear arrangements for the management of risk during the project.

## **11. Power to make the Decision**

Section 2 Local Government Act 2000 / Section 111 Local Government Act 1972

Appendix 1

# **Rhyl New School (RNS)**

## **Full Business Case (FBC)**

Version No: 1.0  
Issue Date: 29/01/2014

## VERSION HISTORY

<b>Version</b>	<b>Date Issued</b>	<b>Brief Summary of Change</b>	<b>Owner's Name</b>
Draft 0.1	17/01/2014	First Draft Version	J Curran
1.0	29/01/2014	First Version	J Curran

## **1. Executive Summary**

### **1.1 Introduction**

This Full Business Case seeks approval to invest £24,586,100 in a contract with Willmott Dixon Construction to construct a new school and associated facilities in Rhyl.

### **1.2 Strategic case**

#### ***1.2.1 The strategic context***

This business case is for the provision of a new school building to replace the existing Rhyl High School building at a cost of £24,586,100; this being a key project within Denbighshire County Council's overall 21<sup>st</sup> Century Schools Programme.

This business case builds on the detail presented in the SOC that was approved by Welsh Government in September 2013. It also develops and confirms the following:

- Determining and confirming value for money
- Preparing for and contracting the deal
- Confirming affordability and financial requirement
- Planning for successful delivery

#### ***1.2.2 The case for change***

Rhyl High School is situated in a residential area of Rhyl and shares its site with Rhyl Leisure Centre (RLC). It occupies a range of buildings which have been adapted and remodelled over the years. The school has the poorest energy efficiency and performance figures of the entire Council buildings portfolio – a situation which is difficult to improve given the usage patterns of its series of detached and external 'walkway-linked' buildings.

Ysgol Tir Morfa is a community special school which caters for pupils with a wide range of additional learning needs, aged between 3 and 19 years. The school is located on Ffordd Derwen. The Key Stage 1 and 2 provision has seen significant investment by Denbighshire County Council and the Welsh Government in recent years. However plans for the next phase to address needs for KS 3&4 have had to be re-assessed due to the scarcity of capital funding to undertake the work.

The strategic drivers for this investment and associated strategies, programmes and plans include the following:

- A need to bring about a step-change improvement in 11-16 secondary education provision in Rhyl and the associated attendance and attainment levels
- The vision for the economic regeneration of Rhyl demands that education infrastructure is kept in step with progress made in other areas of the regeneration programme
- A required reduction in the ever-growing (cost of the) maintenance backlog of secondary school buildings in Rhyl

- The requirement to reduce the carbon footprint of the Council – in particular that of the total school estate

Since the initial discussions regarding this project in 2009 Rhyl High School has had a change of leadership which has seen considerable improvements in performance and attainment. However, in order to see sustained improvements there is a compelling case to improve the physical teaching and learning environment.

At Ysgol Tir Morfa KS3&4 pupils need access to more specialist curriculum facilities than can be provided at the main school site – particularly for vocational courses, performance spaces, technology and science. To address this need consideration has been given to the co-location of elements of Ysgol Tir Morfa at Rhyl High School to enable the school to access improved facilities. This will be provided within the design and configuration of new buildings at Rhyl High School where Ysgol Tir Morfa pupils would have their own discrete base with direct access to shared specialist facilities. This would also provide practical integration opportunities with mainstream life – socially and academically.

### **1.3 Economic case**

#### ***1.3.1 The OBC long list and short list***

The five long list options as considered in the SOC and confirmed in this business case included:

- Option 1.1 – do nothing
- Option 1.2 – the ‘minimum’ scope – for some improvements in secondary education provision in Rhyl: close RHS and re-open as a 11-16 school within the existing buildings
- Option 1.3 – the ‘do-a-bit-mote-than-the-minimum’ scope – marginal improvements in secondary education provision in Rhyl: Remodel or refurbish present RHS buildings - Leave BEJ to be reviewed as part of a wider ‘faith’ Education review; continue with Rhyl 6<sup>th</sup> Project; keep Welsh medium provision discrete
- Option 1.4 – the ‘intermediate’ scope – for improvements in secondary education provision in Rhyl: Rebuild RHS on its present site or an alternative site - Leave BEJ to be reviewed as part of a wider ‘faith’ Education review; continue with Rhyl 6<sup>th</sup> Project; keep Welsh medium provision discrete
- Option 1.5 – ‘maximum’ scope – for improvements in secondary education provision in Rhyl: Closing Rhyl High School (RHS) and/or Blessed Edward Jones Roman Catholic High School (BEJ); open a new replacement/successor school for RHS and/or BEJ establishing a single campus 11-18 school with a ‘faith’ element and offering a Welsh medium stream with community and ALN facilities

The short list shown within the SOC and confirmed in the business case is as follows:

- Option 1 – the do minimum – clear maintenance backlog – status quo



- Option 2 – do intermediate – major refurbishment & extension
- Option 3 – do maximum – new school build

### 1.3.2 The procurement

Denbighshire County Council's aspiration was to use the best current practice for procurement and implementation of the project. Specialist advice was sought from a number of areas; this is explained in more detail in Section 4 – Commercial Case. Based on this advice it was decided to adopt an Early Contractor Involvement (ECI) approach within a 'partnering' agreement as the best way to ensure the Council's aspirations for the project could be met within a partnering relationship with an experienced strategic partner.

It was decided to structure the procurement call into three main Phases as follows:

Phase 1 – Feasibility

Phase 2 – Detailed Design & Target Cost Preparation

Phase 3 – Construction

This approach was taken so as to provide break points at which progress could be halted in order to attain the required approvals at Council and Welsh Government level for the preferred option and the funding to support moving on to the next phase.

The first stage of the procurement process, given the scale of the potential project estimated at the time to be in the order of £25M, was to prepare and launch an OJEU notice and initial PQQ exercise for potential partners.

The OJEU Notice was issued in October 2009 and 15 valid PQQ responses were received in response and subsequently evaluated against the advertised evaluation criteria. Of the 15 responses, 8 potential providers were shortlisted and invited to tender in January 2010.

The 8 potential provider tenders were evaluated against the advertised evaluation criteria and interviewed by a panel. Based on the outcome of this evaluation, Willmott Dixon Construction was selected as the preferred partner to take forward the project in a phased approach as described above.

### 1.3.3 Key findings

The key findings from the economic appraisals are:

	Undiscounted (£)	Net Present Cost (Value) (£)
<b>Option 1 – Do minimum – Status Quo – Clear maintenance backlog</b>		
Capital	3,088,050	2,741,689
Revenue (inc. maintenance)	972,000	551,093
Optimism bias 10% (on capital)	308,805	274,172
<b>Total costs</b>	<b>4,368,855</b>	<b>3,566,984</b>
<b>Less cash releasing benefits</b>	<b>-2,063,000</b>	<b>-1,788,992</b>
<b>Total</b>	<b>2,305,855</b>	<b>1,777,991</b>

	Undiscounted (£)	Net Present Cost (Value) (£)
<b>Option 2 – Do intermediate – major refurbishment &amp; extension</b>		
Capital	26,316,644	24,237,438
Revenue (inc. maintenance)	2,632,500	1,492,542
Optimism bias 10% (on capital)	2,631,664	2,423,744
<b>Total costs</b>	<b>31,580,808</b>	<b>28,153,725</b>
<b>Less cash releasing benefits</b>	<b>-2,063,000</b>	<b>-1,788,992</b>
<b>Total</b>	<b>29,517,808</b>	<b>26,364,732</b>
<b>Option 3 – Do maximum – New school build</b>		
Capital	24,811,100	22,536,013
Revenue (inc. maintenance)	2,632,500	1,492,542
Optimism bias 10% (on capital)	2,481,110	2,253,601
<b>Total costs</b>	<b>29,924,710</b>	<b>26,282,157</b>
<b>Less cash releasing benefits</b>	<b>-2,063,000</b>	<b>-1,788,992</b>
<b>Total</b>	<b>27,861,710</b>	<b>24,493,164</b>

**NOTES:**

- *Capital – includes initial project capital costs plus cyclical capital costs at years 10,20 & 25 of £50k, £75k & £100k*
- *Revenue (inc. maintenance) – estimated revenue impact on school of Options 2&3 of increased floor area of £87,500 plus £36k annual maintenance for Option 1 & £10k annual maintenance for Options 2&3*
- *Optimism Bias – standard 10% applied across all three options based on the capital element only*
- *Cash releasing benefits - consist of £2,063,000 in estimated current maintenance backlog*

The key findings are as follows:

- *Option 1 – Do minimum – Status Quo – Clear maintenance backlog*  
This option ranks first overall in terms of 'Cost net all savings' however it is not a realistic investment option as a step-change in accommodation and facilities is required. Investing in the current buildings would not bring about sufficient change in the teaching and learning environment to realise this. The present buildings lie within a defined flood plain, which militates against any case for large scale capital investment in the site.

It provides no additional benefits in terms of up to date teaching and learning facilities or improved suitability for delivering a modern curriculum. Minimum maintenance investment would just keep the present buildings safe, secure and weather-tight, sufficient to allow continuing operation.

- *Option 2 – Do intermediate – Major refurbishment & extension*

This option ranks third overall in terms of ‘Cost net all savings’. It would see the existing building refurbished & refreshed and new additional accommodation constructed to provide the required capacity to accommodate 1200 plus 45 ALN for Ysgol Tir Morfa. The issue with this option is that it would not provide the complete step change in facilities as a significant amount of the existing accommodation would be retained albeit fully refurbished. This is estimated as being the most expensive option financially given the more complicated nature of a major refurbishment and the logistics of working within a live site.

- *Option 3 – Do maximum – New school build*

This option ranks second overall in terms of ‘Cost net all savings’. It provides a new building with state of the art accommodation and facilities; this would enable full flexibility in the design process to ensure the school will be provided with the accommodation required to make that set change.

### **1.3.4 Overall findings: the preferred option**

Summary of overall results:

<b>Evaluation Results</b>	<b>Option 1</b> Do minimum Clearing maintenance backlog	<b>Option 2</b> Do Intermediate Major Refurbishment & extension	<b>Option 3</b> Do Maximum New build school
Economic Appraisals	1	3	2
Benefits Appraisals	3	2	1
Cost per Benefit Point	3	2	1
Risk Appraisal	3	2	1
<b>Overall Ranking</b>	<b>3</b>	<b>2</b>	<b>1</b>

## **1.4 Commercial case**

### **1.4.1 Agreed products and service**

The products and services under contract are as follows:

- A successful recent track record of designing and constructing innovative secondary schools
- Experience of using ‘partnering-ethos’ arrangements
- Ability to provide and lead a team of appropriate technical specialists (Education consultants, ICT and Energy specialists, et al)
- Understanding of the emerging education and economic trends in Wales and locally in Denbighshire and Rhyl

- A sound reputation for maximising use of local suppliers within the construction supply chain
- A history of delivering significant community benefits through their construction ventures
- Technical ability to lead a complex design and build project to replace the existing school buildings including design, construction, demolition and reinstatement/re-landscaping works

#### **1.4.2 Agreed risk allocation and charging mechanism**

The advertised tender invited bidders to submit their proposals for managing risks under contract. These were 'scored' as part of the evaluation of tenders and included consideration of:

- a 'pain/gain' model to offset risk to the Council
- development of target cost for the project; firming of prices
- an insight into their experience and perceptions of 'partnering'

An allocation of risk against a number of risk categories have been agreed with Willmott Dixon Construction.

Reimbursement under the contract will be made in line with appropriate procedure supporting the submission of claims and control of costs as required. Within the contractual arrangements there is an agreed Pain/Gain mechanism whereby should the Target Cost be exceeded then the contractor will be liable for 100% of the pain. As part of PHASE 2 – Detailed Design & Target Cost Preparation a number of construction risks have been identified and costed in order to allocate a sufficient risk contingency should these risks materialise as the project progresses.

#### **1.4.3 Key contractual arrangements**

In addition to 'standard' contract headings and wording associated with an NEC3 contract, the key contract provisions reflect DCC's aspiration to engage a partner organisation as a first step towards building an enduring beneficial relationship. Some of the key contractual clauses are in relation to the following:

- Project Delivery Proposal
- Building Performance
- Community Focus
- Delivery
- Learning Environment
- Financial Information
  - PHASE 1 – (Feasibility)
  - PHASE 2 - (Detailed Design and Target Cost Preparation)
  - PHASE 3 - (Construction Phase)
- PRICING SCHEDULES

- SPECIFICATIONS
  - Partnering
  - Sustainable Development Scheme
  - Delivery and Implementation of Community Benefits

There are no personnel implications and TUPE does **NOT** apply.

#### **1.4.4 Agreed implementation timescales**

Having appointed a successful supplier (Willmott Dixon Construction) following the procurement approach described above in Section 1.3.2, Phase 1 (Feasibility) of the works was conducted between April and October 2010 using funding from the Welsh Governments Tranche 1 of Transitional Funding awarded in 2009. The output from this Phase provided key information to feed into the developing 5 Case Business Case Process being undertaken by Denbighshire in relation to the Welsh Government's 21<sup>st</sup> Century Schools Programme.

There was then a pause in the project whilst the implications for changes to the timescales and scale of the Welsh Government's 21<sup>st</sup> Century School Programme and Denbighshire's response to it were worked through.

In order to demonstrate commitment to the project and to be in a good position to make timely progress moving forward Denbighshire decided to provide funding to commence work on Phase 2 (Detailed Design & Target Cost Preparation) with this work commencing in Spring 2013 and feeding into this Business Case. Phase 2 is anticipated to be completed by May 2014.

This business case seeks approval to take forward the outputs from Phase 2 and proceed to Phase 3 – contract award for an NEC3 Engineering and Construction Contract for delivery of works associated with construction of a new school building in Rhyl.

#### **1.4.5 Accountancy treatment**

The assets created as a result of the project will be included in DCC's Education property portfolio and the appropriate corporate asset register.

### **1.5 Financial case**

#### **1.5.1 Financial expenditure**

Summary of financial expenditure:

	2012/13	2013/14	2014/15	2015/16	2016/17	Total
	£	£	£	£	£	£
<b>Option 3</b>						
Capital	24,945	1,477,975	7,222,434	15,860,746	0	24,586,100
Revenue	0	0	0	0	87,500	87,500
<b>Total (Capital)</b>	<b>24,945</b>	<b>1,477,975</b>	<b>7,222,434</b>	<b>15,860,746</b>	<b>15,860,746</b>	<b>24,586,100</b>

<b>Capital Only</b>						
DCC	24,945	1,477,975	2,859,758	7,930,372	0	0
WG	0	0	4,362,676	7,930,374	0	0
<b>Total</b>	<b>24,945</b>	<b>1,477,975</b>	<b>7,222,434</b>	<b>15,860,746</b>	<b>15,860,746</b>	<b>24,586,100</b>

**NOTE:**

The increase in revenue shown, £87,500, is in direct relation to the increase in the Gross Internal Floor Area (GIFA) of the preferred option against the current school GIFA. The revenue budget for schools is driven by a number of variables which are often dependent upon pupil numbers. Whilst it is expected that the project will have a positive impact on pupil numbers at this stage this hasn't been robustly modelled. The overall quantum for the all schools revenue budget would remain the same.

Therefore the increased revenue is not an increased financial pressure to the County as it will be dealt with via the standard school budget setting formula process from within the funding envelope for all schools year on year

**1.5.2 Overall affordability and balance sheet treatment**

The payment stream for the capital only to fund the chosen option (Option 3) will see 50% of the funding coming from the WG, the remaining 50% coming from DCC. Revenue implications will be dealt with once the new project is in place via the standard school budget formula setting process.

The capital cost of the project is £24,586,100 over the expected lifetime of the project. A submission to access 50% of the project value is being made to WG with the remaining 50% coming as contribution from Denbighshire. This approach was outlined in the SOP and has been agreed at Council. The detail on the proposed method of delivery for the 50% contribution from Denbighshire was included within the Capital Plan that formed part of the latest Corporate Plan that was agreed at Council on 09<sup>th</sup> October 2012. The funding provided by the authority will be found from reserves, balances and by selling assets with the rest being generated through prudential borrowing. Any amendments to the delegated school revenue budgets arising from the project will be dealt with via the existing school budget formula setting process

In February 2013, a report was submitted to Denbighshire's Cabinet recommending approval of £1.5M from the county's own resources to demonstrate the commitment to taking the project forward through detailed design. This recommendation was approved at Cabinet with the £1.5M being included in the Corporate Plan matrix. This has enabled Phase 2 to progress in parallel with the Welsh Government Business Case process so as to inform the business case development in a timely manner and place the project in a good position to proceed without delay within the County's overall 21<sup>st</sup> Century Schools Band A Programme given formal approval from Welsh Government.

In addition, this business case has been reviewed by Denbighshire Strategic Investment Group to ensure it aligns with the approved Council Capital Plan. The Council's Cabinet and Council will also consider the Business Case prior to determination by the Welsh Government.

The proposed capital expenditure will increase the overall value of the Council's asset estate by replacing aged buildings with new structures. Consequently, the balance sheet will show an increase in total asset value

## **1.6 Management case**

### ***1.6.1 Project management arrangements***

The scheme is an integral part of the DCC 21<sup>st</sup> Century Schools programme, which comprises a portfolio of Education transformation projects within the context of Modernising Education in Denbighshire. Like all projects within the programme, this project will follow the DCC Project Management Methodology founded on PRINCE2 and the principle of management by exception within approved parameter boundaries.

A Project Board was established in September 2009 to oversee the development and progress of the project. Following completion of the feasibility study stage of the project in 2010 the Project Board was suspended until the project detailed design stage was re-started in 2013.

The Project Team reports to, and advises the Project Board and is responsible for the development, planning and delivery of the project. The membership of the team is dynamic and evolves over time with some roles increasing or diminishing in profile as the project progresses through its sequential stages. The team is led and coordinated by the Project Manager.

As with the 21<sup>st</sup> Century Schools Programme Board, the Project Team will be supported, as appropriate, by advisers in key areas. This was a key principle in the appointment of a lead strategic project partner with a recent successful background and track record of designing and constructing similar schools.

### ***1.6.2 Benefits realisation and risk management***

A benefits register for the project is maintained within the DCC corporate project management system. The register records details of the beneficiaries, the timeframe for realisation, the metrics and indicators (for baselines, targets and monitoring) and the benefits owner/manager as the persons accountable for realisation.

As with benefits, a risk register is maintained within the DCC corporate project management system. The register identifies and allocates risk management responsibilities and mitigation measures. This risk register is reviewed on a regular basis to ensure it is up to date and any new risks identified are recorded.

### ***1.6.3 Post project evaluation arrangements***

Post occupancy evaluation (POE) provides a structured review of the process of delivering a capital project as well as a review of operational, functional and strategic performance of the building following occupation. This is a recognised way of providing feedback on the performance of the project through a building's lifecycle from the initial concept to occupation and beyond.

The post occupancy evaluation will occur after a period of operational use – between 6-12 months – and will again capture feedback from all users on how the new set-up is

functioning and to measure the actual outcomes against the objectives, plus it will feedback to identify any areas where changes are needed and as a source of lessons learned for any other similar projects being developed.

### **1.7 Recommendation**

We recommend that the Rhyl New School should proceed to the delivery phase of the project, Phase 3 – Construction.

**Signed:**

A handwritten signature in cursive script, reading "Wynne Williams", enclosed in a thin black rectangular border.

**Date:**

29/01/2014

**Senior Responsible Owner**  
**Project team**



Rhyl New School  
04 February 2014

Equality Impact Assessment

# Rhyl New School

**Contact:** James Curran, Education and Support Services

**Updated:** 04.02.2014

## 1. What type of proposal / decision is being assessed?

A project proposal

## 2. What is the purpose of this proposal / decision, and what change (to staff or the community) will occur as a result of its implementation?

The proposal is for funding for a project to deliver a replacement building for the existing Rhyl High School which will also be able to accommodate a number of pupils from the secondary provision at Ysgol Tir Morfa.

## 3. Does this proposal / decision require an equality impact assessment? If no, please explain why.

*Please note: if the proposal will have an impact on people (staff or the community) then an equality impact assessment **must** be undertaken*

Yes

## 4. Please provide a summary of the steps taken, and the information used, to carry out this assessment, including any engagement undertaken

*(Please refer to section 1 in the toolkit for guidance)*

Consideration of equality issues has occurred at all stages of the development of the project via the Council as clients and by Wilmott Dixon and AEDAS, the contractors and architects for the project.

The intentions have been to provide buildings which meet the current requirements of the legislation in the provision of services, education and employment, within the scope of the brief recognising Denbighshire's policy for 'access for all' and the site conditions. The overall approach to the design being new build will aim to meet the standards set by the ADM and the BS8300:2009 as a minimum and will reflect good practice guidance (it should be noted that BS8300:2009 supersedes ADM). In relation to particular spaces the level of accessibility will be agreed within the constraints of the brief that enables the needs of new users and the existing school population and staff; which may

require accessibility above the standards of the ADM.

- 5. Will this proposal / decision have a positive impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**  
*(Please refer to section 1 in the toolkit for a description of the protected characteristics)*

Yes, the project will deliver improved learning accommodation for some of the current pupils attending Ysgol Tir Morfa who will transfer to the new site in 2015. In addition to improved accommodation they will be able to access specialised facilities within the main area of Rhyl High School.

- 6. Will this proposal / decision have a disproportionate negative impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**

No

- 7. Has the proposal / decision been amended to eliminate or reduce any potential disproportionate negative impact? If no, please explain why.**

Yes	<p>The approach to inclusion and disabled access and use of the building has been to incorporate access for all into every aspect of the design. This will include (but not limited to):</p> <ul style="list-style-type: none"><li>• Ample disabled parking bays close to the main entrance.</li><li>• Step free external environment.</li><li>• Level access thresholds to all external and internal doors. The floor level will be designed at the same level as the external ground level.</li><li>• Lifts solely for the use of disabled pupils, staff or visitors as well as deliveries.</li><li>• Sufficient disabled sanitary provision as well as ambulant sanitary provision within the main toilet blocks.</li><li>• Changing Places hygiene suite.</li><li>• Furniture design to allow for disabled use.</li><li>• Main circulation doors held open during the school day.</li><li>• Colour schemes to provide the correct colour contrast</li></ul>
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	between surfaces etc. .
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**8. Have you identified any further actions to address and / or monitor any potential negative impact(s)?**

Yes	
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Action(s)	Owner	By when?
Review Proposals at end of Stage F	Sian Lloyd Price	09.05.14
Review Proposals prior to site construction works	Sian Lloyd Price	30.05.14
Monitor during progression of works	Sian Lloyd Price	20.11.15
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**9. Declaration**

Every reasonable effort has been made to eliminate or reduce any potential disproportionate impact on people sharing protected characteristics. The actual impact of the proposal / decision will be reviewed at the appropriate stage.

Review Date:	04.02.2014
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Name of Lead Officer for Equality Impact Assessment	Date
James Curran	04.02.14

**Please note you will be required to publish the outcome of the equality impact assessment if you identify a substantial likely impact.**

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**Report To: Full Council**

**Date of Meeting: 25<sup>th</sup> February 2014**

**Lead Member / Officer: Julian Thompson – Hill / Paul McGrady**

**Report Author: Paul McGrady / Rod Urquhart**

**Title: Council Tax 2014/2015 and Associated Matters**

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## **1. What is the report about?**

In adopting the resolutions of the Council budget meeting of the 27<sup>th</sup> January 2014 it is necessary for the Council to pass further resolutions in a particular form to ensure that the Council Tax and its associated matters are legally valid.

## **2. What is the reason for making this report?**

To set the levels of Council Tax for 2014/15.

## **3. What are the Recommendations?**

3.1 It is necessary for the County Council, as the Billing Authority, to consider the precepts received from the Police & Crime Commissioner for North Wales and the Town/Community Councils and declare the Council Tax levels for the 2014/2015 financial year.

3.2 It is recommended that the amounts calculated by the Council for the 2014/15 financial year, in accordance with Sections 32 to 34 (1) of the Local Government Finance Act 1992 (the Act) and Alteration of Requisite Calculations (Wales) Regulations 2008 be as Appendix A section 3.

3.3 It is recommended that the amounts calculated by the Council for the 2014/15 financial year, in accordance with Sections 34 (2) to 36 (1) of the Local Government Finance Act 1992 (the Act) be as Appendix A section 4.

3.4 That the amounts of Council Tax for the 2014/15 financial year for each of the categories of dwellings be as shown in Appendix C.

3.5 That the level of discount for Class A, B, and C as prescribed under the Council Tax (Prescribed Class of Dwellings) (Wales) Regulations 2004 be set at zero for the financial years 2014/15, 2015/16 and 2016/17 being the term of this Council with the caveat that this is dependent on no changes to Legislation or local conditions.

**4. Report details.**

Due to the requirement to approve the resolution and recommendations in the prescribed manner Annex A contains report details

**5. How does the decision contribute to the Corporate Priorities?**

If the recommendations are not approved, the Council will be unable to raise Council Tax demands, therefore income required to fund Corporate Priorities and services will not be available.

**6. What will it cost and how will it affect other services?**

The cost of raising and distributing Council Tax demands and the collection of the sums due are factored into the Council's Annual budget.

**7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report.**

Not applicable.

**8. What consultations have been carried out with Scrutiny and others?**

The level of Council Tax comes from the budget set by the Council. The budget was developed during service challenges attended by members and officers and by a series of member workshops. Full Council approved the budget on 27<sup>th</sup> January 2014.

**9. Chief Finance Officer Statement**

The Council has a legal obligation to set a Council Tax. The regulations are prescriptive as to how this is to be done and this report meets those requirements.

**10. What risks are there and is there anything we can do to reduce them?**

The financial risk of being unable to raise or collect Council Tax income if the recommendations are not approved.

**11. Power to make the Decision**

The Local Government Finance Act 1992 and Alteration of Requisite Calculations (Wales) Regulations 2008

## Appendix A

### 1.0 SETTING THE COUNCIL TAX FOR 2014/15

#### 1.1 Background.

At the Council meeting on the 27 January 2014 members considered and approved Cabinet's budget proposals and resulting impact on Council Tax for next financial year.

The main features of the proposal included:

- A cash reduction in the Council's revenue settlement from Welsh Government of 4.6%.
- A reduction in Welsh Government general capital funding of 0.5%.
- The provision of additional resources for the impact of some inflationary pressures.
- Protection of schools.
- Savings of approximately £8.5m.
- Investment of £0.75m in priority areas.
- Use of £500k general balances

#### 1.2 Section 151 Officer's statement

In accordance with the requirements of the Local Government Act 2003 the observations of the Section 151 Officer on the budget for 2014/15 are required to be presented to members.

##### a) Robustness of Budget Estimates

The budget proposals for 2014/15 contain a level of financial estimates. This is due to the uncertainty around the future impact upon the Council of current economic events. A considered view has been taken on the level of funding that services require and on the amount and timing of savings. The requirement to make £8.5m of savings is clearly a risk to the Council as it follows on from £3.1m of savings made in 2013/14. However, the process has been thorough and robust and proposals have been reviewed several times by Officers and Councillors. The budget depends upon the delivery of the proposed savings which will also be closely monitored and reported regularly to Cabinet.

I consider the budget proposals for 2014/15 to be sensible and robust.

##### b) Adequacy of Reserves

The level of general balances is stable and I consider they are broadly appropriate given the financial risks that the council faces. Adequate general balances are vital to protect the Council from unforeseen problems or in-year emergencies. The 2014/15 budget has been set using £500k of

general balances. This is sustainable as a short term measure but is not a permanent solution to funding a gap in the budget.

**1.3 In adopting the resolutions of the Council meeting of the 27 January 2014 it will be necessary for the Council to pass certain further resolutions in a particular form so as to ensure that the Council Tax and its associated matters are legally valid. I attach a copy of the required resolutions and request that these be approved.**

1.3 The average percentage increase for Council Tax bills (based on Band D) payable is:

- County Council increase 3.5%
- Town / Community Councils average increase 3.25%
- Police & Crime Commissioner for North Wales increase 2.02%

## **2.0 COUNCIL TAX RESOLUTION**

It is necessary for the County Council, as the Billing Authority, to consider the precepts received from the Police & Crime Commissioner for North Wales *and* the Town/Community Councils and declare the Council Tax levels for the 2014/15 financial year.

### **2.1 TOWN/COMMUNITY COUNCILS – PRECEPTS**

The following precepts have been received:-

	<b>2014/15</b>	<b>2013/14</b>
	£	£
Aberwheeler	2,300	2,100
Betws Gwerfil Goch	2,322	2,324
Bodelwyddan	54,800	54,800
Bodfari	3,075	3,075
Bryneglwys	5,700	3,300
Cefn Meiriadog	3,456	3,456
Clocaenog	3,600	3,600
Corwen	29,000	25,000
Cyffylliog	5,625	5,625
Cynwyd	3,072	3,048
Denbigh	184,464	176,472
Derwen	6,000	6,000
Dyserth	30,000	28,950
Efenechtyd	4,020	4,020
Gwyddelwern	3,456	3,440
Henllan	6,696	6,642
Llanarmon yn Ial	14,500	14,000
Llanbedr D C	5,000	5,000
Llandegla	6,000	6,000



Llandrillo	5,274	5,274
Llandyrnog	10,066	10,066
Llanelidan	3,375	3,255
Llanfair D C	4,900	5,000
Llanferres	7,995	7,995
Llangollen Town	87,800	84,700
Llangynhafal	1,500	1,500
Llanrhaeadr Y C	11,784	11,784
Llantysilio	8,500	7,300
Llanynys	7,896	7,239
Nantglyn	5,000	4,800
Prestatyn	360,080	349,285
Rhuddlan	50,000	50,000
Rhyl (1)	415,140	407,000
Ruthin	129,225	111,550
St. Asaph	54,210	51,960
Trefnant	4,668	2,500
Tremeirchion/Cwm/Waen	9,750	9,750
Total	1,550,249	1,487,810

### 3.0 DENBIGHSHIRE COUNTY COUNCIL/TOWN AND COMMUNITY COUNCILS - INCOME AND EXPENDITURE

It is recommended that the amounts calculated by the Council for the 2014/15 financial year, in accordance with Sections 32 to 34 (1) of the Local Government Finance Act 1992 (the Act) and Alteration of Requisite Calculations (Wales) Regulations 2008 be as follows:-

	£
(a) The aggregate of the amounts which the Council estimates for the items set out in Section 32 (2) (a) to (e) of the Act.	282,454,514
(b) The aggregate of the amounts which the Council estimates for the items set out in Section 32 (3) (a) to (c) of the Act.	92,721,686
(c) The amount by which the aggregate of Section 32 (2) above, exceeds the aggregate of Section 32 (3) above, calculated in accordance with Section 32 (4) of the Act, as its budget requirement for the year.	189,732,828
(d) The aggregate amount which the Council estimates will be payable for the year into its general fund in respect of redistributed non-domestic rates and revenue support grant less cost of discretionary non-domestic rate reliefs.	145,550,089

(e)	The amount at (c) above less the amount at (d) above, divided by council tax base for the year, 38,349, calculated by the Council in accordance with Section 33 (1) of the Act, (i.e. basic amount Council Tax).	1,152.12
(f)	The aggregate amount of all special items referred to in Section 34 (1) of the Act (Town/Community Council Precepts).	1,550,249
(g)	The amount at (e) above less the result given by dividing the amount at (f) above by the council tax base, calculated by the Council, in accordance with Section 34 (2) of the Act, as the basic amount of its Council Tax for the year for dwellings in those parts of its area to which no special items relate.	1,111.70

#### 4.0 DENBIGHSHIRE COUNTY COUNCIL/TOWN AND COMMUNITY COUNCILS - COUNCIL TAX

It is recommended that the amounts calculated by the Council for the 2014/15 financial year, in accordance with Sections 34 (2) to 36 (1) of the Local Government Finance Act 1992 (the Act) be as follows:-

(a) the amounts calculated in accordance with Sections 34 (2) and (3) of the Act as the basic amounts of its Council Tax for the year for dwellings in part of the Council's area :-

#### COUNCIL TAX 2014/15 BAND 'D'

<u>Community</u>	<u>County Council</u>	<u>Community Precept</u>	<u>Total</u>
	£	£	£
Aberwheeler	1111.70	13.29	1124.99
Betws G G	1111.70	14.70	1126.40
Bodelwyddan	1111.70	65.16	1176.86
Bodfari	1111.70	15.85	1127.55
Bryneglwys	1111.70	32.95	1144.65
Cefn Meiriadog	1111.70	17.45	1129.15
Clocaenog	1111.70	30.00	1141.70
Corwen	1111.70	30.27	1141.97
Cyffylliog	1111.70	25.00	1136.70
Cynwyd	1111.70	12.00	1123.70
Denbigh	1111.70	56.00	1167.70
Derwen	1111.70	27.15	1138.85
Dyserth	1111.70	28.82	1140.52
Efenechtyd	1111.70	13.98	1125.68

Gwyddelwern	1111.70	16.00	1127.70
Henllan	1111.70	18.00	1129.70
Llanarmon yn Ial	1111.70	25.26	1136.96
Llanbedr D C	1111.70	10.89	1122.59
Llandegla	1111.70	20.83	1132.53
Llandrillo	1111.70	16.00	1127.70
Llandyrnog	1111.70	20.58	1132.28
Llanelidan	1111.70	21.50	1133.20
Llanfair D C	1111.70	8.77	1120.47
Llanferres	1111.70	20.14	1131.84
Llangollen Town	1111.70	51.44	1163.14
Llangynhafal	1111.70	4.60	1116.30
Llanrhaeadr Y C	1111.70	24.00	1135.70
Llantysilio	1111.70	33.86	1145.56
Llanynys	1111.70	24.00	1135.70
Nantglyn	1111.70	30.67	1142.37
Prestatyn	1111.70	47.87	1159.57
Rhuddlan	1111.70	30.67	1142.37
Rhyl	1111.70	46.12	1157.82
Ruthin	1111.70	54.92	1166.62
St. Asaph	1111.70	39.00	1150.70
Trefnant	1111.70	7.01	1118.71
Tremeirchion/ Cwm/Waen	1111.70	15.00	1126.70

- (b) The amounts calculated in accordance with Section 36 (1) of the Act as the amounts to be taken into account for the year in respect of dwellings listed in different valuation bands. (Appendix B)

## 5.0 Police & Crime Commissioner for North Wales - PRECEPT

The precept for the Police & Crime Commissioner for North Wales for 2014/15 is £8,728,702.

In accordance with Section 40 of the Local Government Finance Act 1992, it is noted that the amounts applicable for the year in respect of dwellings listed in different valuation bands are as follows :-

### Valuation Bands

A	B	C	D	E	F	G	H	I
£	£	£	£	£	£	£	£	£
151.74	177.03	202.32	227.61	278.19	328.77	379.35	455.22	531.09

**6.0 AGGREGATE COUNCIL TAX – 2014/15 (including Police & Crime Commissioner for North Wales)**

Having calculated the aggregates in each case of the amounts at 4.0 and 5.0 above in accordance with Section 30 (2) of the Local Government Finance Act 1992, it is

**RECOMMENDED**

That the amounts of Council Tax for the 2014/15 financial year for each of the categories of dwellings be as shown in Appendix C.

**7.0 PRESCRIBED CLASS OF DWELLINGS - THE COUNCIL TAX (PRESCRIBED CLASS OF DWELLINGS) (WALES) REGULATIONS 1998 - SI 1998/105 AS AMENDED BY PRESCRIBED CLASS OF DWELLINGS - THE COUNCIL TAX (PRESCRIBED CLASS OF DWELLINGS) (WALES) (AMENDMENT) REGULATIONS 2004**

7.1 In Wales, Section 12 of the Local Government Finance Act 1992 creates a special class of property (prescribed class of dwellings) which allows a local billing authority to use its discretion in determining the level of discount to be awarded. If a dwelling meets certain criteria, then a billing authority can set the level of discount at either 25% or zero (i.e. no discount) for classes A & B, 50% or zero for class C.

7.2 The Council Tax (Prescribed Class of Dwellings)(Wales) Regulations 1998 as amended 2004, has with effect from 1st April, 2004 designated three classes of prescribed dwellings.

The classes are:-

**Class A.**

- a. A dwelling which is not the sole or main residence of an individual.
- b. Dwelling which is furnished.
- c. Occupation of the dwelling is prohibited by law for a continuous period of at least 28 days in the relevant year.
- d. Dwelling is not a mooring occupied by a boat or pitch occupied by a caravan.
- e. Dwelling is unoccupied and is managed by a personal representative in relation to the administration of a deceased person.

**Class B**

- a. A dwelling which is not the sole or main residence of an individual.
- b. Dwelling which is furnished.
- c. Occupation of the dwelling is not prohibited by law for a continuous period of at least 28 days in the relevant year.
- d. Dwelling is not a mooring occupied by a boat or pitch occupied by a caravan.
- e. Dwelling is unoccupied and is managed by a personal representative in relation to the administration of a deceased person.

## Class C

- a. A dwelling which is unoccupied.
- b. A dwelling which is substantially unfurnished.

7.3 The difference between the classes A and B is the fact Class B has unrestricted occupation throughout 365 days a year whereas Class A is restricted to a maximum of 11 months occupation in a year. E.g. planning restriction as commonly applied to holiday chalets.

7.4 The main type of property covered by these regulations relate to furnished dwellings and not someone's sole or main residence e.g. second homes.

7.5 Class C was introduced to end the Council Tax discount for chargeable dwellings which are unoccupied and substantially unfurnished for periods greater than 6 months.

This allows the Authority to levy a full charge once the initial 6 month exemption period expires; this benefits Denbighshire residents in that

- a. The property owner would be contributing a full charge
- b. There is a financial incentive to the owner to occupy the property leading to.

- The potential of increasing accommodation availability
- The reduction in the number of empty properties in communities

7.6 In the year 2009/2010 the Council resolved not to award a discount to Class A, B or C for the remaining term of the Council with the caveat that this was dependant on, no changes to Legislation or local conditions. The purpose of this resolution enabled consistency in the calculation of the Tax Base, a shorter report and the reduction in the volumes of paper produced.

## 7.7 **IT IS RECOMMENDED**

That the level of discount for Class A, B, and C as prescribed under the Council Tax (Prescribed Class of Dwellings) (Wales) Regulations 2004 be set at zero for the financial years 2014/15, 2015/16 and 2016/17 being the term of this Council with the caveat that this is dependent on, no changes to Legislation or local conditions.

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2014/15

## DENBIGHSHIRE COUNTY COUNCIL

## Appendix B

	<u>COUNTY</u> <u>PRECEPT</u>	<u>COMMUNITY</u> <u>PRECEPT</u>	<u>TOTAL</u>	<u>BAND A</u>	<u>BAND B</u>	<u>BAND C</u>	<u>BAND D</u>	<u>BAND E</u>	<u>BAND F</u>	<u>BAND G</u>	<u>BAND H</u>	<u>BAND I</u>
	£	£	£	£	£	£	£	£	£	£	£	£
ABERWHEELER	1,111.70	13.29	1,124.99	749.99	874.99	999.99	1,124.99	1,374.99	1,624.99	1,874.98	2,249.98	2,624.98
BETWS G G	1,111.70	14.70	1,126.40	750.93	876.09	1,001.24	1,126.40	1,376.71	1,627.02	1,877.33	2,252.80	2,628.27
BODELWYDDAN	1,111.70	65.16	1,176.86	784.57	915.34	1,046.10	1,176.86	1,438.38	1,699.91	1,961.43	2,353.72	2,746.01
BODFARI	1,111.70	15.85	1,127.55	751.70	876.98	1,002.27	1,127.55	1,378.12	1,628.68	1,879.25	2,255.10	2,630.95
BRYNEGLWYS	1,111.70	32.95	1,144.65	763.10	890.28	1,017.47	1,144.65	1,399.02	1,653.38	1,907.75	2,289.30	2,670.85
CEFN MEIRIADOG	1,111.70	17.45	1,129.15	752.77	878.23	1,003.69	1,129.15	1,380.07	1,630.99	1,881.92	2,258.30	2,634.68
CLOCAENOG	1,111.70	30.00	1,141.70	761.13	887.99	1,014.84	1,141.70	1,395.41	1,649.12	1,902.83	2,283.40	2,663.97
CORWEN	1,111.70	30.27	1,141.97	761.31	888.20	1,015.08	1,141.97	1,395.74	1,649.51	1,903.28	2,283.94	2,664.60
CYFYLLIOG	1,111.70	25.00	1,136.70	757.80	884.10	1,010.40	1,136.70	1,389.30	1,641.90	1,894.50	2,273.40	2,652.30
CYNWYD	1,111.70	12.00	1,123.70	749.13	873.99	998.84	1,123.70	1,373.41	1,623.12	1,872.83	2,247.40	2,621.97
DENBIGH	1,111.70	56.00	1,167.70	778.47	908.21	1,037.96	1,167.70	1,427.19	1,686.68	1,946.17	2,335.40	2,724.63
DERWEN	1,111.70	27.15	1,138.85	759.23	885.77	1,012.31	1,138.85	1,391.93	1,645.01	1,898.08	2,277.70	2,657.32
DYSERTH	1,111.70	28.82	1,140.52	760.35	887.07	1,013.80	1,140.52	1,393.97	1,647.42	1,900.87	2,281.04	2,661.21
EFENECHTYD	1,111.70	13.98	1,125.68	750.45	875.53	1,000.60	1,125.68	1,375.83	1,625.98	1,876.13	2,251.36	2,626.59
GWYDDELWERN	1,111.70	16.00	1,127.70	751.80	877.10	1,002.40	1,127.70	1,378.30	1,628.90	1,879.50	2,255.40	2,631.30
HENLLAN	1,111.70	18.00	1,129.70	753.13	878.66	1,004.18	1,129.70	1,380.74	1,631.79	1,882.83	2,259.40	2,635.97
LLANARMON YN IAL	1,111.70	25.26	1,136.96	757.97	884.30	1,010.63	1,136.96	1,389.62	1,642.28	1,894.93	2,273.92	2,652.91
LLANBEDR D C	1,111.70	10.89	1,122.59	748.39	873.13	997.86	1,122.59	1,372.05	1,621.52	1,870.98	2,245.18	2,619.38
LLANDEGLA	1,111.70	20.83	1,132.53	755.02	880.86	1,006.69	1,132.53	1,384.20	1,635.88	1,887.55	2,265.06	2,642.57
LLANDRILLO	1,111.70	16.00	1,127.70	751.80	877.10	1,002.40	1,127.70	1,378.30	1,628.90	1,879.50	2,255.40	2,631.30
LLANDYRNOG	1,111.70	20.58	1,132.28	754.85	880.66	1,006.47	1,132.28	1,383.90	1,635.52	1,887.13	2,264.56	2,641.99
LLANELIDAN	1,111.70	21.50	1,133.20	755.47	881.38	1,007.29	1,133.20	1,385.02	1,636.84	1,888.67	2,266.40	2,644.13
LLANFAIR DC	1,111.70	8.77	1,120.47	746.98	871.48	995.97	1,120.47	1,369.46	1,618.46	1,867.45	2,240.94	2,614.43
LLANFERRES	1,111.70	20.14	1,131.84	754.56	880.32	1,006.08	1,131.84	1,383.36	1,634.88	1,886.40	2,263.68	2,640.96
LLANGOLLEN TOWN	1,111.70	51.44	1,163.14	775.43	904.66	1,033.90	1,163.14	1,421.62	1,680.09	1,938.57	2,326.28	2,713.99
LLANGYNHAFAL	1,111.70	4.60	1,116.30	744.20	868.23	992.27	1,116.30	1,364.37	1,612.43	1,860.50	2,232.60	2,604.70
LLANRHAEDR Y C	1,111.70	24.00	1,135.70	757.13	883.32	1,009.51	1,135.70	1,388.08	1,640.46	1,892.83	2,271.40	2,649.97
LLANTYSILIO	1,111.70	33.86	1,145.56	763.71	890.99	1,018.28	1,145.56	1,400.13	1,654.70	1,909.27	2,291.12	2,672.97
LLANYNYS	1,111.70	24.00	1,135.70	757.13	883.32	1,009.51	1,135.70	1,388.08	1,640.46	1,892.83	2,271.40	2,649.97
NANTGLYN	1,111.70	30.67	1,142.37	761.58	888.51	1,015.44	1,142.37	1,396.23	1,650.09	1,903.95	2,284.74	2,665.53
PRESTATYN	1,111.70	47.87	1,159.57	773.05	901.89	1,030.73	1,159.57	1,417.25	1,674.93	1,932.62	2,319.14	2,705.66
RHUDDLAN	1,111.70	30.67	1,142.37	761.58	888.51	1,015.44	1,142.37	1,396.23	1,650.09	1,903.95	2,284.74	2,665.53
RHYL	1,111.70	46.12	1,157.82	771.88	900.53	1,029.17	1,157.82	1,415.11	1,672.41	1,929.70	2,315.64	2,701.58
RUTHIN	1,111.70	54.92	1,166.62	777.75	907.37	1,037.00	1,166.62	1,425.87	1,685.12	1,944.37	2,333.24	2,722.11
ST ASAPH	1,111.70	39.00	1,150.70	767.13	894.99	1,022.84	1,150.70	1,406.41	1,662.12	1,917.83	2,301.40	2,684.97
TREFNANT	1,111.70	7.01	1,118.71	745.81	870.11	994.41	1,118.71	1,367.31	1,615.91	1,864.52	2,237.42	2,610.32
TREMEIRCHION	1,111.70	15.00	1,126.70	751.13	876.32	1,001.51	1,126.70	1,377.08	1,627.46	1,877.83	2,253.40	2,628.97

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**2014/15**  
**DENBIGHSHIRE COUNTY COUNCIL**

**Appendix C**

	<u>COUNTY</u> <u>PRECEPT</u>	<u>COMMUNITY</u> <u>PRECEPT</u>	<u>POLICE</u> <u>PRECEPT</u>	<u>TOTAL</u>	<u>BAND A</u>	<u>BAND B</u>	<u>BAND C</u>	<u>BAND D</u>	<u>BAND E</u>	<u>BAND F</u>	<u>BAND G</u>	<u>BAND H</u>	<u>BAND I</u>
	£	£	£	£	£	£	£	£	£	£	£	£	£
ABERWHEELER	1,111.70	13.29	227.61	1,352.60	901.73	1,052.02	1,202.31	1,352.60	1,653.18	1,953.76	2,254.33	2,705.20	3,156.07
BETWS G G	1,111.70	14.70	227.61	1,354.01	902.67	1,053.12	1,203.56	1,354.01	1,654.90	1,955.79	2,256.68	2,708.02	3,159.36
BODELWYDDAN	1,111.70	65.16	227.61	1,404.47	936.31	1,092.37	1,248.42	1,404.47	1,716.57	2,028.68	2,340.78	2,808.94	3,277.10
BODFARI	1,111.70	15.85	227.61	1,355.16	903.44	1,054.01	1,204.59	1,355.16	1,656.31	1,957.45	2,258.60	2,710.32	3,162.04
BRYNEGLWYS	1,111.70	32.95	227.61	1,372.26	914.84	1,067.31	1,219.79	1,372.26	1,677.21	1,982.15	2,287.10	2,744.52	3,201.94
CEFN MEIRIADOG	1,111.70	17.45	227.61	1,356.76	904.51	1,055.26	1,206.01	1,356.76	1,658.26	1,959.76	2,261.27	2,713.52	3,165.77
CLOCAENOG	1,111.70	30.00	227.61	1,369.31	912.87	1,065.02	1,217.16	1,369.31	1,673.60	1,977.89	2,282.18	2,738.62	3,195.06
CORWEN	1,111.70	30.27	227.61	1,369.58	913.05	1,065.23	1,217.40	1,369.58	1,673.93	1,978.28	2,282.63	2,739.16	3,195.69
CYFYLLIOG	1,111.70	25.00	227.61	1,364.31	909.54	1,061.13	1,212.72	1,364.31	1,667.49	1,970.67	2,273.85	2,728.62	3,183.39
CYNWYD	1,111.70	12.00	227.61	1,351.31	900.87	1,051.02	1,201.16	1,351.31	1,651.60	1,951.89	2,252.18	2,702.62	3,153.06
DENBIGH	1,111.70	56.00	227.61	1,395.31	930.21	1,085.24	1,240.28	1,395.31	1,705.38	2,015.45	2,325.52	2,790.62	3,255.72
DERWEN	1,111.70	27.15	227.61	1,366.46	910.97	1,062.80	1,214.63	1,366.46	1,670.12	1,973.78	2,277.43	2,732.92	3,188.41
DYSERTH	1,111.70	28.82	227.61	1,368.13	912.09	1,064.10	1,216.12	1,368.13	1,672.16	1,976.19	2,280.22	2,736.26	3,192.30
EFENECHTYD	1,111.70	13.98	227.61	1,353.29	902.19	1,052.56	1,202.92	1,353.29	1,654.02	1,954.75	2,255.48	2,706.58	3,157.68
GWYDDELWERN	1,111.70	16.00	227.61	1,355.31	903.54	1,054.13	1,204.72	1,355.31	1,656.49	1,957.67	2,258.85	2,710.62	3,162.39
HENLLAN	1,111.70	18.00	227.61	1,357.31	904.87	1,055.69	1,206.50	1,357.31	1,658.93	1,960.56	2,262.18	2,714.62	3,167.06
LLANARMON YN IAL	1,111.70	25.26	227.61	1,364.57	909.71	1,061.33	1,212.95	1,364.57	1,667.81	1,971.05	2,274.28	2,729.14	3,184.00
LLANBEDR D C	1,111.70	10.89	227.61	1,350.20	900.13	1,050.16	1,200.18	1,350.20	1,650.24	1,950.29	2,250.33	2,700.40	3,150.47
LLANDEGLA	1,111.70	20.83	227.61	1,360.14	906.76	1,057.89	1,209.01	1,360.14	1,662.39	1,964.65	2,266.90	2,720.28	3,173.66
LLANDRILLO	1,111.70	16.00	227.61	1,355.31	903.54	1,054.13	1,204.72	1,355.31	1,656.49	1,957.67	2,258.85	2,710.62	3,162.39
LLANDYRNOG	1,111.70	20.58	227.61	1,359.89	906.59	1,057.69	1,208.79	1,359.89	1,662.09	1,964.29	2,266.48	2,719.78	3,173.08
LLANELIDAN	1,111.70	21.50	227.61	1,360.81	907.21	1,058.41	1,209.61	1,360.81	1,663.21	1,965.61	2,268.02	2,721.62	3,175.22
LLANFAIR DC	1,111.70	8.77	227.61	1,348.08	898.72	1,048.51	1,198.29	1,348.08	1,647.65	1,947.23	2,246.80	2,696.16	3,145.52
LLANFERRES	1,111.70	20.14	227.61	1,359.45	906.30	1,057.35	1,208.40	1,359.45	1,661.55	1,963.65	2,265.75	2,718.90	3,172.05
LLANGOLLEN TOWN	1,111.70	51.44	227.61	1,390.75	927.17	1,081.69	1,236.22	1,390.75	1,699.81	2,008.86	2,317.92	2,781.50	3,245.08
LLANGYNHAFAL	1,111.70	4.60	227.61	1,343.91	895.94	1,045.26	1,194.59	1,343.91	1,642.56	1,941.20	2,239.85	2,687.82	3,135.79
LLANRHAADR Y C	1,111.70	24.00	227.61	1,363.31	908.87	1,060.35	1,211.83	1,363.31	1,666.27	1,969.23	2,272.18	2,726.62	3,181.06
LLANTYSILIO	1,111.70	33.86	227.61	1,373.17	915.45	1,068.02	1,220.60	1,373.17	1,678.32	1,983.47	2,288.62	2,746.34	3,204.06
LLANYNYS	1,111.70	24.00	227.61	1,363.31	908.87	1,060.35	1,211.83	1,363.31	1,666.27	1,969.23	2,272.18	2,726.62	3,181.06
NANTGLYN	1,111.70	30.67	227.61	1,369.98	913.32	1,065.54	1,217.76	1,369.98	1,674.42	1,978.86	2,283.30	2,739.96	3,196.62
PRESTATYN	1,111.70	47.87	227.61	1,387.18	924.79	1,078.92	1,233.05	1,387.18	1,695.44	2,003.70	2,311.97	2,774.36	3,236.75
RHUDDLAN	1,111.70	30.67	227.61	1,369.98	913.32	1,065.54	1,217.76	1,369.98	1,674.42	1,978.86	2,283.30	2,739.96	3,196.62
RHYL	1,111.70	46.12	227.61	1,385.43	923.62	1,077.56	1,231.49	1,385.43	1,693.30	2,001.18	2,309.05	2,770.86	3,232.67
RUTHIN	1,111.70	54.92	227.61	1,394.23	929.49	1,084.40	1,239.32	1,394.23	1,704.06	2,013.89	2,323.72	2,788.46	3,253.20
ST ASAPH	1,111.70	39.00	227.61	1,378.31	918.87	1,072.02	1,225.16	1,378.31	1,684.60	1,990.89	2,297.18	2,756.62	3,216.06
TREFNANT	1,111.70	7.01	227.61	1,346.32	897.55	1,047.14	1,196.73	1,346.32	1,645.50	1,944.68	2,243.87	2,692.64	3,141.41
TREMEIRCHION	1,111.70	15.00	227.61	1,354.31	902.87	1,053.35	1,203.83	1,354.31	1,655.27	1,956.23	2,257.18	2,708.62	3,160.06

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**Report To:** Council

**Date of Meeting:** 25 February 2014

**Lead Member / Officer:** Cllr Julian Thompson-Hill

**Report Author:** Head of Finance and Assets

**Title:** Treasury Management Strategy Statement (TMSS) 2014/15 and Prudential Indicators 2014/15 to 2016/17 (Appendix 1)

## **1 What is the report about?**

- 1.1 The TMSS (Appendix 1) shows how the Council will manage its investments and its borrowing for the coming year and sets the policies within which the Treasury Management (TM) function operates.

## **2 What is the reason for making this report?**

- 2.1 The Chartered Institute of Public Finance and Accountancy's Code of Practice on Treasury Management (the "CIPFA TM Code") requires the Council to approve the TMSS and Prudential Indicators annually. A decision is required therefore to approve the recommendations below.

## **3 What are the Recommendations?**

- 3.1 That Council approves the TMSS for 2014/15 (Appendix 1).
- 3.2 That Council approves the setting of Prudential Indicators for 2014/15, 2015/16 and 2016/17 (Appendix 1 Annex A).
- 3.3 That Council approves the Minimum Revenue Provision Statement (Appendix 1 Section 6).

## **4 Report details**

### **Background**

- 4.1 TM involves looking after the Council's cash which is a vital part of the Council's work because approximately £0.5bn passes through the Council's bank account every year.
- 4.2 At any one time, the Council has at least £20m in cash so we need to make sure that we achieve the best rate of return possible without putting the cash at risk which is why we invest money with a number of financial institutions.

When investing, the Council's priorities are to:

- keep money safe (security);

- make sure that we get the money back when we need it (liquidity);
- make sure we get a decent rate of return (yield).

## **TMSS 2014/15**

- 4.3 The TMSS for 2014/15 is set out in Appendix 1. This report includes Prudential Indicators which set limits on the Council's TM activity and demonstrate that the Council's borrowing is affordable.

### **Prudential Indicators:**

- 4.4 The Council Fund indicators are based on the latest Capital Plan.
- 4.5 The Housing Revenue Account indicators have been calculated based on the latest Housing Stock Business Plan.
- 4.6 The individual Prudential Indicators recommended for approval are set out in Appendix 1 Annex A.

## **5 How does the decision contribute to the Corporate Priorities?**

- 5.1 An efficient TM strategy allows the Council to minimise its borrowing costs and release funding for its investment priorities.

## **6 What will it cost and how will it affect other services?**

- 6.1 There are no cost implications arising as a result of the setting of Prudential Indicators. The point of the TM Strategy is to obtain the best return within a properly managed risk framework.

## **7 What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision?**

- 7.1 This is not required as a part of this report.

## **8 What consultations have been carried out?**

- 8.1 The Council's Capital Plan and Revenue Budget have been prepared in consultation with Heads of Service, Corporate Directors, Scrutiny Committees, Cabinet and Council.
- 8.2 The Housing Stock Business Plan, revenue and capital budgets will be presented to members. Denbighshire Tenants and Residents Federation will also be consulted on the proposals.
- 8.3 The Strategy Statement was reviewed by the Corporate Governance Committee on 29 January 2014.
- 8.4 The Council has consulted with its TM consultants, Arlingclose Ltd.

## **9 Chief Finance Officer Statement**

- 9.1 TM involves looking after significant sums of cash so it is a vital part of the Council's work. It requires a sound strategy and appropriate controls to safeguard the Council's money, to ensure that reasonable returns on investments are achieved and that debt is effectively and prudently managed.
- 9.2 Council adopted the revised CIPFA Code of Practice on TM (Nov 11) at its meeting on 28 February 2012. It is a requirement of that Code for Council to approve a TMSS each financial year.
- 9.3 The Council has approved an ambitious Corporate Plan that could see £134m invested in delivering its priorities over the next five years. It is vital that the Council has a robust and effective TM function underpinning this investment and all other activities.

## **10 What risks are there and is there anything we can do to reduce them?**

- 10.1 TM is inherently risky as outlined in the Strategy Statement. The Council has a risk management policy but it is impossible to eliminate these risks completely.

## **11 Power to make the Decision**

- 11.1 The Local Government Act 2003 determines the requirement for local authorities to set Prudential Indicators and requires the Council to comply with the Prudential Code of Capital Finance for Local Authorities that has been produced by the Chartered Institute of Public Finance and Accountancy (CIPFA).

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**Denbighshire County Council**

**Treasury Management Strategy Statement  
and Investment Strategy 2014/15 to 2016/17**

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- 6. MRP Statement 2014/15**
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- 8. Other Items**

**Annexes**

- A. Prudential Indicators**
- B. Interest Rate Outlook**

**Glossary**

# Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17

## 1 Background

- 1.1 The Council is responsible for its Treasury Management decisions and activity which involves looking after the Council's cash. This is a vital part of the Council's work because approximately £0.5bn passes through the Council's bank account every year.
- 1.2 On 28 February 2012 the Authority adopted the Chartered Institute of Public Finance and Accountancy's *Treasury Management in the Public Services: Code of Practice 2011 Edition* (the CIPFA Code) which requires the Authority to approve a treasury management strategy statement (TMSS) before the start of each financial year.
- 1.3 In addition, the Welsh Government (WG) issued revised *Guidance on Local Authority Investments* in April 2010 that requires the Authority to approve an investment strategy before the start of each financial year.
- 1.4 This report fulfils the Authority's legal obligation under the *Local Government Act 2003* to have regard to both the CIPFA Code and the WG Guidance.
- 1.5 The purpose of the TMSS is to set the:
  - Treasury Management Strategy for 2014/15
  - Annual Investment Strategy for 2014/15
  - Prudential Indicators for 2014/15, 2015/16 and 2016/17 (**Annex A**)
  - Minimum Revenue Provision (MRP) Statement

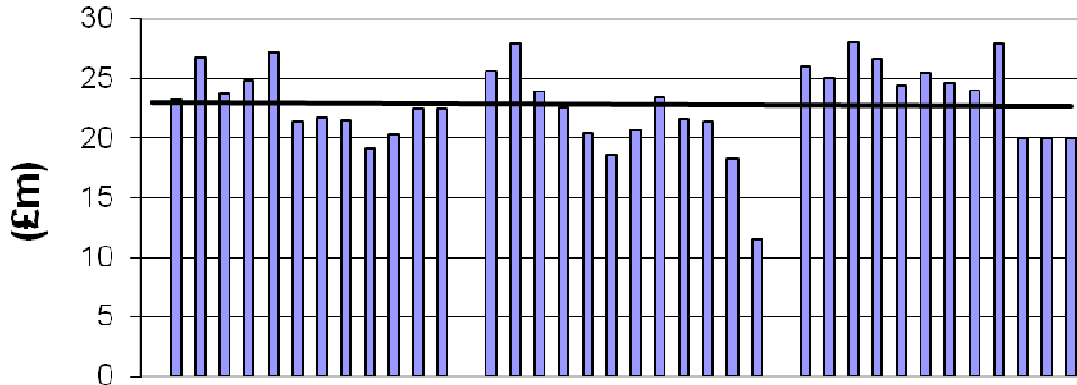
## 2 Treasury Position

- 2.1 The levels of the Council's investment and borrowing balances over the last three years are shown in the graphs below. The first chart shows that the amount of money we have to invest has remained fairly constant over the last three years. The second shows the Council's borrowing has decreased over the course of the last three years as we have relied on internal borrowing as much as possible instead of undertaking external borrowing from the Public Works Loan Board (PWLb).

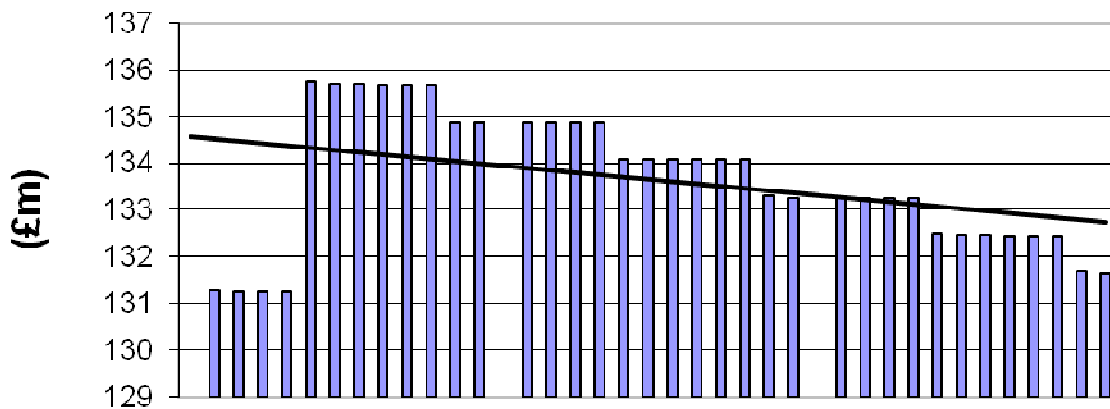


**Treasury Management Strategy Statement  
and Investment Strategy 2014/15 to 2016/17**

**Investment Balances (2011/12 - 2013/14)**



**Borrowing Balances (2011/12 - 2013/14)**



**3 Investment Strategy**

- 3.1 Both the CIPFA Code and the WG Guidance require the Authority to invest its funds prudently, and to have regard to the security and liquidity of its investments before seeking the highest rate of return, or yield. The Authority’s objective when investing money is to strike an appropriate balance between risk and return, minimising the risk of incurring losses from defaults and the risk of receiving unsuitably low investment income.
- 3.2 The Authority may invest its surplus funds with any of the counterparties in table 1 below, subject to the cash and time limits shown.

**Treasury Management Strategy Statement  
and Investment Strategy 2014/15 to 2016/17**

**Table 1: Approved Investment Counterparties**

Counterparty	Cash limit	Time limit
Banks and other organisations whose lowest published long-term credit rating from Fitch, Moody's and Standard & Poor's is:	AAA	10 years
	AA+	5 years
	AA	4 years
	AA-	3 years
	A+	2 years
	A	1 year
	A-	
The Authority's current account bank (Natwest Bank Plc) if it fails to meet the above criteria	£4m	next day
UK Central Government (irrespective of credit rating)	unlimited	50 years
UK Local Authorities (irrespective of credit rating)	£8m each	10 years
UK Registered Providers of Social Housing whose lowest published long-term credit rating is A- or higher	£5m each	10 years
UK Registered Providers of Social Housing whose lowest published long-term credit rating is BBB- or higher and those without credit ratings	£5m each	5 years
UK Building Societies without credit ratings	£1m each	1 year
Money market funds and other pooled funds	£3m each	n/a
Any other organisation, subject to an external credit assessment and specific advice from the Authority's treasury management adviser	£1m each	1 year

- 3.3 This strategy aims to diversify our investments across a larger number of financial institutions which will reduce our current reliance on a limited number of UK banks. This action is being taken because of a lower likelihood that the UK and other governments will support failing banks in the future. As the Banking Reform Act 2014 is implemented, banks will no longer be able to rely on bail-outs and they will be expected to stand on their own feet. This increases the risk to large investors such as local authorities who may be required to provide a proportion of the amount required to cover the bank's losses in the event of default. This new risk has been termed 'bail-in' risk and is potentially a greater risk to investors than the 'bail-out' risk of the past.
- 3.4 Consequently, for a group of banks under the same ownership, the banking group limit will now be equal to the individual bank limit. This is a reduction in our previous limit which was set at 1.5 times the individual bank limit.
- 3.5 As a result of an improvement in the housing market and a strengthening of building societies' balance sheets, the 2014/15 strategy will add a number of building societies to our investment list which will help us to spread our investments over a larger number of financial institutions. This will include

## **Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17**

building societies without credit ratings where an external credit assessment by our treasury advisers, Arlingclose Ltd, shows them to be suitably creditworthy.

- 3.6 The Authority's current account is held with Natwest Bank Plc which is currently rated at the minimum A- rating in table 1. Should the credit rating fall below A-, the Authority may continue to deposit surplus cash with Natwest Bank Plc providing that investments can be withdrawn on the next working day, and that the bank maintains a credit rating no lower than BBB- (the lowest investment grade rating).
- 3.7 The Authority uses long-term credit ratings from the three main rating agencies Fitch Ratings, Moody's Investors Service and Standard & Poor's Financial Services to assess the risk of investment default. The lowest available counterparty credit rating will be used to determine credit quality, unless an investment-specific rating is available. Credit ratings are obtained and monitored by the Authority's treasury advisers, who will notify changes in ratings as they occur. Where an entity has its credit rating downgraded so that it fails to meet the approved investment criteria then:
- no new investments will be made,
  - any existing investments that can be recalled or sold at no cost will be, and
  - full consideration will be given to the recall or sale of all other existing investments with the affected counterparty.
- 3.8 The Authority understands that credit ratings are good, but not perfect, predictors of investment default. Full regard will therefore be given to other available information on the credit quality of the organisations in which it invests, including credit default swap prices (the cost of banks insuring themselves against default), financial statements, information on potential government support and reports in the quality financial press. No investments will be made with an organisation if there are substantive doubts about its credit quality, even though it may meet the credit rating criteria.
- 3.9 When deteriorating financial market conditions affect the creditworthiness of all organisations, as happened in 2008 and 2011, this is not generally reflected in credit ratings, but can be seen in other market measures. In these circumstances, the Authority will restrict its investments to those organisations of higher credit quality and reduce the maximum duration of its investments to maintain the required level of security. The extent of these restrictions will be in line with prevailing financial market conditions. If these restrictions mean that insufficient commercial organisations of high credit quality are available to invest the Authority's cash balances, then the surplus will be deposited with the UK Government, via the Debt Management Office for example, or with other local authorities. This will

## Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17

cause a reduction in the level of investment income earned, but will protect the principal sum invested.

The reduction in investment income which the Council has suffered over the last five years is illustrated in Table 2 below:

**Table 2: Investment Income**

2008/09 Interest £000	2009/10 Interest £000	2010/11 Interest £000	2011/12 Interest £000	2012/13 Interest £000
2,219	635	239	408	398

3.10 **Specified Investments:** The WG Guidance defines specified investments as those:

- denominated in pound sterling,
- due to be repaid within 12 months of arrangement,
- not defined as capital expenditure by legislation, and
- invested with one of:
  - the UK Government,
  - a UK local authority, parish council or community council, or
  - a body or investment scheme of “high credit quality”.

The Authority defines “high credit quality” organisations as those having a credit rating of A- or higher that are domiciled in the UK or a foreign country with a sovereign rating of AA+ or higher.

3.11 **Non-specified Investments:** Any investment not meeting the definition of a specified investment is classed as non-specified. The Authority does not intend to make any investments denominated in foreign currencies. Non-specified investments will therefore be limited to long-term investments, i.e. those that are due to mature 12 months or longer from the date of arrangement; those that are defined as capital expenditure by legislation, such as shares in money market funds and other pooled funds; and investments with bodies and schemes not meeting the definition of high credit quality. Limits on non-specified investments are shown in table 3 below.

**Treasury Management Strategy Statement  
and Investment Strategy 2014/15 to 2016/17**

**Table 3: Non-Specified Investment Limits**

	<b>Cash limit</b>
Total long-term investments	£10m
Total shares in money market funds	£10m
Total shares in other pooled funds	£10m
Total investments without credit ratings or rated below A-	£10m
Total investments in foreign countries rated below AA+	£10m
Total non-specified investments	£20m

3.12 **Approved Instruments:** The Authority may lend or invest money using any of the following instruments:

- interest-bearing bank accounts,
- fixed term deposits and loans,
- callable deposits where the Authority may demand repayment at any time (with or without notice),
- callable loans where the borrower may demand repayment at any time,
- certificates of deposit,
- bonds, notes, bills, commercial paper and other marketable instruments, and
- shares in money market funds and other pooled funds.

Investments may be made at either a fixed rate of interest, or at a variable rate linked to a market interest rate, such as LIBOR, subject to the limits on interest rate exposures below.

#### **4 Borrowing Strategy**

4.1 Borrowing strategies continue to be influenced by the relationship between investment and borrowing rates. The interest rate forecast provided in **Annex B** indicates that an acute difference between investment and borrowing rates is expected to continue. This difference creates a “cost of carry” for any new longer term borrowing where the proceeds are temporarily held as investments because of the difference between what is paid on the borrowing and what is earned on the investment.

4.2 In view of this, the strategy which has been in place for some time now has been to reduce our investment balances and rely on internal borrowing as much as possible instead of external borrowing from the Public Works Loan Board (PWLB). This has been sustainable because the level of the Council’s balances and reserves has been sufficient to avoid the need for external borrowing.

## **Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17**

- 4.3 However, as the Corporate Plan is now progressing, we intend to review this strategy and begin to undertake new borrowing. Borrowing rates are also expected to rise so the intention is to borrow to take advantage of the lower rates which are available currently. Although this will create a cost of carry in the short term while the proceeds are temporarily held as investments, we will save in the long term because of the anticipated increase in borrowing rates which will result in higher interest costs if we delay.
- 4.4 While the Council can borrow from a number of banks, it normally only borrows from the Public Works Loan Board (PWLB) which is a Government body that lends to public sector organisations.

The approved sources of borrowing are listed below:

- PWLB
- UK local authorities
- any institution approved for investments
- any other bank or building society authorised by the Prudential Regulation Authority to operate in the UK
- UK public and private sector pension funds
- capital market bond investors
- special purpose companies created to enable joint local authority bond issues.

### **5 Debt Rescheduling**

- 5.1 The Council is able to pay off loans earlier than we have to and to replace them with cheaper loans in order to save money or to reduce the risk to the Council. Sometimes, we will replace these loans and sometimes not, depending on market conditions and interest rates.
- 5.2 The lower interest rate environment and changes in the rules regarding the premature repayment of PWLB loans has adversely affected the scope to undertake meaningful debt rescheduling although occasional opportunities arise.

### **6 Minimum Revenue Provision (MRP) Statement**

- 6.1 The Council sets aside money each year to repay debt and this is known as the Minimum Revenue Provision (MRP). In 2014/15, this will be £8.2m.
- 6.2 There are four different methods of calculating MRP and the Council needs to say each year which methods it will use. This is known as the MRP Statement.

## **Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17**

- 6.3 The MRP Statement will be submitted to Council before the start of the 2014/15 financial year. If it is ever proposed to vary the terms of the original MRP Statement during the year, a revised statement will be put to Council at that time.

### **6.4 MRP Statement**

The Council will apply the Regulatory Method for supported capital expenditure which means that MRP is charged at 4% of the Council's Capital Financing Requirement.

The Council will apply the Asset Life Method for unsupported capital expenditure which means that MRP is determined by the life of the asset for which the borrowing is undertaken.

The different methods of calculation will affect how much money the Council sets aside for debt repayment. The above statement means that where the Welsh Government gives us the money to repay debt we will repay it at 4% of whatever is outstanding. Where we borrow through Prudential Borrowing we will charge an amount that lets us repay the debt over the expected life of the asset.

- 6.5 Adopting International Financial Reporting Standards (IFRS) has resulted in leases and Private Finance Initiative (PFI) schemes coming on the balance sheet. This affects how much it appears the Council has borrowed but this is effectively covered by grant payments. MRP in respect of leases and PFI schemes brought on the balance sheet under IFRS will match the annual principal repayment for the associated deferred liability. This is a technical accounting adjustment which is cost neutral for the Council.
- 6.6 MRP on Housing assets is made in accordance with statutory requirements (the General Determination of the Item 8 Credit and Item 8 Debit).

## **7 Reporting Treasury Management Activity**

The Section 151 Officer (Head of Finance & Assets) will report to the Corporate Governance Committee on treasury management activity / performance as follows:

- (a) The Treasury Management Strategy Statement and Prudential Indicators will be submitted to the committee in January each year prior to approval by Council.
- (b) Two treasury management updates will be submitted to the committee in January and September each year.
- (c) An annual report on treasury activity will be submitted to the committee in September each year for the preceding year prior to approval by Cabinet.

A treasury update showing the latest investment and borrowing position will be included in the monthly Revenue Monitoring report and borrowing will also be reported on in the Capital Plan to Council.

## **Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17**

### **8 Other items**

#### **8.1 Member Training**

The CIPFA Code of Practice on Treasury Management requires the Section 151 Officer to ensure that all members tasked with treasury management responsibilities, including scrutiny of the treasury management function, receive appropriate training relevant to their needs and understand fully their roles and responsibilities.

The Council has nominated the Corporate Governance Committee as the committee which has responsibility for scrutiny of the treasury management function. Annual training requirements will be agreed with the Corporate Governance Committee.

#### **8.2 Treasury Management Consultants**

The Council uses Arlingclose Ltd as Treasury Management Consultants and receives the following services:

- Credit advice
- Investment advice
- Borrowing advice
- Technical accounting advice
- Economic & interest rate forecasts
- Workshops and training events

The Council maintains the quality of the service with its advisors by holding quarterly strategy meetings and tendering every 5 years. Following a recent tendering exercise, the contract was renewed with Arlingclose from 01 January 2014 for three years with an option to extend for a further two year period.

#### **8.3 Housing Revenue Account Subsidy Reform**

The Welsh Government is in negotiations with HM Treasury regarding the reform of the HRA subsidy system in Wales. Details of the precise mechanism & timing are not available at this stage. The authority will monitor developments in this area as further details become available. It is likely the changes will be implemented from 2015/16.

#### **8.4 Policy on Use of Financial Derivatives**

In the absence of any legal power to do so, the Authority will not use standalone financial derivatives (such as swaps, forwards, futures and options). Derivatives embedded into loans and investments may be used, and the risks that they present will be managed in line with the overall treasury risk management strategy.



**Treasury Management Strategy Statement  
and Investment Strategy 2014/15 to 2016/17**

**ANNEX A**

**PRUDENTIAL INDICATORS 2014/15 TO 2016/17**

**1 Background**

The indicators are calculated to demonstrate that the Council's borrowing is affordable and are underpinned by the following regulations. There is a requirement under the Local Government Act 2003 for local authorities to have regard to CIPFA's Prudential Code for Capital Finance in Local Authorities (the "CIPFA Prudential Code") when setting and reviewing their Prudential Indicators.

**2 Gross Debt and the Capital Financing Requirement**

This is a key indicator of prudence. In order to ensure that over the medium term debt will only be for a capital purpose, the Council should ensure that debt does not, except in the short term, exceed the total of the capital financing requirement in the preceding year plus the estimates of any additional increases to the capital financing requirement for the current and next two financial years.

The Section 151 Officer reports that the Council had no difficulty meeting this requirement in 2013/14 to date nor are there any difficulties envisaged in future years. This view takes into account current commitments, existing plans and the proposals in the approved budget.

**3 Estimates of Capital Expenditure**

3.1 This indicator is set to ensure that the level of proposed capital expenditure remains within sustainable limits and, in particular, to consider the impact on Council Tax and in the case of the HRA, housing rent levels.

<b>Capital Expenditure</b>	<b>2013/14 Approved £000</b>	<b>2013/14 Revised £000</b>	<b>2014/15 Estimate £000</b>	<b>2015/16 Estimate £000</b>	<b>2016/17 Estimate £000</b>
Council Fund	29,727	30,559	23,903	5,027	4,571
Corporate Plan – Approved		7,139	2,246		
Corporate Plan – Proposed	6,603		11,649	34,083	29,102
HRA	9,182	7,384	6,178	5,179	5,335
<b>Total</b>	<b>45,512</b>	<b>45,082</b>	<b>43,976</b>	<b>44,289</b>	<b>39,008</b>

The Corporate Plan has been divided in the table above between those elements which have been approved and those which are proposed at this stage. The indicators below incorporate both elements of the Corporate Plan.

**Treasury Management Strategy Statement  
and Investment Strategy 2014/15 to 2016/17**

3.2 Capital expenditure will be financed as follows:

<b>Capital Financing</b>	<b>2013/14 Approved £000</b>	<b>2013/14 Revised £000</b>	<b>2014/15 Estimate £000</b>	<b>2015/16 Estimate £000</b>	<b>2016/17 Estimate £000</b>
<b>Council Fund</b>					
Capital Receipts	1,738	1,451			
Grants & Contributions	14,016	19,740	9,015	1,868	1,841
Revenue Contributions & Reserves	1,009	1,175	729		
Supported Borrowing	6,846	4,196	5,702	2,909	2,730
Prudential Borrowing	6,118	3,997	8,457	250	
	<b>29,727</b>	<b>30,559</b>	<b>23,903</b>	<b>5,027</b>	<b>4,571</b>
<b>Corporate Plan</b>					
Capital Receipts		400			588
Grants & Contributions	990	1,200	2,834	12,252	6,207
Revenue Contributions & Reserves	2,505	1,213	1,976	7,245	4,844
Supported Borrowing	1,458	218	100		
Prudential Borrowing	1,650	4,108	8,985	14,586	17,463
	<b>6,603</b>	<b>7,139</b>	<b>13,895</b>	<b>34,083</b>	<b>29,102</b>
<b>Total</b>	<b>36,330</b>	<b>37,698</b>	<b>37,798</b>	<b>39,110</b>	<b>33,673</b>
<b>HRA</b>					
Capital Receipts	18	28	38	40	41
Grants & Contributions	2,400	2,400	2,400	2,400	2,400
Revenue Contributions & Reserves	1,024	890	943	1,658	1,805
Supported Borrowing					
Prudential Borrowing	5,740	4,066	2,797	1,081	1,089
<b>Total</b>	<b>9,182</b>	<b>7,384</b>	<b>6,178</b>	<b>5,179</b>	<b>5,335</b>

**4 Ratio of Financing Costs to Net Revenue Stream**

4.1 This is an indicator of affordability and highlights the revenue implications of existing and proposed capital expenditure by identifying the proportion of the revenue budget required to meet borrowing costs. It shows how much of its budget the Council uses to repay debt and interest.

## Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17

4.2 The ratio is based on costs net of investment income.

Ratio of Financing Costs to Net Revenue Stream	2013/14 Approved £000	2013/14 Revised £000	2014/15 Estimate £000	2015/16 Estimate £000	2016/17 Estimate £000
Financing Costs	12,168	12,669	13,002	13,958	14,399
Net Revenue Stream	190,687	191,573	187,683	185,882	185,882
<b>Council Fund Ratio</b>	<b>6.38%</b>	<b>6.61%</b>	<b>6.93%</b>	<b>7.51%</b>	<b>7.75%</b>
Financing Costs	3,092	2,973	3,249	3,385	3,390
Net Revenue Stream	12,662	12,727	13,260	13,882	14,575
<b>HRA Ratio</b>	<b>24.42%</b>	<b>23.36%</b>	<b>24.50%</b>	<b>24.38%</b>	<b>23.26%</b>

## 5 Capital Financing Requirement

5.1 The Capital Plan relies on various sources of finance i.e. grants, contributions and capital receipts. Once these are used up, we need to rely on borrowing and the Capital Financing Requirement (CFR) is the amount we need to borrow. Our borrowing shouldn't therefore go above the CFR. The Council's CFR and borrowing levels are compared in the table below for the current and future years.

Capital Financing Requirement	31/03/14 Approved £000	31/03/14 Revised £000	31/03/15 Estimate £000	31/03/16 Estimate £000	31/03/17 Estimate £000
Council Fund	150,707	145,486	161,803	171,967	184,174
HRA	33,375	30,669	31,705	30,889	30,031
PFI	10,526	10,526	10,437	10,058	9,627
<b>Total CFR</b>	<b>194,608</b>	<b>186,681</b>	<b>203,945</b>	<b>212,914</b>	<b>223,832</b>
<b>Total Debt</b>	<b>153,460</b>	<b>141,648</b>	<b>161,598</b>	<b>177,769</b>	<b>195,608</b>

Note that the projected debt level at 31/03/14 was originally estimated in February 2013 to be £12m higher than the revised estimate because the original estimate was based on the capital expenditure in the Capital Plan to be funded by borrowing for 2013/14. In practice, the Council has been internally borrowing as discussed earlier in the report and has not undertaken any external borrowing yet this year.

## 6 Incremental Impact of Capital Investment Decisions

6.1 This indicator shows how much of the Council Tax income is spent on paying debt interest.

## Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17

Incremental Impact of Capital Investment Decisions	2013/14 Approved £	2014/15 Estimate £	2015/16 Estimate £	2016/17 Estimate £
Increase in Band D Council Tax due to:				
Prudential Borrowing	5.35	3.47	2.63	2.63
Capital Receipts	0.69	0.00	0.00	0.00
Reserves	0.40	0.55	0.00	0.00
<b>Total</b>	<b>6.44</b>	<b>4.02</b>	<b>2.63</b>	<b>2.63</b>
Average Weekly Housing Rents	1.67	1.01	0.95	0.95

This indicator shows the equivalent impact on Council Tax of the decision to undertake Prudential Borrowing as well as the investment interest lost by using capital receipts and reserves to part fund the Capital Plan. The impact of supported borrowing has not been included because it is assumed that the Council would always spend its supported borrowing to fund its Capital Plan.

The increases in council house rents reflect the additional costs of financing the borrowing to be undertaken each year as part of the Housing Stock Business Plan with the aim to attain the Welsh Housing Quality Standard during 2014. The indicator illustrates the impact of each year's capital expenditure and new borrowing on weekly rents.

### 7 **Authorised Limit & Operational Boundary for External Debt**

- 7.1 The Council has an integrated treasury management strategy and manages its treasury position in accordance with its approved strategy and practice. Overall borrowing will therefore arise as a consequence of all the financial transactions of the Council and not just those arising from capital spending reflected in the CFR.
- 7.2 The **Authorised Limit** sets the maximum level of external borrowing. It is measured on a daily basis against all external borrowing items on the Balance Sheet i.e. long and short term borrowing, overdrawn bank balances and long term liabilities. This Prudential Indicator separately identifies borrowing from other long term liabilities such as finance leases. It is consistent with the Council's existing commitments, its proposals for capital expenditure and financing and its approved treasury management policy statement and practices. This is reported as a part of the Capital Monitoring Report.
- 7.3 The Authorised Limit has been set on the estimate of the most likely, prudent but not worst case scenario with sufficient headroom over and above this to allow for unusual cash movements.
- 7.4 The Authorised Limit is the statutory limit determined under Section 3(1) of the Local Government Act 2003 (referred to in the legislation as the

## Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17

Affordable Limit) and if it is breached, it would be reported to the next Council meeting.

Authorised Limit for External Debt	2013/14 Approved £000	2013/14 Revised £000	2014/15 Estimate £000	2015/16 Estimate £000	2016/17 Estimate £000
Borrowing	175,000	165,000	220,000	240,000	260,000

Although details of the precise mechanism and timing are not available at this stage, the reform of the HRA subsidy system in Wales is likely to be implemented from 2015/16. Current calculations suggest that we will need to borrow £39m to buy ourselves out of the subsidy system and it is assumed that this will take place in March 2015. The borrowing limits shown above include an additional £40m from 2014/15 to cover this borrowing.

- 7.5 The **Operational Boundary** links directly to the Council's estimates of the CFR and estimates of other cash flow requirements. This indicator is based on the same estimates as the Authorised Limit reflecting the most likely, prudent but not worst case scenario but without the additional headroom included within the Authorised Limit.

Operational Boundary for External Debt	2013/14 Approved £000	2013/14 Revised £000	2014/15 Estimate £000	2015/16 Estimate £000	2016/17 Estimate £000
Borrowing	170,000	160,000	215,000	235,000	255,000

### 8 Adoption of the CIPFA Treasury Management Code

- 8.1 This indicator demonstrates that the Council has adopted the principles of best practice. The Council adopted the original Code in March 2002. A revised Code was issued in November 2009 and another in November 2011. One of the recommendations is that the Code is adopted by Council.

Adoption of the CIPFA Code of Practice in Treasury Management
The Council approved the adoption of the revised CIPFA Treasury Management Code (Nov 2011) at its meeting on 28 February 2012.

### 9 Upper Limits for Fixed Interest Rate Exposure and Variable Interest Rate Exposure

- 9.1 These indicators allow the Council to manage the extent to which it is exposed to changes in interest rates. This Council calculates these limits on a net interest paid basis (i.e. interest paid on fixed rate debt net of interest received on fixed rate investments).
- 9.2 The upper limit for variable rate exposure has been set to ensure that the Council is not exposed to interest rate rises which could adversely impact

## Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17

on the revenue budget. The limit allows for the use of variable rate debt to offset exposure to changes in short-term rates on investments.

	2013/14 Approved %	2014/15 Estimate %	2015/16 Estimate %	2016/17 Estimate %
<b>Upper Limit for Fixed Interest Rate Exposure</b>	100	100	100	100
<b>Upper Limit for Variable Rate Exposure</b>	40	40	40	40

- 9.3 The limits above provide the necessary flexibility within which decisions will be made for drawing down new loans on a fixed or variable rate basis; the decisions will ultimately be determined by expectations of anticipated interest rate movements as set out in the Council's treasury management strategy.

### 10 Maturity Structure of Fixed Rate borrowing

- 10.1 This indicator highlights the existence of any large concentrations of fixed rate debt needing to be replaced at times of uncertainty over interest rates and is designed to protect against excessive exposures to interest rate changes in any one period, in particular in the course of the next ten years.
- 10.2 It is calculated as the amount of projected borrowing that is fixed rate maturing in each period as a percentage of total projected borrowing that is fixed rate. The maturity of borrowing is determined by reference to the earliest date on which the lender can require payment.

<b>Maturity structure of fixed rate borrowing</b>	<b>Actual %</b>	<b>Lower Limit %</b>	<b>Upper Limit %</b>
under 12 months	3.63	0	10
12 months and within 24 months	1.58	0	10
24 months and within 5 years	4.99	0	20
5 years and within 10 years	5.87	0	25
10 years and above	83.93	50	100

### 11 Credit Risk

- 11.1 The Council considers security, liquidity and yield, in that order, when making investment decisions.
- 11.2 Credit ratings remain an important element of assessing credit risk, but they are not a sole feature in the Council's assessment of counterparty credit risk.

**Treasury Management Strategy Statement  
and Investment Strategy 2014/15 to 2016/17**

11.3 The Council also considers alternative assessments of credit strength, and information on corporate developments of and market sentiment towards counterparties. The following key tools are used to assess credit risk:

- Published credit ratings of the financial institution (minimum A- or equivalent) and its sovereign (minimum AA+ or equivalent for non-UK sovereigns);
- Sovereign support mechanisms;
- Credit default swaps (where quoted);
- Share prices (where available);
- Economic fundamentals, such as a country's net debt as a percentage of its GDP;
- Corporate developments, news, articles, markets sentiment and momentum;
- Subjective overlay.

11.4 The only indicators with prescriptive values are credit ratings. Other indicators of creditworthiness are considered in relative rather than absolute terms.

**12 Upper Limit for total principal sums invested over 364 days**

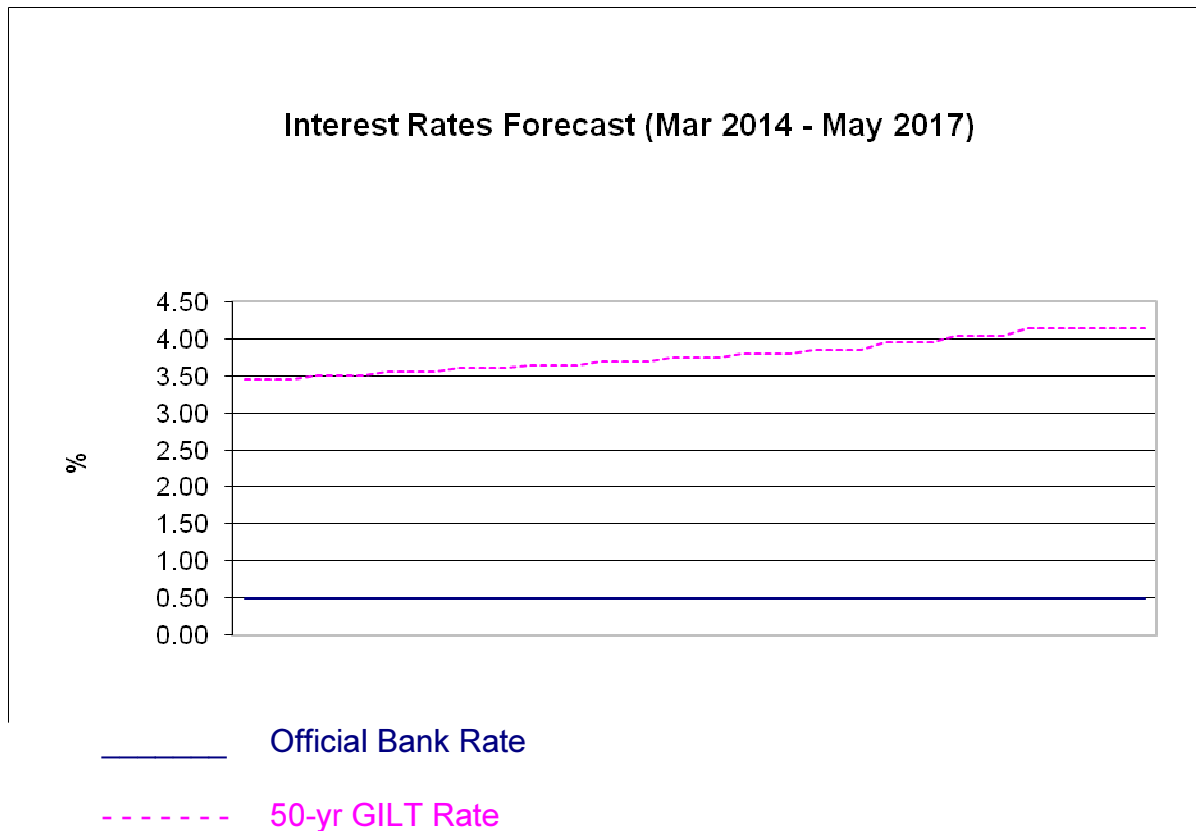
12.1 The purpose of this limit is to contain exposure to the possibility of loss that may arise as a result of the Council having to seek early repayment of the sums invested.

Upper Limit for total principal sums invested over 364 days	2013/14 Approved £m	2014/15 Estimate £m	2015/16 Estimate £m	2016/17 Estimate £m
	6.00	10.00	10.00	10.00

INTEREST RATES FORECAST

The graph below shows the interest rate forecast for the Official UK Bank Rate and the 50 year GILT rate from March 2014 to May 2017. The Official Bank Rate influences the rate at which the Council can invest. The GILT rate is the rate at which the Government borrows money and therefore this affects the rate at which we can borrow from the PWLB which is approximately 1% above GILT rates.

As the graph shows, it's much more expensive to borrow than to invest at the moment with the Official UK Bank Rate expected to remain at 0.5% for some time. The graph illustrates that the difference between investment and borrowing rates is approximately 3%. This means that the cost of carry referred to in paragraph 4.1 in **Appendix 1** is approximately £30,000 for every £1m borrowed because the Council could borrow for 50 years at a rate of approximately 4% but could only invest at a rate of approximately 1%.





## Treasury Management Strategy Statement and Investment Strategy 2014/15 to 2016/17

### GLOSSARY - Useful guide to Treasury Management Terms and Acronyms

Bank of England	UK's Central Bank
Bank Rate	Bank of England Interest Rate (also known as Base Rate)
CPI	Consumer Price Index – a measure of the increase in prices
RPI	Retail Price Index – a measure of the increase in prices
DMO	Debt Management Office – issuer of gilts on behalf of HM Treasury
FSA	Financial Services Authority - the UK financial watchdog
GDP	Gross Domestic Product – a measure of financial output of the UK
GILTS	Investments issued by UK Government which pay a fixed cash payment to the holder
LIBID	London Interbank Bid Rate - International rate that banks lend to other banks
LIBOR	London Interbank Offer Rate – International rate that banks borrow from other banks (the most widely used benchmark or reference for short term interest rates)
PWLB	Public Works Loan Board – a Government department that lends money to Public Sector Organisations
MPC	Monetary Policy Committee - the committee of the Bank of England that sets the Bank Rate
Long term rates	More than 12 months duration
Short term rates	Less than 12 months duration

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**Report To:** County Council  
**Date of Meeting:** 25 February 2014  
**Lead Member / Officer:** Councillor Barbara Smith  
**Report Author:** Linda Atkin, Head of HR  
**Title:** Policies & Procedures

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## 1. What is the report about?

The report relates to two HR policies which have recently been developed:

- a) Domestic Abuse, Violence against Women and Sexual Violence Policy.
- b) Disclosure and Barring Service Policy (replaces the previous CRB Policy)

## 2. What is the reason for making this report?

To gain Full Council approval to adopt these two policy for Denbighshire County Council.

## 3. What are the Recommendations?

That Full Council agrees to adopt the following policies:

- c) Domestic Abuse, Violence against Women and Sexual Violence Policy.
- d) Disclosure and Barring Service Policy

## 4. Report details.

### **Domestic Abuse, Violence against Women and Sexual Violence Policy**

The Welsh Government commissioned the 10,000 Safer Lives Project to ensure that all relevant service providers and organisations are able to identify the signs of domestic abuse and are able to effectively support individuals who experience domestic abuse.

As part of this project there is a requirement for the Council to introduce a Domestic Abuse, Violence against Women and Sexual Violence Policy. The policy is based on a standard policy developed by the Welsh Government and the categories used are those defined by the 10,000 Safer Lives Project which is why there is a specific category relating to violence against women.

The policy details Denbighshire County Council's condemnation of any form of domestic abuse, violence against women and sexual violence and recognises it is both a crime and unacceptable.

It details the Council's commitment to developing a workplace culture in which there is zero tolerance for domestic abuse, violence against women and sexual violence and recognises that the responsibility for this lies with the perpetrator.

We also wish to send out a strong message that domestic abuse, violence against women and sexual violence is unacceptable.

The policy details the responsibility of Managers, HR and other employees along with what support the victim/survivor can expect from the Council. It provides managers with clear guidance on what they should do if an employee discloses to them that they have been subjected to domestic abuse, violence or sexual violence.

A very useful section of the document is the practical support that the Council can offer to an employee which will ensure that those experiencing domestic abuse and sexual violence are able to work in a safe and supported workplace.

A copy of the proposed policy is attached in Appendix 1.

### **Disclosure and Barring Service Policy**

Denbighshire County Council has a duty to ensure the suitability of all those it employs in whatever capacity. Proper recruitment practices form a crucial part in the protection of Council's vulnerable clients.

As part of the recruitment procedures the Council uses Disclosure and Barring Service (DBS) checks where appropriate and subsequently makes a decision regarding the employment of that person within the Council.

The Disclosure and Barring Service (DBS) replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) and this policy has been developed to meet the changes required as a result of this merger. The new policy complies with the DBS Code of Practice.

The main policy change within this document is the increase in the period between checks. For all posts that require a Disclosure Certificate, the Council requires each post holder to be re-checked every four years – this was previously 3 years. However, in accordance with the Care Standards Inspectorate for Wales some roles may require a three yearly DBS Check in order to meet their registration requirements. All school Governors will be checked on appointment.

Other changes have been introduced as a result of the Safeguarding of the Vulnerable Groups Act regarding the definition of regulated activity for Children and Adults and as a result Heads of Services have been requested to review all posts within their service to ensure compliance with the new regulations.

The new policy stresses the importance of employees not starting without the required checks. However, it does recognise that in exceptional circumstances this may be required and has introduced a risk assessment process for such circumstances which has to be signed off and agreed by the appropriate Head of Service/Head Teacher.

A copy of the proposed policy is attached in Appendix 2.

**5. How does the decision contribute to the Corporate Priorities?**

The agreement and implementation of the Domestic Abuse Policy will contribute towards the council legal obligation to ensure employees have a safe working environment.

There is also potential for it to contribute towards the Council's priority to reduce sickness absence levels within the services.

This DBS Policy will ensure that the Council meets its safeguarding obligations.

**6. What will it cost and how will it affect other services?**

There are no additional costs associated with the implementation of either policy.

**7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report.**

Copies of the Equality Impact Assessments are attached in Appendix 3 for information.

**8. What consultations have been carried out with Scrutiny and others?**

The changes to the policy have been distributed for consultation with the Council's Senior Leadership Team and recognised Trade Unions. The two documents were referred to LJCC on the 12<sup>th</sup> February 2014, where both documents were recommended for adoption by Full Council.

**9. Chief Finance Officer Statement**

There are no cost implications resulting from the introduction of these policies.

**10. What risks are there and is there anything we can do to reduce them?**

There are no risks associated with the implementation of these policies.

**11. Power to make the Decision**

Power to make the decision is s112 Local Government Act 1972

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DENBIGHSHIRE COUNTY COUNCIL



.....Directorate/Service

.....Department

**Definition clearly stated: Policy**

---

**Workplace policy on Domestic Abuse,  
Violence against Women and Sexual Violence**

**Author/Custodian:**

**Date agreed & Implemented:**

**Agreed by:**

**Review date:**

**and**

**Frequency:**

**Equality Impact Assessment completed**

(An Equality Impact Assessment offers an opportunity for staff to think carefully about the impact of their work on local people and other members of staff).

**Date:**

**Internal or Public Domain:**

### **Version Control**

*Example below of the use of the version control table:*

Ref	Status	Date	Reason for Change	Authorised
V2	Consultative Draft	11.04.13	New Policy	Catrin Roberts
V3	Consultative Draft	14.10.13	Comment from Trade Unions	Catrin Roberts
V4	Consultative Draft	16.01.14	Feedback from Welsh Government	Catrin Roberts

## Denbighshire County Council

### **Title: Workplace Policy on Domestic Abuse , Violence Against Women and Sexual Violence**

#### **Contents:**

1. Policy Statement
2. What is Domestic Abuse , Violence Against Women and Sexual Violence?
3. Legal Obligations
4. Aims of the Policy
5. Application/Scope of the Policy
6. Roles and Responsibilities
7. Common Myths
8. Perpetrators
9. Application of Procedures
10. Appendices



## 1. Policy Statement

Denbighshire County Council (DCC) condemns domestic abuse, violence against women and sexual violence and recognises it is both a crime and unacceptable. We are committed to developing a workplace culture in which there is zero tolerance for domestic abuse, violence against women and sexual violence and recognises that the responsibility for domestic abuse, violence against women and sexual violence lies with the perpetrator.

We aim to create a safer workplace by understanding the risks and consequences in the workplace for victims/survivors of domestic abuse, violence against women and sexual violence. We also wish to send out a strong message that domestic abuse, violence against women and sexual violence is unacceptable. If the Council is made aware of an employee who has been accused of, or charged with domestic abuse, violence against women or sexual violence, the council should consider whether this has any impact on the role they undertake and if so whether an investigation into the allegations is necessary. Each case will be considered on an individual basis.

If the domestic abuse, violence or sexual violence has taken place during working hours or on the council's premises, the council will commission an investigation into the allegations, and dependent on the outcome will take appropriate action in accordance with council policy.

At Denbighshire County Council we aim to support individuals through periods of domestic abuse, violence and/or sexual violence and where possible, provide advice and information to aid the affected individuals and colleagues to cope with such circumstances.

Our policy recognises that support can be made available to those who are perpetrators of domestic abuse, violence and sexual violence. This provision is to aid the cessation to the cycle of abuse.

The intention is to ensure that if such issues do arise, they are dealt with in a way that is both clear and fair to the employee.

Denbighshire County Council (DCC) believes that flexible and supportive policies have benefits for staff, the council users and the Council.

DCC already has a role in the prevention of domestic abuse, violence against women and sexual violence; support to these victims is through its involvement in the Community Safety Partnership. The development of a work place policy demonstrates our commitment to tackling these issues and of raising awareness.

## 2. What is Domestic Abuse, Violence against Women or Sexual Violence?

### Domestic Abuse

Domestic abuse is the misuse of power and control by one individual over another individual within the context of a close personal relationship. Domestic abuse can include a wide range of abusive and controlling behaviours, including:

- Physical abuse
- Psychological abuse
- Emotional abuse
- Sexual abuse
- Financial control

The Welsh Assembly National Domestic Abuse Strategy defines domestic abuse as:-

‘the use of physical and/or emotional abuse or violence, including undermining of self-confidence, sexual violence or the threat of violence, by any person, who is or has been in a close relationship with the victim, including abuse of parents or adult children’

Domestic abuse is an important issue for all. It has no boundaries in terms of geography, wealth, race, religion, disability, age or sexuality. Statistically at least 10% of employees are likely to be victims or survivors of domestic abuse every year.

It is important to recognise that while domestic abuse can affect both sexes, women and men’s experiences of violence are different. It should also be recognised that there can be additional issues for employees because of their ethnic background, religion, age, sexuality or disability.

### Violence against women

Violence against women is defined by the **United Nations** as ‘any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life’

Accordingly, violence against women encompasses but is not limited to the following:

1. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other

traditional practices harmful to women, non-spousal violence and violence related to exploitation;

2. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
3. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

### **Sexual Violence**

Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.

**(Appendix 2 for examples of domestic abuse and sexual violence and warning signs)**

## **2. Legal Obligations**

Under the Human Rights Act we have an obligation to protect the human rights of individuals and to ensure that their human rights are not being violated. The Equality Act 2010 also states we have a duty to eliminate unlawful discrimination, harassment and victimisation including harassment by third parties. There are also various Health & Safety laws relevant to violence at work and by producing this policy we aim to ensure we are honouring our legal obligations.

The main responsibilities of employers and employees for the health and safety of people at work are defined by the Health and Safety at Work Act 1974; The Management of Health and Safety at Work Regulations 1992; The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995; The Health and Safety (Consultation with Employees) Regulations 1996. These procedures will apply to most situations of violence and potential violence at work. However, managers may have extra factors to consider if these incidents involve domestic abuse. Incidents may involve violent partners or ex-partners visiting the workplace, abusive phone calls, or intimidation or harassment of the victim or other employee by the alleged perpetrator.

The above outline why there are many legislative reasons why an employer should offer support to affected staff. For further details please refer to **(Appendix 3)**

#### 4. Aims of the Policy

Domestic Abuse, violence against women and sexual violence is not a private matter and can impact greatly on an individual's working life. Research shows that 75% of domestic abuse victims are targeted at work and 20% of women take time off work because of domestic violence<sup>1</sup>. It is possible for perpetrators to use workplace resources, such as phones, email and other means to threaten, harass or abuse their victim.

Every year across the UK at least three million women experience violence and many more are living with the legacies of past abuse<sup>2</sup> every week at least two women are killed by violent partners or ex-partners<sup>3</sup>

In England and Wales £2.7billion<sup>4</sup> a year is lost through economic output due to decreased productivity, administrative difficulties from unplanned time off, lost wages and sick pay. A Home Office report in 1999 stated that 1 in 4 women and 1 in 6 men will experience domestic abuse at some point in their life.

Domestic abuse can go beyond actual physical violence. It can also involve emotional abuse, the destruction of a spouse's or partner's property, their isolation from friends, family or other potential sources of support, control over access to money, personal items, food, transportation and the telephone, honour based violence, forced marriage and stalking.

Domestic abuse includes actual harm of children as part of controlling women and is a strong indicator of child abuse. The Children's Act has extended the definition of 'harm' to include any impairment to a child's health and development as a result of witnessing the ill treatment of others. Ill treatment is broader than physical violence and includes sexual abuse and forms of ill treatment such as seeing a person harassed or intimidated by another person.

Domestic abuse is rarely a 'one off' occurrence but is frequent and persistent, aimed at instilling fear into, and compliance from the victim. Once it has started it often becomes more frequent and more violent. On average a victim of domestic abuse can be assaulted up to 35 times before they report the matter to the police.

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<sup>1</sup> <http://www.equalityhumanrights.com/wales/projects/your-business-workplace-policies-on-domestic-abuse-and-mental-health/domestic-abuse-is-your-business/>

<sup>2</sup> Coy, M, Kelly, L & Foord, J (2009) *Map of Gaps 2: The postcode lottery of Violence against Women support services in Britain*, London: End Violence Against Women

<sup>3</sup> Home Office (2003) Reducing homicide report. London: Home Office.

<sup>4</sup> Walby, S (2004) *The Cost of Domestic Violence*, London: Women and Equality Unit  
Jaffe et al (1986) The impact of police charges in incidents of wife abuse, *Journal of Family Violence*1(1): 37 - 39

Statistics also tell us that the risk of serious assault, permanent injury or even murder increases when an individual decides to leave home or immediately after.

## **5. Application/Scope of the Policy**

The policy applies to all council employees and elected members with the exception of:-

- Agency workers
- Volunteer staff or contractors

The policy will apply to full-time, part-time, fixed term and temporary employees who have an employment contract with the council, regardless of the hours worked.

## **6. Roles & Responsibilities**

### **6.1 Why is this a workplace issue?**

Domestic abuse, violence or sexual violence can be a performance and productivity concern. The effects of domestic abuse, violence or sexual violence can include decreased productivity, lateness, stress, absenteeism, errors and increased employee turnover.

Work colleagues may also be affected; they may be followed to and from work, or subject to questioning about the victim's contact details or location.

It is important to recognise that although domestic abuse, violence or sexual violence impacts on the health, safety and wellbeing of employees, for some individuals suffering from domestic abuse, violence or sexual violence, being at work can be a safe haven. A supportive workplace is essential as it can also help protect and provide a route to safety.

The council has a duty to meet its obligations to ensure employees have the right to work in a safe environment and is committed to its responsibilities.

### **6.2 Employee activity**

If you are the victim of domestic abuse, violence or sexual violence and wish to disclose such details, it is advisable to speak to your Supervisor/Line Manager in the first instance. Should you prefer not to do this, you may choose to speak to a member of the Occupational Health Department, the HR Department, or your Trade Union. You may also choose to speak to your colleagues about your situation. In any disclosure it is recommended you consider the support you wish to receive and who can arrange this for you.

### **6.3 What you can expect as a victim/survivor of domestic abuse, violence or sexual violence**

DCC is committed to ensuring that anyone disclosing domestic abuse, violence or sexual violence will be believed and supported.

Employees who disclose domestic abuse, violence or sexual violence to a manager can expect a sensitive and non-judgmental response and should be able to discuss how the organisation can support them.

Remember:

- It is not your fault
- You will be believed
- There is support available

Employees can expect DCC to support them to access confidential help and support if they want to.

DCC recognises that becoming free from abuse is a process that can take a long time, and will not judge any decisions made by employees, but will provide on-going non-judgmental support.

### **6.4 Managers Responsibilities**

Domestic Abuse, violence against women or sexual violence is often perceived as a private matter rather than a workplace issue and managers may be reluctant to raise the issue with employees for a range of reasons including not knowing how to respond. However research show that victims of domestic abuse, violence and sexual violence within a sensitive environment would welcome workplace support as it can be the first step to safety planning.

Employers have an important part to play in referring victims and perpetrators of domestic abuse, violence and sexual violence to specialist organisations, helping them access the range of support they need and putting in place measures to increase their safety.

It is recognised that all people managers are able to:

- Recognise the problem (look for signs and ask)
- Respond appropriately
- Record the details
- Signpost where necessary to supporting agencies/charities
- Support those experiencing domestic abuse in a sympathetic, non-judgemental and confident manner.

- Maintain confidentiality of information (except where there are concerns about children or vulnerable adults)

## 6.5 Human Resources responsibilities

- Central responsibility for developing a policy and keep updated.
- Ensure managers receive basic domestic abuse, violence against women & sexual violence awareness training.
- Ensure awareness is raised of policy implementation for all DCC employees
- Maintain confidentiality of information (except where there are concerns about children or vulnerable adults)

## 6.6 Employees responsibilities

- Take basic steps to assist friends and colleagues
- Behave in a supporting manner
- Assist affected colleague in gaining confidence to tackle and report the problems they are experiencing

## 7. Common Myths about Domestic Abuse and Work

### Myth 1

***Domestic violence is about an employee's personal life and has no impact on my business.***

Fact: Domestic violence has an impact on the financial strength and success of the organisations for which its victims work. Domestic violence leads to decreased productivity and poor performance, erratic attendance, absenteeism and employee turnover.

### Myth 2

***Domestic violence victims are safe at work***

Fact: Research indicates that nearly 75 per cent of domestic abuse victims are targeted at work - from harassing phone calls and abusive partners arriving at the office unannounced, to physical assaults. Once a person leaves an abusive partner they are especially vulnerable at work, as it may be the only place they can be located or harmed. Also, many people meet their partners at work. If both perpetrator and victim work for the same organisation, there are more opportunities for victims to be targeted there.

Simple, practical measures such as alerting security personnel, varying start and finish times or providing a mobile phone can thwart violent perpetrators and protect victims.

### Myth 3

#### ***Supporting victims will mean turning our managers or HR staff into social workers***

Fact: It's not necessary for organisations to have specialised expertise in house; Employees can be referred to domestic violence helplines or other sources of advice. By being aware of how domestic violence can affect victims and being ready to make adjustments to assist them, employers can complement this specialist help with practical support.

### Myth 4

#### ***Domestic violence only affects women***

Fact: Domestic violence can happen to men as well as women. However it is true that more women than men are victims, including the majority of repeat victims. Domestic violence does not only harm the victim. Parents, children, siblings and friends can also be profoundly affected – including their work. Abuse against children can often take place at the same time as abuse against a woman. A conservative estimate is that in 40% of cases of domestic abuse, the man is abusing both his partner and the children.

## **8. Perpetrators**

Domestic abuse, violence against women and sexual violence perpetrated by employees will not be condoned under any circumstances nor will it be treated as a purely private matter.

Employees are expected to abide by the Council's Code of Conduct. The Code states that employees of DCC and office holders must keep to the standards of the Code. If they do not do this, it will be considered a serious matter and could result in disciplinary action and dismissal.

If an employee approaches DCC about their abusive behaviour, DCC will provide information about the services and support available to them, and will encourage the perpetrator to seek support and help from appropriate source.

DCC will treat any allegation, disclosure or conviction of a domestic abuse, violence against women and sexual violence related offence on a case-by-case basis.

The issues surrounding domestic abuse, violence against women and sexual violence can be complex and advice should be sought from HR Direct.

Employees should be aware that domestic abuse, violence against women and sexual violence is a serious matter that can lead to criminal convictions.



In line with the terms and conditions of employment with the Council, employees are required to inform their line manager if they are charged with, or convicted of, a criminal offence.

Where employees are charged or convicted of a criminal offence outside of their employment with the Council, appropriate disciplinary action may be taken where the offence has a bearing on your employment. Where perpetrators are employed in posts requiring a valid CRB disclosure, a caution or conviction relating to domestic abuse and sexual violence may have an adverse impact on their suitability to remain in that post.

Any employee, who threatens, harasses or abuses a partner or family member at, or from the Council's workplace will be subject to disciplinary action up to and including dismissal. This includes employees who use Council resources such as phones, fax machines, email, mail or other means to threaten, harass or abuse a partner or family member.

Conduct outside work (whether or not it leads to a criminal conviction) can also lead to disciplinary action against an employee because of its employment implications. In addition such conduct may make certain job duties inappropriate and justify dismissal or redeployment. It will not be appropriate for a perpetrator of domestic abuse, violence against women and sexual violence to be providing services to vulnerable adults and children.

Similarly, proven harassment and intimidation of Council employees by their partner or ex-partner who also works for the Council will be viewed seriously and may lead to disciplinary action being taken

## **9. Application of Domestic Abuse Policy**

### **I. Management activity**

If domestic abuse, violence or sexual violence is disclosed, undertaking a risk assessment can ensure that the potential risk to employees and colleagues is identified, **(Appendix 1 Manager's pathway following disclosure of Domestic Abuse involving DCC employee)**

### **II. The role of Denbighshire County Council and the Multi Agency Risk Assessment Conference (MARAC)**

The main aim of the MARAC is to reduce the risk of serious harm or homicide for a domestic abuse victim and to increase the safety, health and wellbeing of other victims, both adults and children. In a MARAC local agencies, including the local council, will meet to discuss the highest risk victims of domestic abuse in their area. Information about the risks faced by those victims, the actions needed to ensure safety, and the resources available locally are shared and used to create a risk management plan involving all agencies.

Disclosures to MARAC are made under the Data Protection Act and Human Rights Act. Information can be shared when it is necessary to prevent a crime, protect the health and/or safety of the victim and/or the rights of freedom of those who are victims of abuse and/or their children. It must be proportionate to the level of risk of harm to a named individual or known household. Further information - Coordinated Action Against Domestic Abuse (CAADA) [www.caada.org.uk](http://www.caada.org.uk)

It is important to note that each person's needs are different and that any measures should only be used with the authorisation / consent of the individual concerned.

Line managers must never attempt to mediate between an employee and a perpetrator of domestic abuse and/or violence or suggest that they access professional mediation services. If the perpetrator becomes aware that someone knows about the abuse and/or violence, this could compromise the employee's safety or make a difficult situation even worse.

### **III. Examples of practical support in the workplace**

There can be a number of clear steps identified which will ensure that those experiencing domestic abuse and sexual violence are able to work in a safe and supported workplace.

- Checking that staff have arrangements for getting safely to and from work
- Where possible, offer a secure parking space or different parking space
- Consider offering a temporary or permanent change of workplace.
- For office based staff, alert reception and security staff if the abuser is known to come to the workplace
- Provide a copy of a photograph of the abuser to reception and security staff
- Where practical, offer changes in specific duties, such as not expecting the employee to answer telephones or sit on reception
- Offer a 'fast-track' service for changing bank details in order that salaries are not paid into a joint account, immediately after a colleague has left an abusive partner
- Allow time off to organise practical things such as a locksmith to change the locks on the house.
- Work with other public bodies to provide support, e.g. contact the children's school and advise on who should collect the children
- Arrange a referral to the Occupational Health Department so they can assess the most appropriate support provision available from the Authority.
- Identify a work contact for support and an emergency contact should the organisation be unable to contact the employee.
- Use existing policies to allow the individual to change work patterns or workload and allow flexible or more flexible working or special leave to facilitate any practical arrangements that are required, such as seeking

legal advice, attending counselling, support group meeting, or to attend court.

- Divert phone calls and email messages.
- Reviewing content of personal information can help, such as temporary or new addresses, bank or health care details.
- Review the employee's next of kin information – the ex-partner / partner may still be listed.
- Move the employee out of public view, i.e. they are not visible from reception points or ground floor windows.
- Ensure, where possible, the employee does not work alone or in an isolated area.
- Agree with the employee what to tell colleagues and how they should respond if the (abusive) partner / ex-partner telephones or visits the workplace.
- Keep a record of any incidents of abuse on the workplace, including persistent telephone calls, emails or visits to the employee by their partner / ex-partner.
- Arrange a referral to the Occupational Health Department so they can assess the most appropriate support provision available from the Authority.

#### **IV. Trade Union Support**

Trade Unions offer many benefits of membership and one of these may be counselling support, financial advice etc. This information is only available directly from the Trade Union or their representation within the workforce. For further information, contact the respective Union directly.

#### **V. Additional Support via Other Workplace Policies**

To support and offer flexibility to affected employees please refer to other workplace policies to test their suitability of application.

- Emergency Leave
- Time off work
- Annual leave
- Flexi time / TOIL
- Career Break

#### **VI. Additional Support via Other Workplace Departments**

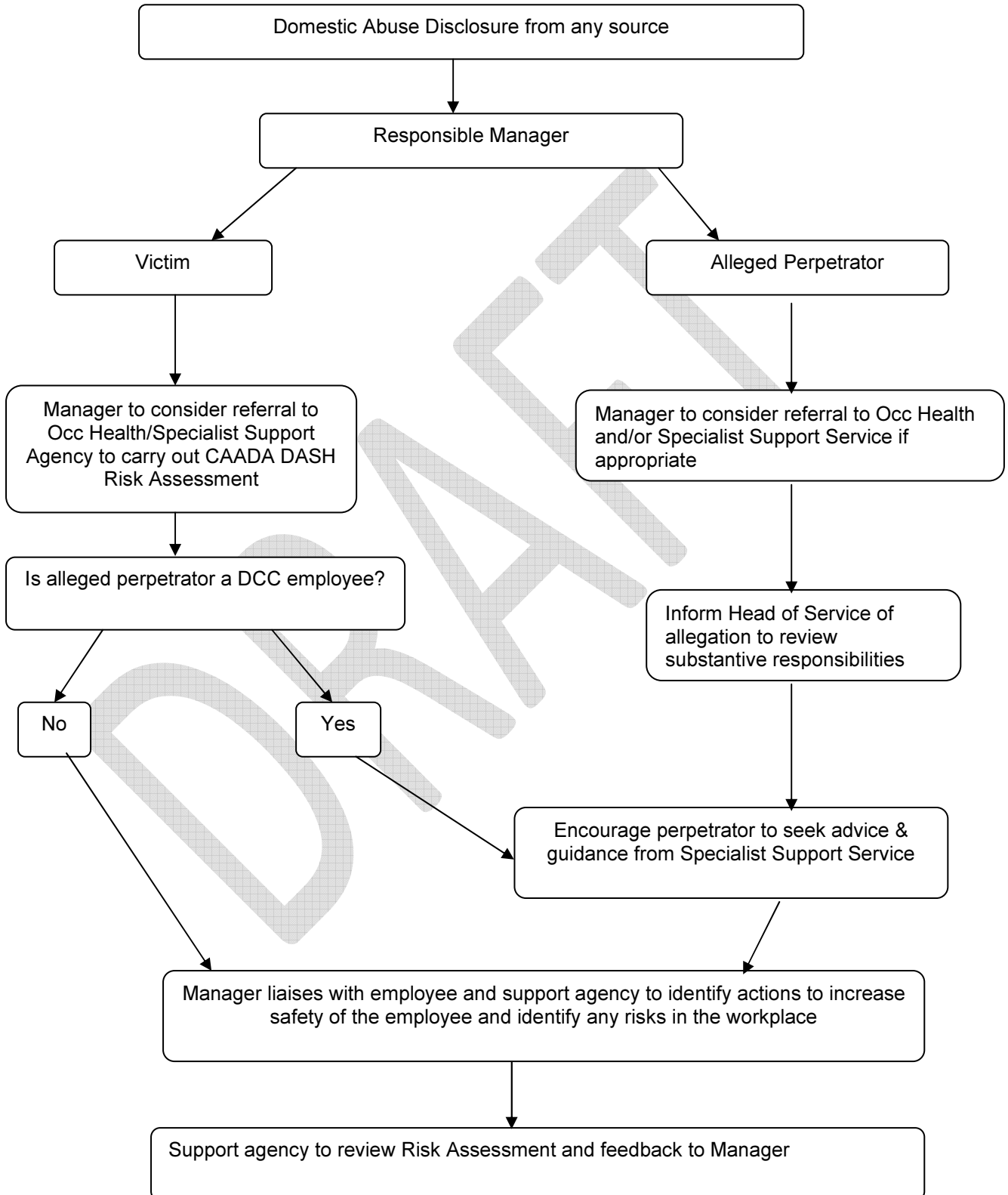
Below are the departments that could supply support or guidance to aid the situation.

- Occupational Health
- Social Service
- Housing
- Welfare Rights

It is not the responsibility of the manager to stop the abuse or help an employee escape from an abusive relationship. The most effective role an employer can play is to signpost the employee to local and national agencies who have the expertise to assist and provide on-going specialist support. **(Appendix 4 Support Agencies)**

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**Manager's pathway following disclosure of Domestic Abuse involving DCC employee**



### **Examples of Domestic Abuse, Violence Against Women or Sexual Violence:**

#### **Physical abuse:**

Physical abuse is the use of physical force against someone in a way that injures or endangers that person. Physical assault is a crime, whether it occurs inside or outside of the home or family.

#### **Emotional abuse:**

Emotional abuse is often minimised or over looked – even by the person being abused. The aim of emotional abuse is to chip away at feelings of self-worth and independence. A victim may feel there is no way out of a relationship or that without their abusive partner, they have nothing.

Emotional abuse includes verbal abuse such as yelling, name-calling, blaming and shaming. Isolation, intimidation and controlling behaviour also fall under emotional abuse.

#### **Sexual abuse**

The World Health Organisation's definition of sexual violence/abuse is:

“Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”.

Examples: rape, unwanted sexual advances or sexual harassment (including demanding sex in return for favours), denial of the right to use contraception or to adopt other measures to protect against sexually transmitted diseases, forced abortion, genital mutilation, forced prostitution. this list is not exhaustive

- 45% sexual assault committed by current partner
- 74% sexual assault occurs in the person own home
- attacks by partners double risk of physical injury

#### **Financial abuse**

An abuser's goal is to control; they will frequently use money to do so. Economic or financial abuse includes:

- rigidly controlling finances
- withholding money or credit cards
- withholding basic necessities (food, clothes, medications, shelter)
- stealing from the victim
- sabotaging their partner's job (making them miss work, calling constantly)
- preventing their partner from working or choosing their own career

## Warning Signs of Domestic Abuse

- General Warning signs
  - Seem afraid or anxious to please partner
  - Check in often with their partner to report where they are and what they're doing
  - Receive frequent, harassing phone calls from the partner
  - Talk about the partner's temper, jealousy or possessiveness.
- Warning signs of physical abuse
  - Frequent injuries with the excuse of 'accidents'
  - Frequently miss work or social occasion without explanation
  - Dress in clothing designed to hide bruises or scars (wearing long sleeves in the summer or sunglasses indoors)
- Warning signs of psychological abuse
  - Low self-esteem, even if the individual used to be confident
  - Major personality changes (outgoing person becomes withdrawn)
  - Depression, anxiety

## The Legal Reasons

### Human Rights Act

Under the **Human Rights Act** all public bodies have an obligation to protect the human rights of individuals and to ensure that their human rights are not being violated. Domestic abuse denies individuals the most fundamental of human rights.

The articles most relevant are:

- Article 2: Right to life
- Article 3: Right to be free from torture, inhumane and degrading treatment
- Article 8: Right to family and private life, which extends to physical and psychological integrity

**The Equality Act 2010** includes a definition of harassment that covers harassment by third parties. For example, this could mean harassment by a partner or ex-partners through repeated phone calls, faxes or emails and unplanned visits to the workplace. Employers will be liable if they fail to take reasonably practicable steps to prevent harassment from occurring if they have been made aware of its occurrence on at least two separate occasions.

The **Gender Equality Duty (GED)** requires all public authorities to have due regard to the need:

- To eliminate unlawful discrimination and harassment and
- To promote equality of opportunity between men and women

The **GED** requires all public authorities to prioritise action to address the most significant gender inequalities and take actions that could deliver the best gender equality outcomes.

**Health and Safety** laws ensure workers have the right to work in a safe environment where risks to health and wellbeing are considered and dealt with efficiently.







## Appendix 4

### External Support via Regional & National Agencies

**In an emergency call the Police on 999 (non emergencies on 101)**

Organisation	Service provided	Contact Number	Website/Email/Address
Wales Domestic Abuse & Sexual Violence Helpline	The Wales domestic abuse helpline offers free confidential information and support to women men and children experiencing domestic abuse. It is also an information service for people who are concerned about someone they know, and for agencies that need information on the support available in Wales for adults and children. They also hold a register for Refuge space.	080880 10 800	<a href="http://www.wdah.org.uk">www.wdah.org.uk</a>
English National Domestic Violence Helpline		0808 2000 247	
Welsh Women's Aid	Practical help and advice for adults and children		<a href="http://www.welshwomensaid.org">www.welshwomensaid.org</a>
Colwyn Women's Aid	Help/Advice/Support/Refuge	01492 534705	
Aberconwy Domestic Abuse Service	Help/Advice/Support Women & Men Refuge - Women	01492 872992	
North Denbighshire Domestic Abuse Service	Help/Advice/Support Women & Men Refuge - Women	01745 337104	
Glyndwr Women's Aid	Help/Advice/Support/Refuge	01745 814494	
Refuge	Refuge is one of the largest single providers of specialist accommodation and services to women and children escaping domestic violence, supporting over 1000 women and children every day.		<a href="http://www.refuge.org.uk">www.refuge.org.uk</a>
Respect	Respect is the UK association for professionals working with domestic violence perpetrators and associated support services. The organisation's key aim is to increase the safety of those experiencing domestic violence through promoting effective interventions with perpetrators.	0845 1228609  (concerned about behaviour towards partner and want to stop?)	<a href="http://www.respect.uk.net">www.respect.uk.net</a>
Choose2change	For men who want to change their abusive behaviour	01745 345929	<a href="http://relatecymru.org.uk">relatecymru.org.uk</a>

Victim Support (North Wales)	Offer free and confidential emotional support and practical help to victims of crime, their family, friends and anyone else affected.	0845 241 2410	<a href="http://www.victimsupport.org.uk">www.victimsupport.org.uk</a>
Citizens Advice Bureau	The Citizens Advice Bureau Service offers free, confidential, impartial and independent advice on a range of issues including debt, benefits, housing and legal matters. Advisers can help individuals to fill out forms, write letters negotiate with creditors and represent individuals at court.		<a href="http://www.adviceguide.org.uk">www.adviceguide.org.uk</a>
Action on Elder Abuse (UK)		0808 808 8141	
North Wales RASA (Rape & Sexual Assault Service)	Rape and sexual support centre provides services for males and females aged 14+ who have experienced any of the following: - domestic abuse includes physical, emotional and sexual, rape and ritual abuse.	01286 669266	PO Box 87, Caernarfon, Gwynedd, LL55 9AA
Amethyst - Sexual Assault Referral Centre (SARC)	Amethyst offers a confidential service for men, women and children in North Wales who have been sexually assaulted, either recently or in the past	0808 156 3658	E-mail: <a href="mailto:BCU.Amethyst@wales.nhs.uk">BCU.Amethyst@wales.nhs.uk</a> (monitored during office hours only)  <a href="http://www.amethystnorthwales.org.uk">www.amethystnorthwales.org.uk</a>
Survivors UK	Provides information, support and counselling for men who have been raped or sexually abused	0845 1221201  (open Monday, Tuesday and Thursday between 7pm and 10pm)  0207 404 6234	E-mail: <a href="mailto:info@survivorsuk.org">info@survivorsuk.org</a>  <a href="http://www.survivorsuk.org/">www.survivorsuk.org/</a>
Sexual Health Wales Helpline		0845604 84 84	
Rape Crisis England and Wales	Rape Crisis provides a range of specialist services for women and girls who have been raped or experienced another form of sexual violence as children or adults.		<a href="http://www.rapecrisis.org.uk">www.rapecrisis.org.uk</a>
Rape and Sexual Assault Abuse Support Centre	Provides a national helpline for female and male survivors, partners, friends and family.	0800 802 9999  (Open daily between noon and 2.30pm and 7pm and 9.30pm)	<a href="http://www.rasasc.org.uk/">www.rasasc.org.uk/</a>

Eighteen and under	Offers confidential support and information to any young person aged 18 and under who has experiences sexual, physical or emotional abuse.	0800 731 40 80	<a href="http://www.18u.org.uk/">www.18u.org.uk/</a>
British Pregnancy Advisory Service	Offer advice if you think you might be pregnant as a result of rape.	08457 30 40 30	<a href="http://www.bpas.org/">www.bpas.org/</a>
ChildLine	Telephone counselling and support for children and young people	08001111	
NSPCC	For children and young people	0800 800 5000	<a href="http://www.nspcc.org.uk">www.nspcc.org.uk</a>
Dyn Project	Works across Wales to support men who experience domestic abuse.	0808 801 0321	<a href="http://www.dynwales.org">www.dynwales.org</a>
MEDA	Men experiencing Domestic Abuse	01686 610391	
Men's Advice Line	Advice and support for men in abusive relationships.	0808 801 0327  (open Monday to Friday 10am to 1pm and 2pm to 5pm)	E-mail: <a href="mailto:info@mensadviceline.org.uk">info@mensadviceline.org.uk</a>  <a href="http://www.mensadviceline.org.uk/">www.mensadviceline.org.uk/</a>
Broken Rainbow	Provides support for lesbian, gay, bisexual and transgender people (LGBT) experiencing domestic abuse.	08452 604460	<a href="http://www.broken-rainbow.org.uk">www.broken-rainbow.org.uk</a>
Black Association of Women Step Out (BAWSO)	A specialist agency, which can provide culturally sensitive and appropriate information and services to black and other minority ethnic groups.	0800 7318147  24 hour helpline	<a href="http://www.bawso.org.uk">www.bawso.org.uk</a>
Hafan Cymru	Provides housing and support services to women, men and children	Conwy 01492 536246  Denbighshire 01745 336524  Head Office 01267 225555	<a href="http://www.hafancymru.co.uk">www.hafancymru.co.uk</a>
North Wales Women's Centre (NWWC)	Dedicated centre for women whose core focus and mission is to cultivate and advance the social and economic development of women in and around North Wales – <ul style="list-style-type: none"> <li> Health and Wellbeing</li> <li> Volunteering opportunities</li> <li> Counselling</li> <li> Support</li> </ul>	01745 339331	<a href="http://www.northwaleswomenscentre.co.uk">www.northwaleswomenscentre.co.uk</a>

<p>Independent Domestic Violence Advocates (IDVA)</p>	<p>Trained specialists whose aim is to ensure the safety of survivors of domestic abuse. They particularly focus on risk and risk management. They work directly with survivors to provide advice and support to help them make safety plans and understand the options they have. They also assist in accessing the full range of legal and non-legal services and resources and engage proactively in multi-agency work to keep victims/survivors and their children safe. Work independently from the Police and can take referrals from all agencies</p>	<p>Conwy 01492 523802</p> <p>Denbighshire 01745 339331</p>	<p><a href="mailto:idva@hafancymru.co.uk">idva@hafancymru.co.uk</a></p> <p><a href="mailto:idva@northwaleswomenscentre.co.uk">idva@northwaleswomenscentre.co.uk</a></p>
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DRAFT

Domestic Abuse, Violence Against Women  
and Sexual Violence Policy  
16/01/2014  
amended 17/02/2014

Equality Impact Assessment

# Domestic Violence, Violence Against Women and Sexual Violence Policy

Contact: Catrin Roberts, Stratetic HR

Updated: 16/01/2014

## 1. What type of proposal / decision is being assessed?

A new or revised policy
-------------------------

## 2. What is the purpose of this proposal / decision, and what change (to staff or the community) will occur as a result of its implementation?

<p>The Welsh Government commissioned the 10,000 Safer Lives Project to ensure that all relevant service providers and organisations are able to identify the signs of domestic abuse and are able to effectively support individuals who experience domestic abuse.</p>
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<p>As part of this project there is a requirement for the Council to introduce a Domestic Abuse, Violence Against Women and Sexual Violence Policy.</p>
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<p>The purpose of this policy is to provide clear guidance to managers and staff on how to manage a disclosure by a member of staff relating to Domestic Violence, Violence Against Women and Sexual Violence. It also ensures that the employee is aware of what support they can expect from the Council and it sends a clear message to the Council's workforce that it condemns any form of domestic abuse, violence against women and sexual violence and recognises it is both a crime and unacceptable.</p>
--

## 3. Does this proposal / decision require an equality impact assessment? If no, please explain why.

**Please note:** if the proposal will have an impact on people (staff or the community) then an equality impact assessment **must** be undertaken

Yes	<If no, briefly summarise the reasons for this decision here, and skip ahead to the declaration at the end>
-----	---

**4. Please provide a summary of the steps taken, and the information used, to carry out this assessment, including any engagement undertaken**

*(Please refer to section 1 in the toolkit for guidance)*

An Equality Impact Assessment form was completed and a review of the statistical evidence relating to domestic violence.

**5. Will this proposal / decision have a positive impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**

*(Please refer to section 1 in the toolkit for a description of the protected characteristics)*

This policy will have a positive impact on Women who are more likely to be affected by Domestic Violence. However, the policy does recognise that there is a growing number of men also affected by these issues and the steps detailed in the policy applies to all.

**6. Will this proposal / decision have a disproportionate negative impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**

<Please summarise any disproportionate negative impact and identify which protected characteristics will be affected>

**7. Has the proposal / decision been amended to eliminate or reduce any potential disproportionate negative impact? If no, please explain why.**

Yes

The policy has been amended to ensure that it is clear that it applies to both men and women.

**8. Have you identified any further actions to address and / or monitor any potential negative impact(s)?**

Yes

This will need to be incorporate into the awareness raising events that will support this policy

Action(s)	Owner	By when?
<Please describe>	<Enter Name>	<DD.MM.YY>
<Please describe>	<Enter Name>	<DD.MM.YY>
<Please describe>	<Enter Name>	<DD.MM.YY>
<Please describe>	<Enter Name>	<DD.MM.YY>
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## 9. Declaration

Every reasonable effort has been made to eliminate or reduce any potential disproportionate impact on people sharing protected characteristics. The actual impact of the proposal / decision will be reviewed at the appropriate stage.

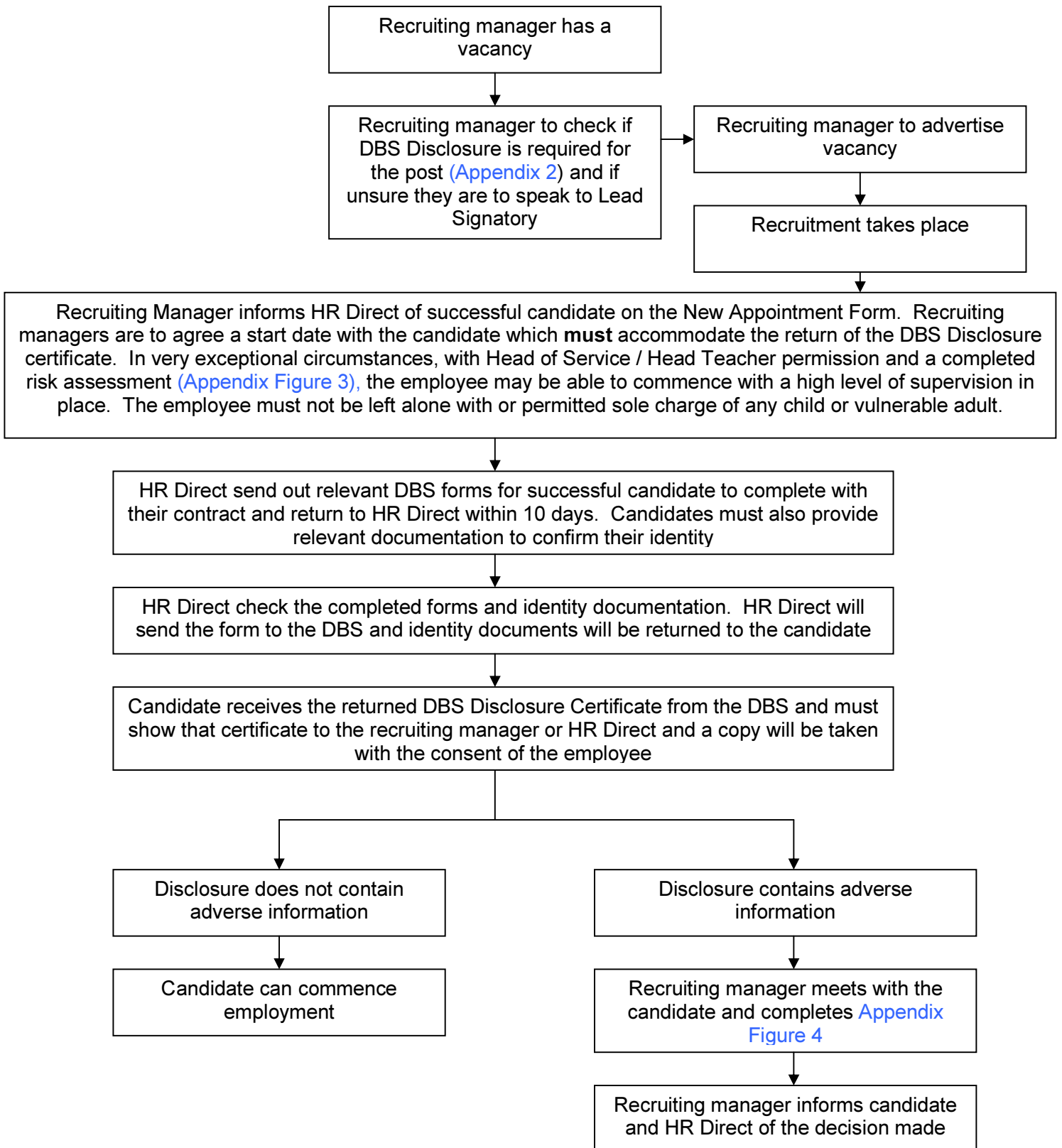
Review Date:	15/01/2015
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Name of Lead Officer for Equality Impact Assessment	Date
Catrin Roberts	16/01/14

**Please note you will be required to publish the outcome of the equality impact assessment if you identify a substantial likely impact.**



**Flowchart for DBS Process**



## **Denbighshire County Council**

### **Policy Document**

#### **Title: Disclosure and Barring Service (DBS) Policy**

### **Policy Statement**

The Council is committed to safeguarding the welfare of those who access our services. The Council has a statutory duty of care towards vulnerable groups under the Safeguarding Vulnerable Groups Act (2006) and the Exceptions order to the rehabilitation of Offenders Act (1975). This duty must be carried out with regard to relevant legislation, to include: Protection of Freedoms Act (2012), Rehabilitation of Offenders Act (1974), Data protection Act (1998), DBS Code of Practice and Human Rights Act (1998).

This document sets out Denbighshire County Council's policy towards the recruitment and retention of people who wish to work with vulnerable groups who may have a criminal record. The Council is fully committed to recruitment on the basis of an objective and systematic assessment of candidates against job related factors. Through the use of fair employment practices and the adoption of this policy, the Council is keen to ensure that the information relating to criminal records is dealt with in context and with discretion.

This policy will apply to those seeking paid or voluntary opportunities within the Council. In addition, fostering and adoption arrangements, seasonal work, summer placements, graduates, elected members school governors, contractors, agency workers will also come under the provision of the policy.

Within Denbighshire schools the Governors and Head Teachers are responsible for appointments and maintenance of the DBS process within that school. Please substitute the Governing Body for any reference to the Council where the vacancy or position is a schools appointment. Throughout this policy specific provisions to schools are clearly indicated.

Denbighshire County Council is committed to the fair treatment of employees, potential employees and service users. Individuals will not experience discrimination, harassment or bullying or receive less favourable treatment because of their age, disability, gender reassignment, marital or civil partnership status race, pregnancy or maternity religion or belief, sex, sexual orientation or caring responsibilities.

Advice and support will be available from HR Direct.

## **Introduction**

Denbighshire County Council has a duty to ensure the suitability of all those it employs in whatever capacity. Proper recruitment practices form a crucial part in the protection of Council's vulnerable clients.

As part of the recruitment procedures the Council uses Disclosure and Barring Service (DBS) checks where appropriate and subsequently makes a decision regarding the employment of that person within the Council.

## **Aims**

The main purpose of this policy is to ensure the safety and protection of children and vulnerable adults who receive a service from Denbighshire County Council and within the wider community.

This policy complies with the DBS Code of Practice. This is available from HR Direct on request.

## **Application/Scope of Policy**

The policy and procedures apply to all employees of Denbighshire County Council. This policy also applies to staff employed by external bodies (e.g. organisations that we give funding to or procure from) contracted by the Council and sets out the procedure for checking elected members, agency workers, external contractors, volunteers and school governors.

The policy will apply to full-time, part-time, fixed term, volunteers, work experience, internships, graduates, casual and temporary employees, regardless of the hours worked.

It will be the responsibility of the recruiting manager to establish the DBS status of workers engaged through external contractors, including agencies through Matrix and temporary staffing agencies, and be assured that the appropriate level check has been undertaken.

## **Engagement /Participation/Consultation**

This policy has been drafted taking account of changes in legislation and feedback from employees attending Staff Road shows & Breakfast meetings. It has also been consulted and negotiated with Senior Leadership Team, managers, officers responsible for safeguarding within the Council and Trade Unions.

## **Legal & Other References**

Rehabilitation of Offenders Act 1974  
Exceptions Order 1975  
Police Act 1997  
Data Protection Act 1998

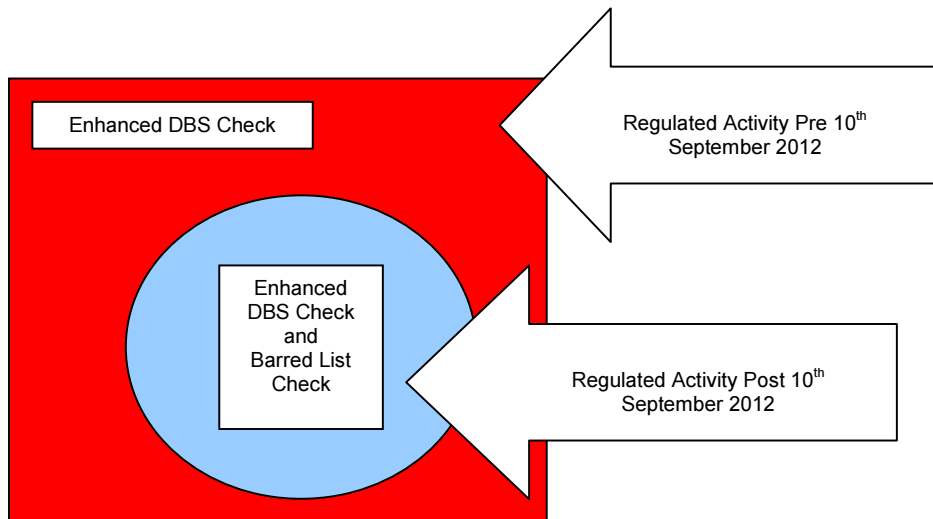
Protection of Children Act 1999  
 Care Standards Act 2000  
 Freedom of Information Act 2000  
 Human Rights Act 1998  
 Safeguarding Vulnerable Groups Act 2006  
 Protection of Freedoms Act 2012  
 DBS Code of Practice and Human Rights Act 1998

## Policy Details

### Types of DBS Disclosure and Barred Checklists

The CRB and ISA have merged to form the DBS. There has been a change in terminology:

Previous Term	New Term
Criminal Records Bureau (CRB) Independent Safeguarding Authority (ISA)	Disclosure & Barring Service (DBS)
Enhanced CRB Check	Enhanced DBS Check
Standard CRB Check	Standard DBS Check
Enhanced CRB Check with Barred List Check	Enhanced Check for Regulated Activity
ISA Adult First	DBS Adult First
Vulnerable Adults	Vulnerable Groups



Red Square - represents the posts that fall within the old definition of Regulated Activity. From 10<sup>th</sup> September 2012, employees in posts that fall within this area are still entitled to an **Enhanced DBS Check**.

Blue Circle – represents the new definition of Regulated Activity. Fewer posts will fall into this definition. From 10<sup>th</sup> September 2012, employees that fall within this area are entitled to an **Enhanced Check for Regulated Activity**.

[Appendix Figure 1](#) will establish whether a position becomes under the Post 10<sup>th</sup> September 2012 definition of a Regulated Activity and is therefore entitled to an Enhanced Check for Regulated Activity. If the position does not come under this definition then refer to [Appendix Figure 2](#) to establish if the position comes under the pre-10<sup>th</sup> September definition and is therefore entitled to an **Enhanced DBS Check**. If the post does not come under either definition then it is not entitled to a DBS Check.

### **Barred List**

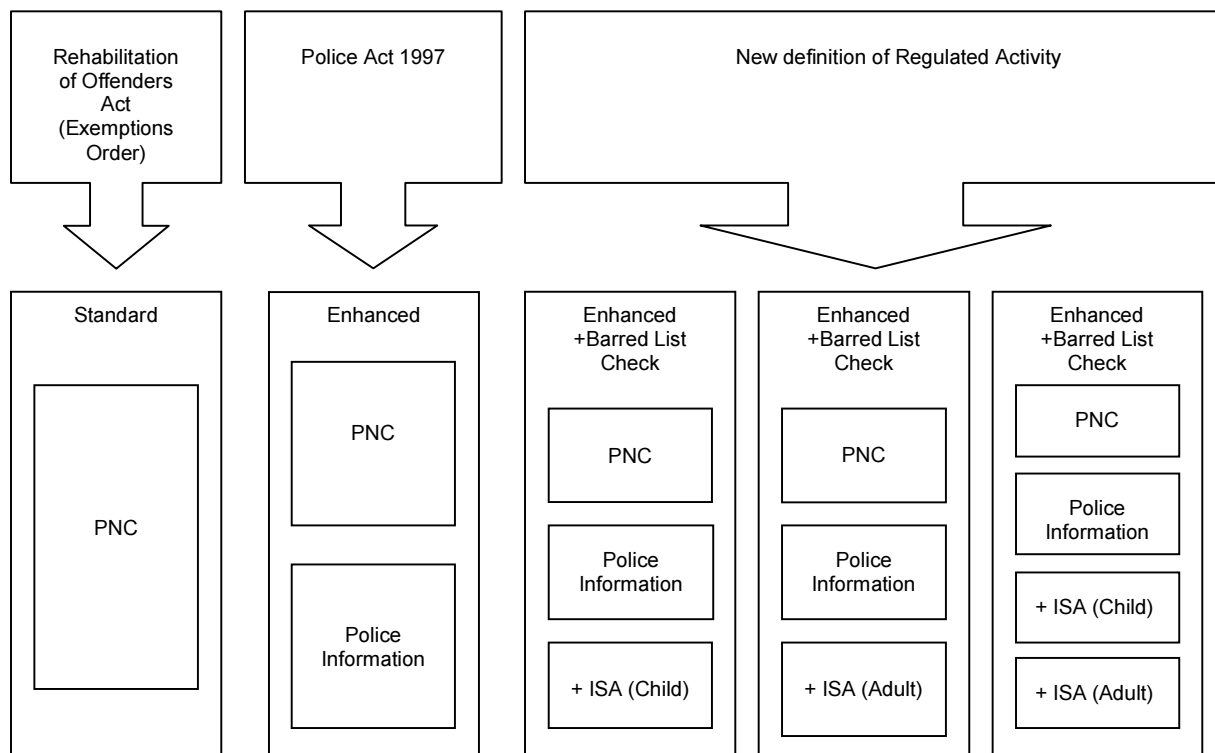
It is an offence for individuals who are on the Barred list to apply for posts in Regulated Activity (Post 10<sup>th</sup> September 2012 definition). Previously it was illegal for them to apply for the posts outlined above. This means that individuals on the barred list can now apply for posts that fall under the old definition of Regulated Activity (i.e. Regulated Activity pre 10<sup>th</sup> September 2012) as long as they do not fall under the new definition of Regulated Activity (Post 10<sup>th</sup> September 2012).

The Enhanced DBS may not state if a person is on the Barred list but there will be details of criminal convictions that would indicate that someone may be on the barred list. The manager would then be responsible for investigating this and completing [Appendix Figure 4 - Cause for Concern Risk Assessment Form](#).

### **Minimum Age**

The minimum age that someone can have a DBS Check is now 16 years old. The Council signatories will be unable to countersign any documents relating to anyone under the age of 16.

## Types of Check Available and Relevant Legislation



## Responsibilities

### Lead Counter Signatory is responsible for:

- Acting for the principal point of contact for the DBS
- Ensuring that the Council's practices and counter signatories comply with the requirements and guidance in line with the DBS Code of Practice

### Counter Signatory is responsible for:

- Ensuring that the correct level of disclosure is requested.
- Ensuring that the appropriate checks have been carried out for periods of non-UK residence
- Counter signing disclosure forms
- Checking Disclosure certificates and updating Trent with the required information
- Controlling the use, access and security of disclosure certificates
- Satisfying themselves of the identity of the person applying for a disclosure
- Satisfying themselves that the evidence presented is genuine and in line with DBS requirements

### **Recruiting Manager is responsible for:**

- Checking an applicants Disclosure certificate, making a copy and sending this copy to HR Direct.
- Checking all private / external contractors DBS certificates before they commence on site.
- Arranging a suitable start date for the new employee in line with the return of the DBS check. In exceptional circumstances, where this is not possible, then a risk assessment must be completed by the line manager which requires the Head of Service / Head Teacher authorisation.
- Checking the DBS website to monitor the progress of DBS certificates. If the DBS website states that the certificate has been printed then the manager must request to see a copy before they commence employment.

### **Disclosure applicants are responsible for:**

- Providing the necessary evidence for identity checks in a timely manner and in person (when applying for a DBS Check)
- Disclosing all of the necessary information to enable an Enhanced DBS disclosure application to be made in a timely manner (when applying for a DBS Check)
- Disclosure of all information that could be relevant to the DBS throughout the duration of their employment/work for the Council

## **Principles**

The Council requires a new and up to date DBS disclosure certificate at the point of engagement.

**Standard checks** – To be eligible for a standard level DBS check the position **must** be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. Please check eligibility list on the following website:

<https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

**Enhanced checks** – To be eligible for an enhanced level DBS check, the position **must** be included in both the ROA Exceptions Order **and** in Police Act Regulations.

**Enhanced checks with children's and/or adults' barred list check(s)** – To be eligible to request a check of the children's or adults' barred lists, the position must meet the new definition of regulated activity.

The Council considers that all of its posts where employees have access to children and/or vulnerable adults fall into one or more of the categories under the Rehabilitation of Offenders Act 1974 Exceptions Orders 1975 and therefore satisfies the first test for eligibility for a disclosure application at enhanced level, which includes information on spent convictions. The individual must declare all information regarding previous criminal convictions, cautions, reprimands, warnings and bindovers, including those

which are 'spent' – all must be declared. The Council is therefore entitled to ask about spent convictions ([see appendix figure 5](#)).

For all posts that require a Disclosure Certificate, the Council requires each post holder to be re-checked every four years. However In accordance with the Care Standards Inspectorate for Wales some roles may require a three yearly DBS Check in order to meet their registration requirements. All school Governors will be checked on appointment.

If a post requires an Enhanced DBS Check or Enhanced Check for Regulated Activity, the Council reserves the right to ask existing members of staff in relevant positions to be re-checked. The same process will apply if an individual's actions or activities give 'cause for concern'.

The Council complies fully with the DBS Code of Practice and will not discriminate unfairly against any subject of a disclosure certificate following information received.

Information regarding the recruitment and employment of ex-offenders will be made available to all applicants who are required to undertake a Disclosure Application during the recruitment process.

As an organisation using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions of trust, Denbighshire County Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosure information. The Council also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information ([Appendix Figure 6](#)).

The Council will not accept an Enhanced DBS Check or Enhanced Check for Regulated Activity from any previous employer as the disclosure is technically out of date at the time of issue.

However if the individual has registered for the update service and gives the Council permission then the Council will make use of that.

There may be occasions where due to legislation changes, occupational groups may become subject to regulation for the first time and employees will be expected to comply. Failure to comply may result in disciplinary action being taken.

## **Procedure**

### **Recruitment**

All recruitment will be in accordance with the Council's Recruitment and Selection Procedure.



## **DBS Requirements for a New Post**

Recruiting managers must determine if the post requires an Enhanced DBS check or an Enhanced Check for Regulated Activity. Standard DBS checks are only required for a small number of professions /specific posts which are listed within the eligibility of posts on the following website: <https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

The recruiting manager will need to speak to the DBS Lead Officer and present their rationale in order to establish whether an Enhanced DBS Check is required for the post. The DBS Lead officer may refer the decision to the DBS for a final decision in order to ensure that the Council are not undertaking any illegal Enhanced DBS checks.

Recruiting managers are to refer to [Appendix Figure 1](#) in order to establish if an Enhanced DBS check is required for the post.

The recruiting manager will need to ensure that job descriptions clearly state the need for an Enhanced DBS disclosure if appropriate. For further information and guidance please contact the DBS Lead Signatory in HR Direct.

Job adverts are also to state that the successful applicant will be subject to an Enhanced DBS Disclosure where appropriate. Information regarding the DBS Code of Practice will be provided by HR Direct, if required.

## **DBS – Exempt Information**

For anyone applying for a post which involves working with children and/or vulnerable adults, the Council has a right to ask the individual to reveal their full details of both spent and unspent convictions because of the nature of work they will be undertaking. The Council is asking an 'exempted question' meaning that the position is exempt from the Rehabilitation of Offenders Act 1974 and all such details must be revealed.

The applicant will be required to disclose the detail of all convictions on record (including 'spent' convictions - i.e. those that happened some time ago and normally no longer need to be revealed as specified in the Rehabilitation of Offenders Act 1974), plus details of any convictions, cautions, bindovers, reprimands or warnings. Enhanced DBS Disclosures may reveal non-conviction information from local police records if the police 'reasonably believe' that the information is relevant to the post in question.

## **Offers of Employment**

Enhanced DBS disclosures will only be requested for the successful candidate. Recruiting managers are to make it clear that the successful candidate's offer of employment is subject to the receipt of a satisfactory Enhanced DBS Check within a reasonable timescale. This is also made clear in the contract of employment.

The Council will not accept an Enhanced DBS Check or Enhanced Check for Regulated Activity from any previous employer.

## **Commencement in Post**

Where Enhanced DBS checks are an essential requirement for posts, the checks must be sought as soon as an employment offer has been accepted, with the aim of receiving them before the individual commences employment. Where possible, the start date for individuals to commence their employment with the Council should be set to accommodate the return and clearance of the Enhanced DBS check. A Head of Service / Headteacher must make the decision as to whether a person can commence employment before the Enhanced DBS Check has been returned and would need to complete a Risk Assessment, [Appendix Figure 3](#). HR would advise that an employee should not start before the Enhanced DBS Check has been returned.

In very exceptional circumstances, when it is not possible to delay the appointment, or there is a delay in the return of the Enhanced DBS check, it is the responsibility of the line manager to request approval from the relevant Head of Service / Head Teacher to let the person start without an Enhanced DBS Check and to ensure that appropriate supervision arrangements and / or adjustment to the individual's duties are in place until a satisfactory Enhanced DBS Check is received. In particular, members of staff must not be permitted sole charge of children or vulnerable adults until a satisfactory Enhanced DBS Check is received in line with a completed risk assessment. Please see [Appendix Figure 3](#).

Where the individual is permitted to work whilst awaiting the Enhanced DBS disclosure results, the line manager is responsible for implementing and explaining supervisory measures to all members of staff, including the person concerned and reviewing the arrangement regularly in line with the risk assessment that has been carried out.

If an individual has undertaken an Enhanced DBS Check for their current role within the Council and they move to another position within the Council, the enhanced check will be acceptable as long as there is not a significant increase in the contact or responsibility for children and/or vulnerable adults and a risk assessment has been undertaken. Please see [Appendix Figure 3](#).

If the person does not take up the appointment for any reason then they will be required to reimburse the Council for the full cost of the DBS Check.

## **Failure to return DBS forms**

Repeated failure to return the DBS forms within a specified time will result in termination of employment. The member of staff will be given 10 working days to complete and return the forms. If the forms have not been received within those 10 working days, their employment may be terminated /or offer of employment may be withdrawn.

A DBS disclosure does not in any way eliminate the need for sound recruitment practices, such as a thorough selection process appropriate to the level of the post, checking of identification, qualifications, taking up and verifying references and any gaps in employment.

## **Verification documents**

DBS Disclosure Applications must always include verification of the identity of the applicant as per DBS guidelines. Original documents are required and the appropriate person should verify that the originals have been seen.

Please contact HR Direct for further information or go to DBS website – <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>

## **What to do if a criminal record is revealed on a Disclosure**

Past convictions will not necessarily be a bar to obtaining a position. However, the failure to disclose such convictions could, be seen as a deliberate attempt to gain employment by deception, and therefore may result in the withdrawal of any offer of employment.

If the applicant has past convictions and discloses them, consideration will be given to the nature of the offence stated and its relevance to the post applied for. The recruiting manager together with the Lead DBS Signatory from HR Direct (if required) will be required to interview the person and complete the 'Cause for Concern Risk Assessment' ([Appendix Figure 4](#)) and assess the risk against set criteria.

For School employees, all decisions as to whether this person can remain in employment are to be made by the Head Teacher and the Chair of Governors and the completed interview form forwarded through to the Head of Education for final approval. Any final decisions in relation to Head Teacher, Governors or Chair of Governors will be made by the Head of Service for Education. All other non schools staff will require the Head of Service, Director or Chief Executive's approval to remain in employment.

It is offence for a barred person to work, apply to work or offer to work in Regulated Activity (post 10<sup>th</sup> September 2012) with a group they are barred from working with. Candidates who are on the Barred list will not be employed in Regulated Activity by the Council.

The Council will notify the DBS if a candidate who is on the barred list makes an attempt to apply for barred work within the Council.

## **Employees with an Adverse Disclosure**

Existing employees who have never been previously checked or their post requires a re-check and subsequently have an adverse disclosure result, the Lead DBS Signatory will refer to [Appendix Figure 4](#) and complete the 'Cause for Concern Risk Assessment' in conjunction with the Head of Service / Head Teacher. It may be appropriate to move the employee in question to a department where they have no access to children and/or vulnerable adults, information, property, data or resources pending the outcome of a full investigation. If this cannot be accommodated then the employee may need to be suspended on full pay pending the outcome of the disciplinary investigation.

When completing the 'Cause for Concern Risk Assessment' it will be considered whether the conviction is relevant to the post. If the results of the Disclosure are considered of a serious nature, the options may include:

- Termination of the employment
- Redeployment – depending on the availability of a suitable vacancy
- The introduction of safeguards

A full appraisal of the situation, including the risks that may be involved and the availability of alternative employment options must be carried out before the decision to dismiss is considered. Any decision to dismiss must be carried out in accordance with the disciplinary policy.

If the disclosure results do not warrant any further action then the employee must be informed of this in writing.

### **Changes to a DBS certificate during the course of employment/work within the Council**

If a post requires an Enhanced DBS Check or Enhanced Check for Regulated Activity, the following applies:

- The Council reserves the right to ask existing members of staff in relevant positions to be re-checked.
- The Council reserves the right to ask existing members of staff to be re-checked if an individual's actions or activities give 'cause for concern'.
- Individuals must notify the Lead Signatory if there are any changes and/or information (to include a new conviction, reprimand, caution or warning) which could be relevant to the DBS throughout their employment or work within the Council.

### **Volunteers**

Checks on volunteers are free; a volunteer is defined as:

“a volunteer is person who is engaged in any activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.”

Any volunteer will need an Enhanced DBS Disclosure if the role meets the requirements for an Enhanced DBS Check. If the role is classed as a Regulated Activity (post 10<sup>th</sup> September 2012) then this will require an Enhanced Check for Regulated Activity.

Examples of volunteer work could include an intern, work experience person or a classroom helper or someone who accompanies children on school trips or assists a vulnerable adult with leisure activities.

Under no circumstances must a volunteer who has not obtained a DBS disclosure because one is not required due to infrequent contact be left unsupervised with children and/or vulnerable adults.

### **Agency Workers**

For the purposes of this policy this section refers to those staff employed through Matrix or temporary staff agencies including those contracted to provide care on behalf of Social Services. The agency is legally the employer of any agency worker and the responsibility to obtain the required DBS Checks lies with them as the employer. The agency is also responsible for the costs of obtaining any required DBS checks.

To ensure the safety and protection of children and vulnerable adults, the Council will only employ agency workers who have been subject to the same checks as those which would be undertaken for recruitment to the Council.

Recruiting managers are to ensure that the agency workers that they use are to have an Enhanced DBS disclosure before they can consider using them for any form of work within the Council.

A copy of the agency workers disclosure along with evidence of identity to the same standard should be requested by the recruiting manager for verification. With the consent of the agency worker, the manager must keep a copy of the DBS certificate and a copy of their proof of identity with a record of the date received.

If the Recruitment/Temping agency wishes to recommend an individual with a criminal record to work with children or vulnerable groups, the issues must be discussed with the recruiting manager and the same criteria for decision making will apply as to those which would be undertaken for internal employment.

Agencies contracted by Social Services to provide care would normally be subject to the regulations of the Care Standards Act and be regulated and inspected by the Care Standards Inspectorate for Wales. As such they are required to have DBS checks on staff. Any agency providing a form of care that is not regulated will be required to provide evidence of Enhanced DBS checks on staff for the recruiting manager.

The level of disclosure for agency workers should be equivalent to the level of disclosure that would be applied to an internal post of the same nature.

### **Members (Councillors) of DCC.**

The following members will be required to complete a DBS check:

- A member of the Cabinet
- All members of Scrutiny committees
- A member of the Fostering Panel
- A member of the Adoption Panel
- A member of the Local Children's Safeguarding Board

DBS checks are to be carried out on eligible members following county council elections, and on the relevant members following by-elections and any change in the composition of the Cabinet, committees, panels etc.

That councillors who have not been DBS checked are not eligible to hold any of the above positions or take part in any of the designated activities, noting that a councillor will not be subject to any restrictions on his or her representative role on behalf of vulnerable groups.

We will require an Enhanced DBS Check for any new member of the above committees during the first three months of their term in office.

It will be made clear when the initial notification of elections is posted and in the information packs that individuals who are elected to serve on DCC will be subject to an Enhanced DBS check.

Currently there are certain disqualifications for elections, of which the main ones are:

- having been sentenced to a term of imprisonment (whether suspended or not) of not less than 3 months, without the option of a fine during the five years preceding the elections, and
- being disqualified under any enactment relating to corrupt or illegal practices.

The Chief Executive and Monitoring Officer (Head of Legal and Democratic Services) can intervene and influence Members involvement on all committees and the responsibilities that they discharge. If disclosure or other information reveals the need to adjust a member's involvement or responsibilities, the Chief Executive and Monitoring Officer will be notified by HR Direct and agree the adjustments with the member concerned.

### **Schools Governors**

Welsh Assembly Government confirms that current legislation does not require pre-appointment checks for newly appointed, re-appointed, newly elected or re-elected governors, however, Denbighshire County Council requires all School Governors to undergo an Enhanced DBS Check.

We will require an Enhanced DBS Check for each new governor during the first three months of their term in office. Only governors who have been satisfactorily checked will carry out certain duties within areas used by children during school time hours.

If a criminal record is disclosed on the DBS Disclosure, any final decisions as to whether a Governor / Chair of Governors can remain in that role will be made by the Corporate Director for Learning and Communities.

## **Private Contractors – including ‘Occasional Contractors’**

It is ultimately the responsibility of the Head Teacher or Manager to ensure that all contractors and visitors to the site either have an appropriate DBS Disclosure or have undertaken an appropriate risk assessment ([Appendix Figure 3](#)) to ensure that they can work on site. The same rule will apply in the later circumstance, whereby the Head of Service will need to give permission with regards to the

(For those employed to provide care through contract to Social Services see Agency Workers.)

The organisation providing the contractor is legally the employer of any contractors and the responsibility to obtain the relevant DBS Check or Enhanced Check for Regulated Activity is theirs. An external contractor will include organisations that the Council give funding to, or procure from (e.g. Scala). Examples of such contracts include provision of transport to children and vulnerable adults, catering, cleaning or trade instructors working with children and vulnerable adults.

The risk assessment of contracts with contractors who provide building works, maintenance, or engineering works must include consideration of the protection of children and vulnerable adults.

Where the contractor is to work in a school during term time the first principle is to arrange for the work to be carried out without regular contact with children. If this is not possible and the workers employed through the contract are likely to come into unsupervised contact with children, the contract officer must require the contractor to provide the names and details of the employees and sub contractors so that List 99 can be checked by HR Direct to exclude anyone barred from working with children.

In the case of such contracts in the homes of vulnerable adults where there will be no supervision of the contractor, the contract officer must undertake spot checks. Where there is to be ‘Regular’ ([Appendix Figure 2](#)) unsupervised work in the person’s home, the contract officer must require the contractor to provide names and details of workers and sub contractors so that the POVA list can be checked to exclude anyone who is a potential risk to vulnerable adults.

## **Overseas Recruitment**

Overseas staff should be checked in the same way as for all other staff. The Council will need to carry out the required police checks in line with that country’s justice system and UK requirements.

Where DBS checks are an essential requirement for posts, the checks must be sought as soon as an employment offer has been accepted, with the aim of receiving them before the individual commences employment.

Candidates who have worked or been resident overseas for longer than three months within the previous five years, including UK Citizens who have worked or lived overseas, require the ‘Statement of Good Conduct’. This is also known as a ‘Certificate of Good

Standing'. The original certificate must be seen by HR Direct before the successful candidate commences employment. If the candidate does not have a 'Certificate of Good Standing,' the individual is responsible for the costs involved in obtaining it, together with any translation that is necessary and any cost incurred whilst doing so.

The Home Office are only able to supply information relating to the period the applicant has been resident in this country.

References will need to cover the periods of employment/educational periods abroad. Referees will be asked to provide any information on previous convictions and the appropriate foreign embassy will be contacted for any details on convictions in that country.

Undertaking these relevant checks will extend the pre-employment checking process.

### **Gender Recognition Certificates**

The Gender Recognition Act 2004 allows transsexual people who have undergone gender reassignment to apply for a gender recognition certificate. When a full gender recognition certificate has been issued, the person is legally considered to be of the acquired gender.

If the person is required to undergo a DBS check as part of the recruitment process they must disclose any previous names and/or gender to the DBS who have established a special application procedure and dedicated contact officer to maintain confidentiality (email: [sensitive@dbs.gsi.gov.uk](mailto:sensitive@dbs.gsi.gov.uk) or telephone: 0151 6761452).

Gender confidentiality will be maintained where the individual has no criminal convictions and where there is no other information held by any Police Authority, as a clear disclosure certificate is the ultimate result. However, if they did have convictions under their previous gender that were considered relevant to the position, then the individual's gender change would become evident through the provision of conviction information on the DBS disclosure certificate showing both gender names.

### **Placements**

For teacher and social worker placements, the individual is required to show their line manager /Head teacher their original DBS Disclosure certificate prior to them starting their placement. If the Disclosure shows that the individual has a conviction / caution / warning – then the normal interview procedure should be undertaken as detailed above and a decision made about their suitability for the placement ([Appendix Figure 4](#)).

Placements must not commence until the original DBS certificate has been verified by the manager / Head teacher.



## **Taxi Drivers**

All taxi and private hire vehicle drivers must receive an Enhanced DBS Check. Enabling licensing authorities can also check whether any applicant for a taxi license is barred from working with children or vulnerable adults.

## **General**

### **Delivery of goods to Council establishments**

Schools and other establishments will look at improving the control of deliveries through the use of restricted areas, deliveries by arranged appointment only, time limited movements (e.g. not able to cross playground when children using it), sign in and out procedures and escorting through areas where delivery drivers may have direct access to children or vulnerable adults.

### **Watchful culture**

Even the most careful selection process cannot identify all those who pose a risk to children and vulnerable adults. Therefore, managers and employees should always be alert to untoward behaviour. The emphasis should be on the creation of a culture which gives the people we work with the confidence and mechanisms to raise concern.

# Supporting Documents

## Appendices

### Appendix Figure 1

#### POSTS REQUIRING AN ENHANCED DBS CHECK

(PRE SEPTEMBER 2012)

**Note: All of these posts are still entitled to an enhanced DBS check but may not be entitled to a barred list check. Only posts which fall under the parameters of Regulated Activity Post 10<sup>th</sup> September 2012 are entitled to a Barred List Check (See Appendix 2)**

The enhanced DBS check searches the applicant's details against criminal records and other sources, including the Police National Computer. The check may disclose convictions, cautions, reprimands and warnings. The applicant and the employer will see the results of the search. The DBS check will either confirm that the applicant doesn't have a criminal record, or it will disclose any relevant convictions, cautions, reprimands, warnings and, if applicable, whether the applicant has been barred from working with children and/or vulnerable adults.

The police can also include non-conviction information, for example, fixed penalties, that may be relevant. An enhanced DBS check uses a range of different information sources, including the records of:

- the Police National Computer (PNC) and other data sources
- the Independent Safeguarding Authority

The Council will obtain an enhanced CRB check for every employee or volunteer who is involved in regulated activity (pre 10<sup>th</sup> September 2012 definition) working with children or vulnerable adults. The same principle is also applied to agency workers and contractors/sub-contractors.

An activity is classed as 'regulated' and therefore eligible for an enhanced CRB check if one of the three following criteria is met:

1. The work is of a Specified Nature – e.g. teaching, training, supervision, advice, treatment, transport	and	Frequently, intensively and/or overnight – once a week for most services, but once a month or more for health and social care services providing personal care, takes place on four days in one month or more, overnight between 2am-6am.		
or				
2. The work is in a Specified Place – e.g. schools, pupil referral units, childcare premises, residential children’s care homes, children’s centres, adult care homes	and	Frequently, intensively and/or overnight – once a week for most services, but once a month or more for health and social care services providing personal care, takes place on four days in one month or more, overnight between 2am-6am	and	Gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with children or vulnerable adults.
or				
3. The work is in a Specified Role – including fostering and adoption or a ‘defined office holders’ such as Director of Children and Family Services, Member of a Local Safeguarding Children’s Board, Members of Fostering and Adoption Panels, Member of any committee of a Local Authority that discharges any of that Authority’s education or social services function.				

No distinction is made between paid and voluntary work.

There is a fine line of distinction with some posts across the Council. A library is not a listed establishment in the Safeguarding Vulnerable Groups Act 2006 and therefore all roles must be assessed on the nature of the duties the individual will carry out, i.e. training, teaching, instructing and supervising children or vulnerable adults. Examples include:

- There is a story time session for the general public. Some people may bring their children along and the children may join in. This is classed as incidental contact with children and the assistant is therefore not eligible for a CRB check.
- There is a story time session for children aged 18 and under. The assistant meets the criteria and is eligible for a CRB check even if the children in the club may differ from week to week.

In summary, activities in a library which are open to the general public are not covered by any exceptions in legislation and, therefore, unless a class or event has been organised wholly or mainly for children or vulnerable adults on a regular basis, the instructor/facilitator would not meet the criteria for a CRB check.

Direct supervisors of staff who require an enhanced CRB check and Barred List check, will also require an enhanced CRB and Barred List check themselves.

Certain posts within the Council are not eligible for a CRB check, for example, if an employee has access to sensitive or confidential information such as home addresses, financial details, databases of vulnerable clients or medical information, application for a disclosure does not currently fall within legislation; this is because the employee has no direct contact with children and/or vulnerable adults.

### **What is meant by working regularly?**

The key test is 'frequent' or 'intensive' contact which was clarified in December 2009 by Sir Roger Singleton and the Secretary of State for Children, Schools and Families as:

"The frequent contact test should be met if the work with children takes place once a week or more. The intensive contact test should be met if the work takes place on four days in one month or more or overnight. Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive."

## Appendix Figure 2

### **POSTS REQUIRING AN ENHANCED CHECK FOR REGULATED ACTIVITY**

#### **(POST 10<sup>th</sup> SEPTEMBER 2012 DEFINITION)**

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012). Regulated activity still excludes family arrangements, and personal, non-commercial arrangements.

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#### **Regulated Activity (Children) - New Definition of Regulated Activity - Children (post 10<sup>th</sup> September 2012)**

The new definition of regulated activity relating to children comprises only:

1. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
2. Work for a limited range of establishments ('specified places' – see list below), with opportunity for contact, (but not work by supervised volunteers).

Work under 1 or 2 above is regulated activity only if done regularly. Regular means carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period (or in some cases, overnight). Statutory guidance about supervision of activity – currently out for consultation.

- Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once;
- Registered childminding; and foster-carers;

Regulated activity still excludes:

- Family arrangements;
- Personal, non-commercial arrangements.

#### **Definition of Supervision**

Supervision must be:

- Regular.

- Day to day.
- Reasonable in all the circumstances for the purpose of protecting the children concerned.
- Carried out by someone who is engaging in regulated activity relating to children.

**Specified Places**

- Schools and colleges wholly or mainly for under 18 year olds (all or mainly full-time, for children).
- Pupil referral units (also known as Short Stay Schools) not falling within the above.
- Nursery schools.
- Institutions for the detention of children.
- Children's homes.
- Children's centres in Wales
- Childcare premises (including nurseries).

No longer in regulated activity - children

**Activities**

- Activity supervised at reasonable level.
- Health care not by (or directed or supervised by) a health care professional.
- Legal advice.
- "Treatment/therapy" (instead "health care").

**Establishments**

- Occasional or temporary services, e.g. maintenance (not teaching etc.).
- Volunteers supervised at reasonable level.

<b>Part 1: Regulated Activity in relation to children activities</b>
<p>The activities in the left-hand column are regulated activity in relation to children, subject to:</p> <ul style="list-style-type: none"> <li>▪ exceptions in the right-hand column;</li> <li>▪ different provisions for "establishments" (specified places) in Part 2 below.</li> </ul> <p>Do not read the left-hand column in isolation from the right-hand column or from Part 2.</p> <p>In the right-hand column:</p> <ul style="list-style-type: none"> <li>▪ "new" exceptions are those in the 2012 Act;</li> <li>▪ "existing" exceptions are already in the 2006 Act as amended before the 2012 Act, or in secondary legislation under it.</li> </ul> <p>Changes to Legislation: There are outstanding changes not yet made to the</p>

Safeguarding Vulnerable Groups Act 2006, but which are in force.	
<b>Activity</b>	<b>Exceptions – not Regulated Activity</b>
All of regulated activity.	Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the “peer exemption”.
In para 2(1) of Schedule 4: of the Safeguarding Vulnerable Groups Act 2006	
<p>(a) Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p> <p>*Sources:</p> <ul style="list-style-type: none"> <li>- once a week: guidance, March 2010, Annex B, page 70 para B.12;</li> <li>- four or more days/ overnight: Schedule 4, para 10(1) as amended.</li> </ul>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3A).</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.</li> <li>▪ Activity merely incidental to activity with adults.</li> </ul>

<p>(b) Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3B)(b).</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> <li>▪ Activity merely incidental to activity with adults.</li> </ul>
<p>Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.</p>	
<p>(i) Relevant personal care. Para 1(1B):</p> <p>(a) physical help in connection with eating or drinking, for reasons of illness or disability;</p> <p>(b) physical help for reasons of age, illness, or disability, in connection with:</p> <ul style="list-style-type: none"> <li>▪ toileting (including re menstruation);</li> <li>▪ (ii-iii) washing, bathing, or dressing;</li> </ul> <p>(c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide;</p> <p>(e)-(f) other training or advice in relation to (a)-(b).</p>	



<p>(ii) Health care. Para 1 (1C): All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Health care not by, or directed or supervised by, a health care professional*. Para 2(3B)(a).</li> <li>▪ *Defined by reference to regulatory bodies. Para 1(1C).</li> </ul>
<p>(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Legal advice. Para 2(3C);</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> </ul>
<p>(a), (b) &amp; (c): Definition of “overnight”:  In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. Schedule4, Para 10(2).</p>	
<p>Former category (d), treatment or therapy, is now replaced by “health care” provisions.</p>	
<p>(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p>	<p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity by a person who does not have access to the content of the matter, or contact with users.</li> </ul>

<p>(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p> <p>*Prescribed by SI 2009-1548</p>	
<p>In para 1 of schedule 4:</p>	
<p>(3) Early years or later years childminding* with a requirement to register, or voluntary registration, under Childcare Act 2006.</p> <p>*That is: on domestic premises, for reward; as opposed to “childcare premises”, part 2 below.</p>	
<p>(5) Fostering** a child.</p> <p>**Defined at section 53.</p>	<p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Care arranged by family members and not for reward is not regulated activity. Section 53(8).</li> <li>▪ Local Authority can foster child with barred person who is, or lives with, a relative of the child. <i>SI 2009-1797, Art 3(2)</i>.</li> </ul>
<ul style="list-style-type: none"> <li>• (14) Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity: <ul style="list-style-type: none"> <li>- at (a) to (f) above;</li> </ul> </li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- in establishments in part 2 below;</li> </ul>	

## Part 2: Regulated Activity in relation to Children - Establishments

An activity is regulated activity in relation to children if carried out (subject to exceptions below):

- in one of the following establishments;
- frequently (once a week or more often), or on 4 or more days in a 30-day period;
- by the same person, engaged in work for or in connection with the purposes of the establishment; and
- it gives the person the opportunity, in their work, to have contact with children.

Day to day management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

Establishment	Exceptions – not Regulated Activity
Schedule 4, para 3(1) of the Safeguarding Vulnerable Groups Act 2006	
<p>(a) schools (all or mainly full-time, for children);</p> <p>(aa) pupil referral units (also known as Short Stay Schools) not falling within the above;</p> <p>(b) nursery schools;</p> <p>(d) institutions for the detention of children;</p> <p>(e) &amp; (f) children’s homes;</p> <p>(fa) children’s centres in England;</p> <ul style="list-style-type: none"> <li>▪ childcare premises (including nurseries).</li> </ul> <p>Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(15).</i></p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) &amp; (2B)(a);</i></li> <li>▪ Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1 (2B)(b).</i></li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity;</li> <li>▪ childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;</li> <li>▪ for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the</li> </ul>

	<p>activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.</p>
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Note: Categories for office holders (“Positions” - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed.

### **Regulated Activity (Adults)**

This provides information on the scope of regulated activity in relation to adults, as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA) and as amended by the Protection of Freedoms Act 2012 (PoFA) in England and Wales.

The definition of regulated activity for adults from 10<sup>th</sup> September 2012 will identify the activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time. The SVGA will no longer label adults as ‘vulnerable’ because of the setting in which the activity is received, nor because of the personal characteristics or circumstances of the adult receiving the activities.

This means, for example, anyone providing personal care to an adult is in regulated activity irrespective of whether that occurs in, say, a hospital, a care home, a day care centre, a prison or in sheltered housing.

There is no longer a requirement for a person to carry out the activities a certain number of times before they are engaging in regulated activity. Any time a person engages in the activities set out below, they are engaging in regulated activity.

### **General points**

1. Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.
  - a) Family relationships involve close family (e.g. parents, siblings, grandparents) and relationships between two people who live in the same household and treat each other as family.
  - b) Personal, non-commercial relationships are arrangements where either no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital), and the arrangement is made between friends or family friends.
2. An adult is a person aged 18 years or over.
3. A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.

### **New definition of regulated activity Adults**

There are six categories within the new definition of regulated activity.

## 1. Providing Healthcare

The provision of health care by any health care professional to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity. A health care professional is a person who is regulated by one of the following professional regulators:

- General Medical Council
- General Dental Council
- General Optical Council
- General Osteopathic Council
- General Chiropractic Council
- General Pharmaceutical Council
- Pharmaceutical Society of Northern Ireland
- Nursing and Midwifery Council
- Health Professions Council

Health care includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care. This includes diagnostic tests and investigative procedures. Health care also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with a medical condition. An example of this is taking blood from a blood donor or cosmetic surgery.

- The provision of psychotherapy and counselling to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care professional, is regulated activity. This would include the provision of psychotherapy and counselling over the telephone. Life coaching is excluded. The secondary legislation that will bring psychotherapy and counselling into regulated activity is soon to be laid before Parliament (as of September 2012).
- First aid, when any person administering the first aid is doing so on behalf of an organisation established for the purpose of providing first aid (for example, St John Ambulance Service), is regulated activity. This includes first aid given by Community First Responders.
- A worker employed for another purpose who volunteers, or is designated, to be that organisation's first aider is not in regulated activity. For example, a person who works in a department store whose role includes being a first aider is not engaging in regulated activity.
- Members of peer support groups (for example, Alcoholics Anonymous), are not in regulated activity, even if the group is directed or supervised by a health care professional.
- All staff who work in community pharmacies and opticians who are not regulated health care professionals will be excluded from regulated activity. For example, a person who works in a high street pharmacy providing health advice to customers over the pharmacy counter will not be in regulated activity.
- Staff in GP surgeries or dental practices who do not provide health care (for example, receptionists) will not be in regulated activity.

## 2. Providing Personal Care

- Anyone who provides an adult with physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability, is in regulated activity.
- Anyone who prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting and supervision, is in regulated activity.
- Anyone who trains, instructs or provides advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability, is in regulated activity.
- There is one exception to this. Excluded from regulated activity is any physical assistance provided to an adult in relation to the care of their hair when that assistance relates only to the cutting of the adult's hair. This is to ensure that hairdressers who cut the hair of patients and residents in hospitals and care homes are not engaging in regulated activity.

Illustrative examples:

1. A care assistant in a care home who cuts and files an adult's nails to keep the nails short and safe, because the adult cannot do it themselves, because, for example, they cannot see well enough, would be engaging in regulated activity.
2. A beauty therapist who attends a day care centre once a week and provides manicures for anyone who would *like* one, instead of for people who *need them* because of their age, illness or disability, is not engaging in regulated activity.
3. A volunteer who prepares and serves a meal to an adult in their own home (but does not feed the adult) is not engaging in regulated activity. To be engaged in regulated activity you must provide physical assistance to the person, for example spoon feeding that person, or you must be prompting and supervising (for example, prompting and supervising a person with dementia, because without it they would not eat), or you must be training or instructing (for example, teaching a person who has suffered a stroke to eat using adapted cutlery).
4. A health care assistant on a hospital ward who feeds an adult because they are too frail to feed themselves would be engaging in regulated activity.
5. A worker in a care home who reminds a person with dementia to eat their lunch, and ensures they do so is in regulated activity.

## 3. Providing Social Work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services, and providing ongoing support to clients.

## 4. Assistance with general household matters

Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity:

- managing the person's cash,
- paying the person's bills, or
- shopping on their behalf.

Illustrative examples:

1. A volunteer who collects shopping lists and the cash to pay for the shopping from older adults' homes, who then does the shopping on their behalf, would be engaging in regulated activity.
2. A befriender who helps a disabled person compile their weekly shopping list is not in regulated activity.

## **5. Assistance in the conduct of a person's own affairs**

Anyone who provides assistance in the conduct of an adult's own affairs by virtue of:

- Lasting power of attorney under the Mental Capacity Act 2005.
- Enduring power of attorney under the Mental Capacity Act 2005.
- Being appointed as the adult's deputy under the Mental Capacity Act 2005.
- Being an Independent Mental Health Advocate.
- Being an Independent Mental Capacity Advocate.
- Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006.
- Receiving payments on behalf of that person under the Social Security Administration Act 1992 is in regulated activity.

## **6. Conveying**

The secondary legislation that will prescribe when conveying is regulated activity is soon to be laid before Parliament (as of September 2012).

- Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity. The driver does, or the person assists in, such conveying for the purpose of enabling the adult to receive services. Health care, relevant personal care and relevant social work are discussed above.
- In addition, hospital porters, Patient Transport Service drivers and assistants, Ambulance Technicians and Emergency Care Assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are also in regulated activity.
- Conveying does not include licensed taxi drivers or licensed private hire drivers, and does not include trips taken for purposes other than to receive health care, personal care or social work (for example, trips for pleasure are excluded).

Illustrative examples:

1. A person who volunteers to take an adult to and from their GP appointment on behalf of a community group is in regulated activity. It would not matter if that person

knows, or is friends with, the adult they were taking to the appointment if the conveying is on behalf of the group.

2. A friend who takes their neighbour to a hospital appointment would not be in regulated activity, as this is a personal relationship.

### **Statutory guidance: Regulated Activity (children) - supervision of activity with children which is regulated activity when unsupervised**

1. This document fulfils the duty in the Safeguarding Vulnerable Groups Act 2006<sup>1</sup> and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007<sup>2</sup> that the Secretary of State must publish statutory guidance on supervision of activity with children, which when unsupervised is regulated activity. This guidance applies in England, Wales and Northern Ireland.

<sup>1</sup> 2006 Act, amended by Protection of Freedoms Act 2012: Sch 4, para 5A: guidance must be *“for the purpose of assisting” organisations “in deciding whether supervision is of such a kind that” the person being supervised is not in regulated activity.*

<sup>2</sup> 2007 Order, Sch 2, para 5A is as above on guidance on “supervision” for Northern Ireland.

2. For too long child protection policy has been developed in haste and in response to individual tragedies, with the well-intentioned though misguided belief that every risk could be mitigated and every loophole closed. The pressure has been to prescribe and legislate more. This has led to public confusion, a fearful workforce and a dysfunctional culture of mistrust between children and adults. This Government is taking a different approach.

3. We start with a presumption of trust and confidence in those who work with children, and the good sense and judgement of their managers. The law is that supervision must be reasonable, which gives local managers the flexibility to determine what is reasonable for their circumstances. In law, an organisation will have no entitlement to do a barred list check on a worker who, because they are supervised, is not in regulated activity.

4. The precise nature and level of supervision will vary from case to case. The duty means that organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of the children concerned.

5. The duty that supervision must take place “on a regular basis” means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time.

7. Within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:



- the age of the children concerned;
- the number of children that the individual is working with;
- whether or not there are other carers/ adults around;
- the nature of the individual's work or contact with the children;
- the vulnerability of the children;
- the experience of, and checks carried out on, the person being supervised;
- the number of people being supervised.

## **EXAMPLES**

### ***A supervised volunteer, in a specified place***

Mr Jones, a new entrant volunteer, helps children with their reading at a local school for two mornings a week. Mr Jones is generally based in the classroom, in sight of the teacher. Sometimes Mr Jones takes some of the children to a separate room to listen to them reading, where he is supervised by a paid classroom assistant, who is in that room most of the time.

- A person in regulated activity (either the teacher or the classroom assistant) is supervising Mr Jones to the statutory standard;
- therefore Mr Jones is not in regulated activity and the law does not give the school a duty (or power) to do a barred list check on Mr Jones.
- The law does not place on the school a duty to require an enhanced DBS check, but the school is entitled to do so.

The school chooses to do an enhanced DBS check.

### ***A supervised volunteer, not in a specified place***

Mr Wood, a new entrant volunteer, assists with the coaching of children at his local cricket club. The children are divided into small groups, with assistant coaches such as Mr Wood assigned to each group. The head coach, Mr Smith, oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. A barred list check has been done on Mr Smith, as he is in regulated activity.

- A person in regulated activity (Mr Smith) is supervising Mr Wood to the statutory standard;
- therefore the club must not require a barred list check on Mr Wood.
- The law does not place on the club a duty to require an enhanced DBS check, but the club is entitled to if it chooses to.

The club chooses not to do an enhanced DBS check. They take special care in places where children may be particularly vulnerable, such as changing rooms.

***Unsupervised volunteer, not in a specified place***

Mrs Shah starts as an activity organiser at a youth club. She instructs a group of children, is not herself supervised, and supervises a number of paid assistant leaders. The youth club manager has known Mrs Shah well for many years.

- Mrs Shah is entering regulated activity, and therefore the club must obtain a barred list check on Mrs Shah;
- The law does not require the youth club to do an enhanced DBS check, but the youth club is entitled to if it chooses to.

The club manager does the barred list check which he must do, and chooses not to do an enhanced DBS check.

***Department for Education / Department of Health, Social Services and Public Safety (Northern Ireland), May 2012***

### Appendix Figure 3

#### **RISK ASSESSMENT TEMPLATE – EMPLOYEES STARTING WORK BEFORE AN ENHANCED DBS CHECK IS RETURNED**

Please complete this form fully as it will form the basis of a decision to appoint/not to appoint someone into a position subject to it.

**If a Barred List check is not applicable for this role, approval for allowing an applicant to start, based on the completion of this risk assessment must be approved by the appropriate Head of Service.**

Name of Manager/Head Teacher

Name of Applicant

Position Applied For

Service / School

Start Date

Date of Risk Assessment

Previous work experience (outline previous roles and experience)

Questions	Comments
<p>Is this post eligible for a Barred List Check?</p> <p><i>If 'No', then sign off will be required by an appropriate Head of Service on the completion of this form before the applicant may start in role.</i></p>	<p>Yes No</p>
<p>Has the Barred List check been undertaken if applicable?</p> <p><i>See Appendix Figure 2 to determine if applicable. If it is applicable and the answer here is 'no' then this must be undertaken – contact HR Direct.</i></p>	<p>Yes No</p>
<p>Is the applicant barred from working with Children/Adults? <i>If 'Yes' end process now.</i></p>	<p>Yes No</p>
<p>Have all Pre-employment checks been undertaken including</p> <ul style="list-style-type: none"> <li>▪ References checked and verified.</li> <li>▪ Application form checked and all breaks in employment and or training are accounted for.</li> </ul>	<p>Yes No</p>

Questions	Comments
<ul style="list-style-type: none"> <li>▪ Identity has been validated.</li> </ul>	
Has a correctly completed DBS check application form been sent to DBS?	Yes No
What level of and how much supervision is available to the applicant from an appropriately qualified and experienced member of staff?	
Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?	Yes No
Does the post involve any direct responsibility with children and /or vulnerable adults?	Yes No
Has the applicant advised of any disclosures that the DBS check will show? If so, what is the impact of these – see Appendix Figure 4: Cause for Concern Risk Assessment Proforma.	Yes No
Any questions/additional comments from the applicant?	

Declaration by applicant and any additional comments in support of an employee starting work before an enhanced DBS check is returned:

I understand that if I am allowed to start work before my enhanced DBS check is returned it is subject to the information I have supplied and that this is complete and correct. False information, or a failure to supply the details required could lead to termination of employment.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Additional comments from the Manager/Head teacher

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Outcome of Risk Assessment (delete as appropriate):

Allow employee to begin before the enhanced DBS is returned?

Yes

No

Please state (if applicable) whether approval is dependent upon conditions being met, such as recommendations, restrictions or safeguards to be implemented by the employing service/school.

Name of Authorising Officer:

Signature of Authorising Officer:

I have considered the content of this risk assessment and give approval for the applicant to start in position, with the safeguards set out above put in place, prior to the return of an enhanced DBS check.

Name of Head of Service

Signature of Head of Service

Date

## Appendix Figure 4

### CAUSE FOR CONCERN RISK ASSESSMENT FORM

Please complete this form fully and discuss with an Lead DBS Signatory in HR Direct, as it will form the basis of a decision to appoint/not to appoint someone into a position where adverse disclosures have been identified on a returned DBS check.

Name of Manager/Head Teacher

Name of Applicant

Name of HR Specialist

Position Applied For

Service/School

Date of Risk Assessment

Questions	Comments
Nature of incident as outline on the DBS certificate?	
Does the applicant meet all the essential criteria for the post in terms of skills, knowledge, experience and ability?	
Does the applicant agree that the information detailed on the DBS certificate is correct? In the event of a challenge from the applicant the matter needs referring to the disputes team at the DBS.	
The country in which the offence was committed e.g. some activities are offences in Scotland and not in England and/or Wales and vice versa. Whether the offence has since been decriminalised by Parliament.	
What was the nature of the crime, when did the relevant offence(s) occur (specify date), what were the circumstances involved and what was the sentence?	

Do the matters disclosed form any pattern? Was the offence a one-off, or part of a history of offending e.g. is the offence likely to re-occur?	
What is the seriousness of the offence(s) and relevance to the safety of other employees, customers, service users and property?	
Are there any assessments and reports from those agencies involved in the applicant's process of rehabilitation e.g. probation service, specialists working in prison, other agencies?	
Are the type and/or nature of the offence(s) directly relevant to the post?	
What is the nature of the contact the applicant will have with children/adults/the public and how vulnerable are they? If working with adults, will the applicant have access to finances or to items of value?	
Was the relevant offence committed at work (either paid or unpaid work)? Does the job present any opportunities for the applicant to re-offend in the place of work?	
Did the applicant declare the matters on the DBS disclosure application form and/or the DCC application form?	
Are there any mitigating circumstances e.g. any relevant information offered by the applicant about the circumstances that led to the offence being committed e.g. the influence of domestic or financial difficulties?	
Has the applicant's circumstances changed since the offence was committed, making re-offending less likely (e.g. improved personal circumstances, drug	

addiction therapy etc.). Can the applicant demonstrate any efforts not to re-offend? i.e. rehabilitation course	
Would the applicant do anything differently now - has their motivation changed? Does the individual regret the matter (degree of remorse) and what is their attitude towards the matters now?	
What level of and how much supervision is available to the applicant?	
Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?	
Any questions/additional comments from the applicant?	

**Declaration by applicant and any additional comments in support of their employment**

I understand that any offer of employment will be subject to the information I have supplied and that this is complete and correct. False information, or a failure to supply the details required could make an offer of employment invalid or lead to termination of employment. I understand that this proforma will be held securely by HR Direct for 6 months from the date of the assessment if appointed/if not appointed. It will only be accessed if a) Regulatory/enforcement organisations ask for clarification on this recruitment decision, or b) any allegations are made against me during the course of my employment with the Council, where an investigation would require access to this data. It will be destroyed in line with the Council's Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information.

I consent to the above:



Signature:	Date
Full name	

Additional comments from the Manager/Head teacher	
Signature:	Date:

<p><b><u>Outcome of Risk Assessment (delete as appropriate):</u></b></p> <p>Continue with offer of employment / Withdraw offer of employment</p> <p>Please state (if applicable) whether approval is dependent upon conditions being met, such as recommendations, restrictions, safeguards to be implemented by the employing service/school.</p> <p>Authorising Officer: Please also consider whether your decision may have an impact on another head of service and their service provision.</p> <p>Name of Authorising Officer:</p> <p>Signature of Authorising Officer:</p>
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## Appendix Figure 5

### POLICY STATEMENT ON THE RECRUITMENT OF EX-OFFENDERS

1. As an organisation using the DBS to assess applicants' suitability for positions of trust, Denbighshire County Council complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly, it undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
2. Denbighshire County Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
3. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select candidates for interview based on their skills, qualifications and experience.
4. A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, all application forms and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
5. Where a Disclosure is to form part of the recruitment process, we encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process. We request that this information is sent under separate, confidential cover, to a designated person with Denbighshire County Council and we guarantee that this information is only seen by those who need to see it as part of the recruitment process.
6. We ensure that all those in Denbighshire County Council who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.
7. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
8. We make every subject of a DBS Disclosure aware of the existence of the DBS Code of Practice and make a copy available on request.

9. We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

**Having a criminal record will not necessarily bar you from working with us.** This will depend on the nature of the position and the circumstances and background of your offences.

## Appendix Figure 6

### **POLICY STATEMENT ON THE SECURE STORAGE, HANDLING, USE, RETENTION AND DISPOSAL OF DISCLOSURES AND DISCLOSURE INFORMATION SUPPLIED BY THE DBS.**

#### **General Principles**

As an organisation using the DBS to help assess the suitability of applicants for positions of trust, Denbighshire County Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information.

#### **Storage and Access**

Disclosure information is never kept on an applicant's personnel file, only evidence of a check having been undertaken will be recorded on Trent. Any sensitive information is always kept separately and securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

The following details of all DBS checks will be maintained for employed members of staff on the HR System (Trent):

- DBS type
- Date DBS valid from
- DBS checked by
- DBS renewal date
- Disclosure certificate number
- The position for which the Disclosure was requested
- Children or vulnerable adults or both
- Who the information has been shared with
- Form reference number

#### **Handling**

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

#### **Usage**

Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

## **Retention**

Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six months, we will consult the DBS about this and will give full consideration to the Data Protection and Human Rights individual subject before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

## **Disposal**

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, notwithstanding the above, we will keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken.

## **Reproductions of Disclosures**

With the consent of the applicant, a copy of their DBS certificate will be taken.

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# Disclosure and Barring Policy 29/01/2014

Equality Impact Assessment

# Disclosure and Barring Policy

Contact: Catrin Roberts

Updated: 29/01/2014

## 1. What type of proposal / decision is being assessed?

A new or revised policy

## 2. What is the purpose of this proposal / decision, and what change (to staff or the community) will occur as a result of its implementation?

The policy has been update to reflect legislative changes.

## 3. Does this proposal / decision require an equality impact assessment? If no, please explain why.

*Please note: if the proposal will have an impact on people (staff or the community) then an equality impact assessment **must** be undertaken*

Yes

<If no, briefly summarise the reasons for this decision here, and skip ahead to the declaration at the end>

## 4. Please provide a summary of the steps taken, and the information used, to carry out this assessment, including any engagement undertaken

*(Please refer to section 1 in the toolkit for guidance)*

The completion of an Equality Impact Assessment Form.

## 5. Will this proposal / decision have a positive impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?

*(Please refer to section 1 in the toolkit for a description of the protected characteristics)*

<Please summarise any likely positive impact and identify which protected characteristics will benefit>



**6. Will this proposal / decision have a disproportionate negative impact on any of the protected characteristics (age; disability; gender-reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation)?**

No - the policy impact will be the same regardless of an individual's protected characteristics.
--

**7. Has the proposal / decision been amended to eliminate or reduce any potential disproportionate negative impact? If no, please explain why.**

No	<If yes, please provide detail>
----	---------------------------------

**8. Have you identified any further actions to address and / or monitor any potential negative impact(s)?**

No	<If yes please complete the table below. If no, please explain here>
----	--

Action(s)	Owner	By when?
<Please describe>	<Enter Name>	<DD.MM.YY>
<Please describe>	<Enter Name>	<DD.MM.YY>
<Please describe>	<Enter Name>	<DD.MM.YY>
<Please describe>	<Enter Name>	<DD.MM.YY>
<Unrestrict editing to insert additional rows>	<Enter Name>	<DD.MM.YY>

**9. Declaration**

Every reasonable effort has been made to eliminate or reduce any potential disproportionate impact on people sharing protected characteristics. The actual impact of the proposal / decision will be reviewed at the appropriate stage.

<b>Review Date:</b>	28/01/2015
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Name of Lead Officer for Equality Impact Assessment	Date
Catrin Roberts	29/01/2014

**Please note you will be required to publish the outcome of the equality impact assessment if you identify a substantial likely impact.**

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**Report To:** Full council

**Date of Meeting:** 25 February 2014

**Lead Member / Officer:** David Smith, Lead Member Public Realm

**Report Author:** Steve Parker, Head of Environmental Services

**Title:** Approval of Preferred Bidder, and the second Inter-Authority Agreement - North Wales Residual Waste Project (NWRWTP)

**1. What is the report about?**

In February 2008 the council gave its approval for DCC to enter into a formal partnership with four other north Wales councils, to jointly procure a 25 year contract for the provision of residual waste disposal facilities. This report seeks authorisation for the remaining steps in the process to be completed.

**2. What is the reason for making this report?**

In order to facilitate the procurement process, all councils involved in the partnership, subsequently signed-up to a formal Inter Authority Agreement (IAA1). Under this agreement, delegated decision making authority was given to the Project Board and the Project Committee, with a number of key decisions still being reserved for individual councils. This report is principally about two of those reserved matters, i.e. confirmation of the final preferred bidder, and approval of the second Inter Authority Agreement (IAA2). Due to the value of the project, full Council approval is necessary for these steps.

**3. What are the Recommendations?**

The council is asked to :

- a) approve the award of Preferred Bidder status to Wheelabrator Technologies Inc (WTI), on the basis that following a rigorous dialogue and negotiation with WTI, the Call for Final Tender (CFT) bid submitted by WTI represents value for money for the partnership; and that following detailed financial, legal and technical evaluation of WTI's CFT bid, the partnership is satisfied with the risk balance proposed with the contract 'Project Agreement')
- b) grant authority to the North Wales Residual Waste Joint Committee to take all necessary steps to take the process forward with WTI from Preferred bidder through to Financial Close, and award a contract.
- c) commit to the Partnership and the Project by adopting, along with the other 4 councils, the principles in the 2<sup>nd</sup> Inter-Authority Agreement which reflect the key terms of the Project Agreement to be entered into by the Lead Council with the Preferred Bidder on Contract Award.
- d) delegate authority to the Lead Chief Executive of Flintshire to finalise the second Inter-Authority Agreement for signing by the constituent authorities, and to circulate the finalised agreement to the Monitoring Officers of all 5 authorities take into account the views of all constituent Authorities and to refer back to the Joint Committee for approval any material departures from the agreed principles.
- e) To agree to sign the second Inter Authority Agreement once it has been finalised in accordance with the above procedure,
- f) to approve the proposed 2013/14 revised project budget of £595,558, together with the proposed expenditure of £321,066 for 2014/15, to take the

procurement process to the final stage of Financial Close (both as set out in appendix 5).

g) to delegate the authorisation of ongoing budget requirements to the NWRWTP Joint Committee (in accordance with appendix 5).

#### **4. Report details.**

##### **4a) preferred bidder selection.**

The procurement has been undertaken via a “competitive dialogue” process. At this stage, two bidders would normally still be in the running, and a decision on deselection would now be required. However, the second bidder withdrew unilaterally in Jan.2013, leaving the current bidder in a monopoly position.

Since that withdrawal, the project team (and the remaining bidder) have been keen to demonstrate that value for money (VFM) is still being achieved on the project. The drive for VFM resulted in a number of highly significant changes to what was being procured. The overall result from these changes has been an improved position for Denbighshire, i.e. comparing the IAA1 agreement “offer” against the currently anticipated outcome (see 4b for details).

That is significant, because under IAA1, the council accepted the basic position that withdrawal from the project was only permissible if the price became “unaffordable”. Furthermore; it also accepted the position that, if any council were to unilaterally withdraw, it would have to reimburse the remaining council for all consequential costs to date (likely to be several million pounds).

The project is actually well-inside the “affordability envelope” (see Appendix One). Furthermore, the final business case does appear to demonstrate genuine VFM. The company has also satisfied the requirements of the partnership’s legal, technical, and financial experts. In these circumstances, there appears to be no reason why the remaining bidder should not now be granted “preferred bidder status”.

##### **4b) Inter Authority Agreement No.2**

IAA No.1 was an “agreement to procure”, which covered everything up to final contract award. IAA2 covers the operation of the contract itself, i.e. from contract award onwards. The draft IAA2 is included as an Appendix to this report. The agreement is a complex legal document that covers every aspect of how the contract is to be managed. The essential features are as follows:

- i) The main waste disposal facility will be an energy from waste plant, located at Deeside industrial park, operated by Wheelabrator Technologies Ltd (WTI). The plant will be paid for over a 25 year period via “gate fees”. The same charging mechanism will apply to all councils.
- ii) Gate fees vary according to the tonnages that are delivered. The councils have an optional 5 year extension available to them.
- iii) Flintshire CC will enter the main contract with WTI, and will then recharge other councils for the services provided. A small team will be employed to do this work.
- iv) Under IAA1, a principle was agreed that the councils would share transportation costs, i.e. between the various transfer stations in each

county and the new plant. In Denbighshire the stations used would be Ruthin, and a (yet to be determined) location; designed to replace the Llandullas landfill site.

- v) Councils will pay their own costs in relation to the operation of the transfer stations. This principle is a variation from the principle set out in IAA1. However, it is not a significant factor in Denbighshire's VFM calculation. It is broadly cost neutral for Denbighshire.
- vi) Under IAA1 the council agreed to provide a guaranteed minimum tonnage of waste, for which it would be charged, even if the council was not able to deliver it for some reason. Under IAA2, this specified tonnage is lower. I.e. that is an improved position for Denbighshire.
- vii) Under IAA1 the liability for shared haulage cost was significantly higher than it is under IAA2. Once again, this is an improved position.

In summary; IAA2 generally offers the council a better position than IAA1. Technical officers are satisfied with the main features, and the legal clauses have been drafted to the satisfaction of the council's legal officers. Officers therefore recommend that the draft should be supported.

There is one new item proposed in IAA2 (not included in IAA1), i.e. a "community benefit payment". The money would be spent on agreed local community projects. The sum is designed to reflect the fact that Flintshire offered up the use of their land for free. The method of apportioning the charges (i.e. the contributions from individual councils) would be on a "tonnes delivered" basis. This is the optimum method for Denbighshire. Accepting IAA2 would mean accepting this charge.

#### 4c) Approval of remaining procurement budget

The costs of procurement have exceeded those previously authorised, due to time delays and other factors, Approval is therefore sought to allow permit expenditure between April and June 2014 (financial close), as we will exceed the original IAA budget by 5% and need partner authority approval to go more than that. (details are explained in the separate report - Appendix 3). The second recommendation from the report one is to fix a ceiling for future contract management expenditure of £359,000 per annum, Denbighshire's share will be based on tonnages delivered, so is likely to be around 11 to 13% of this sum (approx. £43,000 p.a maximum).

### **5. How does the decision contribute to the Corporate Priorities?**

This contract will assist in the delivery of the sustainability agenda. Energy will be recovered from waste that would otherwise be going to landfill.

### **6. What will it cost and how will it affect other services?**

- a) The scope of this report is limited to the selection of preferred bidder decision, support for the draft IAA2 document, and payment of procurement costs. However, the final business case for the project indicates that the chosen solution is cheaper than "business as usual".
- b) The contract is for bulk disposal of waste so there is no direct effect on the public in terms of equalities., and there are no relevant biodiversity factors. The Environmental effects of the project are beneficial; energy will be recovered from waste that would otherwise be going to landfill.

## **7. Equality Impact Assessment (EqIA)**

There are no direct consequences for services delivered to the public, or on the working arrangements for council staff (see appendix 9).

## **8. What consultations have been carried out?**

DCC legal officers have been fully involved in the drafting of the IAA2. An informal council briefing session was held on 4 February. The matter was considered by Partnerships Scrutiny on 6 February 2014. Members were confident that the Project had been fully evaluated at every stage and was therefore sound. The Committee was also supportive of the request to delegate to the Joint Committee the powers to conclude any necessary negotiations. Formal approval was sought from Cabinet on 16 Feb.2014.

## **9. Chief Finance Officer Statement**

The changes to the proposals that have been made since the withdrawal of the second bidder have resulted in an improved financial offer for DCC. Although the final decision on the final business case will be the subject of a future report, the current business case shows that the proposed solution is also cheaper than the cost of the current operations. This supports the acceptance of both the recommendations of this report.

**10. What risks are there and is there anything we can do to reduce them?** If the council failed to enter the agreement, the other councils would suffer consequential costs, for which Denbighshire would be liable. The whole project might be jeopardised.

## **11. Power to make the Decision**

Under Section 2 of the Local Government Act 2000, i.e. the promotion or improvement of the environment for the well-being of the area.

## **Appendices**

1. IAA2 cover report
2. Summary of IAA2 paper (Pinsent Mason paper)
3. Revised Draft IAA2 itself
4. Data Protection Policy (which accompanies the draft IAA2)
5. Budget Report (will naturally follow the IAA2 papers)
6. Preferred Bidder Report (draft attached) **PART 2 ITEM**
7. Consolidated advisors Evaluation Report (Appendix A to the Preferred Bidder Report) **PART 2 ITEM**
8. Summary of Project Agreement (Appendix C to the Preferred Bidder Report) **PART 2 ITEM**
9. Equalities Impact Assessment

**REPORT TO:** **[INSERT RELEVANT COMMITTEE NAME]**

**DATE:** **[DATE]**

**REPORT BY:** **PROJECT MANAGER**

**SUBJECT:** **2<sup>nd</sup> INTER-AUTHORITY AGREEMENT**

## **1. PURPOSE OF REPORT**

- 1.1 For the **[INSERT RELEVANT COMMITTEE NAME]** to approve the key principles for the 2<sup>nd</sup> Inter-Authority Agreement for adoption by all constituent Authorities.
- 1.2 To delegate authority to the Lead Chief Executive to finalise the 2<sup>nd</sup> Inter-Authority Agreement to be signed by all 5 Authorities. If there are to be any material departures from the agreed principles, in the finalisation of the Agreement, these would be referred back to the Joint Committee for approval.

## **2. BACKGROUND**

- 2.1 The NWRWTP is currently governed by an Inter-Authority Agreement, signed by all partner authorities, which takes the partnership through to the stages of financial close and contract award. Once these stages are reached a second Inter-Authority Agreement (IAA2) will be required to take the partnership through the subsequent stages:
  - seeking planning and environmental consents;
  - construction;
  - managing the contract for the operation of the facility over the life of the contract; and
  - concluding the contract on expiry.
- 2.2 During late 2013 and January 2014 discussions have been held with the officer groups advising and supporting the project (legal, financial and technical) on the content of the second Inter Authority Agreement. At the Joint Committee on 29th January 2014, agreement was reached on the remaining key areas. The key principles that have been agreed at the Joint Committee are set out in the table at 3.2 below.
- 2.3 A summary of the IAA2 principles produced by the project's legal advisors, Pinsent Masons, is highlighted within the draft second Inter Authority Agreement appendix 1 (separate document) and as set out in a Report at appendix 2 (separate document). It is intended that these reflect the key terms of the Project Agreement that Flintshire as Lead Authority will be entering into with the Preferred Bidder on Contract Award.

### 3. CONSIDERATIONS

3.1 Appendix 1 is still a working draft of the IAA2, which makes provision for:

- the principles and key objectives of the agreement
- the duties of the Lead Council ( Flintshire) and Partners
- decision making processes
- site issues
- termination events and consequences
- roles of the Project Board and Joint Committee
- the commitments and liabilities of each partner constituent council and their contributions.

It now contains all of the agreed principles recommended by the Joint Committee with a view to the detail behind those principles to now be finalised. A completed document will then be sent to all 5 Authorities before Contract Award and the Lead Authority Chief Executive will take into account the observations of all constituent Authorities.

The constitutional and governance arrangements of the second IAA are intended to reflect those of the first IAA:- namely that the Project Board and Joint Committee decisions are to be by majority vote and the matters reserved to the individual Councils are to be unanimous decision; the quorum for the Project Board would be a senior officer from each participating Council in person (or if in an emergency by telephone) and for the Joint Committee, the quorum would be attendance by one member (voting or non-voting member) from each participating Council.

3.2 The table below summarises the key areas of cost sharing principles and other significant issues within the IAA2 which were put to the Joint Committee on the 29<sup>th</sup> January 2014 for recommendations. Points 14 and 15 of that table were additional recommendations made by the Joint Committee for incorporation into the IAA2.

Liabilities of the Councils are set out at paragraph 6 of Pinsent Mason's Report at appendix 2. On termination liability essentially follows the cost sharing agreed principle, that if any liabilities/termination payments are incurred whilst the facility is operational then those costs are to be borne by the Councils pro rata per the tonnage delivered. If however, the facility has not yet been built then those costs are to be borne equally. If the Councils were not equally at fault for termination and one Council bears more responsibility for that event then that Council shall bear a greater proportion for any payment due. For any other defaults, then the responsible Council will pay this or if there is more than one,



will share this accordingly. Any Council withdrawing or being terminated will have to pay in accordance with the Liability Report set out at Schedule 7 of the IAA2. This reflects the Liability Report appended to the 1<sup>st</sup> Inter-Authority Agreement.

	Issue	Agreement at Project Board
1.	1. A general overarching agreement on cost sharing.	<p>a) Where any costs apply to a period when the facility is operational that they are split pro rata based on the tonnage delivered (i.e. actual not forecast) subject to paragraph 14 of this table below, and</p> <p>b) In any other situation the costs are to be divided equally between the councils</p> <p>See 3 below for after the site has been operational and is being wound down.</p>
2.	What happens to the site on early termination?	<p>The cost sharing principle above is to be applied to any early termination payments and liabilities.</p> <p>In relation to the facility site:</p> <p>a) If the facility had been built and still had the potential to be used, then it should be made available to the Partnership for the duration of the term of the proposed Project Agreement. The rationale for this is that on early termination, the Partnership as a whole will have invested in the capital and operating expenditure incurred up to the termination date. If Flintshire alone were to have the benefit of a “working facility”, then this would be inequitable and there would have to be some payment by them to offset any valuation of the facility which would probably be punitive to meet.</p> <p>b) If the facility had not been built i.e. because of planning failure, then there would be no obligation to tie the site to the project.</p> <p>c) If the facility was built but not operational or had a negative value (i.e. on a re-tender for a Contractor default situation) then all Councils should contribute / share any liability such as decommissioning costs or alternatively share any additional costs of making the facility operational for the term of the Project Agreement.</p>

3.	Decommissioning costs.	<p>These are to be divided equally at expiry. However, if Flintshire were to opt to continue using the facility solely it would take on the decommissioning liability in full. A share of these costs is to be included in the liability report for any Council withdrawing or being terminated early.</p> <p>For reference current estimates provided by AMEC are that decommissioning could cost in the region of £1.1 million (with a 10% contingency to be built in) and could take up to 6 to 12 months to deal with the Planning and EIA requirements and a potential further 12 to 18 months for the actual decommissioning itself (subject to any complications that could arise).</p>
4.	Contract Management Costs	These are to be divided equally up to operation of the Facility and thereafter pro rata based on the tonnage delivered as per the general cost sharing principle.
5.	The Community Benefit Fund	This is to be paid into by all 5 Councils pro rata based on the tonnage delivered
6.	Loss of WG funding	Any loss of funding for which the Contractor is not responsible will be shared and paid by the Councils pro rata based on the tonnage delivered
7.	New build Waste Transfer station (if required)	This is to be divided equally as a capital expenditure. The parcel of land provided is to revert to the donating authority if owned by them, or if funded by the partnership then the councils would jointly decide what happens to that facility at the end of the contract term and how its proceeds/assets are to be distributed.
8.	Decision making	All decisions to be made by the Project Board and Joint Committee are to be by majority vote with any matters that are reserved to Individual Councils to be made unanimously by all Councils (save for when one Council has defaulted in which case the four non-defaulting Councils only, would have to make any decision unanimously ie to terminate the defaulting Council).

9.	Extension of the Project Agreement	This is to be a matter that all five councils are required to agree on (without allowing for any Council to withdraw at this stage) and if the decision cannot be unanimous then any Council(s) who do wish to continue to use the facility can agree to do so outside of the Project Agreement. Those councils could decide to agree a new procurement amongst themselves.
10.	Cost Sharing during operation (waste treatment, haulage / transport and "excess payments")	<p>a) Each authority is bound by its own Guaranteed Minimum Tonnage and the price bands as charged by the contractor.</p> <p>b) Payments to the contractor for the treatment and transport of waste will be based on the actual tonnages delivered subject to not exceeding the forecast tonnages.</p> <p>c) Where tonnage delivered by an authority exceeds the forecast tonnages, the authority delivering such excess tonnage shall be solely responsible for the costs associated with the treatment and transport of such tonnage.</p> <p>d) Where the tonnages are below the guaranteed minimum tonnage the guaranteed minimum tonnage as applicable to each authority will be deemed to be the tonnage delivered by the relevant authority.</p> <p>e) In the event where the tonnages delivered are below the guaranteed minimum tonnage, the authority not meeting its requirements will pay on the basis of the guaranteed minimum tonnage and this will result in an 'excess payment' to be managed as per paragraph 12.a) below.</p>

11.	Cost of managing waste prior to haulage and treatment (e.g. waste transfer stations)	<p>a) Where WG do not provide a grant for that element, each authority would be responsible for their own transfer station operating costs, with no recourse to other authorities;</p> <p>b) Where WG do provide a grant for that element, all partner authorities will pay in to the Partnership an agreed amount per tonne for the waste being managed within each authority area, and all partner authorities receive an equitable share of the payment back, with the addition of the Welsh Government Grant. The amount paid “in” to the partnership per tonne will be an amount agreed between the partner authorities (the starting point for the discussion would be the rate identified by the market testing / procurement exercise for the intended Conwy transfer station; this will ensure that the amount is based on a market rate).</p>
12.	Benefit Sharing	<p>a) The application of the overall contract level tonnage limits on an authority level could result in an overall overpayment by the authorities in total compared to the payment to the contractor and such excess will be termed as 'excess payments' but is in actuality arises as a result of the benefits of being in a partnership. Such “Excess” payments should be placed in a reserve to be used to fund project expenses, or be shared on a periodic basis or at the end of the project utilising the percentages used to allocate the tonnage bandings. This will be administered by the Joint Committee at its discretion.</p> <p>b) The Excess Payments will be reviewed after the first year of the contract to take into account the likelihood of amounts that may regularly be accrued on an annual basis.</p> <p>c) Dealing with additional income and windfall gains: - the project has the potential to deliver increased 3rd party income over and above that guaranteed by the contractor. Examples include electricity and 3rd party waste income. There could also be circumstances where windfall payments also arise (for instance if there are electricity or heat generation subsidies not envisaged at this time that subsequently come to pass). Such income is to be split pro rata per tonne delivered.</p>

13.	Ability to “trade” tonnage allocations.	The project will be operational for 25 years, and during this time it is likely that proportions of wastes arising will change between authorities during the project period. The IAA2 is to have a method included within it to ensure some flexibility to allow readjustment on the tonnage bands to more closely reflect any changes in the proportions of waste arisings between authorities.
14.	Commitment to Guaranteed Minimum Tonnages/Payments	The Councils agree to make a commitment to make payments for not less than the Guaranteed Minimum tonnages of Contract Waste to the Contractor each year, whether they deliver their share of the Minimum Tonnage or not. Their share will be set out in an appendix to the 2 <sup>nd</sup> Inter Authority Agreement.
15.	Additional air quality Monitoring	The Councils agree that there will be additional air quality monitoring undertaken for the period of 1 year from the date of service commencement at the discretion of the Joint Committee. Costs will be shared on a pro rata basis per actual tonnages delivered. Thereafter the said monitoring will be subject to review by the Joint Committee."

#### **4. RECOMMENDATIONS**

- 4.1 To commit to the Partnership and the Project by adopting, along with the other 4 councils, the principles in the 2<sup>nd</sup> Inter-Authority Agreement which reflect the key terms of the Project Agreement to be entered into by the Lead Council with the Preferred Bidder on Contract Award.
- 4.2 To delegate authority to the Lead Chief Executive to:
- finalise the 2<sup>nd</sup> Inter-Authority Agreement for signing by the constituent authorities;
  - circulate the finalised agreement to the Monitoring Officers of all 5 Authorities
  - take into account the views of all constituent Authorities and to refer back to the Joint Committee for approval any material departures from the agreed principles.
- 4.3 To agree to sign the 2<sup>nd</sup> Inter Authority Agreement once it has been finalised in accordance with the above procedure

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 There are financial implications and risk for all five constituent authorities as a consequence of entering into an Agreement. These are summarised in this and accompanying reports.

**6. ANTI-POVERTY IMPACT**

6.1 None

**7. ENVIRONMENTAL IMPACT**

7.1 None

**8. EQUALITIES IMPACT**

8.1 None

**9. PERSONNEL IMPLICATIONS**

9.1 None

**10. CONSULTATION REQUIRED**

10.1 None

**11. CONSULTATION UNDERTAKEN**

11.1 A number of meetings have taken place of the Technical Officers' Group, Finance Officers' Group and the Legal Officers' Group to discuss the key issues raised in the draft IAA2, at the Project Board on 12 December 2013, and 16 January 2014 and the Joint Committee on 29 January 2014.

**LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985**

**Background Documents:**

None

**Contact Officer:** Louise Pedreschi (FCC)  
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Steffan Owen (NWRWTP)

## REPORT ON THE

### DRAFT SECOND INTER-AUTHORITY AGREEMENT

**Note:** *This report is intended to provide a high level summary of the current draft form Inter Authority Agreement. The report includes details of issues that have been discussed and agreed in principle by the Project Board at a meeting on the 16 January 2014.*

*The Inter Authority Agreement is currently only in draft form. In the event that the Partnership wish to change any of the principles set out below, or wish to include any additional project specific partnering elements, then this can be accommodated.*

*The Partnership should also note that this report is only intended to be a high level summary of the content of the draft Inter Authority Agreement and should not be relied upon in lieu of the Inter Authority Agreement itself.*

#### 1. INTRODUCTION

- 1.1 At the beginning of the procurement, Conwy County Borough Council, Denbighshire County Council, Flintshire County Council, Gwynedd Council and the Isle of Anglesey County Council (together the "**Partnership**") agreed to work together in a partnering relationship to jointly procure a residual waste treatment facility and deliver residual waste treatment services in the project known as the North Wales Residual Waste Treatment Project (the "**Project**"). The Partnership signed the first Inter Authority Agreement on 24 June 2010, to regulate working arrangements and decision making among each of the Councils during the procurement of the Project up to financial close.
- 1.2 The Partnership has agreed that Flintshire County Council will take on the role as 'Lead Council' and will sign and enter into all the legal documents to the Project on behalf of the Partnership; the main document being the agreement with the Contractor, involving the design, construction, installation, commissioning, operation and maintenance of the facility for the treatment of residual waste (the "**Project Agreement**"). Following the commencement of the Project Agreement, the rights, liabilities and obligations of each Council set out in the first Inter Authority Agreement will be superseded by the rights, liabilities and obligations set out in the second Inter Authority Agreement (the "**IAA**").
- 1.3 As the Lead Council will take on the full contract responsibility on behalf of the Partnership, it requires assurances that each Council will meet its obligations in a timely manner to ensure that the Lead Council is never exposed to unreasonable contractual liabilities. Also, each Council needs assurance that they will receive all the contractual benefits that they are entitled to – even though they have not directly signed a contract with the Contractor. This is one of the primary objectives of the IAA.

#### 2. PURPOSE OF THE SECOND INTER-AUTHORITY AGREEMENT

- 2.1 The overarching purpose of the IAA is to ensure that the five Councils are able to work effectively together in true partnership and with the Contractor to get maximum benefit from the Project. The IAA tries to balance the potential conflicts: that the Lead Council, as the Project Agreement counter-party, is not over-exposed in terms of risk and liability; and that the other Councils get their fair share of the contractual rights and benefits. The IAA is based on the principles of fairness and partnership working and is intended to manage the interests of all the Councils equitably.
- 2.2 The IAA attempts to reflect, where appropriate, the Project Agreement between the Partnership and the Contractor.

- 2.3 The IAA accommodates a structure to ensure that the Lead Council isn't exposed to disproportionate liability and that the contractual rights and obligations appropriately flow down to all the Councils.
- 2.4 At its most basic level, having signed the Project Agreement, the Lead Council is committed to the delivery of all the Partnership's waste and the full payment for its treatment. The Contractor, for its part, is obliged to accept and treat the waste.
- 2.5 Given this commitment, the IAA needs to ensure that each Council is committed to deliver its waste to the Contractor and pay to the Lead Council the correct amount in advance of the Lead Council having to pay the Contractor.
- 2.6 The IAA sets out the duties of the Lead Council. These duties include (but are not limited to);
- 2.6.1 acting on behalf of the Councils for the management and supervision of the Project Agreement,
  - 2.6.2 acting under the direction of the Joint Committee;
  - 2.6.3 being responsible for liaising with the Contractor, and
  - 2.6.4 entering into any contracts that may be required (for example, the appointment of consultants) and liaising with Welsh Government.
- 2.7 The IAA also regulates such things as:-
- 2.7.1 Decision making;
  - 2.7.2 Termination and Withdrawal from the IAA;
  - 2.7.3 Flexibility to Contract Changes; and
  - 2.7.4 Liabilities of the Councils.

### 3. **DECISION MAKING**

#### 3.1 **Contract Manager**

- 3.1.1 The Partnership will appoint a suitably qualified Contract Manager for the day-to-day management of the Project. The Contract Manager will be responsible to all the Councils but will be employed by or seconded to the Lead Council and shall report to the Project Board. The Contract Manager shall act as the Authority's Representative (as such term is defined in the Project Agreement.)
- 3.1.2 The Contract Manager will have sufficient authority to make day-to-day decisions and will liaise on a regular basis with key personnel at each Council and with the Project Board and the Joint Committee.
- 3.1.3 For those decisions with a budgetary impact, the Contract Manager will have authority up to an annual financial threshold of [£ ], over which the decision would have to be escalated to the Project Board. It is noted however, that regardless of financial threshold, the Contractor Manager has the ability to refer any matter to the Project Board.

#### 3.2 **Project Board**

- 3.2.1 The Councils shall form the Project Board for the purpose of the day-to-day management and the implementation and monitoring process and to carry



out those specific Project Tasks as indicated in Schedule 1 (Project Tasks) of the IAA and any matters referred to the Project Board by the Contract Manager.

3.2.2 The Project Board will have authority to decide on a matter at a quorate meeting of the Project Board by those present and entitled to vote in respect of a matter that will have (or is reasonably expected to have) an annual financial threshold of up to [£ ], over which the matter would need to escalate to the Joint Committee, provided always that the Project Board has the ability to refer any matter of any financial value to the Joint Committee to decide.

3.2.3 Any such decision of the Project Board will be binding on all the Councils.

### 3.3 **Joint Committee**

3.3.1 The Councils shall form the Joint Committee, (which shall supersede and replace the Joint Committee formed pursuant to the first Inter Authority Agreement), to carry out the functions set out in Schedule 2 (Joint Committee Terms of Reference) of the IAA and to carry out the Project Tasks as indicated in Schedule 1 (Project Tasks).

3.3.2 The proposed annual threshold for Joint Committee matters is up to [£ ]. Any decisions to be made on a matter in excess of these parameters shall be referred as a 'Matter Reserved To The Councils' and decisions would have to be taken by each individual Council.

3.3.3 The Joint Committee may determine that any Joint Committee Matter or Project Board Matter may be referred back to each Council for a decision as a Matter Reserved to the Councils and/or make a decision to delegate any matter to the Project Board for decision.

3.4 A general principle of decision making under the Project Board and the Joint Committee structure is that decisions should be by majority voting. For Matters Reserved To The Councils, such decisions shall not be implemented unless approved by all of the Councils on a unanimous basis.

3.5 It is agreed that there is no requirement for Council Lead Officers to be included within the IAA and the necessity and appointment of Project Officers for the purposes of the Project will be for the Joint Committee to determine from time to time as required.

## 4. **TERMINATION, WITHDRAWAL AND EXTENSION**

The IAA shall continue in full force and effect from the date upon which the IAA is entered into by the Partnership, until the earlier of the following dates:

- (a) all the Councils agree in writing to its termination; or
- (b) there is only one remaining Council who has not withdrawn from the IAA; or
- (c) the date falling six (6) months after the expiry or earlier termination of the Project Agreement (subject to any agreed period of time in respect of the decommissioning of the Site as noted below).

### 4.2 **Termination**

4.2.1 The IAA makes provision for terminating one of the Councils in the event of an unresolved breach of a Council's obligations under the IAA. The decision

to terminate the participation of a Council shall be treated as a Matter Reserved To The Councils.

4.2.2 The defaulting Council would be liable to the other Councils for any increased cost and losses suffered as a result of the default and agreed pursuant to a Liability Report (as defined in the IAA), prepared by the Lead Council and agreed by the Joint Committee.

#### 4.3 **Withdrawal**

4.3.1 It is possible for a Council to withdraw from the Project if it chooses. Any Council wishing to withdraw from the Project shall provide written notice to the other Councils.

4.3.2 The withdrawing Council would be liable to the other Councils in accordance with the Liability Report as prepared by the Lead Council and agreed by the Joint Committee.

4.3.3 If the Lead Council is the withdrawing Council then the Lead Council shall be required to novate each of the Contract Documents (including the Project Agreement, Independent Certifier's Appointment, Parent Company Guarantee and the Lease of the Site) to the new lead council selected by the remaining Councils.

#### 4.4 **Extension**

4.4.1 The Project Agreement contains an option for the Councils to extend the Contract Period by a period of up to five years. It is agreed in principle that this will be a Matter Reserved To The Councils and decided by way of a unanimous decision.

### 5. **FLEXIBILITY TO CHANGE**

5.1 The IAA reflects the flexibility embedded in the main Project Agreement to accommodate any variations under the Project Agreement (whether the proposed variation is required due to a change in law or a contract change required by one or more of the Councils or the Contractor or any other matter affecting the Project which may have an equivalent effect).

5.2 The Councils agree to be bound by the obligations on the Lead Council set out in Clause 43 (Authority and Contractor Changes) and Schedule 21 (Change Protocol) of the Project Agreement.

5.3 The Councils will work with the Contractor to achieve the best value solution for the Project.

5.4 If the Councils decide to support a proposed variation under the Project Agreement, the Lead Council will seek an Authority Change (as defined in the Project Agreement) with the Contractor in the Project Agreement, and where the proposed Authority Change is agreed to have a mutual benefit to the Project, the costs of such proposed Authority Change shall be shared between the Councils. Where the Authority Change does not have a mutual benefit, the Council seeking the change in the Project Agreement shall bear responsibility for the payment of the costs of the Authority Change.

5.5 It is noted that with the recent publication of the Williams Commission Report and on the understanding that Flintshire County Council and Wrexham County Council, Denbighshire County Council and Conwy County Council, and Gwynedd Council and the Isle of Anglesey County Council are to potentially amalgamate over the next couple of years, the Councils acknowledge that any new "successor Council" following

any such amalgamation shall automatically succeed the original Councils for the purposes of the IAA. However, it is further acknowledged by the Councils that any amalgamation shall not have the ability to automatically alter the Administrative Area (as defined in the Project Agreement), and the only way for the Councils to amend this (so as to capture the geographical area of any new "successor Council" for the purposes of the Project) shall be to implement a variation under the Project Agreement by way of an Authority Change as noted above.

## **6. LIABILITIES OF THE COUNCILS**

### **6.1 General Indemnities**

- 6.1.1 The Lead Council shall indemnify each of the Councils against any losses, claims, expenses, actions, demands, costs and liability suffered, to the extent arising from any wilful default, wilful breach or negligent act or omission by the Lead Council of its obligations under the Contract Documents (as defined under the IAA (including the Project Agreement and the IAA).
- 6.1.2 Each of the other Councils (acting severally), shall indemnify the Lead Council against any losses, claims, expenses, actions, demands, costs and liability suffered, to the extent arising from any wilful default, wilful breach or negligent act or omission by a Council of its obligations under the IAA.
- 6.1.3 The Councils agree that the amount to be paid to the Lead Council shall be borne by each of the Councils to the extent that they were responsible, however, in the event that responsibility is shared between two or more defaulting Councils, then the amount to be paid will be divided between those Council's responsible in such proportions as the Joint Committee may determine.
- 6.1.4 The Councils shall ensure that adequate insurance cover is effected and maintained in respect of any liabilities they may have in the event of any neglect or default on their part.

### **6.2 Early Termination**

- 6.2.1 The Councils' liability on early termination of the Project Agreement shall be defined by reference to the Lead Council's obligation to pay compensation on early termination to the Contractor under the Project Agreement.
- 6.2.2 The Councils shall be liable (and shall indemnify each other) for equal proportions of the termination sum payable to the Contractor following an early termination of the Project Agreement where the early termination occurs during the works period of the Project prior to completion of the Facility. If termination occurs when the Facility is operational then liability shall be determined on a pro rata basis in respect of the actual tonnage delivered by each of the Councils.
- 6.2.3 If the Councils are not equally at fault for such early termination, the Councils agree that the Council or Councils whose acts or omissions gave rise to the termination shall be liable for a greater proportion of the termination sum or all of the termination sum.
- 6.2.4 It is noted that the Lead Council shall not be entitled to issue a notice of voluntary termination of the Project Agreement unless such action has been approved by all of the Councils as a Matter Reserved To The Councils.

## **7. SITE AND DECOMMISSIONING**

- 7.1 Upon expiry of the Project, the Site shall be retained by Flintshire County Council. However, as noted above, in the event of a Lead Council termination or withdrawal from the IAA, then the Site will transfer to the new Lead Council (as selected by the remaining Councils) for the duration of the Project and upon expiry of the Project the Site shall then return to Flintshire County Council.
- 7.2 It is agreed in principle that on early termination of the Project if the Facility is operational then the Partnership should agree appropriate arrangements to continue the use of the Facility for the remainder of the 25 years. If however the Facility has not been built (due to eg. a planning/permitting failure) then the Site shall be retained by Flintshire County Council and there shall be no further obligation for the Site to be utilised for the purposes of the Project. If the Facility has been partly built but is not yet operational then the Councils shall agree to discuss and decide upon appropriate arrangements and the Councils shall equally share liability in respect of any costs.
- 7.3 Upon expiry of the Project, the cost of decommissioning will be split equally between the five Councils, unless Flintshire County Council (in its absolute discretion) elects not to undertake decommissioning of the Site, in which case, Flintshire County Council shall be solely liable for any future decommissioning costs.
- 7.4 It is noted that the cost of decommissioning the Site should be included in the Liability Report as a payment to be made by any withdrawing or terminated Council.

## **8. COMMUNITY BENEFIT FUND**

- 8.1 The Councils have agreed in principle to payments in respect of a Community Benefit Fund. Each of the Councils shall contribute towards the fund and the payments shall be determined on a pro rata basis in proportion to the tonnage provided by each of the Councils.

## **9. WELSH GOVERNMENT FUNDING**

- 9.1 It is agreed in principle that in the event that Welsh Government funding is withdrawn from the Project then the Councils shall be required to cover the lost Welsh Government funding on a pro rata basis in proportion to the actual tonnage provided by each of the respective Councils.

## **10. CONTRACT MANAGEMENT COSTS**

- 10.1 During the works period of the Project up until the Facility being completed and operational, the Contract Management Costs associated with the Project shall be split equally between the Councils. During the operational period of the Project the Contract Management Costs shall be on a pro rata basis and payments will be proportional to the actual tonnages delivered by each of the Councils.

## **11. NEW WASTE TRANSFER STATION**

- 11.1 It is agreed in principle that the costs of building a new Waste Transfer Station will be a capital expenditure to be split equally between each of the five Councils.
- 11.2 If it is determined that the new Waste Transfer Station shall be built on a site that is to be provided by Conwy County Council then upon expiry or termination of the Project the site will be retained by Conwy County Council. If however, the Partnership jointly fund and provide a site on which to build the new Waste Transfer Station, then upon expiry or early termination of the Project the IAA will contain provisions which shall allow the Councils to agree at the time how they would like to deal with the site and the new Waste Transfer Station.

- (1) CONWY COUNTY BOROUGH COUNCIL
- (2) DENBIGHSHIRE COUNTY COUNCIL
- (3) FLINTSHIRE COUNTY COUNCIL
- (4) GWYNEDD COUNCIL
- (5) ISLE OF ANGLESEY COUNTY COUNCIL

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**SECOND INTER-AUTHORITY AGREEMENT**  
in relation to the joint procurement of  
a Residual Waste Treatment Facility pursuant to  
the North Wales Residual Waste Partnership Agreement

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*NOT FOR PUBLIC DISCLOSURE – CONFIDENTIAL*

***DRAFT***

**The Draft IAA is subject to a cross referencing and definitions check. The Agreement will need to be further monitored and updated in line with the final agreed form Project Agreement.**

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**BETWEEN**

- (1) **CONWY COUNTY BOROUGH COUNCIL** of Bodlondeb, Conwy, North Wales, LL32 8DU ("**Conwy Council**");
- (2) **DENBIGHSHIRE COUNTY COUNCIL** of Environmental Services, Kinmel Park Depot, Bodelwyddan, Denbighshire, LL18 5UX ("**Denbighshire Council**");
- (3) **FLINTSHIRE COUNTY COUNCIL** of County Hall, Mold, Flintshire, CH7 6NB ("**Flintshire Council**");
- (4) **GWYNEDD COUNCIL** of Council Offices, Shirehall Street, Caernarfon, Gwynedd, LL55 1SH ("**Gwynedd Council**"); and
- (5) **ISLE OF ANGLESEY COUNTY COUNCIL** of Council Offices, Llangefni, Anglesey, LL77 7TW ("**Isle of Anglesey Council**")

(together referred to as the "**Councils**" and individually as a "**Council**")

**BACKGROUND**

- (A) The Councils have agreed to work together in a partnering relationship to jointly procure a residual waste treatment facility and deliver residual waste treatment services (the "**Solution**") in furtherance of the objectives of the North Wales Residual Waste Treatment Partnership (the "**Partnership**") and the project known as the North Wales Residual Waste Treatment Project (the "**Project**").
- (B) The Councils (pursuant to the powers conferred on them by Sections 51 and 55 of The Environmental Protection Act 1990, Section 19 of the Local Government Act 2000 and all other enabling powers) entered into the first Inter-Authority Agreement on 24 June 2010 (the "**First Inter-Authority Agreement**") to formalise their respective roles and responsibilities in relation to the joint working arrangements for the procurement of the Project and the appointment of Flintshire Council as Lead Council in carrying out the procurement in accordance with the terms of the Outline Business Case and the common decision made by each Council to approve the affordability envelope for the Project and commence the procurement.
- (C) The Councils acknowledge that the First Inter-Authority Agreement regulated the procurement of the Project up to Financial Close. Pursuant to the First Inter-Authority Agreement, the Councils have agreed to enter into this second Inter-Authority Agreement (the "**Agreement**") which will set out the respective rights and obligations of each Council in relation to the implementation and operational phases of the Project.
- (D) The Councils have agreed that the Lead Council shall enter into a contract (the "**Project Agreement**") with [Name of Contractor]<sup>1</sup>, (Company No. [ ]), a private sector contractor, of [ ] (the "**Contractor**") involving the design, construction, installation, commissioning, financing, operation and maintenance of the Facilities and the provision of the Services (including the Interim Services and the Commissioning Services).
- (E) Following the successful entry into the Project Agreement, the Councils have agreed to enter into this Agreement to formalise their respective roles and responsibilities in relation to the joint working arrangements for the operational phase of the Project following financial close and the appointment of Flintshire Council as Lead Council.

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<sup>1</sup> Details to be included when confirmed in respect of the Project Agreement.



- (F) The Councils acknowledge that this Agreement sets out the basis on which risks and liabilities are apportioned between the Councils in relation to the implementation and operational phases of the Project. Such agreement is intended to reflect the terms of the Project Agreement.
- (G) The Councils agree to work together in the implementation and contract management of the Project Agreement and acknowledge that all decisions relating to the Project and the operation of the Project Agreement shall be made in accordance with the terms of this Agreement and shall be implemented by the Lead Council under the Project Agreement for and on behalf of itself and the other Councils.
- (H) The Councils wish to enter into this Agreement and implement the Project pursuant to the powers conferred on them by sections 51 and 55 of the Environmental Protection Act 1990, sections 19 and 20 of the Local Government Act 2000, and all other enabling powers.
- (I) Under Section 113 of the Act the Councils may enter into an agreement with each other for the placing at their disposal the services of officers employed by them.
- (J) By virtue of Section 111 of the Act, each of the Councils has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- (K) By virtue of Section 3 of the Local Government Act 1999 substituted by the Local Government and Public Involvement Health Act 2007, each of the Councils has a duty to make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness.
- (L) By virtue of Section 2 of the Local Government Act 2000, each of the Councils has power to do anything that it considers is likely to achieve the promotion or improvement of the economic, social or environmental well-being of its area.
- (M) The Councils have agreed to establish and participate in a joint committee (whose remit is presently limited to the Project but may be extended to cover other activities by agreement) to facilitate the delivery and management of the Project from the date of financial close of the Project when the Project Agreement and supporting documentation is completed.
- (N) The Councils acknowledge that this Agreement shall be certified for the purposes of the Local Government (Contracts) Act 1997.

1. **DEFINITIONS AND INTERPRETATION**

**[DN: Definitions to be reviewed and updated.]**

1.1 In this Agreement and the Recitals, unless, the context otherwise requires the following terms shall have the meaning given to them below:-

<b>"AB Accounts"</b>	has the meaning given in Clause 14 (Accounts)
<b>"Accounting Period"</b>	means those periods set out in Schedule 6 (Accounting Periods) as may be amended from time to time in accordance with the terms of this Agreement
<b>"Act"</b>	means the Local Government Act 1972
<b>"Allocated Site"</b>	means a site (or sites) offered to the Project by a Council;

<b>"Annual Budget"</b>	means the sum set out in Schedule 5 (Annual Budget) which represents the upper limit of the financial threshold calculated by the Project Board for each Council's annual contribution to the necessary funding of the Lead Council to discharge its functions on behalf of all the Councils under this Agreement as managed by the Project Board, notified to the Joint Committee and approved by each Council in respect of this Project (and the Councils acknowledge that the Annual Budget does not include the Unitary Charge payment made under the Project Agreement)
<b>"Business Day"</b>	means any day other than a Saturday or Sunday or a public or bank holiday in England and Wales
<b>"Chair"</b>	means the chair of the Joint Committee (duly appointed pursuant to paragraph 11 of Part 2 of Schedule 2 (Joint Committee Terms of Reference)) or the Project Board (duly appointed pursuant to Clause 8.4 (Project Board) (as the case may be))
<b>"CIWM"</b>	means the Chartered Institute of Wastes Management
<b>"Commencement Date"</b>	means the date of this Agreement
<b>"Confidential Information"</b>	means all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of all or any Council, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure
<b>"Contract Documents"</b>	means the Project Agreement, the [Collateral Warranties, the Independent Certifier's Appointment and the Parent Company Guarantee, the Haulage Sub-Contract (each as defined in the Project Agreement)] <sup>2</sup> and any other document entered into between the Lead Council and the Contractor or an Affiliate of the Contractor in respect of the Project
<b>"Contract Manager"</b>	means the person appointed to manage the Project
<b>"Contract Procedure Rules"</b>	means the Lead Council's contract procedure rules
<b>"Contractor"</b>	Is the term used to define the Contractor in the Project Agreement
<b>"Conwy's Payment Proportion"</b>	has the meaning given in Clause 12 (Payments)
<b>"Core Policies"</b>	means those policies set out at Schedule 13 (Authority's Policies) of the Project Agreement

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<sup>2</sup> List to be reviewed in line with the final solution.

<b>"Cost Sharing Formula"</b>	means, when the Councils are responsible for the cost of any item and payment is due from the Lead Council to the Contractor, that costs shall be shared between each of the Councils in the proportions set out in Part 1 of Schedule 9 (Payment Proportions) (and subsequently reconciled on an annual basis)
<b>"Council Procedure Rules"</b>	means the Lead Council's procedure rules
<b>"Counternotice"</b>	has the meaning given in Clause 2.2.2 (Breaches of this Agreement and Remediation)
<b>"Decision Period"</b>	means the period of <b>[fourteen (14) Business Days]</b> <sup>3</sup> from the date of the Liability Report or such other time as is unanimously agreed by all the Councils
<b>"Project Officer"</b>	has the meaning given in Clause 9 (Project Officers)
<b>"Deductions"</b>	means the deductions imposed by the Lead Council pursuant to Schedule 4 (Payment Mechanism) of the Project Agreement
<b>"Default Interest Rate"</b>	means two per cent (2%) above the base rate of Barclays Bank plc
<b>"Default Notice"</b>	has the meaning given in Clause 2.2.1 (Breaches of this Agreement and Remediation)
<b>"Defaulter"</b>	has the meaning given in Clause 2.3.1 (Termination)
<b>"Denbighshire's Payment Proportion"</b>	has the meaning given in Clause 12.8 (Payments)
<b>"Dispute"</b>	means any difference or dispute between the Councils arising out of or in connection with this Agreement and/or the Project
<b>"DPA"</b>	means the Data Protection Act 1998
<b>"Due Date"</b>	has the meaning given in Clause 12.7 (Payments)
<b>"EIR"</b>	has the meaning given in Clause 19 (Freedom of Information and Environmental Information)
<b>"EU Procurement Rules"</b>	means the Public Contracts Regulations 2006
<b>"Facility"</b>	means the waste management facility (or facilities) procured as the Solution under the Project designed for processing residual waste, waste being defined in the Waste and Emissions Trading Act 2003
<b>"Final Business Case" or "FBC"</b>	means the final business case for the Project, prepared by the Councils and subject to the Council's delegated approval before submission to the Welsh Government for funding to support the Project

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<sup>3</sup> Time period to be agreed by the Councils.

<b>"FoIA"</b>	has the meaning given in Clause 19 (Freedom of Information and Environmental Information)
<b>"Gwynedd's Payment Proportion"</b>	has the meaning given in Clause 12.9 (Payments)
<b>"Intellectual Property"</b>	means any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them
<b>"IP Material"</b>	means the Intellectual Property in the Material
<b>"Isle of Anglesey's Payment Proportion"</b>	has the meaning given in Clause 12.10 (Payments)
<b>"JC Unresolved Matter"</b>	has the meaning given in Clause 6.3 (Joint Committee)
<b>"Joint Committee"</b>	shall have the meaning given to it in Clause 6.1 (Joint Committee) being the joint board of members of the Councils with delegated power to discharge the functions of the relevant Council as provided for in this Agreement in relation to the Project established under the provisions of Part VI of the Act
<b>"Joint Committee Meeting"</b>	means a meeting of the Joint Committee duly convened in accordance with Clause 6 (Joint Committee)
<b>"Key Facility"</b>	means the key residual waste treatment facility procured as part of the Solution under the Project
<b>"LAS"</b>	means the Landfill Allowance Scheme (LAS) Regulations (Wales) 2004
<b>"LAS Allowances"</b>	means the annual allowances for each local authority pursuant to the LAS
<b>"Lead Council"</b>	means the Council appointed under Clause 4 (Duties of the Lead Council and Other Councils) as the lead administering authority for the Project whose duties are set out in this Agreement
<b>"Lead Finance Officer"</b>	means the person so appointed from time to time by the Lead Council to represent the interests of the Councils in respect of financial matters of the Project and to ensure the provision of regular update reports are provided to the Project Board from time to time and who shall be called the Lead Finance Officer reporting to the Project Section 151 Officer

**"Liability Report"**

means a report prepared by the Lead Council (or such other Council nominated under Clause 2.3.4(b) (Termination) in the event that the Lead Council is a Defaulter or Clause 16.3 (Withdrawal) in the event that the Lead Council issues the Withdrawal Notice) acting reasonably setting out the financial and resource commitments of the relevant Council under Clause 2.3.4(b) (Termination) upon termination or Clause 16.6 (Withdrawal) upon withdrawal including the items set out in 7 (Liability Report)

**"Local Authority"**

means a principal council (as defined in section 270 of the Act) or any body of government in Wales established as a successor of a principal council

**"Market Value"**

means the best price at which the Allocated Site in question might reasonably be expected to have been disposed of unconditionally for cash consideration at the relevant time assuming:-

- (a) a willing seller;
- (b) that prior to the relevant time there has been a reasonable period for the proper marketing of such Allocated Site and for the agreement of price and terms for completion of the disposal of such Allocated Site;
- (c) the state of the market, levels of values and other circumstances are on any earlier assumed date of exchange of contracts the same as at the relevant time;
- (d) the relevant Council has good and marketable title to such Allocated Site;
- (e) all necessary consents for any building or other works at such Allocated Site have been obtained and such Allocated Site can be lawfully used;
- (f) any damage to such Allocated Site caused by any insured risk has been made good;
- (g) that where the Project (or one of the Councils in furtherance of the Project) has made an investment into improving an Allocated Site (whether by obtaining planning permission or other permits or necessary consents, regardless of whether they are used or capable of being used for the Project, or otherwise) to confer an advantage on the value of such Allocated Site compared to its pre-Project value then such enhancement shall be taken into account,

and otherwise taking into account of the actual circumstances as shall exist at the time including the results of any site investigation survey, ground conditions survey or ground contamination survey to identify any pre-existing abnormal issues or contamination,

provided further that for the purposes of calculating valuation to determine whether proposed Allocated Site disposals under the terms of the Act any Council willing to dispose of its land at less than Market Value as established under the RICS Valuation Standards will have regard to the Local Government Act 1972: General Disposal Consent (Wales) 2003

<b>"Material"</b>	means all data, text, graphics, images and other materials or documents created, used or supplied by a Council in connection with this Agreement (unless before the first use or supply, the Council notifies the other Councils that the data, text supplied is not to be covered by this definition)
<b>"Matter Reserved To The Councils"</b>	means those actions, matters and/or functions as defined in Clause 5 (Decision Making)
<b>"Model Procedure"</b>	means the Centre for Dispute Resolution Model Mediation Procedure
<b>"Non-Defaulting Councils"</b>	has the meaning given in Clause 2.3.1 (Termination)
<b>"Notice of Acceptance"</b>	has the meaning given in Clause 2.2.2 (Breaches of this Agreement and Remediation)
<b>"Notice of Dispute"</b>	has the meaning given in Clause 2.2.2 (Breaches of this Agreement and Remediation)
<b>"Performance and Improvement Plan"</b>	means the plan to be prepared and updated as and when necessary by the Contract Manager indicating any anticipated Authority Changes under the Project Agreement, major milestones and activities, and resources required in relation to the Project, to be presented annually to the Project Board in accordance with Clause 10 (Business Plan and Work Programme);
<b>"Personal Data"</b>	means personal data as defined in the DPA
<b>"PB Unresolved Matter"</b>	has the meaning given in Clause 8 (Project Board)
<b>"Project Board"</b>	has the meaning given to it in Clause 8 (Project Board)
<b>"Project Board Meeting"</b>	means a meeting of the Project Board duly convened in accordance with Clause 8 (Project Board)
<b>"Project"</b>	means as defined in Recital (A)

<b>"Project Agreement"</b>	means the contract for the preferred Solution to dispose of the Councils' residual waste to be entered into by the Lead Council (acting on behalf of itself and the Councils) and the Contractor in connection with the Project
<b>"Project Section 151 Officer"</b>	means the person so appointed by the Lead Council (as their officer appointed pursuant to section 151 of the Act) as the officer responsible for the proper administration of the financial affairs under the Project and who shall manage the Lead Finance Officer and collate regular reports on Project accounting matters (provided that for the avoidance of doubt each Council's own officer appointed pursuant to section 151 of the Act shall be entitled to attend Project Board Meetings and Joint Committee Meetings from time to time as non-voting members pursuant to Clauses 8 (Project Board) and 6.18 (Joint Committee) respectively)
<b>"Project Tasks"</b>	means as defined in Clause 4.1 (Duties of the Lead Council and other Councils) being the administrative tasks as set out in Schedule 1 (Project Tasks) as may be amended from time to time by the Councils in accordance with the terms of this Agreement
<b>"Solution"</b>	means as defined in Recital (A)
<b>"Statutory Officer"</b>	means each Council's head of paid service, monitoring officer (both as defined pursuant to the Local Government and Housing Act 1989) and Chief Finance Officer (section 151 officer) as defined in the Act
<b>"Termination Sum"</b>	means any sum payable for Project assets by the Lead Council to the Contractor as compensation on termination caused due to Lead Council default or voluntary termination or relevant discharge terms paid due to the Lead Council acting ultra vires, Contractor default on a no retendering basis (fair market valuation), Contractor default due to breach of the refinancing provisions, force majeure, uninsurability consequences or corrupt gifts and fraud early termination of the Project Agreement
<b>"Vice-Chair"</b>	means the vice-chair of the Joint Committee (duly appointed pursuant to paragraph 10 of Part 2 of Schedule 2 (Joint Committee Terms of Reference)); and
<b>"WG"</b>	means the Welsh Government.

1.2 The principles set out in Clause 1.1 above shall be borne in mind and applied so far as appropriate in the interpretation of this Agreement and in the resolution of any dispute under this Agreement.

1.3 **Interpretation**

In this Agreement, except where the context otherwise requires:-

1.3.1 each gender includes all genders;

- 1.3.2 except as where expressly defined within the Agreement, all words and expressions used throughout this Agreement shall have the same meaning as given under the Project Agreement;
- 1.3.3 the singular includes the plural and vice versa;
- 1.3.4 a reference to any clause, sub-clause, paragraph, Schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.3.5 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.3.6 any reference to legislation (including subsidiary legislation), determinations and directions shall be construed as a reference to any legislation, determinations, directions and statutory guidance as amended, replaced, consolidated or re-enacted;
- 1.3.7 a reference to a public organisation (to include, for the avoidance of doubt, any Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both of the waste disposal functions and responsibilities of such public organisation;
- 1.3.8 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.3.9 any reference to a requirement for "**consent**" or "**approval**" shall be taken to be the prior written consent or approval of the relevant body or person;
- 1.3.10 the schedule, clause, sub-clause and (where provided) paragraph headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;
- 1.3.11 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
- 1.3.12 any reference to the title of an officer or any of the Councils shall include any person holding such office from time to time by the same or any title substituted thereafter or such other officer of the relevant Council as that Council may from time to time appoint to carry out the duties of the officer referred to; and
- 1.3.13 in this Agreement, save where otherwise provided, references to amounts expressed to be "**indexed**" are references to such amounts, multiplied by:  
  
Index<sub>1</sub>  
  
Index<sub>2</sub>
- 1.3.14 where "**Index<sub>1</sub>**" is the value of RPIX most recently published prior to the relevant calculation date and "**Index<sub>2</sub>**" is the value of RPIX on [REDACTED].

#### 1.4 Schedules

The Schedules to this Agreement form part of this Agreement. This Agreement and its Schedules shall be read and taken together. In the event of any inconsistency or conflict between these terms and conditions in this Agreement and the contents of any of the Schedules these terms and conditions shall prevail.



## 2. COMMENCEMENT, DURATION AND TERMINATION

### 2.1 Duration of Agreement

2.1.1 Subject to Clause 2.1.2 this Agreement shall continue in full force and effect from the Commencement Date until the earlier of the following dates:-

- (a) all the Councils agree in writing to its termination; or
- (b) there is only one (1) remaining Council who has not withdrawn from this Agreement in accordance with Clause 16 (Withdrawal); or
- (c) the date falling six (6) months after the expiry or earlier termination of the Project Agreement.

2.1.2 Notwithstanding the provisions of Clause 2.1.1, Clause 17 (Dispute Resolution) of this Agreement shall continue in respect of any Dispute arising prior to the expiry of this Agreement until the date upon which such Dispute has been finally agreed or determined.

2.1.3 The Councils agree that following the Commencement Date the rights, liabilities and obligations of each Council set out within the First Inter-Authority Agreement shall be superseded by the rights, liabilities and obligations set out in this Agreement.

### 2.2 Breaches of this Agreement and Remediation

**[DN: The process and time limits for dealing with failures to comply with this Agreement should be discussed and agreed between the Councils]**

2.2.1 At any time the Chief Executive of any of the Councils (the “**First Council**”) may serve a notice on one of the other Councils (the “**Other Council**”) a notice (the “**Default Notice**”), alleging that the Other Council has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the First Council has or is likely to suffer as a result of the alleged failure.

2.2.2 A Council in receipt of a Default Notice shall have **[ten (10) Business Days]** (or such longer period as agreed between the Parties (acting reasonably)), within which to serve on the Chief Executive of the First Council who served the Default Notice a “**Counternotice**”, setting out in respect of every matter contained in the Default Notice proposals for the remediation of the alleged failure including a proposed timescale in which the remediation will be completed and making good any loss which the First Council has suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed.

2.2.3 Within **[ten (10) Business Days]** (or such longer period as agreed between the Parties (acting reasonably)) of receipt of a Counternotice, the Chief Executive of the First Council shall send to the Chief Executive of the Other Council a notice (the “**Notice of Acceptance**”) of any proposals contained in the Counternotice in so far as those proposals are accepted by the First Council, and may send a notice (the “**Notice of Dispute**”) of any proposals contained in the Counternotice insofar as those proposals are not accepted and setting out in respect of each proposal which is not accepted by the First Council why it is considered to be unacceptable.

2.2.4 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the Other Council shall implement that proposal as soon as reasonably practicable.

2.2.5 Where any matter is contained in a Notice of Dispute, it shall fall to be dealt with under the disputes procedure set out in Clause 17 (Dispute Resolution).

### 2.3 Termination of Participation of a Partner Council or Lead Council

2.3.1 Without prejudice to any other rights or remedies, this Agreement may be terminated in relation to any Council ("**Defaulter**") by the other Councils ("**Non-Defaulting Councils**") acting unanimously in giving written notice to the Defaulter effective on receipt where the Defaulter breaches any of the provisions of this Agreement and in the case of a breach capable of remedy fails to remedy the same within [sixty (60) Business Days] (or such other period as agreed by the Councils) of being notified of each breach in writing by the Non-Defaulting Councils and being required to remedy the same.

2.3.2 The Councils acknowledge that a decision to terminate the participation of a Council shall be treated as a Matter Reserved To The Councils.

2.3.3 If this Agreement is terminated in accordance with Clause 2.1 (Duration of Agreement), Clause 2.3.1 (Termination of Participation of a Partner Council or Lead Council), save for the obligations set out in [Clause 11 (Sites)], Clause 23 (Councils' Obligations Following Expiry or Earlier Termination), Clause 25 (Confidentiality and Announcements) and Clause 2.4 (Effects of Termination of the Lead Council), the Councils shall be released from their respective obligations described in this Agreement<sup>4</sup>.

2.3.4 The Councils acknowledge and agree that:

- (a) the Project has been modelled on the basis of participation by the Councils and that there are considerable economic benefits to be achieved as a result of such joint working; and
- (b) accordingly, in the event that this Agreement is terminated in relation to any Council pursuant to Clause 2.3.1 (Termination of Participation of a Partner Council or Lead Council) such Defaulter shall, subject to Clause 23 (Councils' Obligations Following Expiry or Earlier Termination), be liable to the Non-Defaulting Council or Councils for their consequential loss as set out in a Liability Report issued to the Defaulter within [fourteen (14)] days of the notice of termination (such Liability Report being prepared by the Contract Manager and provided to all the Councils which shall be discussed and agreed by the Joint Committee at its next meeting or a specially convened meeting if the next meeting falls more than two (2) weeks after the issue of the Liability Report). The Non-Defaulting Councils shall have a duty, acting reasonably, to mitigate any losses which they suffer due to the financial and resource implications set out in the Liability Report.
- (c) pursuant to Clause 23 (Councils Obligations Following Early Termination of the Project Agreement), if a Defaulter causes the early termination of the Project Agreement, such Defaulter shall be liable to the other Councils in accordance with Clause [ ] and the Liability Report (prepared in accordance with Clause [ ] above) shall reflect such liabilities;
- (d) any amounts payable by a Defaulter set out in a Liability Report shall be paid by the Defaulter within [ ] Business Days<sup>5</sup>

<sup>4</sup> To draft out and list any continuing obligation/survivorship clauses.

<sup>5</sup> Time period to be agreed.

following agreement of the Liability Report by the Joint Committee or determined under Clause 2.8.5; and

- (e) any failure by the Joint Committee to agree the amounts payable as set out in the Liability Report within [ ] Business Days<sup>6</sup> shall be referred under Clause 17 (Dispute Resolution) as a dispute for resolution.

## 2.4 Effects of Termination of the Lead Council

The Councils acknowledge and agree that if the Lead Council (or any subsequent lead council) is terminated in accordance with the provisions of Clause 2.3 (Termination of Participation of a Partner Council or Lead Council), then the Lead Council (or any subsequent lead council), shall, prior to their termination from the Project:-

2.4.1 novate each of the Contract Documents (including but not limited to the Project Agreement, Independent Certifiers' Appointment, Parent Company Guarantee) to the new lead council as selected by the remaining Councils; and

2.4.2 comply with the obligations set out at Clause 11.2.

## 3. PRINCIPLES AND KEY OBJECTIVES

3.1 The Councils intend this Agreement to be legally binding.

3.2 The Councils agree to work together to carry out the Project Tasks and activities in accordance with the terms of this Agreement.

3.3 Each of the Councils hereby represents to each other Council that it has obtained all necessary consents sufficient to ensure the delegation of functions provided by this Agreement for the Project.

3.4 The Councils commit to share data and knowledge relevant to the Project where appropriate and in accordance with their duties under the DPA.

3.5 Without prejudice to the terms of this Agreement, the Councils agree that they will conduct their relationship in accordance with the following principles:-

### 3.5.1 Openness and Trust

in relation to this Agreement the Councils will act in accordance with a duty of good faith to each other, be open and trusting in their dealings with each other, make information and analysis available to each other, use such information to support the Project, discuss and develop ideas openly and contribute fully to all aspects of making the joint working successful. Whilst respecting the mutual need for commercial confidentiality, the Councils will willingly embrace a commitment to transparency in their dealings and in particular a need to comply with statutory access to information requirements including the Environmental Information Regulations 2004 (SI 2004/3391) and the Freedom of Information Act 2000 and supporting codes of practice. The Councils will be aware of the need for and respect matters of commercial confidentiality and potential sensitivity;

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<sup>6</sup> As above.

### 3.5.2 **Commitment and Drive**

the Councils will be fully committed to working jointly, will seek to fully motivate employees and will address the challenges of the Project with drive, enthusiasm and a determination to succeed;

### 3.5.3 **Skills and Creativity**

the Councils recognise that each brings complementary skills and knowledge which they will apply creatively to achieving the Councils' objectives, continuity, resolution of difficulties and the development of the joint working relationship and the personnel working within it. It is recognised that this will involve the appreciation and adoption of common values;

### 3.5.4 **Effective Relationships**

the roles and responsibilities of each Council will be clear with relationships developed at the appropriate levels within each organisation with direct and easy access to each other's representatives;

### 3.5.5 **Developing and Adapting**

the Councils recognise that they are engaged in what could be a long term business relationship for mutual benefit through the achievement of the Project which needs to develop and adapt and each Council will use reasonable endeavours to develop and maintain an effective joint process to ensure that the relationship develops appropriately and in line with these principles and objectives including ensuring that the Lead Council's obligations within the Project Agreement are met at all times;

### 3.5.6 **Reputation and Standing**

the Councils agree that, in relation to this Agreement and the Project generally, they shall pay the utmost regard to the standing and reputation of one another and shall not do or fail to do anything which may bring the standing or reputation of any other Council into disrepute or attract adverse publicity to any other Council;

### 3.5.7 **Reasonableness of Decision Making**

the Councils agree that all decisions made in relation to this Agreement and the Project generally shall be made by them acting reasonably and in good faith; and

### 3.5.8 **Members and Officers' Commitments**

each Council shall use its reasonable endeavours to procure that their respective members and officers who are involved in the Project shall at all times act in the best interests of the Project, devote sufficient resources to the Project and respond in a timely manner to all relevant requests from the other Councils.

### 3.5.9 **Welsh Language Measure**

the Councils agree to cooperate in good faith with each other in the compliance of their obligations under the Welsh Language Measure.

#### 4. DUTIES OF THE LEAD COUNCIL AND OTHER COUNCILS

- 4.1 Subject to section 101(4) of the Act, the Councils (acting severally) have agreed, with effect from the Commencement Date, that Flintshire Council acting through its Chief Executive will be the Lead Council for the carrying out of the Project administrative and representative functions (following, where relevant, any approvals required from the Councils) (the "**Project Tasks**") which shall be carried out for and on behalf of itself and the other Councils and Flintshire Council agrees to act in that capacity subject to and in accordance with the terms of this Agreement.
- 4.2 The Councils shall recognise the existence of and comply with the decisions that have been delegated to the Joint Committee. For the avoidance of doubt the Councils shall have the right to and shall make individual independent decisions on matters referred to each of them by the Joint Committee for decision and on matters not delegated or referred to the Joint Committee.
- 4.3 The Joint Committee shall decide:
- 4.3.1 the detailed scope and authority of the Lead Council role;
  - 4.3.2 by reference to the Contract Documents the administrative and representative functions of the Lead Council being:
    - (a) administrative functions which can be undertaken by the Lead Council without the need for consultation with the Joint Committee; or
    - (b) representative functions which will be instructed by the Joint Committee (whether in accordance with the established standing orders of the Joint Committee or otherwise) and communicated to the Contractor by the Lead Council;
  - 4.3.3 consultation and reporting requirements between the Lead Council and the Joint Committee.
- 4.4 For the avoidance of doubt the Councils have agreed that the role of Lead Council includes (but is not limited to):-
- 4.4.1 acting on behalf of the Councils in the management and supervision of the Project;
  - 4.4.2 acting under the direction of the Joint Committee provided always that the Joint Committee can only direct in accordance with terms of the Project Agreement;
  - 4.4.3 for any function the Lead Council shall act on behalf of and in the interests of the Partnership;
  - 4.4.4 liaising with the Contractor and the Contractor's Representative;
  - 4.4.5 participating in the Liaison Committee (and co-ordination of the ten (10) Council representatives, being two representatives from each of the Councils, who are appointed to the Liaison Committee for the purposes of Schedule 18 (Liaison Procedure) of the Project Agreement));
  - 4.4.6 subject to indemnities acting as the employing authority for any staff involved in the administration of the Project who shall report to the Project Board in accordance with this Agreement (including the Contract Manager);
  - 4.4.7 being the legal point of contact for the purposes of managing the Project;

- 4.4.8 providing such additional administrative resources and office facilities that may be necessary for the purpose of discharging the Project and holding all central funds;
  - 4.4.9 responsibility for liaison and communication with WG and co-ordination of communication and public relations;
  - 4.4.10 responsibility for conducting an internal audit and reporting on its findings to the Joint Committee;
  - 4.4.11 managing the application of the Annual Budget in respect of the Project and reporting on expenditure to the Joint Committee; and
  - 4.4.12 having powers to enter into contracts for consultants as required for the purposes of the Project following prior approval from the Project Board.
- 4.5 If the Lead Council defaults and the Agreement is terminated in respect of it pursuant to Clause 2.3.1 (Termination) or the Lead Council withdraws pursuant to Clause 16 (Withdrawal), then a replacement Lead Council will be appointed by the Joint Committee and the withdrawing Lead Council or Lead Council as Defaulter (as the case may be) voting members on the Joint Committee will not have the right to vote in regard to any such appointment.
- 4.6 The Councils acknowledge that the Lead Council role in the administration of the Project Agreement shall be largely discharged by the Contract Manager acting as the Authority's Representative as defined under the Project Agreement.
- 4.7 The Contract Manager shall:
- 4.7.1 be employed by or seconded to the Lead Council and report to the Project Board as line manager;
  - 4.7.2 conduct all day to day business for the Project to satisfy the Lead Council's obligations to the Contractor under the Project Agreement;
  - 4.7.3 potentially have staff reporting to him or her who may be seconded from the other Councils (not being the Lead Council);
  - 4.7.4 notify the Lead Council (without undue delay) of any matter that may reasonably be expected to have a local and/or political significance to any Council.

**[DN: The Councils acknowledge and agree that under the terms of the Project Agreement there will be a commitment to make payments for not less than the Minimum Tonnage of Contract Waste to the Contractor per year. Accordingly, if any Council fails to deliver its Minimum Tonnage guarantee of Contract Waste in any year, such Council shall still be liable for its Minimum Payment. Details in respect of each Councils Minimum Tonnage guarantee/Minimum Payment will be set out in Schedule 9 (Payment Proportions).]**

- 4.8 The Councils agree and undertake to commit to the Project in accordance with the terms of this Agreement and not to commission and/or undertake any procurement and/or Project that seeks or would procure the delivery of all or any part of the Project outside the terms of this Agreement (including (without limitation) wilfully diverting Contract Waste away from the Project) unless and until it shall have withdrawn from the Project in accordance with Clause 16 (Withdrawal). The Councils acknowledge that their commitment to a minimum tonnage guarantee for residual waste remains whether they consider alternative waste collection or recycling programmes and that pursuant to [Part 3 of Schedule 9 (Payment Proportions) they shall be collectively liable for the minimum tonnage guarantee payments where there is an overall shortfall by the Councils collectively in supplying sufficient waste to the Key Facility (and that

the terms of Part 3 of Schedule 9 (Payment Proportions) shall address any intra-Councils commercial arrangements in meeting the Project's minimum tonnage guarantee).]

- 4.9 Each Council warrants to the other Councils that it shall observe and comply with the terms of each of the Contract Documents and shall, subject to the remaining provisions of this Agreement, indemnify the other Councils in respect of any loss, damage or expense caused as a result of its breach of any of the Contract Documents.
- 4.10 Each Council shall co-operate with the other Councils in good faith in order to facilitate the performance of their respective obligations under the Contract Documents and to avoid and/or mitigate any additional costs, expenses, delays or disruption to the Project provided that (subject to the specific obligations within this Agreement) no Council shall be under any duty to fulfil obligations which are the responsibility of any other Council.
- 4.11 Each Council acknowledges that it shall not exercise or waive any right under any of the Contract Documents where such exercise or waiver has not first been approved in accordance with this Agreement.
- 4.12 Each Council in entering into the Contract Documents shall be deemed to have satisfied itself of all relevant matters and shall not rely on any representations made by any other Council in respect of the Contract Documents.
- 4.13 For the duration of this Agreement, the Lead Council shall act as the primary interface with the Contractor, WG, Infrastructure UK and any other body necessary to carry out the Project Tasks in accordance with the terms of this Agreement.
- 4.14 For the duration of this Agreement, the Lead Council shall act diligently and in good faith in all its dealings with the Contractor and the other Councils and it shall use all reasonable endeavours to carry out the Project Tasks in accordance with any WG guidance and any other applicable legislation.

## 5. DECISION MAKING

- 5.1 In terms of the need for decisions and other actions to be taken and carried out for the Project Tasks, the Councils have identified the following four (4) categories together with the means by which they will be taken:-

5.1.1 **"Contract Manager Matter"** – being the day to day management of the Project (in accordance with the terms of the Project Agreement) pursuant to Clause [4.7] which shall include any decision which has (or is reasonably expected to have) an annual financial impact on the Project of up to (and including) [£ ]<sup>7</sup>, except in circumstances where such decision could reasonably be expected to have local and/or political significance to any of the Councils, in which case such decision shall be elevated to the Project Board, provided always that the Contact Manager may refer any matter to the Project Board;

5.1.2 **"Project Board Matter"** - being a matter which is to be decided upon [(pursuant to Clause 8 and Schedule 3 (Project Board Terms of Reference))] at a quorate meeting of the Project Board by those present and entitled to vote and which shall have (or is reasonably expected to have) an annual financial impact on the Project of up to [£ ] or be a matter referred to the Project Board by the Contract Manager. Any decision made by the Project Board in relation to a Project Board Matter within these financial parameters shall be binding on all of the Councils. Any decision to be made on a matter

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<sup>7</sup> Appropriate figure to be determined.

with an impact (or expected impact) in excess of these parameters shall be elevated to the Joint Committee, provided always that the Project Board can refer any matter of any financial value to the Joint Committee if they so decide;

5.1.3 **"Joint Committee Matter"** – being a matter which is to be decided upon at a quorate meeting of the Joint Committee by those present and entitled pursuant to Clause (Joint Committee Terms of Reference) to vote and which shall have (or is reasonably expected to have) an annual financial impact on the Project of up to [£ ] or be a matter referred to the Joint Committee by the Project Board. Any decision made by the Joint Committee in relation to a Joint Committee Matter within these financial parameters shall be binding on all of the Councils. Any decision to be made on a matter with an impact (or expected impact) in excess of these parameters shall be referred as a Matter Reserved To The Councils. The Joint Committee may determine that any Joint Committee Matter or any Project Board Matter may be referred back to each Council for decision as a Matter Reserved To The Councils and/or make a decision to delegate any matter to the Project Board for decision; and

5.1.4 **"Matter Reserved To The Councils"** – being a matter which will have to be referred to each Council for decision (at a meeting of either the relevant cabinet or full Council at the discretion of each Council) and, for the avoidance of doubt, any such matter will not be dealt with by the Project Board or the Joint Committee (as the case may be) until the matter has been determined by all of the Councils. If the Councils fail to reach the same decision in respect of such matter then the matter shall be referred under Clause 17 (Dispute Resolution) as a dispute for resolution.

and in each case, such matters are identified in Schedule 1 (Project Tasks).

5.2 [The Councils agree that in due course, should they elect to set up a joint scrutiny committee, each Council shall seek the necessary approvals in order to set up such a committee.]<sup>8</sup>

5.3 Each Council acknowledges and agrees that the Lead Council shall have the power and the entitlement to require a decision that in its opinion (acting reasonably) shall either:

5.3.1 mean a substantive change to the size or nature of the Facilities; or

5.3.2 mean a substantive change to the size or nature of the Project,

to be referred as a Matter Reserved To The Councils and such decision shall not be implemented unless approved by all of the Councils.

## 6. **JOINT COMMITTEE**

6.1 The Councils shall form the joint committee ("**Joint Committee**"), which shall, for the avoidance of doubt, supersede and replace the "Joint Committee" formed pursuant to the First Inter-Authority Agreement to carry out the functions set out in Schedule 2 (Joint Committee Terms of Reference).

6.2 The Joint Committee shall not have power to approve any Matter Reserved To The Councils pursuant to Clause 5.1.4.

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<sup>8</sup> It is noted that whilst the Councils would prefer to determine their own Scrutiny process internally, would Councils prefer to leave the above wording in to cover the possibility of a joint scrutiny committee being set up at some point in the future or should this be removed?



- 6.3 At meetings of the Joint Committee each elected member from each Council shall have one vote. Subject to the Lead Council's right to refer a decision pursuant to Clause 5.3 as a Matter Reserved To The Councils, decisions at meetings of the Joint Committee will be taken by a majority vote. The Contract Manager shall not have a vote.
- 6.4 If, at a meeting of the Joint Committee, a matter is not determined by a majority vote pursuant to Clause 6.3, that matter ("**JC Unresolved Matter**") shall be deferred for consideration at the next Joint Committee Meeting which shall be convened within [ten (10) Business Days] of that meeting. If at the reconvened Joint Committee meeting the JC Unresolved Matter is not determined by a majority vote, the Chairperson shall have a casting vote in respect of that JC Unresolved Matter.
- 6.5 Without prejudice to Clause 6.4, if one Council requests that a decision of the Joint Committee be deferred, the Chairperson shall defer such decision until the next Joint Committee Meeting which shall be convened within the next [ten (10) Business Days] of that meeting.
- 6.6 Each Council shall provide all relevant information reasonably required upon request by the Joint Committee and shall comply with any decisions of the Joint Committee to request such information.
- 6.7 Each Council shall consult with the other Councils to ensure the diligent progress of the day to day matters relating to any Joint Committee Matters.
- 6.8 The administrative costs and expenses of the Joint Committee incurred in accordance with the Annual Budget for setting up and conducting meetings of the Joint Committee shall be reimbursed by the Councils and arrangements for such reimbursement shall be agreed between the Councils and reviewed each year when the draft Annual Budget is prepared by the Project Board, considered by the Joint Committee and approved by the Councils.
- 6.9 The costs and expenses of the Joint Committee for the Contract Year [2014-2015] (which will precede the preparation of the first Annual Budget and be a transitional Contract Year) will be reimbursed as follows:
- 6.9.1 each of the Councils agrees in principle to pay any costs required in accordance with the cost sharing arrangements agreed by the Councils in place immediately prior to the completion of this Agreement; and
- 6.9.2 the costs shall be met by the Councils (following recommendations by the Project Board) as the Joint Committee may decide, else in absence of agreed recommendations shall be met equally.
- 6.10 When working as a member of a Joint Committee, the members shall be deemed to be working on behalf of their own Council even where the particular matter under consideration relates to or also relates to one of the other Councils.
- 6.11 When working on behalf of the Project, officers shall be deemed to be working on behalf of all their employing Councils, and made available and working on behalf of the other Councils under section 113 of the Act.
- 6.12 In consequence of the above, both members and officers shall be treated as falling within the statutory immunity provided by section 265 of the Public Health Act 1875, as amended, in respect of the Project.
- 6.13 None of the Councils shall have any liability to the other Councils in respect of any loss which those other Councils may suffer as a consequence of any action or omission by any officer whilst working on the Project on behalf of the Joint Committee.

- 6.14 The Lead Council will provide clerical support for the Joint Committee including convening meetings and maintaining minutes.
- 6.15 Constitutional arrangements for the Joint Committee are set out in Part 2 of Schedule 2 (Joint Committee Terms of Reference).
- 6.16 The Joint Committee shall delegate such operational functions to the Project Board as specified in Schedule 1 (Project Tasks) which may in turn delegate appropriate matters to the Contract Manager.

7. **ANNUAL BUDGET**

**[It is agreed in principle that during the Works Period of the Project the Contract Management Costs associated with the Project shall be split equally between the Councils. During the Services Period of the Project when the Facility is operational and up until expiry or early termination, the Contract Management Costs shall be on a pro-rata basis proportional to the actual tonnages delivered by each Council.]**

- 7.1 The Joint Committee shall by not later than November in each Contract Year consider and recommend a draft Annual Budget prepared by the Project Board for the following Contract Year which, in its opinion and based on the preceding Contract Year's actual spend and the Project plan prepared pursuant to Clause 10.1 (Business Plan and Work Programme), it reasonably requires to achieve its objectives in relation to the Project and to secure the funding requirement for the Lead Council to fulfil its obligations under this Agreement on behalf of the Councils. For the avoidance of doubt the Joint Committee has no budget setting or managing responsibility and the approval of the Annual Budget (as part of the Councils' wider budget setting procedure) is a Matter Reserved To The Councils.
- 7.2 The draft Annual Budget shall contain draft estimates of revenue income and expenditure of the Joint Committee for or in relation to the discharge of the Joint Committee's agreed functions. The estimates shall include details as to how the expenditure is to be financed including a breakdown of the contributions required from each Council.
- 7.3 [The Councils each agree and undertake to contribute an annual sum for each "Spend year".
- 7.4 Each of the Councils shall irrevocably make available to the Lead Council their share of the Annual Budget.<sup>9</sup> The Annual Budget (including any contingency sum) shall not be exceeded without the prior approval of the Councils.
- 7.5 The Lead Council shall be the accountable body for the Annual Budget and shall, pursuant to Clauses 13.1 to 13.4 (Accounts), prepare and keep accounts and shall make all accounts records and other documents available for inspection by any Council on request. The Joint Committee role is to oversee and procure the monitoring of the Annual Budget for the purposes of Councils' scrutiny.
- 7.6 Whenever any sum of money is recoverable from or payable by a Council it may be deducted from any sum then due to that Council under this Agreement and vice versa.
- 7.7 The Lead Council shall within twenty-eight (28) days of the conclusion of an Accounting Period prepare and serve on each Council a schedule of payments itemised by reference to the Heads of Expenditure set out in Schedule 5 (Annual Budget) and certified by the Lead Finance Officer as being in respect of that Council's

<sup>9</sup> For the avoidance of doubt these costs will include the Lead Councils costs including any recruitment, legal and financial costs incurred by the Lead Council associated with its role of management and supervision of the Project (see Schedule 5 for further details).

proportion of the costs which have been properly incurred in accordance with the terms of this Agreement for that Accounting Period. Such schedule of payments shall be payable by the Councils within thirty-five (35) days.

7.8 The costs associated with providing internal resources in relation to the Project Tasks shall (if not included within the Annual Budget and shared between the Councils), subject to Clause 7.10, be borne by the Council providing that internal resource. However, any additional costs and external costs required shall be shared equally by the Councils provided that such costs have received prior written approval from the Project Team (subject to where such additional costs and/or external costs exceed or are anticipated to exceed an aggregate total of five thousand pounds (£5,000) (indexed) in value in any single Contract Year they shall require the Project Team to secure prior written approval from the Project Board) and that such sums fall within the Project spend profile agreed by the Councils set out at Schedule 5 (Annual Budget). Any additional costs and external costs sought from Project funds which are not included in the spend profile at Schedule 5 (Annual Budget) will be dealt with pursuant to Clause 7.9 below.

7.9 The Councils hereby agree that:-

7.9.1 if one of the Councils wishes to carry out any work or incur any cost or expenses in relation to the Project exceeding an aggregate total of one thousand pounds (£1,000) (indexed) in any single Contract Year or requests the Joint Committee, the Project Board or any member or officer appointed to or engaged to support the Project to carry out any work or to incur any cost or expense that is not envisaged by the spend profile set out at Schedule 5 (Annual Budget) then such Council shall seek the prior written approval of the Contract Manager to approve it and allocate Project funding else it shall have to bear the cost itself; and

7.9.2 if one of the Councils carries out any work or incurs any cost or expenses or requests the Joint Committee, the Project Board or any member or officer appointed to or engaged to support the Project to carry out any work or to incur any cost or expense in relation to the Project that is not envisaged by the Contract Manager to be an efficient use of time and/or resources, that matter shall, at the discretion of the Contract Manager or at the request of the relevant Council, be referred to the Project Board for a decision as to whether such work, cost or expense is part of the Project or whether such work, cost or expense should be the entire responsibility of the Council so carrying it out or requesting it (as the case may be),

subject to such approval or decision not being unreasonably withheld or delayed by the Contract Manager and/or the Project Board and in the case of dispute Clause 17 (Dispute Resolution) shall apply.

7.10 The Councils hereby agree that if one of the Councils believes it is likely to incur disproportionate internal resource costs (compared to the Project spend profile set out at Schedule 5 (Annual Budget)) pursuant to Clause 7.8 that matter shall be referred to the Project Board for a decision as to whether such costs will be disproportionate and whether any contributions should be made to this cost by the other Councils.

## 8. **PROJECT BOARD**

8.1 The Councils shall form the Project Board ("**Project Board**") for the purpose of the day-to-day management of the Project and the Contract Manager and the implementation and monitoring of the process and to carry out those functions set out in Schedule 1 (Project Tasks) as being functions of the Project Board and in accordance with the Project Board's Terms of Reference as set on in Schedule 3 (Project Board Terms of Reference).

- 8.2 The Project Board shall have the powers to make decisions and recommendations within its Terms of Reference as set out in Schedule 3 (Project Board Terms of Reference) but shall not have power to approve any Joint Committee Matter or any Matter Reserved To The Councils pursuant to Clause 5.1.4.
- 8.3 Notwithstanding the above, the following specific functions are given to the Project Board:-
- 8.3.1 prior approval of all reports for decision by the Joint Committee save if impractical in the case of a special meeting; and
- 8.3.2 monitoring of:
- (a) the Annual Budget as agreed by the Joint Committee and approved by the Councils;
  - (b) the costs expended against the Annual Budget to ensure that the Project remains within budget; and
  - (c) the Unitary Charge payments or other payments to the Contractor for Services (including the Commissioning Services and the Interim Services) delivered against the overall forecast Unitary Charge for each Contract Year.
- 8.4 Each Council shall appoint one senior officer representative [(being a director or head of service)]<sup>10</sup> to the Project Board. The Chairperson of the Project Board shall be a director of the Lead Council appointed by the Project Board from time to time. Each such representative shall have one vote on any matter to be determined by the Project Board. Decisions at meetings of the Project Board will be taken by a majority vote.
- 8.5 The quorum necessary for a Project Board Meeting shall be a senior officer representative each Council unless such a quorum is not reached in which case the relevant meeting shall be re-convened and the required quorum shall be a senior officer representative from each of the five (5) Councils (in person or by telephone or video-conference facility). The Contract Manager, the Lead Finance Officer, the legal, procurement and technical officers for each Council shall be entitled to attend the meetings of the Project Board but not vote.
- 8.6 The section 151 officer and/or the monitoring officer for each Council shall be entitled to attend and participate in Project Board Meetings in a non-voting capacity.
- 8.7 If, at a meeting of the Project Board, a matter is not determined by a majority vote pursuant to Clause 8.4, such matter ("**PB Unresolved Matter**") shall be deferred for consideration at the next Project Board Meeting which shall be convened within [ten (10) Business Days] of that meeting. If at the reconvened Project Board Meeting the PB Unresolved Matter is not determined by a majority vote, subject to the Lead Council's right to refer a decision pursuant to Clause 5.3 as a Matter Reserved To The Councils, that matter shall be referred for a decision by the Joint Committee.
- 8.8 The Councils may, at their discretion, replace their representatives appointed to the Project Board provided that such replacement shall be on the same basis as the original appointed and provided further that no senior technical officer of the Project Board shall be removed or replaced by any Council without that Council giving prior written notice as soon as reasonably practicable of its intention to remove or replace that representative.

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<sup>10</sup> Councils to confirm.

8.9 Each Council shall also appoint one (1) substitute representative in the event that appointed representatives to the Project Board are unable or incapable of discharging their functions.

8.10 Each Council's substitute representative shall be entitled to attend meetings of the Project Board but shall only be entitled to vote in the absence of his or her corresponding voting representative.

8.11 The Project Board shall meet as and when required in accordance with the timetable for the Project.

## 9. **PROJECT OFFICERS**

9.1 The Joint Committee shall determine from time to time the necessity of the officers set out below (the "**Project Officers**") for the purposes of the Project:

9.1.1 the Contract Manager; and

9.1.2 such further officers (including but not limited to financial advisors, legal advisors and technical advisors) acting under the direction of the Contract Manager in his responsibilities in respect of the Project (insofar as the costs of such officers have been identified within the Annual Budget or otherwise provided for by one (1) or more of the Councils).

9.2 The Councils shall make their officers available as necessary for the purpose of the Project.

9.3 As and when requested by the Joint Committee, the Lead Council shall appoint the Project Officers (advised by the head of human resources or equivalent officer of the Lead Council and shall act within the employment procedure rules and policies of the Lead Council):

9.4 Project Officers may be:

9.4.1 appointed specifically and exclusively for the purpose of the Project to the employment of the Lead Council, on terms and for such duration as may be appropriate to that purpose, and the Lead Council shall make them available full-time or part-time for the performance of their functions under this Agreement; or

9.4.2 seconded by the Councils for the purpose of the Project to the Lead Council on terms and for such duration as may be appropriate to that purpose, and the relevant Council shall make them available full-time or part-time for the performance of their functions under this Agreement.

## 10. **BUSINESS PLAN AND WORK PROGRAMME**

10.1 The Contract Manager shall continually monitor all aspects of the Project's performance and prepare the Performance and Improvement Plan.

10.2 No later than [ ]<sup>11</sup> in any Contract Year, the Contract Manager shall present the draft Performance and Improvement Plan including any resource requirements for the Project and the draft Annual Budget to the Project Board to enable the Project Board to be made aware of any significant changes which they may refer for approval and recommendation to the Joint Committee including any anticipated Authority Changes under the Project Agreement.

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<sup>11</sup> Date to be agreed and confirmed by Councils.

10.3 The Performance and Improvement Plan for the Project, as amended where necessary and as approved by the Joint Committee, shall form:

10.3.1 the basis of the Joint Committee's request to each Council for future budgetary provision and for resources pursuant to Clause 7.1 (Annual Budget); and

10.3.2 an instruction from the Joint Committee to the Project Board.

#### 10A **AIR QUALITY MONITORING**

The Councils agree that there will be additional air quality monitoring undertaken for the period of 1 year from the Service Commencement Date at the discretion of the Joint Committee. Costs will be shared on a pro rata basis per actual tonnages delivered. Thereafter, the said monitoring will be subject to review by the Joint Committee.

#### 11. **SITES AND DECOMMISSIONING**

##### **Arrangements on Expiry or Early Termination**

11.1 The Councils acknowledge that, upon the expiry of the Project the Site shall be retained by Flintshire Council.

11.2 In the event that Flintshire Council is terminated or withdraws from the Project (pursuant to Clause 2.3 (Termination of Participation of a Partner Council or Lead Council) or Clause 16 (Withdrawal) of this Agreement), then the Site will transfer<sup>12</sup> to the new lead council for the duration of the Project and upon expiry of the Project, the remaining Councils shall ensure that the Site is transferred back to Flintshire Council as soon as reasonably practicable.

**[DN: It is agreed in principle that on an early termination of the Project if the Facility is operational then the Partnership should seek to agree appropriate arrangements to continue the use of the Facility for the purposes of the remainder of the 25 years. If however, the Facility has not been built, then the Site shall be retained by Flintshire County Council and there shall be no further obligation for the Site to be used for the purposes of the Project.]**

**[If the Facility has been partly built but is not yet operational, then the Councils shall seek to discuss and agree appropriate arrangements for the Site and the Councils shall equally share the liability of any associated costs.]**

##### **Decommissioning**

11.3 Upon expiry or termination of the Project, the cost of decommissioning will be split equally between the Councils, unless Flintshire Council (in its absolute discretion) elects not to undertake decommissioning at the time of expiry or the early termination of the Project, in which case Flintshire Council shall be solely liable for any future decommissioning costs.

##### 11.4 **[New Waste Transfer Station**

The Councils acknowledge and agree that the new Waste Transfer Station (the "WTS") that is to be built for the purposes of the Project shall be funded by the Councils on an equal basis. If it is determined that the new WTS shall be built on a site that is provided by Conwy Council, then upon expiry or early termination of the Project the Site shall be retained by Conwy Council. If, however, the Partnership jointly fund and provide a site for the new WTS, then upon expiry or early termination

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<sup>12</sup> Details in respect of the transfer to be confirmed by Property advisers.

of the Project the Councils agree to discuss and determine appropriate arrangements in respect of the site and the WTS].

#### 11.5 **Cost of Managing Waste prior to Haulage and Treatment**

**[DN: It is agreed in principle that where Welsh Government do not provide a grant for the element that covers the cost of managing waste prior to haulage and treatment, each Council would be responsible for their own transfer station operating costs, with no recourse to other Councils.]**

**Where Welsh Government do provide a grant for that element, all Councils will pay in to the Partnership an agreed amount per tonne for the Waste being managed within each Council area, and all Councils will receive an equitable share of the payment back, with the addition of the Welsh Government Grant. The amount aid “in” to the Partnership per tonne will be an amount agreed between the Councils (the starting point for the discussion would be the rate identified by the market testing / procurement exercise for the intended Conwy transfer station; this will ensure that the amount is based on a market rate).]**

#### 12. **PAYMENTS**

**[DN: Provisions setting out the process for receipt of payments from the Welsh Government and any banking and interest related provisions to be considered and confirmed by Finance.]**

##### **Incoming payment to the Lead Council of WG grant funding and other sums**

12.1 [Any grant funding from WG to the Councils in respect of the Project shall be paid to the Lead Council and each of the Councils' entitlement shall be on a pro rata basis in proportion to the forecast tonnages delivered by each of the Councils [in accordance with Schedule 9 (Payment Proportions), the Lead Council making such payments to the other Councils within **five (5) Business Days**]. In the event that the Lead Council fails to pay a Council within the five (5) Business Day period referred to above the Lead Council shall be liable to pay interest to the relevant Council at the Default Interest Rate, calculated from the due date for payment until (but excluding) the actual date of payment.]

12.2 [It is agreed in principle that in the event that the WG grant funding is withdrawn from the Project (and the Contractor is nor liable to replace the lost WG funding in accordance with the provisions of the Project Agreement), then the Councils shall be liable to cover the lost WG funding on a pro-rata basis in proportion to the actual tonnage provided by each of the Councils.]

##### **Invoices from Contractor**

**[DN: Finance to review and consider the below payment provisions.]**

12.3 The Councils acknowledge that the Lead Council's ability to agree and make payments to the Contractor is governed by the terms of the Project Agreement (specifically the Payment Mechanism).

12.4 The Councils acknowledge that Clause 45 (Payment and Invoicing) of the Project Agreement governs the process by which the Contractor invoices the Lead Council in respect of the Monthly Contract Payment and that, for the purposes of Clause 45 (Payment and Invoicing) of the Project Agreement, Flintshire Council (as Lead Council) will be responsible for making payment to the Contractor following receipt of such invoices.

- 12.5 The Councils acknowledge that the Lead Council's payment of the Monthly Contract Payment assumes a one hundred per cent (100%) availability and performance model.
- 12.6 On a monthly basis the Contract Manager (on behalf of the Lead Council) shall be responsible for taking decisions as to the appropriateness of any adjustments or Deductions (and contract default points or other remedies of the Lead Council) to be applied and made to the Contractor's invoice to the Lead Council due to poor performance or non-performance.
- 12.7 Within fifteen (15) Business Days of receipt of the Contractor's invoice in accordance with Clause 45.4 (Payment and Invoicing) of the Project Agreement, Conwy Council shall pay to Flintshire Council on receipt of a schedule of payments its proportion of the Monthly Contract Payment and any other relevant payments ("**Conwy's Payment Proportion**"), in each case calculated by reference to the relevant financial liabilities of the Councils as set out in Schedule 10 (Payment Proportions). In the event that Conwy Council fails to pay Conwy's Payment Proportion within the fifteen (15) Business Day period referred to above (the "**Due Date**") Conwy Council shall be liable to pay interest to Flintshire Council at the Default Interest Rate, calculated from the Due Date until (but excluding) the actual date of payment.
- 12.8 Within fifteen (15) Business Days of receipt of the Contractor's invoice in accordance with Clause 45.4 (Payment and Invoicing) of the Project Agreement, Denbighshire Council shall pay to Flintshire Council on receipt of a schedule of payments its proportion of the Monthly Contract Payment and any other relevant payments ("**Denbighshire's Payment Proportion**"), in each case calculated by reference to the relevant financial liabilities of the Councils as set out in Schedule 10 (Payment Proportions). In the event that Denbighshire Council fails to pay Denbighshire's Payment Proportion within the fifteen (15) Business Day period referred to above (the "**Due Date**") Denbighshire Council shall be liable to pay interest to Flintshire Council at the Default Interest Rate, calculated from the Due Date until (but excluding) the actual date of payment.
- 12.9 Within fifteen (15) Business Days of receipt of the Contractor's invoice in accordance with Clause 45.4 (Payment and Invoicing) of the Project Agreement, Gwynedd Council shall pay to Flintshire Council on receipt of a schedule of payments its proportion of the Monthly Contract Payment and any other relevant payments ("**Gwynedd's Payment Proportion**"), in each case calculated by reference to the relevant financial liabilities of the Councils as set out in Schedule 10 (Payment Proportions). In the event that Gwynedd Council fails to pay Gwynedd's Payment Proportion within the fifteen (15) Business Day period referred to above (the "**Due Date**") Gwynedd Council shall be liable to pay interest to Flintshire Council at the Default Interest Rate, calculated from the Due Date until (but excluding) the actual date of payment.
- 12.10 Within fifteen (15) Business Days of receipt of the Contractor's invoice in accordance with Clause 45.4 (Payment and Invoicing) of the Project Agreement, Isle of Anglesey Council shall pay to Flintshire Council on receipt of a schedule of payments its proportion of the Monthly Contract Payment and any other relevant payments ("**Isle of Anglesey's Payment Proportion**"), in each case calculated by reference to the relevant financial liabilities of the Councils as set out in Schedule 10 (Payment Proportions). In the event that Isle of Anglesey Council fails to pay Isle of Anglesey's Payment Proportion within the fifteen (15) Business Day period referred to above (the "**Due Date**") Isle of Anglesey Council shall be liable to pay interest to Flintshire Council at the Default Interest Rate, calculated from the Due Date until (but excluding) the actual date of payment.
- 12.11 The Councils shall ensure that there are always cleared funds paid in accordance with their respective share of contributions set out in a schedule of payments such that, subject to each Council fulfilling its payment obligations, the Lead Council shall always be capable of meeting its payment obligations to the Contractor. The Councils shall



not withhold payment of any intra-Councils sum due to the Lead Council which may be due to intra-Council disputes.

- 12.12 The Councils shall procure that, as regards this Project, the Lead Council is to remain cost and cash neutral for the planned term of the Project only insofar as the Lead Council satisfies its payment proportion and the payment obligations of the other Councils are set out in the Annual Budget.
- 12.13 The Councils agree that Flintshire Council as Lead Council shall (with the agreement of Conwy Council, Denbighshire Council, Gwynedd Council and Isle of Anglesey Council) be entitled to withhold payment of any disputed amounts as between the Lead Council and the Contractor in accordance with Clause 45 (Payment and Invoicing) of the Project Agreement but that the Lead Council shall not be entitled to withhold payment on the basis of a dispute solely between the Councils (any such dispute to be resolved in accordance with the provisions of Clause 17 (Dispute Resolution)).
- 12.14 Flintshire Council as Lead Council shall not agree to set-off any amounts owed by the Contractor to the Lead Council in accordance with Clause 46 (Set-Off) of the Project Agreement without the agreement of Conwy Borough Council, Denbighshire Council, Gwynedd Council and Isle of Anglesey Council (such agreement to include an agreement as to how Conwy's Payment Proportion, and/or Denbighshire's Payment Proportion and/or Gwynedd's Payment Proportion and/or Isle of Anglesey's Payment Proportion shall be amended as a result of such set-off).
- 12.15 [Subject to Clause 12.16 the Councils shall review their payment proportions as defined in Schedule 9 (Payment Proportions) for the items set out in Schedule 10 (Payment Proportions) (using fair and objective criteria supplied by the Project Board and recognising the principle of mutual benefit) on [30 September] following the Services Commencement Date (as defined in the Project Agreement) and at one (1) yearly intervals thereafter (or such other period as is agreed by the Councils) and shall agree any necessary amendments to this Clause 12. In default of such agreement, no amendment shall be made.
- 12.16 The Lead Council shall (following agreement by the Project Board and notification to the Joint Committee) be authorised to make adjustments, reconciliations or payments to recompense for significant anomalies in Project mutual benefit between the Councils (and for the avoidance of doubt where an anomaly between the Councils' modelled contributions exceeds [fifty thousand pounds (£50,000)] (indexed) per Accounting Period it shall be construed as significant).]

#### **Payments from Contractor**

- 12.17 Any payments to be made by the Contractor to the Lead Council in accordance with the terms of the Project Agreement (whether via an indemnity or through the imposition of Deductions or sanctions whose effects as between the Councils are set out in Part 2 of Schedule 9 (Payment Proportions) or otherwise) shall be apportioned between the relevant Councils to reflect the respective effects on each Council which are the subject of such payment:
- 12.17.1 where related to a [Performance Management Framework] item set out in Schedule 9 (Payment Proportions) in such proportions as defined in Part 2 of Schedule 9 (Payment Proportions); or
- 12.17.2 where not related to a [Performance Management Framework] item set out in Schedule 9 (Payment Proportions) by the Project Board in proportion to the level of cost incurred by each Council as a consequence of the actions and obligations pertaining to that Council's administrative area and works or services carried out under the Project Agreement in relation to that Council's administrative area.

- 12.18 The Lead Council shall, where Deductions apportioned to a Council exceed fifty thousand pounds (£50,000) (indexed) at the end of an Accounting Period, pay the sum of the Deductions to a Council within twenty (20) Business Days, unless otherwise agreed by the Project Board.

### **Taxation**

- 12.19 Each Council shall bear its own liability for any taxation or duty chargeable in the United Kingdom in respect of its participation in the arrangements under this Agreement and each Council undertakes to indemnify the other Councils in respect of any such taxation assessed on and paid by the other in respect of which the former is primarily liable.
- 12.20 Any supply made by one (1) Council to any other Council pursuant to this Agreement shall be exclusive of any value added tax chargeable on it, which shall (where required by law), be paid by the Council to whom the supply is made in addition to the payment for the supply, subject to the provision to it of a valid value added tax invoice.
- 12.21 All payments to be made by one (1) Council to another Council under this Agreement shall be made in full without deduction of or withholding for or on account of any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature unless the Council making the payment is required by law to make any such deduction or withholding. If such withholding or deduction is so required by law, then the Council making the payment shall increase the amount of the payment so that the other Council receives the same amount as it would have received in the absence of the requirement to make the withholding or deduction, and the Council making the payment shall give to the other Council an appropriate certificate as may be required by law showing the amount.
- 12.22 If the Council receiving the payment subsequently obtains relief or credit in respect of the withholding or deduction, then it shall promptly repay to the Council which made the payment an amount equal to the credit or relief obtained up to a maximum of the amount by which the payment was increased to take account of the withholding or deduction. The Councils shall co-operate with a view to allowing each Council to obtain any available relief or credit in respect of any such withholding or deduction in respect of taxation and in particular but without prejudice to the foregoing generality shall give any information reasonably required by the other Council in connection with the making of a claim for relief under an applicable double taxation treaty.

### **Community Benefit Fund**

**[DN: It is noted that the Councils have agreed in principle to payments in respect of a Community Benefit Fund. Each of the Councils shall pay into the fund and the payments shall be determined on a pro-rata basis in proportion to the tonnage provided by each of the respective Councils.]**

## **13. ACCOUNTS<sup>13</sup>**

### **Accounts to reconcile Annual Budget**

- 13.1 Clauses 13.2 to 13.4 shall apply to Conwy Council, Denbighshire Council, Gwynedd and Isle of Anglesey Council only where Clause 7.9 applies.
- 13.2 Each Council shall be required to prepare accounts including (reporting by exception) details of any expenditure incurred pursuant to Schedule 5 (Annual Budget) (the "**AB Accounts**") in respect of each Accounting Period and for such further and/or other

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<sup>13</sup> Drafting to be incorporated to capture 3 year accounting cycle plans, with agreed accounts for the following year and then 2 year projections/indicators for subsequent years.

accounting periods as the Project Board shall determine and which shall be incorporated into Schedule 6 (Accounting Periods).

13.3 Each Council shall:-

13.3.1 in the AB Accounts make true and complete entries of all relevant payments and receipts made by it during the previous Accounting Period;

13.3.2 within ten (10) Business Days of the end of the Accounting Period, the Councils shall provide to the Lead Council unaudited AB Accounts for such Accounting Period together with certification that such AB Accounts comply with this Clause 13.3;

13.3.3 nominate an individual to be responsible for ensuring that Council's own compliance with this Clause 14 and the name, address and telephone number of each individual nominated pursuant to this Clause 13.3 shall be notified to the other Councils in accordance with Clause 27 (Notices); and

13.3.4 acknowledge that the Lead Council shall within ten (10) Business Days of receipt of the AB Accounts submitted by each of the Councils, in accordance with Clause 13.3.2 prepare a reconciliation statement identifying the payments made by each Council and the balance due from or owing to each Council. The Lead Council shall within twenty (20) Business Days of the preparation of the reconciliation statement send out a copy of the reconciliation statement together with either a balancing schedule of payments or credit payment to each Council. A Council receiving a schedule of payments for payment shall pay it in full within twenty (20) Business Days. Any error in a balancing schedule of payments must be notified to the Lead Council within five (5) Business Days of such balancing schedule of payments being sent out. An amended balancing schedule of payments will be issued by the Lead Council and the Council receiving such schedule of payments shall pay it in full within twenty (20) Business Days.

13.4 If an individual nominated by a Council pursuant to Clause 13.3.3 changes, that Council shall notify the other Councils forthwith of the replacement nominees.

**Audits**

13.5 Subject to ensuring compliance with each Council's audit requirements, the Councils agree that the auditor for the Lead Council shall carry out the audit of the Project.

13.6 The Lead Council shall at all times maintain an up to date register of the assets and committed liabilities of each of the Councils in relation to the Joint Committee and the Councils will each advise the Lead Council of any such assets and committed liabilities.

13.7 The books of account for the Joint Committee shall be the subject of the audit arrangements of the Lead Council and shall be open to inspection by the Councils.

**14. INTELLECTUAL PROPERTY**

14.1 Each Council will retain all Intellectual Property in its Material.

14.2 Each Council will grant all of the other Councils a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its IP Material for the Project Tasks and any other purpose resulting from the Project Tasks whether or not the party granting the licence remains a party to this Agreement or the Project Tasks.

- 14.3 Without prejudice to Clause 14.1, if more than one (1) Council owns or has a legal or beneficial right or interest in any aspect of the IP Material for any reason (including without limitation that no one (1) Council can demonstrate that it independently supplied or created the relevant IP Material without the help of one (1) or more of the other Councils), each of the Councils who contributed to the relevant IP Material will grant to all other Councils to this Agreement a non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such IP Material as if all the other Councils were the sole owner under the Copyright Design and Patents Act 1988 or any other relevant statute or rule of law.
- 14.4 For the avoidance of doubt, any entity or person who is at the date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.
- 14.5 Each Council warrants that it has or will have the necessary rights to grant the licences set out in Clauses 14.2 and 14.3 in respect of the IP Material to be licensed.
- 14.6 Each Council shall indemnify the other Councils against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its Intellectual Property rights by use of that Council's Intellectual Property for the purposes of the Project.
- 14.7 Each Council agrees to execute such further documents and take such actions or do such things as may be reasonably requested by any other Council (and at the expense of the Council(s) making the request) to give full effect to the terms of this Agreement concerning management and control of Intellectual Property.

**15. LIABILITY OF THE COUNCILS**

- 15.1 The Lead Council shall indemnify and keep fully indemnified each of the other Councils to this Agreement against any losses, damage, claims, proceedings, expenses, actions, demands, costs and liabilities suffered by or incurred in respect of or in connection with:

15.1.1 any damage to property, real or personal; and/or

15.1.2 any injury to, or the death of, any person whomsoever; and/or

15.1.3 any third party actions, claims or demands

to the extent such damage, injury, death, third party actions, claims or demands arise from any breach by the Lead Council of its obligations under the Contract Documents or any negligent act, omission or default in relation to such obligations and the Lead Council shall make payment to the other Councils sums for which it becomes liable under this Clause 15.1 within twenty (20) Business Days of the date of another Council's written demand.

- 15.2 No claim shall be made against the Lead Council to recover any loss or damage which may be incurred by reason of or arising out of the carrying out by the Lead Council of its obligations under this Agreement unless and to the extent such loss or damage arises from any breach by the Lead Council under Clause 15.1.
- 15.3 Each of the other Councils (acting severally) shall indemnify and keep fully indemnified the Lead Council against any losses, damage, claims, proceedings, expenses, actions, demands, costs and liabilities suffered by or incurred in respect of or in connection with:
- 15.3.1 any damage to property, real or personal; and/or

15.3.2 any injury to, or the death of, any person whomsoever; and/or

15.3.3 any third party actions, claims or demands

if to the extent such damage, injury, death, third party actions, claims or demands arise from breach of the Contract Documents or from negligence or other act, omission or default on the part of the indemnifying party in relation to the Project and each Council shall make payment to the Lead Council sums for which it becomes liable under this Clause 15.3 within twenty (20) Business Days of the date of the Lead Council's written demand.

- 15.4 The Councils agree and acknowledge that the amount to be paid to the Lead Council by any of the other Councils under Clause 15.3 shall be borne by each of the Councils to the extent of its responsibility, however in the event that the responsibility is a shared one between the Councils (so that it is not reasonably practicable to ascertain the exact responsibility between the Councils) then the amount to be paid shall be divided between the Councils who share such responsibility in such proportions as the Joint Committee may decide.
- 15.5 In the event of a claim under this Clause 15 in which it is not reasonably practicable to determine the extent of responsibility as between the Councils (including the Lead Council), then the amount shall be divided between the Councils (including the Lead Council) as the Project Board may decide.
- 15.6 A Council (including the Lead Council) who receives a claim for losses, expenses, actions, demands, costs and liabilities shall notify and provide details of such claim as soon as is reasonably practicable to the other Councils.
- 15.7 Criminal fines or sanctions of individual Councils incurred through Council activities which are not in furtherance of the Project shall not be apportioned and the liability shall remain with the Council responsible for such fine or sanction.
- 15.8 No Council shall be indemnified in accordance with this Clause 15 unless it has given notice in accordance with Clause 15.6 to the other Council against whom it will be enforcing its right to an indemnity under this Agreement.
- 15.9 Each Council ("**Indemnifier**") shall not be responsible or be obliged to indemnify the other Councils (including the Lead Council) ("**Beneficiary**") to the extent that any insurances maintained by the Beneficiary at the relevant time provide an indemnity against the loss giving rise to such claim and to the extent that the Beneficiary recovers under such policy of insurance (save that the Indemnifier shall be responsible for the deductible under any such policy of insurance and any amount over the maximum amount insured under such policy of insurance).
- 15.10 Any liability to the Contractor in respect of any indemnity (which for the avoidance of doubt shall include Compensation Events and any other remedy of the Contractor under the Project Agreement which results in a financial obligation on the Lead Council) contained within the Project Agreement shall be for the account of the Council in breach of the indemnity in question (and where such breach has not been caused wholly by one (1) Council in such proportions as are agreed or determined by the Joint Committee else in accordance with Clause 17 (Dispute Resolution) to reflect the respective liability of each Council).
- 15.11 The Lead Council will have regard to, and to the extent not dealt with by the Contractor, administer all Project insurances in accordance with the provisions of the Project Agreement.
- 15.12 The Councils shall ensure that adequate insurance cover is effected and maintained in respect of any liabilities they may have in the event of any neglect or default on their part.

15.13 The Lead Council acting through the Project Board shall ensure that adequate insurance cover is effected and maintained in respect of any property and assets held by them for the purposes of the Joint Committee.

## 16. **WITHDRAWAL**

### **Termination by a Council is not Withdrawal**

16.1 For the avoidance of doubt Clause 2.3.1 (Termination) addresses early termination for breach by a Council.

### **Withdrawal**

16.2 If for any reason any Council (including the Lead Council) determines to withdraw from this Agreement then Clauses 16.3 to 16.6 shall apply.

16.3 If any Council wishes to withdraw from the Project it shall provide written notice to all the other Councils as soon as reasonably practicable ("**Withdrawal Notice**"). The Lead Council (or such other Council as nominated by the Joint Committee in the event that the Lead Council issues the Withdrawal Notice) shall within fourteen (14) days of receipt of the Withdrawal Notice provide to all the Councils a Liability Report which shall be discussed by the Joint Committee at its next meeting or a specially convened meeting if the next meeting falls more than two (2) weeks after the issue of the Liability Report. Those Councils who do not wish to withdraw from the Project shall have a duty, acting reasonably, to mitigate any losses which they suffer due to the financial and resource implications set out in the Liability Report.

16.4 Within the Decision Period each Council shall indicate either:-

16.4.1 that it withdraws from the Project and this Agreement; or

16.4.2 that it wishes to continue with the Project and this Agreement.

16.5 Where a Council does not indicate its intentions as required by Clause 16.4 then it shall at the expiry of the Decision Period be taken to have indicated that they wish to continue with the Project and this Agreement.

16.6 Where a Council indicates that it wishes to withdraw from the Project in accordance with Clause 16.4.1 then:-

16.6.1 the Council who shall have indicated its wish to withdraw shall pay all amounts due to be paid by it in accordance with the Liability Report within twenty (20) Business Days of the date of its notification under Clause 16.4.1 and comply with its obligation to contribute to the Project up to the date of its withdrawal; and

16.6.2 if in the event of such a withdrawal the Project timetable is delayed then the Council who shall have indicated its wish to withdraw may be responsible for any increased costs associated with such delay (as determined by the Joint Committee and notified as the sum payable in full and final settlement of such Council's liability, subject always to that Council meeting any additional antecedent liabilities incurred prior to the date of withdrawal).

### **Effects of Withdrawal**

16.7 Unless agreed otherwise by the remaining Councils, the Council who shall have indicated its wish to withdraw from the Project shall not remove its appointees to the Project Board for a period of three (3) months commencing on the date of such Council's withdrawal, [provided that the costs associated with those appointees to the Project Board shall be borne by the remaining Councils to the Project and this

Agreement in equal shares]. For the avoidance of doubt, the Council who shall have indicated its wish to withdraw from the Project acknowledges that its voting members shall remain on the Joint Committee but shall be unable to vote on matters pertaining to the Project with effect from the date of its confirmation under Clause 16.4.1.

- 16.8 If the Lead Council is the withdrawing Council, then the Lead Council shall be required, prior to its withdrawal from the Project, to novate each of the Contract Documents (including but not limited to the Project Agreement, Independent Certifier's Appointment, Parent Company Guarantee) to the new lead Council as selected by the remaining Councils.
- 16.9 [The Lead Council (and any subsequent lead council) (agrees that if it exercises its rights to withdraw from the Project pursuant to this Clause 16 (Withdrawal) then it shall transfer its interest in the Site to the new lead council (as selected by the remaining Councils), for use for the purposes of the Project only, in accordance with Clause [ ].
- 16.10 Any Council to which the Site is transferred acknowledges and agrees that upon expiry of the Project the Site shall be transferred back to Flintshire Council (at no cost to Flintshire Council.)]

## 17. **DISPUTE RESOLUTION**

- 17.1 Subject to section 103 of the Act, any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause 17. The Councils undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this partnership between the Councils) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute which avoids legal proceedings and maintains a strong working relationship between the Councils. Any interim determination will be applied but will be subject to the full dispute resolution procedure.

### **General disputes or disagreements**

- 17.2 in the event of any dispute, disagreement or difference between the Councils relating to this Agreement (whether this may be a matter of contractual interpretation or otherwise) then save in relation to disputes or disagreements relating to a Matter Reserved To The Councils, the matter shall be dealt with by referral in the first instance to the Project Board who shall meet within ten (10) Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.

### **Elevation of disputes**

- 17.3 If the Project Board fails to resolve a dispute or disagreement within **five (5) Business Days** of meeting pursuant to [Clause 17.2], or fails to meet in accordance with the timescales set out in [Clause 17.2], the dispute shall be referred to the Joint Committee for resolution at the next programmed meeting (or a special meeting of the Joint Committee shall be called to resolve the dispute as agreed by the Councils).
- 17.4 In relation to a dispute or disagreement relating to a Matter Reserved To The Councils, or if the Joint Committee fails to resolve a dispute or disagreement within **five (5) Business Days** of meeting pursuant to Clause 17.3, then the Councils in dispute or the Joint Committee (as the case may be) may refer the matter for resolution to the Chief Executive(s) or equivalent officer(s) (as appropriate) of each of the Councils as a pre-condition to mediation followed by:
- 17.4.1 a mediation facilitated by the President of the CIWM or his nominated representative or such other party as the Councils may agree (or the CIWM may direct) for resolution by them; or

17.4.2 the exclusive jurisdiction of the Courts of England and Wales where a dispute or disagreement relates specifically to the vires of the Councils;

and on referral to mediation or the Courts of England and Wales the Project Board shall furnish the Joint Committee with a briefing report on the dispute or disagreement for information.

17.5 Any dispute and/or disagreement to be determined by the Chief Executives (as appropriate), CIWM or the Courts of England and Wales or such other body as agreed by the Councils (as the case may be) under this Agreement shall be promptly referred for determination to them and in any event within thirty (30) Business Days of the Project Board's failure to reach agreement.

17.6 The Councils shall on request promptly supply to the Chief Executive(s) or CIWM (as the case may be) all such assistance, documents and information as may be required for the purpose of determination and the Councils shall use all reasonable endeavours to procure the prompt determination of such reference.

17.7 If the CIWM is appointed to determine in dispute pursuant to Clause 17.5, then the CIWM shall be deemed to act as an expert and not as an arbitrator and its determination shall (in the absence of manifest error) be conclusive and binding upon the Councils.

17.8 The costs of the resolution of any dispute and/or disagreement between the Councils under this Agreement shall be borne equally by the Councils to the dispute in question save as may be otherwise directed by the Chief Executive(s) (as appropriate), CIWM or the Courts of England (as the case may be).

## 18. DATA PROTECTION

18.1 In relation to all Personal Data, each Council shall at all times comply with the DPA, (as a data controller if necessary) which includes (but is not limited to) maintaining a valid and up to date registration or notification under the DPA covering the data processing activities to be performed in connection with the Project Tasks.

18.2 Each Council:-

18.2.1 shall process Personal Data belonging to any other Council only on the instructions of that Council (subject to compliance with applicable law);

18.2.2 shall only undertake processing of Personal Data reasonably required in connection with the Project Tasks and shall not transfer any Personal Data to any country or territory outside the European Economic Area; and

18.2.3 shall use all reasonable endeavours to procure that all relevant sub-contractors and the Contractor comply with this Clause 18.2. For the avoidance of doubt a relevant sub-contractor is one which processes Personal Data belonging to one or any of the Councils.

18.3 The Councils shall not disclose Personal Data to any third parties other than:-

18.3.1 to employees and sub-contractors and the Contractor to whom such disclosure is reasonably necessary in order for the Councils to carry out the Project Tasks; or

18.3.2 to the extent required under a court order or to comply with any applicable laws including (but not limited to) any statute, bye law, European Directive or regulation,



provided that any disclosure to sub-contractors or the Contractor under Clause 18.3.1 shall be made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 18 and that the Councils shall give notice in writing to all other Councils of any disclosure of Personal Data belonging to them which they or a sub-contractor or the Contractor are required to make under Clause 18.3.2 immediately as they are aware of such a requirement.

18.4 Any Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by any other Council and the relevant sub-contractors referred to in Clause 18.3.1. Within five (5) Business Days of such a request, the Council requested to do so shall supply written particulars of all such measures as it is maintaining detailed to a reasonable level such that the requesting Council can determine whether or not, in connection with the Personal Data, it is compliant with the DPA. All Councils shall use all reasonable endeavours to ensure that the sub-contractors and the Contractor also comply with such request from any other Council.

18.5 All Councils shall ensure that any Personal Data they obtain and provide to any other Council has been lawfully obtained and complies with the DPA and that the use thereof in accordance with this Agreement shall not breach any of the provisions of the DPA.

18.6 If:-

18.6.1 under the DPA any Council is required to provide information to a data subject (as defined in the DPA) in relation to Personal Data when such data is in the possession or under control of any other Council; and

18.6.2 the required Council informs the controlling Council in writing that this is the case,

then the controlling Council shall guarantee reasonable and prompt co-operation to the required Council in meeting its obligations under the DPA including making copies of the relevant Personal Data to the extent the same are in its possession.

18.7 Each Council shall provide the other as soon as reasonably practicable, with such information in relation to Personal Data and their processing as the other Council may reasonably request in writing and the party asked to provide the relevant data may reasonably be able to provide in order for the other Council to:-

18.7.1 comply with its obligations under this Clause and the DPA; and

18.7.2 assess whether the processing of the relevant Personal Data in connection with this Agreement is breaching or may breach the DPA in a manner which is material and not effectively sanctioned by any guidance statement issued by the Information Commissioner.

18.8 The Councils shall each take reasonable precautions (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of any Personal Data.

## 19. **FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION**

19.1 Each Council acknowledges that the other Councils are subject to the requirements of the Freedom of Information Act 2000 ("**FoIA**") and the Environmental Information Regulations 2004 ("**EIR**") and each Council shall where reasonable assist and co-operate with the other Councils (at their own expense) to enable the other Councils to comply with these information disclosure obligations.

- 19.2 Where a Council receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of any of the other Councils in relation to the Project, it shall:-
- 19.2.1 transfer the request for information to the other Councils as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
  - 19.2.2 provide the other Councils with a copy of all information in its possession or power in the form that the Councils reasonably require within ten (10) Business Days (or such longer period as the Councils may specify) of the Council requesting that information; and
  - 19.2.3 provide all necessary assistance as reasonably requested by the other Councils to enable the Council to respond to a request for information within the time for compliance set out in the FoIA or the EIR.
- 19.3 Where a Council receives a request for information under the FoIA or the EIR which relates to this Agreement or the Project, it shall inform the other Councils of the request for information as soon as practicable after receipt and in any event at least two (2) Business Days before disclosure and shall use all reasonable endeavours to consult with the other Councils prior to disclosure and shall consider all representations made by the other Councils in relation to the decision whether or not to disclose the information requested.
- 19.4 The Councils shall be responsible for determining in their absolute discretion whether any information requested under the FoIA or the EIR:-
- 19.4.1 is exempt from disclosure under the FoIA or the EIR; or
  - 19.4.2 is to be disclosed in response to a request for information.
- 19.5 Each Council acknowledges that the other Councils may be obliged under the FoIA or the EIR to disclose information:-
- 19.5.1 without consulting with the other Councils where it has not been practicable to achieve such consultation; or
  - 19.5.2 following consultation with the other Councils and having taken their views into account.

## 20. **CHANGES AND CHANGE IN LAW**

- 20.1 The Councils agree to be bound by the obligations on the Lead Council set out in [Clause 43 (Authority and Contractor Changes)] and Schedule 21 (Change Protocol) of the Project Agreement.
- 20.2 In relation to any proposed variations under the Project Agreement (whether the proposed variation is a Qualifying Change in Law, an Authority Change, a Contractor Change) or any other matter affecting the Project which may have an equivalent effect, the Councils shall work with the Contractor to achieve the best value solution for the Project in respect of such Qualifying Change in Law, Authority Change, Contractor Change or any other such matter as described in this Clause 20.2.
- 20.3 If, following a decision of the Contract Manager, the Project Board, the Joint Committee or the Councils (in respect of a Matter Reserved To The Councils) (as applicable) that the Councils decide to support a proposed variation under the Project Agreement, then Lead Council shall seek an Authority Change with the Contractor in the Project Agreement then:

- 20.3.1 where the proposed Authority Change is agreed by the Contract Manager, the Project Board, the Joint Committee or the Councils (in respect of a Matter Reserved To The Councils) (as applicable) to have a mutual benefit to the Project the costs of such proposed Authority Change shall be shared between the Councils by agreement else in absence of agreement according to the [Cost Sharing Formula];
- 20.3.2 where the proposed Authority Change is agreed by the Contract Manager, the Project Board, the Joint Committee or the Councils (in respect of a Matter Reserved to the Councils) (as applicable) to not have a mutual benefit to the Project the Council seeking such Authority Change in the Project Agreement shall bear responsibility for payment and indemnify the other Councils to hold them harmless against losses caused to each other Council by such Authority Change;
- 20.3.3 in requesting an Authority Change such proposing Council shall consider and address the impact on the other Councils; and
- 20.3.4 where a potential Authority Change falls within the grounds set out in paragraph 2 of Part 1 of Schedule 21 (Change Protocol) of the Project Agreement such Authority Change shall not be proposed or implemented.

**21. STEP-IN TO THE PROJECT AGREEMENT**

- 21.1 The Councils acknowledge the provisions of Clause 33 (Authority Step-In) of the Project Agreement where the Lead Council has rights to step into service delivery where it reasonably believes that it needs to take action in connection with the services because a serious risk exists to the health and safety of persons or property or to the environment or to discharge a statutory duty.
- 21.2 Under the provisions of Clause 33 (Authority Step-In) of the Project Agreement the Lead Council shall only be permitted to exercise such step in rights whereby the Councils agree to exercise such step in rights together and shall not be permitted to adopt differing approaches.

**22. TERMINATION OF THE PROJECT AGREEMENT**

- 22.1 Should the Lead Council become entitled to terminate the Project Agreement or otherwise serve a notice pursuant to Clause 67 (Termination for Contractor Default), Clause 69 (Termination on Force Majeure), Clause 71 (Termination on Corrupt Gifts and Fraud) and Clause 75 (Termination for Breach of the Refinancing Provisions) of the Project Agreement, the Councils shall meet as soon as reasonably practicable thereafter to decide as a Matter Reserved To The Councils whether the Project Agreement should be terminated (and for the avoidance of doubt no partial termination is contemplated, any changes of scope in the Project to be addressed as an Authority Change), taking into account:
  - 22.1.1 the point during the Project term at which termination of the Project Agreement would occur;
  - 22.1.2 the financial consequences of such termination and the rights of the Contractor pursuant to Schedule 17 (Compensation on Termination) of the Project Agreement;
  - 22.1.3 the financial consequences of continuing with the Project;
  - 22.1.4 the views of each Council concerning such termination;
  - 22.1.5 any alternative providers or means of provision of the works and/or services available to the Lead Council (and the other Councils);

22.1.6 whether the Councils are required to step in to provide the works and/or services; and

22.1.7 any other matters relevant to the termination or continuance of the Project.

22.2 For the avoidance of doubt, the Lead Council shall not be entitled to issue a notice of voluntary termination in accordance with Clause 73 (Voluntary Termination by the Authority) of the Project Agreement unless such action has been approved by all of the Councils as a Matter Reserved To The Councils.

## 23. **COUNCILS' OBLIGATIONS FOLLOWING EXPIRY OR EARLIER TERMINATION OF THE PROJECT AGREEMENT**

### **Extension**

23.1 The Councils acknowledge that pursuant to Clause 3.3 of the Project Agreement, there is an option for the Authority to extend the Expiry Date by a period of up to five (5) years. The Councils agree that any decision to extend the Expiry Date shall be a Matter Reserved To The Councils.

23.2 The Councils shall determine no later than sixty (60) months prior to expiry of the Project Agreement, what information is required (if any) from the Contractor, which will enable the Councils to determine if any extension of the Expiry Date is required by the Councils.

23.3 The Councils acknowledge that any decision to extend the Contract Period must be determined and notified to the Contractor no later than 36 months prior to the Expiry Date in accordance with Clause 3.3 of the Project Agreement.

### **After Project expiry or earlier termination**

23.4 The Councils agree that, following expiry or earlier termination of the Project Agreement they shall, prior to termination of this Agreement, seek to agree such arrangements as are appropriate in respect of the continuing operation or otherwise of the Facilities in accordance with Clause 11 (Sites and Decommissioning). The Councils acknowledge however that on expiry of the Project there is no obligation on Flintshire Council to utilise the Site for any continued arrangements with Partnership (or any of the Councils separately) and any arrangements that are agreed in respect of the continued utilisation of the Site will need to be agreed and documented in a separate agreement.

23.5 Subject to the provisions at Clause 11. The Councils assume that on early termination of the Project Agreement that leases and/or licences shall cross default with the Project Agreement and that [Allocated Sites] shall remain in the possession of the Council which acquired them and/or contributed them to the Project.

### **Termination Payments**

**[It is agreed in principle that the Councils shall be liable (and shall indemnify each other) for equal proportions of the termination sum payable to the Contractor following an early termination of the Project Agreement where the early termination occurs during the Works Period and prior to completion of the Facility. If termination occurs during the Services Period, when the Facility is operational, then liability shall be determined on a pro-rata basis in respect of the actual tonnage delivered by each of the Councils. An exception to this principle applies in circumstances where one Council is wholly responsible for the termination, or the Councils are not equally at fault, in which case the Councils agree that the Council or Councils whose acts or omissions gave rise to the early termination shall be liable for a greater proportion of the termination sum or all of the termination sum.]**

- 23.6 The Councils shall be liable for (and indemnify each other) in the proportions described in the Cost Sharing Formula for the Termination Sum payable to the Contractor following the early termination of the Project Agreement, save in respect of any Termination Sum payable in accordance with Clause 66 (Compensation on Termination for Authority Default) or Clause 4.4 (Relevant Discharge Terms) and Schedule 28 (Relevant Discharge Terms) of the Project Agreement, in which case liability for payment of the Termination Sum shall rest with the Council responsible for such termination (and where such termination has not been caused wholly by a single Council in such proportions as are agreed or determined in accordance with Clause 20 (Dispute Resolution) to reflect the respective liability of each Council and the concept of mutual benefit shall not apply).
- 23.7 The Councils' liability on early termination of the Project Agreement shall be defined by reference to the Lead Council's obligation to pay compensation on early termination to the Contractor as follows:
- 23.7.1 Clause 65 (Termination for Authority Default) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;
  - 23.7.2 Clause 67 (Termination for Contractor Default) and Part 3 of Schedule 17 (Compensation on Termination) of the Project Agreement;
  - 23.7.3 Clause 69 (Termination on Force Majeure) and Part 5 of Schedule 17 (Compensation on Termination) of the Project Agreement;
  - 23.7.4 Clause 71 (Termination on Corrupt Gifts and Fraud) and Part 4 of Schedule 17 (Compensation on Termination) of the Project Agreement;
  - 23.7.5 Clause 73 (Voluntary Termination by the Authority) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;
  - 23.7.6 Any other provision within the Project Agreement that affects liability on termination of the Project Agreement; and
  - 23.7.7 Any other liability that the Lead Council may reasonably incur which flows from or is connected to the termination of the Project Agreement.
- 23.8 Notwithstanding any other provisions of this Agreement it is agreed that no Council shall be entitled to derive any financial or other benefit from an early termination event at the cost of any other Council.

## 24. **POLICIES**

- 24.1 In respect of the policies referred to in Schedule 13 (Authority Policies) of the Project Agreement, the policies of the Lead Council shall apply in relation to the operation of the Project Agreement within the Councils' administrative areas and to employees operating within those areas.

## 25. **CONFIDENTIALITY AND ANNOUNCEMENTS**

- 25.1 The Councils shall comply with the confidentiality provisions of the Lead Council set out in the Project Agreement as if they were set out in this Agreement.
- 25.2 Each Council ("**Covenanter**") shall, both during the currency of this Agreement and at all times following its termination or expiry, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any Confidential Information about the business of and/or belonging to any other Council or the Contractor which has come to its attention as a result of or in connection with this Agreement, in particular (but without prejudice to the generality of the foregoing) Confidential Information relating to the Project Agreement.

- 25.3 The obligation set out in Clause 25.1 shall not relate to information which:-
- 25.3.1 comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the Covenanter or any other person to whom the Covenanter is permitted to disclose such information under this Agreement); or
  - 25.3.2 any disclosure to enable a determination to be made under Clause 17 (Dispute Resolution);
  - 25.3.3 is required to be disclosed by law; or
  - 25.3.4 was already in the possession of the Covenanter (without restrictions as to its use) on the date of receipt; or
  - 25.3.5 is required or recommended by the rules of any governmental or regulatory body including any guidance from time to time as to openness and disclosure of information by public bodies; or
  - 25.3.6 is necessary to be disclosed to provide relevant information to any insurer or insurance broker in connection with obtaining any insurance required by this Agreement.
- 25.4 Where disclosure is permitted under Clauses 25.3.3, 25.3.4 or 25.3.5, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 25 and the disclosing Council shall make this known to the recipient of the information.
- 25.5 No Council shall make any public statement (which shall include speaking or presenting at public conferences or other analogous situations) or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Project Agreement (excluding any disclosure required by legal or regulatory requirements) without obtaining the prior written approval of the other Councils as to the contents thereof and the manner of its presentation and publication provided that prior approval shall be required if such public statement materially affects any Council.
- 25.6 Each Council agrees to make available to the other Councils any books and records which may be required for the purposes of an internal audit and the Councils agree that any disclosure of such books and records to an appointed external auditor shall not breach the provisions of this Agreement.

## 26. **CONTRACTS (THIRD PARTY RIGHTS)**

The Councils as parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 27. **NOTICES**

- 27.1 Any notice or demand in connection with this Agreement shall be in writing and may be delivered by hand, prepaid first class post, special delivery post, facsimile or email (with a copy following by facsimile or post), addressed to the recipient at the address or facsimile number as the case may be set out in Schedule 4 (Addresses of the Councils) or such other recipient address or facsimile number as may be notified in writing from time to time by any of the parties to this Agreement to all the other Councils to this Agreement.
- 27.2 The notice or demand shall be deemed to have been duly served:-

- 27.2.1 if delivered by hand, when left at the proper address for service;
- 27.2.2 if given or made by prepaid first class post or special delivery post, forty-eight (48) hours after being posted (excluding days other than Business Days);
- 27.2.3 if given or made by facsimile, at the time of transmission;
- 27.2.4 if given or made by email, at the time of transmission,

provided that, where in the case of delivery by hand or transmission by facsimile or email such delivery or transmission occurs either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 9.00am on the next following Business Day.

- 27.3 For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
- 27.4 Each Council shall notify the other Councils in writing within five (5) Business Days of any change in its address for service.

28. **GOVERNING LAW**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 17 (Dispute Resolution), the English and Welsh Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

29. **ASSIGNMENTS**

- 29.1 The rights and obligations of the Councils under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) save in circumstances of an amalgamation of the Councils to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the relevant Council under this Agreement being:-
  - 29.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
  - 29.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the relevant Council under this Agreement.

30. **WAIVER AND COSTS**

- 30.1 No failure or delay by any Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right, power or remedy unless a waiver is given in writing by that Council.
- 30.2 Each Council shall pay their own respective costs and expenses incurred in connection with the preparation, execution, completion and implementation of this Agreement, except as expressly provided for in this Agreement.
- 30.3 Save where otherwise provided, the Councils will pay interest on any amount payable under this Agreement not paid on the due date from that date to the date of payment

at a rate equal to two per cent (2%) above the base rate from time to time of Barclays Bank plc.

**31. ENTIRE AGREEMENT**

This Agreement contains all the terms which the parties have agreed in relation to the subject of this Agreement and supersedes any prior written or oral agreements, representations, communications, negotiations or understandings between the Councils relating to such subject matter. No Council has been induced to enter into this Agreement or any of these documents by statement or promise which they do not contain, save that this Clause 31 shall not exclude any liability which one (1) Council would otherwise have to the other in respect of any statements made fraudulently by that Council.

**32. COUNTERPARTS**

This Agreement may be executed in any number of counterparts each of which so executed shall be an original but together shall constitute one and the same instrument.

**33. RELATIONSHIP OF COUNCILS**

Each Council is an independent body and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Councils of partnership or (except as expressly provided in this Agreement) of principal/agent or of employer/employee. No Council shall have the right to act on behalf of another, make any representations or give any warranties to third parties on behalf or in respect of any other Council nor to bind (or hold themselves out as having authority or power to bind) any other Council by contract or otherwise except to the extent expressly permitted by the terms of this Agreement or where a statutory provision otherwise requires. In particular for the avoidance of doubt, none of the provisions relating to the principles of working in partnership shall create, or be deemed to create, any partnership as defined by The Partnership Act 1890.

**34. MITIGATION**

Each Council shall at all time take all reasonable steps to minimise and mitigate any loss for which the relevant Council is entitled to bring a claim against the other Council(s) pursuant to this Agreement.

**35. STATUTORY RESPONSIBILITIES**

Notwithstanding anything apparently to the contrary in this Agreement, in carrying out their statutory duties, the discretion of any Council shall not be fettered or otherwise affected by the terms of this Agreement. Nothing contained or implied herein shall prejudice or affect the Councils' rights and powers, duties and obligations in the exercise of their functions as Local Authorities and/or in any other capacity and all rights, powers, discretions, duties and obligations of the Councils under all laws may at all times be fully and effectually exercised as if the Councils were not a party to this Agreement and as if the Agreement had not been made.

**36. LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

The certificate in respect of this Agreement to be provided by the Councils (not being the Lead Council) in respect of their powers to enter into this Agreement and support the Lead Council model whereby the Lead Council enters into the Project Agreement with the Contractor and accepts a contingent liability for the Relevant Discharge Terms (as defined in the Project Agreement) on behalf of itself assuming the other Councils are committed to underwriting their proportion of any compensation payable under the Relevant Discharge Terms pursuant to section 3 of the Local Government



(Contracts) Act 1997 shall be provided by the Councils (not being the Lead Council) to the Lead Council on or before the date of this Agreement.

37. **VARIATIONS**

37.1 The Councils may vary the terms of this Agreement including admitting additional Councils to the Joint Committee, the terms of such admission to be agreed by the Councils.

37.2 Where an additional Council is admitted to the Joint Committee it shall enter a deed of variation in a form agreed by the Joint Committee and from the date of its admittance to the Joint Committee all provisions of this Agreement shall apply to the admitted Council and the definition of "**Councils**" shall include it.

37.3 No amendment to this Agreement shall be binding unless it is in writing and signed by the duly authorised representatives of each of the Councils and expressed to be for the purpose of such amendment.

37.4 The Councils shall endeavour to review this Agreement on an annual basis to monitor and reflect on the operation of the Project and the performance of the obligations set out in this Agreement.

38. **SEVERABILITY**

In the event of any provision of this Agreement being or becoming legally ineffective, invalid, illegal or unenforceable as declared by the courts of other competent authority the remaining provisions of this Agreement shall not be invalidated and the Councils shall negotiate in good faith in order to agree a mutually satisfactory substitute provision.

**AS WITNESSED** the duly authorised representatives of the Councils have signed this Agreement as a deed on the date written at the beginning of this Agreement.

**SCHEDULE 1 – PROJECT TASKS**

**[Note: The below table of Project Tasks will need to be monitored and updated to reflect the main body of the IAA as it progresses. Councils will need to review and confirm each of the Project Tasks.]**

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
1. Agree to terminate Agreement	2.2					Y
2. Issue Default Notice for Council breach of Agreement	2.2.1					Y
3. Respond to Default Notice with Counternotice proposing remediation of Default Notice matters	2.2.2					Y
4. Issue of Notice of Acceptance or Notice of Dispute concerning Counternotice proposals to remediate beaches of Agreement	2.2.3					Y
5. Implement Notice of Acceptance	2.2.4					
6. Issue of written notice of termination of Agreement by Non-Defaulting Councils to Defaulter	2.3.1					
7. Liability for losses caused due to termination by a Defaulter	2.8.2					
8. Issue of Liability Report by Lead Council to Defaulter	2.8.2					
9. Discussion of Liability Report					Y	
10. All necessary consents obtained						Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
11. Share data and knowledge relevant to the Project	3.4					
12. Conduct relationship in accordance with stated principles	3.5					
13. Agreement that Flintshire Council shall be Lead Council	4.1					Y
14. Recognition of existence of Joint Committee and compliance with decisions delegated to Joint Committee	4.2					
15. Deciding detailed scope of Lead Council role	4.3.1				Y	
16. Deciding administrative and representative functions of the Lead Council	4.3.2				Y	
17. Communicate representative functions to Contractor	4.3.2		Y			
18. Consultation and reporting requirements between Lead Council and Joint Committee	4.3.3				Y	
19. Act on behalf of Partnership in management and supervision of Project	4.4.1		Y			
20. Acting under direction of Joint Committee	4.4.2		Y			
21. Act on behalf of other Councils	4.4.3		Y			
22. Liaising with Contractor and Contractor's representatives	4.4.4		Y			
23. Participating in Liaison Committee under Project Agreement	4.4.5		Y			
24. Act as employing authority for Lead Council staff or supervisor of Councils' seconded staff	4.4.6		Y			

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
25. Legal point of contact for managing Project	4.4.7		Y			
26. Providing additional resources and office facilities	4.4.8		Y			
27. Providing senior officers to Project	4.4.9		Y			
28. Determining level of involvement of senior officers	4.4.9				Y	
29. Responsibility for liaison and communication with WG and co-ordination of communication and public relations	4.4.10		Y			
30. Managing application of Annual Budget for Core Project Team and reporting to Project Board	4.4.11		Y			
31. Reviewing Annual Budget expenditure	4.4.11			Y		
32. Having powers to enter into contracts with consultants	4.4.11		Y			
33. Appointing a replacement Lead Council if the Lead Council defaults or withdraws from the Agreement	4.5				Y	
34. Performing much of Lead Council role	4.6	Y				
35. Employing Contract Manager	4.7.1		Y			
36. Line manager of Contract Manager	4.7.1			Project Team		
37. No competing procurement to the Project unless outside the terms of the Agreement	4.8					
38. Commitment to a minimum tonnage guarantee	4.8					Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
39. Warranty to comply with the Contract Documents (and indemnity in respect of loss)	4.9					Y
40. Co-operate in good faith	4.10					Y
41. No exercise or waiver of right under Contract Documents without approval	4.11					Y
42. Primary interface with Contractor, WG, IUK and other bodies	4.13		Y			
43. Overview and scrutiny responsibility	5.2					Y
44. Provision of information on reasonable request of Joint Committee	6.6					Y
45. Consultation with Councils to allow diligent progress day to day	6.7					Y
46. Reimbursement of administrative costs and expenses of Joint Committee in accordance with Annual Budget	6.7					Y
47. Review of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.7			Y		
48. Consideration of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.8				Y	
49. Approval of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.8					Y
50. Principle of reimbursement of first year costs and expenses of Joint Committee	6.10.1					Y
51. Recommendation of first year costs and expenses of Joint Committee	6.10.2			Y		
52. Setting first year costs and expenses of Joint Committee	6.10.2				Y	

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
53. Preparing a draft Annual Budget for the following Contract Year by 31 December in each Contract Year	7.1			Y		
54. Consider and recommend a draft Annual Budget for the following Contract Year by 31 December in each Contract Year	7.1				Y	
55. Approval of Annual Budget	7.1					Y
56. Approval to exceed Annual Budget (including contingency sums)	7.3					Y
57. Making available share of Annual Budget irrevocably to Lead Council	7.4					Y
58. Accountable body for the Joint Committee	7.5			Y		
59. Oversee or procure monitoring of Annual Budget for Councils' scrutiny	7.5				Y	
60. Contribute annual sum for Annual Budget spend year from spend profile	7.7					Y
61. Serve Annual Budget invoice on Councils at end of each Accounting Period	7.7		Y			
62. Payment of Annual Budget invoice each Accounting Period	7.7					Y
63. Costs of providing internal resources	7.8					Y
64. Approval of additional costs and external costs beyond Council internal resources approval (all within Annual Budget spend profile)	7.8			Project Team <£5K Project Board >£5K		
65. Approval of additional costs and external costs beyond Council internal resources approval (not included within Annual	7.9.1			Project Team		

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Budget spend profile)						
66. Has Council carried out activity as efficient use of time?	7.9.2			Y		
67. Decision on whether a Council internal resource costs are disproportionate compared to the Annual Budget spend profile	7.10			Y		
68. Prior approval of all reports for decision by Joint Committee (except if impracticable due to special meeting)	8.3.1			Y		
69. Monitor Project to ensure it remains within budget	8.3.2			Y		
70. Make available officers as necessary for purposes of the Project	9.1					Y
71. Appoint the Project Officers for the purpose of the Project	9.2		Y			
72. Provide necessary support to secure the effective achievement of the Project	10.2					Y
73. Prepare and keep up to date a draft Project Plan, work programme and resource plan for the Project	11.1	Contract Manager				
74. Present the draft Project Plan, work programme and resource plan for the Project to the Project Board	11.2			Project Team		
75. Decision on whether there is any significant change to the Project Plan, work programme and resource plan for the Project to be approved by the Joint Committee	11.2			Y		
76. Approval of the Project Plan, work programme and resource plan for the Project	11.3				Y	

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
77. Request to each Council for future budgetary provision and for resources	11.3.1				Y	
78. Cost and terms of the acquisition and/or securing of the Allocated Sites	12.1					Y
79. Decision on whether to transfer or not to transfer a interest in an Allocated Site pursuant to Withdrawal or Termination of the Project	12.2					Y
80. Transfer an interest in a Allocated Site to one of the remaining Councils for the use for the Project pursuant to Withdrawal or Termination of the Project	12.2.1				Y	
81. Liability for costs of provision of an alternative Site for the Project having equivalent operational effect	12.2.2					Y
82. Conduct a transfer of a interest in any Allocated Site at an undervalue of Market Value	12.3					Y
83. Receive any WG grant from [REDACTED] and payment to Councils of such credits or grant	13.1		Y			
84. Payment of contributions towards funding the Project's annual unitary charge payment	13.2					Y
85. Monthly Contract Payment to the Contractor	13.3		Y			
86. Responsibility for any adjustments or Deductions to the Contractor's invoice	13.6	Contract Manager				
87. Payment of proportion of the Monthly Contract Payment to Flintshire Council	13.7/ 13.8					Y
88. Ensure that there are always cleared funds paid	13.9					Y



TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
89. Review payment proportions as defined in Schedule 10 (Payment Proportions) on 30 September following the Service Commencement Date and at one (1) yearly intervals thereafter	13.13					Y
90. Supply fair and objective criteria for review of payment proportions	13.13			Y		
91. Consider adjustments, reconciliations or payments to recompense for significant anomalies in Project mutual benefit	13.14			Y		
92. Power to make adjustments, reconciliations or payments to recompense for significant anomalies in Project mutual benefit	13.14		Y			
93. Apportion any payment made by the Contractor	13.15		Y			
94. Liability for any taxation or duty chargeable in the UK in respect to participation the Project	13.16					Y
95. Increase payment to negate any withholding or deduction required by law and provide any appropriate certificate as may be required by law showing the amount.	13.17					Y
96. Obtain any available relief or credit in respect of any such withholding or deduction regarding taxation and provide information reasonably required with making a claim for relief	13.18					Y
1. Prepare accounts including expenditure incurred pursuant to the Annual Budget	14.2					Y
2. Determine Accounting Period in relation to AB Accounts	14.2			Y		

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
3. Ensure true and complete entries of all relevant payments and receipts in the AB Accounts	14.3.1					Y
4. Provide the Lead Council with unaudited AB Accounts for an Accounting period with certification that such AB Accounts comply with this agreement	14.3.2					Y
5. Nominate and notify to the other Councils the name, address and telephone number of an individual responsible for ensuring that Council complies with Clause 14 of this agreement	14.3.3					Y
6. Prepare and send a reconciliation statement with either a balancing invoice or credit payment	14.3.4		Y			
7. Notify a change to the nominated individual pursuant to Clause 14	14.4					Y
8. Maintain an up to date register of the assets and committed liabilities of each Council in relation to the Joint Committee	14.6		Y			
9. Grant a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its IP Material for the Project Tasks	15.2					Y
10. Indemnify any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its Intellectual Property rights	15.6					Y
11. Indemnify against any losses, damage, claims, proceedings, expenses, actions, demands, costs and liabilities in	16.1/ 16.3		Y			Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
connection with any damage to property; any injury to, or death of any person; and any third party actions, claims or demands						
12. Determine the extent of responsibility of responsibility in the event of a claim	16.5			Y		
13. Notify and provide details of a claim for losses, expenses, actions, demands, costs and liabilities	16.6					Y
14. Allocate any sums paid by the Contractor	16.11					Y
15. Administer all Project insurances in accordance with the provisions of the Project Agreement	16.2		Y			
16. Ensure that adequate insurance cover is effected and maintained in respect of any liabilities	16.14					Y
17. Ensure adequate insurance cover is effected and maintained in respect of any property and assets held by them for the purposes of the Joint Committee	16.15		Y	Y		
18. Provide written Withdrawal Notice	17.3					Y
19. Provide a Liability Report that is discussed by the Joint Committee	17.3		Y			Y (If nominated by JC)

## SCHEDULE 2 - JOINT COMMITTEE TERMS OF REFERENCE

### PART 1

#### TERMS OF REFERENCE

**[DN: The terms of reference of the Joint Committee require review and consideration by the Councils.]**

1. The terms of reference of the Joint Committee are:-
  - 1.1 to promote joint working in the delivery of the Project through:-
    - 1.1.1 facilitating constructive partnership working;
    - 1.1.2 engaging with key interested bodies and stakeholders when appropriate; and
    - 1.1.3 carrying out such other activities calculated to facilitate, or which are conducive to the successful delivery of the Project; and
  - 1.2 to ensure that the Project is developed in accordance with good industry practice, is in the best interests of all Councils and delivers value for money.
2. The key functions of the Joint Committee are to:-
  - 2.1 consider and make recommendations concerning the Councils' collective budget for the Project on an annual basis noting:
    - 2.1.1 the predicted outturn of the Councils' collective payments to the Contractor for services received under the Project Agreement as approved by the Councils;
    - 2.1.2 the profile of such payments described as Monthly Payments of Unitary Charge; and
    - 2.1.3 the draft Annual Budget prepared by the Project Board and approved by each Council;
  - 2.2 consider and make recommendations in respect of all Contract Documents in relation to the Project;
  - 2.3 to monitor and manage the risks associated with the Project
  - 2.4 address at a members' level any issues raised by the Councils' representatives on the Liaison Committee (pursuant to the Project Agreement) which require discussion; and
  - 2.5 to ratify requests for additional funding from individual Councils.
3. For the avoidance of doubt, the following matters are Matters Reserved To The Councils i.e. reserved for an individual Council decision:-
  - 3.1 approval of inter-Council partnership governance arrangements; and
  - 3.2 increase of budget over agreed Council contributions.
4. The key responsibilities of the Joint Committee include those tasks set out in Schedule 1 (Project Tasks) which are each designated as a "**Joint Committee Matter**" and in addition the following:-

- 4.1 providing strategic direction to the Project Board;
- 4.2 receiving and reviewing the Contractor's summary of its performance under the Project Agreement which is issued each quarter;
- 4.3 receiving and reviewing the Project monitoring update which is issued each year;
- 4.4 promoting partnership working between the Councils;
- 4.5 adherence to the Data Protection Policy as set out at Appendix 1 (Data Protection Policy);
- 4.6 approval of the annual Governance Statement which shall be published with the annual account at the end of each financial year;
- 4.7 consideration of the Annual Budget and recommendation of the same to the Councils for approval in accordance with Clause [ ];
- 4.8 preparation of statutory accounts pursuant to The Accounts and Audit (Wales) (Amendment) Regulations 2010;
- 4.9 ensuring that the Lead Council provides all financial and statistical reports on an open book basis upon request by the Councils or their internal or external auditors, permitting any such authorised persons to inspect, audit and take copies of all reports, books, accounting records, vouchers and any other documents considered relevant and seek reasonable explanations for any matter under examination; and
- 4.10 ensuring that the Lead Council's internal audit service provides an annual statement of assurance to the Councils regarding the payment process and Project monitoring arrangements which will be provided by 30 June each year.

## PART 2

### CONSTITUTIONAL ARRANGEMENTS

1. Subject to Clause 4.5 (Duties of the Lead Council and Other Councils), each Council shall appoint two (2) elected members of their [executive or Cabinet], both of whom shall be voting members, as their representatives to the Joint Committee.
2. Members of the Joint Committee shall be appointed in accordance with the standing orders of that Council.
3. In appointing members to the Joint Committee, each Council will include among its appointees, unless there are overriding reasons to the contrary, the member of the [Cabinet] of that Council who has portfolio responsibility for waste management functions within that Council.
4. Each member of the Joint Committee shall be empowered to have the delegated authority of his or her Council to make binding decisions in relation to the Project. In the event that any member is unable to make a decision the matter will be referred to the respective Council at an appropriate level (including but not limited to Council leader or Council [Cabinet]) and a binding decision will be made by such Council as soon as reasonably practicable and in any event within forty (40) Business Days.
5. Each member of the Joint Committee shall have responsibility for championing the Project within their own Council and for securing, as far as possible that any matter which is recommended to that Council by the Joint Committee for decision shall be considered and determined expeditiously and having due regard to the benefits to each Council of the joint procurement and implementation of the Project.
6. Each Council shall also appoint one (1) substitute member in the event that appointed members are unable or incapable of discharging their functions.
7. Each Council's substitute member shall be entitled to attend meetings of the Joint Committee but shall only be entitled to vote in the absence of his or her corresponding voting member.
8. Each Council may, at their discretion, replace their representatives appointed to the Joint Committee, provided that:-
  - (a) at all times, they have representatives appointed to the Joint Committee in accordance with the roles identified in Part 1 of this Schedule 2 (Joint Committee Terms of Reference); and
  - (b) any such replacement nominated in writing on not less than five (5) Business Days' notice shall have no lesser status or authority than that set out in Part 1 of this Schedule 2 (Joint Committee Terms of Reference) unless otherwise agreed by the Councils.
9. The Chair of the Joint Committee shall be an elected Executive or Board member of a Council appointed by the Joint Committee pursuant to paragraph 11.
10. The Vice-Chair of the Joint Committee shall be an elected executive member of a Council appointed by the Joint Committee pursuant to paragraph 11. In the absence of the Chair for any reason, the responsibilities of the Chair can be discharged by the Vice-Chair.
11. The Chair and the Vice-Chair of the Joint Committee shall be elected at the annual general meeting and appointments shall take effect until the next annual general meeting. The Chair will be nominated by annual rotation between the Councils commencing with a Flintshire Council member of the Joint Committee and the

subsequent order of rotation for the following two (2) years shall be agreed by the Joint Committee.

12. The Joint Committee shall meet as and when required to suit the needs of the Project in accordance with the Project timetable provided that there shall be a minimum of two (2) meetings per year, one (1) of which shall be specified as the annual general meeting and, subject to paragraph 13, at appropriate times and on reasonable notice (to be issued through the Project Team) to carry out the Joint Committee Matters referred to in Schedule 1 (Project Tasks). The venue for the meetings shall be agreed by the Joint Committee.
13. A printed copy of the agenda and reports for each meeting and the minutes of the previous meeting shall be despatched at least five (5) Business Days before such meeting is to be held to each representative appointed to the Joint Committee. The Chief Executive of the Lead Council shall use reasonable endeavour to procure that the agenda and all relevant papers meet this deadline. All agendas, reports and minutes in relation to the Joint Committee shall be in English.
14. The quorum necessary for a Joint Committee Meeting shall be five (5) members of the Joint Committee comprising at least one (1) member from each of the Councils from each Council (in person but not by telephone).
15. Each Council shall be entitled to invite appropriate third parties to observe Joint Committee Meetings and such third parties shall be entitled to be present in support of such Joint Committee Meetings at the discretion of the Chair of the Joint Committee. Such observers shall not have a vote. For the avoidance of doubt, the section 151 officer and/or monitoring officer for each Council shall be entitled to attend and participate in Joint Committee Meetings in a non-voting capacity.
16. Save as is inconsistent with the terms of this Agreement the Council Procedure Rules and Contract Procedure Rules of the Lead Council shall apply.
17. At meetings of the Joint Committee each elected voting member or appropriate deputy appointed pursuant to paragraph 1 above from each Council shall have one (1) vote. Decisions at meetings of the Joint Committee must be unanimous.
18. The Joint Committee shall have the powers to make decisions and recommendations within its terms of reference as set out in Part 1 of this Schedule 2 (Joint Committee Terms of Reference) but shall not have power to approve any Matter Reserved To The Councils pursuant to Clause 5.1.4 (Decision Making).
19. The Joint Committee decisions shall comply with the Core Policies of the Councils. If the Joint Committee proposes to make a decision contrary to the Core Policies then those decisions must be referred to each Council for resolution as a Matter Reserved To The Councils.
20. Reports to be submitted to the Joint Committee (including those pertaining to the Annual Budget) shall be considered by the Project Board prior to submission to the Joint Committee.
21. The Chair may summon a special meeting of the Joint Committee at any time by written notice to the Lead Council specifying the business to be considered at the special meeting.
22. A special meeting shall be summoned on the requisition in writing of any Joint Committee Members acting on behalf of his or her Council, which requisition shall specify the business to be considered at the special meeting.
23. Arrangements for holding a special meeting will be in accordance with the timetable set out in paragraph 12.

24. In the event that a special meeting is called the Lead Council shall notify all members of the Project Board as a matter of urgency.



### SCHEDULE 3 - PROJECT BOARD TERMS OF REFERENCE

**[DN: THE TERMS OF REFERENCE OF THE PROJECT BOARD REQUIRE REVIEW AND CONSIDERATION BY THE COUNCILS.]**

1. The Project Board will manage the progress and implementation of the Project including identifying all works necessary to be carried out and instructing the internal and external financial, legal, procurement and technical advisors to carry out the same. The Project Team shall be empowered (within pre-agreed parameters) to deal direct with the Contractor and other third parties.
2. The Project Board will act as a representative for each of the Council's "Corporate Officer Management Team" described in Schedule 4 (Addresses of the Councils) to ensure consistency with individual Council objectives and visions.
3. The Project Board will consider and determine those matters allocated to it in Schedule 1 (Project Tasks).
4. The Project Board will as and when necessary report to the Joint Committee and provide advice to the Joint Committee on those matters referred to the Joint Committee as set out in Schedule 1 (Project Tasks) and Schedule 2 (Joint Committee Terms of Reference).
5. For the avoidance of doubt (as set out in Clause 8.3) the following specific functions are given to the Project Board:-
  - (a) prior approval of all reports for decision by the Joint Committee save if impracticable in the case of a special meeting;
  - (b) preparation of the draft Annual Budget;
  - (c) monitor the Project to ensure that it remains within budget;
  - (d) to provide strategic guidance to the Project to ensure that it delivers the desired outcomes for the Councils;
  - (e) to ensure that the Project and Partnership is presented positively to external stakeholders;
  - (f) to oversee the Project's progress to ensure it is delivered within agreed timescales;
  - (g) to approve the completion of each stage of the Project before sign off;
  - (h) to review and approve, as appropriate, key documents relating to the Project such as the Contract Documents;
  - (i) to ensure that the Project is sufficiently resourced in regard to finance and staffing;
  - (j) to approve the scope of work, selection, and terms of engagement of advisors;
  - (k) to approve Project reviews and ensure that action is taken against any recommendations made; and
  - (l) to agree items for presentation to Joint Committee for approval or information.

**SCHEDULE 4 - ADDRESSES OF THE COUNCILS**

**[DN: Details taken from the First Inter-Authority Agreement. Councils to confirm any required amendments.]**

<b>RECIPIENT'S NAME</b>	<b>ADDRESS</b>	<b>FAX NO.</b>	<b>EMAIL</b>	<b>CORPORATE OFFICER MANAGEMENT TEAM</b>
Conwy County Borough Council:-	Bodlondeb, Conwy, North Wales LL32 8DU	01492 576116	Janet.Jones@conwy.gov.uk	Executive Group
Denbighshire County Council:- Head of Corporate Governance	County Hall, Wynnstay Road, Ruthin LL15 1YN	01824 706293	Legal@denbighshire.gov.uk	Senior Leadership Team
Flintshire County Council:- Head of Legal and Democratic Services	County Hall, Mold, Flintshire CH7 6NB	01352 702494	Gareth.Legal@flintshire.gcsx.gov.uk	Corporate Management Team
Gwynedd Council:- Head of Democracy and Legal Service	Council Offices, Shirehall Street, Caernarfon, Gwynedd LL55 1SH	01286 679466	IwanGDEvans@gwynedd.gov.uk	Leadership Group
Isle of Anglesey County Council:- Corporate Director, Department of Environment and Technical Services	Council Offices, Llangefni, Anglesey LL77 7TW	01248 752132	rbxcs@anglesey.gov.uk	Corporate Management Team

## SCHEDULE 5 - ANNUAL BUDGET

For the avoidance of doubt the Annual Budget is required for the Joint Committee to note the Project Board's recommendations for funding the Lead Council's obligations under this Agreement.

The Annual Budget does not include the Unitary Charge payment due under the Project Agreement as envisaged by the Final Business Case and as approved by the Councils.

The following is a non-exhaustive list of the heads of expenditure that may be expected to be incurred by the Councils in relation to the Project Tasks:

1. internal expenditure (staff costs and associated overheads);
2. internal financial support;
3. internal legal support;
4. other professional services (including asset management, architects, quantity surveyors, surveyors, procurement and planning);
5. communications;
6. external expenditure (staff costs and associated overheads);
7. Project management/technical and administrative support;
8. financial advisors;
9. technical advisors;
10. insurance advisors;
11. legal advisors;
12. other professional services (including asset management, architects, QS, surveyors, procurement, site investigation, remediation and planning);
13. waste analysis;
14. ICT;
15. communications advisors;
16. associated overheads may include such expenses as travel expenses, room hire, printing, accommodation and ICT costs; and
17. agreement to the incurring of costs and the appropriateness of sharing such costs between the Councils will be in accordance with the terms of this Agreement.

**SCHEDULE 6 - ACCOUNTING PERIODS**

**[DN: Details to be confirmed by the Councils.]**

<b>Start of Accounting Period</b>	<b>End of Accounting Period</b>
1 April	30 June
1 July	30 September
1 October	31 December
1 January	31 March

## SCHEDULE 7 - LIABILITY REPORT

The Liability Report shall include (but shall not be limited to):-

	<b><u>Amount</u> (all figures in round pounds)</b>
<p>Staff costs (and associated overheads) in progressing the Project:-</p> <ul style="list-style-type: none"> <li>• consultancy and advisors fees (legal, financial, technical, insurance etc.);</li> <li>• internal Project management and monitoring;</li> <li>• internal professional advice.</li> </ul>	
<p>Loss of funding support from Welsh Government.</p>	
<p>Losses incurred due to:-</p> <ul style="list-style-type: none"> <li>• loss of guaranteed Third Party Income identified in the Contractor's base case financial model;</li> <li>• liability on the remaining Councils to pay an increased proportion of the Unitary Charge payments due to the Contractor under the Project Agreement;</li> <li>• where a Council withdraws from or is terminated from this Agreement a payment in lieu of transferring an Allocated Site to a nominated Council (that is, the reasonably determined Market Value or an appropriate substitute site or sites from which the Contractor can deliver an equivalent level of service and which holds harmless the remaining Councils from additional payments to the Contractor;</li> <li>• loss of non-guaranteed Third Party Income;</li> <li>• loss of electricity revenues; and</li> <li>• the cost of acquiring additional</li> </ul>	

	<b><u>Amount</u> (all figures in round pounds)</b>
LAS allowances as a consequence of the withdrawal or termination (as the case may be) by a Council.	
Any other losses, costs, claims and damages arising from the remaining Councils within the Project recommissioning alternative service provision if the Project is no longer viable and the Project Agreement is terminated.	
Costs incurred by the Lead Council as certified by the Project Section 151 Officer and as approved by the Project Board as appropriate.	
Recognition of any mitigating factors including a substitute waste source (whether an additional local authority beyond the Councils or otherwise).	

Certified as correct \_\_\_\_\_

(Signed)

\_\_\_\_\_

(Date)

**SCHEDULE 8 - SITE**

<b>Site</b>	<b>Site Address (the Site being more particularly identified shown edged red on the relevant Site Plan)</b>	<b>Land Registry Title Number(s)</b>	<b>Freehold/Lease hold</b>
Deeside	Land at Deeside Industrial Park, Deeside, Flintshire	CYM316351	Freehold

## SCHEDULE 9 - PAYMENT PROPORTIONS

[DN: Finance to provide details for inclusion. However, agreed principles are noted below.]

It is noted that the Schedule shall incorporate a table which identifies in respect of each of the Councils, the forecast Contract Waste tonnages and respective cost sharing percentages.]

### Cost Sharing Principles in respect of Waste Treatment and Transport

1. Payments to the Contractor for the treatment and transport of Waste will be based on the actual tonnages delivered by each of the Councils, subject to not exceeding the forecast tonnages.
2. Where tonnage delivered by a Council exceeds the forecast tonnages, the Council delivering such excess tonnage shall be solely responsible for the costs associated with the treatment and transport of such tonnage.
3. Where the tonnages are below the guaranteed minimum tonnage the guaranteed minimum tonnage as applicable to each Council will be deemed to be the tonnage delivered by the relevant Council.
4. In the event that the tonnages delivered to the Contractor are below the guaranteed minimum tonnage, the Council not meeting its requirements will pay on the basis of the guaranteed minimum tonnage and this will result in an 'excess payment'.

### Excess Payments

Excess payments shall be 'placed in a reserve' to be used by the Councils (at the Joint Committees discretion) to fund project expenses, or be shared on a periodic basis or at the end of the Project utilising the percentages used to allocate the tonnage bandings.

### Additional Income and Windfall Gains

The Councils agree that any additional income shall be shared between each of the Councils on a pro-rata basis proportional to the actual tonnage delivered by each Council.

### Mechanism to re-align Tonnage Bands

It is agreed in principle that the IAA should contain provisions to allow for a readjustment of the tonnage bands as and when required to more closely reflect any changes in proportions of Waste arising in the Partnership. An Annual Review of the tonnages shall be conducted and the Joint Committee shall decide on any necessary adjustments.



**APPENDIX 1**  
**DATA PROTECTION POLICY**

**[Policy to be inserted]**

The Common Seal of **CONWY COUNTY** )  
**BOROUGH COUNCIL** was )  
hereunto affixed in the presence of:- )

Authorised Sealing Officer

The Common Seal of **DENBIGHSHIRE** )  
**COUNTY COUNCIL** was )  
hereunto affixed in the presence of:- )

Chairman

Authorised Signatory (Head of Legal  
Services/Legal Services Manager)

The Common Seal of **FLINTSHIRE** )  
**COUNTY COUNCIL** was )  
hereunto affixed in the presence of:- )

Chairman

Head of Legal and Democratic Services

The Common Seal of **GWYNEDD** )  
**COUNCIL** was )  
hereunto affixed in the presence of:- )

Authorised Signatory

The Common Seal of **ISLE OF** )  
**ANGLESEY COUNTY COUNCIL** was )  
hereunto affixed in the presence of:- )

Authorised Signatory

## **STATEMENT OF DATA PROTECTION POLICY & PRACTICE – NORTH WALES RESIDUAL WASTE JOINT COMMITTEE**

### **1.0 Introduction**

1.1 The North Wales Residual Waste Joint Committee comprises two elected Councillors from each of the following North Wales authorities:-

- Conwy County Borough Council
- Denbighshire County Council
- Flintshire County Council
- Gwynedd County Council
- Isle of Anglesey County Council

1.2 Flintshire County Council is the lead authority and has entered into an inter-authority agreement with the other four authorities which sets out the constitution of the Joint Committee and its decision making powers. In addition to the Data Protection policies in place for each constituent authority it has been decided to have a Data Protection policy for the Joint Committee.

1.3 The Joint Committee is supported by a project team of officers who use a stakeholder management database to track and manage communications and engagements with stakeholders and the public. The Joint Committee also processes personal information in relation to procurement processes whereby the employment details of two members of staff likely to be affected is passed to bidding companies for pricing purposes. These examples of the processing of personal information have led to the need for this Statement of Data Protection Policy & Practice.

1.4 The processing of personal information is regulated by the Data Protection Act 1998 (“The Act”) and the Joint Committee regards the lawful and correct treatment of personal information as very important to its successful operation and in maintaining confidence between it and those with whom it carries out business.

### **2.0 The Principles of Data Protection**

2.1 The Act stipulates that anyone processing personal data must comply with Eight Principles of good practice. These Principles are legally enforceable.

2.2 The Principles require that personal information:

1. Shall be processed fairly and lawfully and in particular, shall not be processed unless specific conditions are met;
2. Shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or those purposes;

3. Shall be adequate, relevant and not excessive in relation to the purpose or purposes for which it is processed;
4. Shall be accurate and where necessary, kept up to date;
5. Shall not be kept for longer than is necessary for that purpose or those purposes;
6. Shall be processed in accordance with the rights of data subjects under the Act;
7. Shall be kept secure i.e. protected by an appropriate degree of security;
8. Shall not be transferred to a country or territory outside the European Union Area, unless that country or territory ensures an adequate level of data protection.

### **3.0 Processing of Personal Information**

- 3.1 The Joint Committee will through the Project Manager and Project Team ensure that personal information is processed in accordance with the Act and the 8 principles in paragraph 2.2.
- 3.2 As the lead authority is Flintshire the Joint Committee is covered by Flintshire's notification to the Information Commissioner's office. The corporate Data Protection procedures applying in Flintshire will also apply to the Joint Committee covering such matters as subject access requests, violent warning markers and Data Protection complains.
- 3.3 The responsibility for ensuring compliance rests with the Project Manager. Where advice is needed on Data Protection matters it can be obtained from the relevant officers in Flintshire's Legal & Democratic Services department. Guidance is available on Flintshire's Infonet as well as on the website of the Information Commissioner's office.

REPORT TO: **[INSERT RELEVANT COMMITTEE NAME]**

DATE: **[DATE]**

REPORT BY: **NWRWTP PROJECT MANAGER**

SUBJECT: **PROJECT BUDGET REVISION**

## 1. PURPOSE OF REPORT

- 1.1. To present the revised budget for 2013/14 for Members' approval.
- 1.2. To present the budget to the procurement stage of Financial Close for 2014/15 for Members approval.

## 2. BACKGROUND

- 2.1. The contents of this report were considered by the Joint Committee at their meeting of 29 January 2014 and it was agreed that it be recommended for approval by the partner authorities.
- 2.2. The Joint Committee approved a project budget to the stage of Preferred Bidder selection at its meeting in July 2013. The approved budget for the year 2013/14 was £455,862 within a total net projected project expenditure of £3,000,367 summarised in the table below.

### NWRWTP Budget Review June 2013

(To preferred bidder selection. Excludes advisor fees from preferred bidder through to contract award)

EXPENDITURE HEADING	A2008/9 - 2012/13	P2013/14	P2014/15 Q1	PTotal
TOTAL PROJECT MANAGEMENT COSTS	1,369,916	261,088	23,864	1,654,868
TOTAL ADVISOR COSTS	2,110,381	285,150	0	2,395,531
CONTINGENCY	0	109,624	0	109,624
<b>TOTAL COSTS</b>	<b>3,480,297</b>	<b>655,862</b>	<b>23,864</b>	<b>4,160,023</b>
LESS INCOME	959,656	200,000	0	1,159,656
<b>NET COST</b>	<b>2,520,641</b>	<b>455,862</b>	<b>23,864</b>	<b>3,000,367</b>
Per AUTHORITY equal shares	504,128	91,172	4,773	600,073

- 2.3. Before calling for final tender Wheelabrator Technologies Inc (WTI) provided a price update paper to the NWRWTP Project team. The paper indicated that WTI's CFT submission would represent a significant increase in costs to that set out in WTI's refined ISDS submission. This unexpected development created an extra demand on resources to examine WTI's position in detail and consider alternative options of service delivery.
- 2.4. At the September 2013 meeting of the NWRWTP Joint Committee the Project Manager advised Members that as a result of the additional work undertaken there would be an increase in expenditure and the project budget would have to be re-visited.
- 2.5. The first Inter-Authority Agreement (IAA) regulates the procurement project up to the position of Financial Close. The projected procurement project net

expenditure included in the IAA is £3,198,673. To reach the milestone of Financial Close a budget is required that extends into Q1 of 2014/15.

### 3. CONSIDERATIONS

- 3.1. Expenditure to the end of Q3 2013/14 v the approved budget is summarised in the following table. The reported overspend of £268,869 is largely due to a timing difference on the receipt of grant monies to be received from WG and the additional work resulting from WTI's price update paper.

SUMMARY BUDGET MONITORING REPORT as at 31 December 2013								
EXPENDITURE HEADING	ANNUAL BUDGETv5	YEAR TO DATE 2013/14			TOTAL PROJECT BUDGETv5	CUMULATIVE PROJECT TO DATE		
		BUDGET	ACTUAL	BUD-ACT VARIANCE - = OVER; + = UNDER		BUDGET	ACTUAL	VARIANCE
PROJECT MANAGEMENT COSTS	261,088	224,353	241,437	-17,084	1,654,868	1,594,269	1,611,353	-17,084
ADVISOR COSTS	285,150	281,400	383,760	-102,360	2,395,531	2,391,781	2,494,142	-102,360
CONTINGENCY	109,624	50,575	0	+50,575	109,624	50,575	0	+50,575
<b>TOTAL COSTS</b>	<b>655,862</b>	<b>556,329</b>	<b>625,197</b>	<b>-68,869</b>	<b>4,160,023</b>	<b>4,036,626</b>	<b>4,105,494</b>	<b>-68,869</b>
LESS INCOME	200,000	200,000	0	+200,000	1,159,656	1,159,656	959,656	+200,000
<b>NET COST</b>	<b>455,862</b>	<b>356,329</b>	<b>625,197</b>	<b>-268,869</b>	<b>3,000,367</b>	<b>2,876,970</b>	<b>3,145,838</b>	<b>-268,869</b>
Per AUTHORITY equal shares	91,172				600,073			

- 3.2. The project procurement programme has been revised. Preferred Bidder approval by each of the Partnership Authorities will take place during February/March 2014. Financial Close is scheduled to be completed during June 2014.
- 3.3. The approved 2013/14 budget has been reviewed in the light of actual expenditure incurred to date (Dec 2013). The project team have also assessed the input required from advisors to get to the point of Financial Close. The updated procurement project budget to the point of Financial Close is shown in the table below.

#### NWRWTP Budget Review January 2014 ( To financial close)

EXPENDITURE HEADING	A2008/9 - 2012/13	P2013/14	P2014/15 Q1	PTotal
TOTAL PROJECT MANAGEMENT COSTS	1,369,916	302,061	59,128	1,731,105
TOTAL ADVISOR COSTS	2,110,381	478,010	182,750	2,771,142
CONTINGENCY	0	15,487	79,188	94,675
<b>TOTAL COSTS</b>	<b>3,480,297</b>	<b>795,558</b>	<b>321,066</b>	<b>4,596,922</b>
LESS INCOME	969,656	200,000	0	1,159,656
<b>NET COST</b>	<b>2,520,641</b>	<b>595,558</b>	<b>321,066</b>	<b>3,437,266</b>
Per AUTHORITY equal shares	504,128	119,112	64,213	687,453

Total procurement project net expenditure is projected to be £3,437,266 being £238,593 (+7.5%) greater than that contained in the IAA. The projected net expenditure for the current year is £595,558. The key assumptions that underpin these projections are attached in Appendix 1. A more detailed breakdown of the expenditure headings is attached in Appendix 2

- 3.4. The IAA Agreement provides that where actual costs associated with the project are likely to exceed the approved annual Project budget held on behalf of the Councils by 5% this will be a Matter Reserved To the Councils.
- 3.5. Individual Councils will also need to consider budget requirements beyond Financial Close noting the following points.
- The second IAA will need to be executed before the JC is able to approve budgets beyond the financial close stage.
  - The requirements for the project beyond financial close need to be identified and agreed.
  - Individual Councils will need to be able to plan for costs now (at least in 2014/15) ahead of the second IAA being formally agreed.
  - The Project Director previously identified (May 2011) the potential cost of a Contract Management Team plus External Advisors of between £307,000 to £359,000 per annum. Further advice is being sought on this matter from sources in WG.

#### **4. RECOMMENDATIONS**

Members of [insert partner authority] are asked to:-

- 4.1. Approve the proposed 2013/14 revised budget it being £595,558 (as set out in the report).
- 4.2. Approve expenditure in 2014/15 to take the procurement process to the final stage of Financial Close it being £321,066 (as set out in the report).
- 4.3. For the Joint Committee members to approve the ongoing project budget requirements referred to in point 3.5 above.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1. See sections 3.1 to 3.5 above

#### **6. ANTI-POVERTY IMPACT**

- 6.1. Not applicable.

#### **7. ENVIRONMENTAL IMPACT**

- 7.1. Not applicable.

#### **8. EQUALITIES IMPACT**

- 8.1. Not applicable.

#### **9. PERSONNEL IMPLICATIONS**

- 9.1. see Appendix 1 Key assumptions item 3.

#### **10. CONSULTATION REQUIRED**

10.1. See above.

## **11. CONSULTATION UNDERTAKEN**

11.1. Not applicable.

## **LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985**

### **Background Documents:**

None

**Contact Officer:** Steffan Owen NWRWTP Project Manager



## **Appendix 1 – Key Assumptions**

1. The successful appointment of Preferred Bidder by individual Councils will be completed during the months February/March 2014.
2. Financial Close will be completed on or before 30<sup>th</sup> June 2014.
3. Staffing
  - Project Director 2 days per week
  - Full time Project Manager
  - Full time Administrative Assistant
  - Lead Financial 1day every 2 weeks
  - Lead Technical 1 day every 2 weeks
  - Lead Legal 1 day per week
4. Advisors fees are based on advisors anticipated levels of activity in the run up to Financial Close that being most intense during the months April – June 2014. An allowance of 1 day's attendance by the external advisors in three out of the five Councils has been provided for.

## Appendix 2 – Detailed Projected Project Expenditure

EXPENDITURE HEADING	A2008/9	A2009/10	A2010/11	A2011/12	A2012/13	P2013/14	P2014/15	PTotal
Project Director	57,706	106,622	142,000	161,490	123,263	100,314	20,625	712,021
Project Director Travel etc	45	8	1,183	60	0	0	0	1,295
Project Manager	0	35,051	54,197	55,695	56,970	57,536	14,384	273,832
Project Manager travel and other expenses	0	0	2,161	1,298	998	1,135	1,250	6,842
Administrative assistance	1,237	0	33,599	27,773	27,761	28,021	7,004	125,396
Lead finance	0	0	0	35,735	42,543	43,406	3,617	125,301
Interim finance	0	0	38,000	0	0	0	0	38,000
Lead Technical	0	0	30,432	37,000	26,998	17,717	1,490	113,638
IT/ Telephones	0	1,077	1,290	1,630	738	1,126	300	6,162
Software	0	6,670	0	4,020	0	0	0	10,690
Stationery/Printing	0	630	161	2,622	2,048	1,215	240	6,915
Translation	0	3,928	2,687	2,511	2,977	3,781	1,500	17,384
Staffs enquiries	0	101	127	0	0	0	0	228
Remote document managements system	0	0	11,511	0	2,440	1,760	480	16,191
Advertising	18,981	0	3,000	6,261	3,997	1,721	0	33,961
Job Working	0	0	4,000	0	0	0	0	4,000
Payment recharge	0	0	405	0	0	0	0	405
Finance recharge	0	0	0	0	0	0	0	0
Lead recharge	0	29,797	23,472	28,984	29,466	29,415	4,238	145,372
Office accommodation recharge	0	0	4,379	0	0	0	0	4,379
Venues	1,348	5,668	14,865	28,745	7,768	7,911	2,250	68,556
Audit fees	0	0	0	0	11,787	7,000	1,750	20,537
<b>TOTAL PROJECT MANAGEMENT COSTS</b>	<b>79,316</b>	<b>189,553</b>	<b>367,468</b>	<b>393,823</b>	<b>339,755</b>	<b>302,061</b>	<b>59,128</b>	<b>1,731,105</b>
								0
Technical advisors - Entec/Amec	0	149,824	350,862	272,830	227,230	164,937	33,750	1,199,433
Technical advisors - Entec/Amec Sauce	0	0	0	34,210	47,912	25,275	30,000	137,398
Legal advisors - Pinsent Mason	0	33,850	151,792	235,664	146,303	210,565	90,000	868,174
Financial advisors - Grant Thornton	0	32,701	111,523	122,907	82,243	77,233	24,000	450,606
Other advisors - AECOM/Acer	0	0	83,786	12,950	1,190	0	0	97,926
Insurance advisors - Jardine Lloyd Thompson	0	0	1,984	1,121	9,500	0	5,000	17,605
	0	0	0	0	0	0	0	0
<b>TOTAL ADVISOR COSTS</b>	<b>0</b>	<b>216,374</b>	<b>699,946</b>	<b>679,682</b>	<b>514,379</b>	<b>478,010</b>	<b>182,750</b>	<b>2,771,142</b>
Potential site survey costs	0	0	0	0	0	0	55,000	55,000
Contingency - comms	0	0	0	0	0	0	0	0
Contingency - general (10%)	0	0	0	0	0	15,487	24,188	39,675
<b>TOTAL COSTS</b>	<b>79,316</b>	<b>405,928</b>	<b>1,067,414</b>	<b>1,073,506</b>	<b>854,134</b>	<b>795,558</b>	<b>321,066</b>	<b>4,596,922</b>
					0	0	0	0
WAG Contribution	75,000	345,000	200,000	0	310,000	200,000	0	1,130,000
Other Income	0	0	0	0	29,656	0	0	29,656
<b>TOTAL INCOME</b>	<b>75,000</b>	<b>345,000</b>	<b>200,000</b>	<b>0</b>	<b>339,656</b>	<b>200,000</b>	<b>0</b>	<b>1,159,656</b>
<b>NET COST</b>	<b>4,316</b>	<b>60,928</b>	<b>867,414</b>	<b>1,073,506</b>	<b>514,477</b>	<b>595,558</b>	<b>321,066</b>	<b>3,437,266</b>



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of the Local Government Act 1972.

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NWRWTP - Selection of preferred bidder  
& contents of draft IAA2  
06/02/2014

Equality Impact Assessment

**Contact:** S.PARKER - HEAD OF SERVICE

**Updated:** 24/1/2014

**1. What type of proposal is being assessed?**

A project proposal

**2. Please describe the purpose of this proposal**

a) to select a particular contractor  
b) to establish a legal framework for cost sharing between councils

**3. Does this proposal require a full equality impact assessment?**  
*(Please refer to section 1 in the toolkit above for guidance)*

No	The proposal has no potential for discrimination against protected groups
----	---

**4. Please provide a summary of the steps taken, and the information used, to carry out this assessment, including any engagement undertaken**  
*(Please refer to section 1 in the toolkit for guidance)*

Documents studied by head of service

**5. Will this proposal have a positive impact on any of the protected characteristics?**  
*(Please refer to section 1 in the toolkit for a description of the protected characteristics)*

no effect

**6. Will this proposal have a disproportionate negative impact on any of the protected characteristics?**

no effect

**7. Has the proposal been amended to eliminate or reduce any potential negative impact?**

<Please Select>	no effect
-----------------	-----------

**8. Have you identified any further actions to address and / or monitor any potential negative impact(s)?**

<Please Select>	<none
-----------------	-------

Action(s)	Owner	Date
<Please describe>	<Enter Name>	<DD.MM.YY>
<For additional actions, insert row below>	<Enter Name>	<DD.MM.YY>

**9. Declaration**

Every reasonable effort has been made to eliminate or reduce any potential disproportionate impact on people sharing protected characteristics. The actual impact of the proposal will be reviewed at the appropriate stage.

Review Date:	<24.01.2014
--------------	-------------

Name of Lead Officer for Equality Impact Assessment	Date
<s.parker	24.1.2014

**Please note you will be required to publish the outcome of the equality impact assessment if you identify a substantial likely impact.**

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**Report To:** Council

**Date of Meeting:** 25 February 2014

**Lead Officer:** Democratic Services Manager

**Report Author:** Democratic Services Manager

**Title:** Committee Timetable 2014 / 15, Annual Review of Political Balance, and Appointment of Scrutiny Chairs

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## **1. What is the report about?**

This report contains information and requests decisions on committee-related issues.

## **2. What is the reason for making this report?**

It is necessary for Council to approve a timetable for 2014/15 to enable meeting venues and resources to be confirmed, to publicise the timetable and to populate the Members' diary. As the new municipal year starts in May it is also appropriate for Council to consider changes in political balance and be aware of how Scrutiny chairing arrangements work.

## **3. What are the Recommendations?**

That Council approves the draft timetable and considers the merits of extending the timetable over two or more years.

## **4. Report details.**

### **4.1 Committee Timetable**

The new municipal year begins with the Annual Meeting of Council in May, when the current timetable of committee meetings ends. The draft timetable for meetings is attached as appendix 1.

Some members voiced suggestions in 2013 that extending the timetable to cover a longer period would be helpful, and a discussion on this point was held with the Democratic Services Committee who debated the advantages and disadvantages of the proposition and sought the views of the full Council membership.

### **4.2 Annual Review of Political Balance**

The Council is required to consider at least annually how the membership of its committees relates to the political balance of the Groups. Changes to the membership of committees and the strength of the political groups mean that not all committees are currently politically balanced, and these are shown in Appendix 2.

At the time of writing this report the recommendations in appendix 2 are relevant.

#### **4.3 Appointment of Chairs of Scrutiny Committees**

According to the principles for allocating Scrutiny chairs in the 2011 Local Government (Wales) Measure the Groups represented in the Cabinet (Independents, Conservatives and Plaid Cymru) will be entitled to 1 of the 3 scrutiny chairs, and it will be for those groups to decide amongst themselves which of their eligible members will be a chair. The Labour Group, as the only group which does not have members on Cabinet, is entitled to appoint 2 of the scrutiny chairs.

Neither the Measure nor the associated statutory guidance make provisions for changing or re-appointing scrutiny chairs, except where the political make-up of Cabinet changes or where a scrutiny chair is vacated for some reason. The appointment of chairs for the new municipal year is therefore a matter for the political groups to consider and to report any changes.

#### **5. How does the decision contribute to the Corporate Priorities?**

The decisions and information arising from this report are central to the functioning of the democratic and committee systems which are essential elements of the Council's governance arrangements and contribute to the Council's corporate priorities.

#### **6. What will it cost and how will it affect other services?**

The costs of maintaining a committee system are covered within existing budgets. Services throughout the Council may contribute to the meetings included in the timetable, usually by contributing information, reports and officer time.

#### **7. What consultations have been carried out with Scrutiny and others, and has an Equality Impact Assessment Screening been undertaken?**

The annual timetable of meetings is an established process and meets the aims of the Equality Act. The principal 'service users' are the members of the committees and supporting officers although the press and public are also able to attend most meetings the interest of individuals or groups is likely to depend on the topic under consideration.

A survey of councillors was conducted in 2012 on the timing and location of meetings and the results have been taken into consideration. The Council uses the most suitable meeting rooms whenever possible (in terms of access, parking, toilet facilities, public transport).

#### **8. Chief Finance Officer Statement**

There are no additional costs arising from the recommendations in this report.



**9. What risks are there and is there anything we can do to reduce them?**

Failure to confirm a new meeting schedule and other committee-related issues in this report would be detrimental to the Council's governance arrangements.

**10. Power to make the Decision**

Schedule 12 of the Local Government Act 1972; Local Government and Housing Act 1989; Local Government (Wales) Measure 2011.

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COMMITTEE TIMETABLE 2014 / 2015

APPENDIX 1

Committee	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	
COUNTY COUNCIL 10 a.m.	13 Annual Meeting	10	8	<b>SUMMER RECESS</b>	9	7	4	9		3 24		14	12 Annual Meeting	
COUNCIL BRIEFING 2 p.m.		23	14 Budget		22	20 Budget	17	22 Budget	19		16			
CABINET 10 a.m.	27	24	29		2 30	28	25	16	13	17	24	28	26	
CABINET BRIEFING 2p.m.	12	2	7			6	3	8	5	2	2	13	11	
PLANNING 9.30 a.m.	14	18	30		10	15	12	10	21	18	18	15	13	
PERFORMANCE SCRUTINY 9.30 a.m.	1	12	17			2	20		15	26		16		
COMMUNITIES SCRUTINY 9.30 a.m.	15	26			11	23		4	29		12	23		
PARTNERSHIPS SCRUTINY 9.30 a.m.		5	10		25		6	18		5	19	30		
CORPORATE GOVERNANCE 9.30 a.m.	21		2		3 29		5	17	28		25			20
LICENSING 9.30 a.m.		11			24			3			4			
LICC 2.p.m.		4			17				14				22	

Committee	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May
SACRE 10 a.m.		16				22				13			
STANDARDS 10 a.m.	9		18			17			23		6		22
DEMOCRATIC SERVICES COMMITTEE 10 a.m.		20									13		
CORPORATE HEALTH, S & W 10 a.m.	2			1		31			30				1

## **Timetabling Information**

### **Council**

Monthly meetings have been scheduled to follow the Annual Meeting on the 13 May 2014. No meeting has been scheduled for January on the basis that (a) preparations for meetings in early January are affected by the Christmas and new year holidays, and (b) Cabinet in January needs to meet to make recommendations to Council on the following year's budget,

There are 2 Council meetings scheduled for the start and the end of February, particularly to agree the Council's budget and then to set the level of council tax. The end of February meeting will also conduct any business that would have been considered by a March meeting.

### **Cabinet**

Dates for Cabinet meetings have been moved towards the end of a month where possible. The reason for this is that Cabinet considers an important budget monitoring report at each meeting, which covers the previous month. Collection of the budget information, report preparation, and publication can result in these reports being 'late'. Holding the Cabinet meetings at the end of a month will allow these reports to be circulated on time. As a consequence, some Cabinet meetings do fall during school holidays.

There are two meetings scheduled for September as a result of the August recess.

Mid-month meetings will be held in:

- December - a meeting the following week would fall on the 23 December and the close proximity to the holiday period may not be felt to be ideal;
- January - Cabinet needs to meet early enough to make recommendations on the budget to Council at the beginning of February, with Council's agenda being published at the beginning of the last week in January
- February – Affected by the position of Council meetings at the beginning of the month (to agree the budget) and at the end of the month (to set Council Tax levels).

### Scrutiny Committees

The 3 scrutiny committees have 5 co-opted voting members whenever they discuss education matters. For this reason none of their meetings have been scheduled during school holidays. Each committee has 8 meetings scheduled for the year (additional special meetings can be called if required).

The Scrutiny Co-ordinator has reviewed and agreed the draft timetable.

### Planning Committee

Planning officers have identified the proposed schedule for Planning Committee meetings which is designed to ensure that the committee meetings and associated post-committee work (issuing decision certificated, etc.) are complementary.

### Corporate Governance Committee

The Corporate Governance Committee is also the Council's Audit Committee and the proposed scheduled takes into account when the committee will be required to consider treasury management performance and the statement of accounts.

### Standards Committee

In line with the 2013/14 timetable there are 5 meetings scheduled to reflect the workload experienced over recent years. However, if the workload indicates that other meetings are required, these will be arranged accordingly.

### Licensing Committee

Four Wednesday meetings have been scheduled in accordance with existing timetabling arrangements. Licensing sub-committee meetings are arranged when required.

### Corporate Health, Safety and Welfare Committee

Meetings of the CHSW Committee have been scheduled for approximately 1 month after the end of the previous quarter to allow the committee to review quarterly health

and safety reports. The Committee meets on a Friday, and one meeting will be held on Friday 1 August. This is the only meeting scheduled during the August recess.

#### Local Joint Consultative Committee (LJCC)

4 quarterly meetings have been scheduled on Wednesday afternoons.

#### Standing Advisory Council for Religious Education (SACRE)

The membership of this statutory committee includes representatives from Denbighshire County Council, religious denominations and teacher associations. As with the current year, the new schedule proposes to hold their 3 termly meetings on different days of the week (a Monday, Wednesday and Friday) to lessen the impact on teacher representatives caused by taking time out of school on the same week-day for each meeting.

#### Democratic Services Committee

This committee must meet at least once every calendar year and is able to review the level of support for democratic services, committees and associated matters. Two Friday meetings have been scheduled at the beginning of the municipal year (20 June) and on the 13 March. Extra meetings can be added if necessary.

#### Council Briefing

Afternoon sessions of this informal gathering of Council for general topics have been proposed for June, September, November, January and March to accommodate issues of interest to members that do not require a formal decision from full Council.

Three budget workshops have also been included in the Council Briefing schedule in July, October and December to support members' involvement in developing the draft budget for the following year.

#### Cabinet Briefing

This is an informal but important meeting for Cabinet members and meetings are proposed for the first Monday of a month where possible. This is expected to complement the cycle of Cabinet meetings which will usually be at the end of the month. Please note that a meeting has not been scheduled for September (there are Cabinet meetings at the beginning and the end of the month).

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### Political Balance Position at January 2014

The tables below summarise the position for each of the committees. The third column headed *Political Balance* shows the actual number of seats each Group is entitled to have on the committee.

Changes to committee memberships can occur at any time and the Groups are encouraged to ensure that each committee has a full contingent of members throughout the year. A general review of the political balance of the committees is undertaken annually to re-balance committees for the start of the new municipal year in May. This year the Annual Meeting of Council falls on the 13 May and will include the withdrawal of the 2014 / 15 Vice Chair of Council from his / her membership of most committees owing to the non-political roles the Chair and Vice Chair of Council undertake.

Cabinet	Current Membership	Political Balance
Labour	0	3
Independent	4	2
Conservative	2	1 or 2*
Plaid Cymru	2	1 or 2*

Comments: The political balance requirements have been achieved for the groups participating in the executive.

In the event of a political group with 5 or more members declining to take up their seats on the Cabinet the Leader may appoint councillors to fill the vacancies and the rules of political balance do not apply to the filling of those vacancies. No further actions required.

\*With 8 members each both the Conservative and Plaid Cymru Groups have the same political balance weighting, so in respect of political balance, either could take a second seat on the committee.

Corporate Governance Committee	Current Membership	Political Balance
Labour	2	2
Independent	2	2
Conservative	1	1
Plaid Cymru	1	1

Comments: The membership of the Corporate Governance Committee is 6 councillors of whom one shall be the Vice Chair of the Council, politically balanced. The current Vice Chair is the Labour Group's Councillor Brian Blakeley who will leave the committee after his appointment as Chair of the Council in May. This will leave 1 Labour vacancy. If the new Vice Chair of the Council is not drawn from the Labour Group, Labour will be entitled to appoint 1 new member, and the new Vice Chair of Council will take one of his or her group's allocation of seats on the committee.

**Actions: (i) Refer back to relevant group leaders following the identification of the new Vice Chair of Council.**

Communities Scrutiny Committee	Current Membership	Political Balance
Labour	4	4
Independent	3	3
Conservative	2	2
Plaid Cymru	2	2
<p>Comments: This committee is politically balanced.</p> <p><b>Actions: None required.</b></p>		

Partnerships Scrutiny Committee	Current Membership	Political Balance
Labour	4	4
Independent	3	3
Conservative	2	2
Plaid Cymru	2	2
<p>Comments: This committee is politically balanced.</p> <p><b>Actions: None required.</b></p>		

Performance Scrutiny Committee	Current Membership	Political Balance
Labour	4	4
Independent	2	3
Conservative	2	2
Plaid Cymru	2	2
<p>Comments: There is currently (Jan 2014) a vacancy for an Independent Group member on this committee, which has been offered across to one of the other groups to fill.</p> <p><b>Action: An additional member is being sought for the remainder of this municipal year. A review of the membership will be required before May 2014 to re-balance this committee for the 2014/15 municipal year.</b></p>		

Planning Committee	Current Membership	Political Balance
Labour	11	12
Independent	8	8
Conservative	5	5
Plaid Cymru	5	5
<p>Comments: Labour have one vacancy (January 2014) which they are looking to fill</p> <p><b>Actions: Subject to the Labour Group appointing a member for their vacant seat this committee is politically balanced.</b></p>		

Licensing Committee	Current Membership	Political Balance
Labour	4	4
Independent	3	3
Conservative	2	2
Plaid Cymru	2	2
Comments: This committee is politically balanced.		
<b>Actions: None required.</b>		

Democratic Services Committee	Current Membership	Political Balance
Labour	4	4
Independent	3	3
Conservative	2	2
Plaid Cymru	2	2
Comments: This committee is politically balanced.		
<b>Actions: None required.</b>		

Local Joint Consultative Committee (LJCC)	Current Membership	Political Balance
Labour	2	2
Independent	2	2
Conservative	1	1
Plaid Cymru	1	1
Comments: This committee is politically balanced.		
<b>Actions: None required.</b>		

Corporate Health, Safety and Welfare Committee	Current Membership	Political Balance
Labour	2	3
Independent	2	2
Conservative	2	1 or 2*
Plaid Cymru	2	1 or 2*
Comments: Labour are currently (January 2014) 1 member below their entitlement of 3 members on the committee. Both the Conservative and Plaid Cymru Groups have an additional member – see note*.		
<b>Actions: (i) Labour to appoint 1 additional member. Either the Conservative or Plaid Cymru Group then withdraw 1 member.</b>		
*With 8 members each both the Conservative and Plaid Cymru Groups have the same political		

balance weighting so either (but only one of them) could take a second seat on the committee.

Standing Advisory Council for Religious Education (SACRE)	Current Membership	Political Balance
Labour	3	3
Independent	1	2
Conservative	2	1 or 2*
Plaid Cymru	1	1 or 2*
<p>Comments: The Independents are entitled to 1 extra seat but have not been able to nominate a member.</p> <p><b>Action: Independents to consider appointing a member or offering it to another Group.</b></p> <p>*With 8 members each both the Conservative and Plaid Cymru Groups have the same political balance weighting so one of them would be entitled to take 2 seats</p>		

Appeals and complaints Committee	Current Membership	Political Balance
Labour	4	4
Independent	3	3
Conservative	2	2
Plaid Cymru	2	2
<p>Comments: This 'committee' provides a pool of members for appeals and complaints work. It is currently balanced.</p> <p><b>Actions: None required.</b></p>		

Name of Cttee	Membership	Representation - Pure Political Balance										SEATS ALLOCATED
		Lab		Ind		Con		PC		Non-Alig		
		18		13		8		8		0		47
		38%	Percent	28%	Percent	17%	Percent	17%	Percent	0%	Percent	
Cabinet	8	3	38%	2	25%	1	13%	1	13%	0	0%	7
Corporate Governance	6	2	33%	2	33%	1	17%	1	17%	0	0%	6
Communities Scrutiny	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
Partnerships Scrutiny	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
Performance Scrutiny	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
Appeals & complaints	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
LJCC	6	2	33%	2	33%	1	17%	1	17%	0	0%	6
	(+2 officers)											0
Corporate Health & Safety	8	3	38%	2	25%	1	13%	1	13%	0	0%	7
SACRE	8	3	38%	2	25%	1	13%	1	13%	0	0%	7
Planning Cttee	30	12	40%	8	27%	5	17%	5	17%	0	0%	30
Licensing Cttee	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
Democratic Services Cttee	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
<b>Total Actual</b>	<b>132</b>	<b>49</b>	37%	<b>36</b>	27%	<b>22</b>	17%	<b>22</b>	17%	0	0%	<b>129</b>

Notes: Cabinet, Corporate H&S and SACRE are 1 short of their full membership on this table, as either the Conservative or Plaid Cymru Groups would be eligible for the remaining seat based on political balance.

Name of Cttee	Membership	Actual Membership - January 2014										SEATS ALLOCATED
		Lab		Ind		Con		PC		Non-Alig		
		18		13		8		8		0		47
		38%	Percent	28%	Percent	17%	Percent	17%	Percent	0%	Percent	
Cabinet	8	0	0%	4	50%	2	25%	2	25%	0	0%	8
Corporate Governance	6	2	33%	2	33%	1	17%	1	17%	0	0%	6
Communities Scrutiny	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
Partnerships Scrutiny	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
Performance Scrutiny	11	4	36%	2	18%	2	18%	2	18%	0	0%	10
Appeals & complaints	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
LJCC	6	2	33%	2	33%	1	17%	1	17%	0	0%	6
	(+2 officers)											0
Corporate Health & Safety	8	2	25%	2	25%	2	25%	2	25%	0	0%	8
SAC	8	3	38%	1	13%	2	25%	1	13%	0	0%	7
Planning Cttee	30	11	37%	8	27%	5	17%	5	17%	0	0%	29
Licensing Cttee	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
Democratic Services Cttee	11	4	36%	3	27%	2	18%	2	18%	0	0%	11
<b>Total Actual</b>	<b>132</b>	<b>44</b>	33%	<b>36</b>	27%	<b>25</b>	19%	<b>24</b>	18%	0	0%	<b>129</b>

County Council Forward Work Plan

Meeting	Item (description / title)		Purpose of report	Council Decision required (yes/no)	Author – Lead member and contact officer
<b>8 April</b>	1	Arrangements for the Election of Chair and Vice Chair of Council	To agree the nominations for the civic roles.	No	Gary Williams
	2	Capital Plan	To set the Budget for the year 2014/15	Yes	Cllr Julian Thompson-Hill/ Paul McGrady / Richard Weigh
	3	Revision of the Absence Policy	To consider amendments to the Council's Absence Policy	Yes	Cllr Barbara Smith / Julie Worrall
<b>Council Briefing 28 April</b>	1	Natural Resources Wales	To introduce the new arrangements now that NRW has been established and to share their corporate priorities and discuss how they impact on the council	N/A	Rebecca Maxwell
	2	Financial Inclusion Anti-Poverty (FIAP) Project	To inform all members of the project's aims and objectives	N/A	Cllr. Hugh Irving/Sarah Lamberton
	3	New North East Wales marketing area for tourism in Wales	Verbal report to inform all members of the replacement of 2 current marketing areas/		Vicki Shenton-Morris / Fiona Dolben

County Council Forward Work Plan

Meeting		Item (description / title)	Purpose of report	Council Decision required (yes/no)	Author – Lead member and contact officer
			introduce the new brand / moving forward and business buy in		
	4	Local Housing Strategy	To introduce the Local Housing Strategy		Cllr Hugh Irving / Peter McHugh / Sue Lewis
	5	North Wales Police- Force Communications Centre (FCC)	Superintendent Alex Goss to give a presentation to increase knowledge of the FCC function and accessibility and possible visits to the FCC, if required, by Members.	N/A	Superintendent Alex Goss and Mr Paul Shea attending.
<b>13 May ANNUAL MEETING</b>	1	Appointment of the Chair of Council	To appoint the Chair of Council for the 2014 / 15 municipal year	Yes	Gary Williams
	2	Appointment of the Vice Chair of Council	To appoint the Vice Chair of Council for the 2014 / 15 municipal year	Yes	Gary Williams
	3	Annual Report of the Scrutiny Committees	To consider the Annual Report	Yes	Rhian Evans / Steve Price
<b>June 2014</b>	1.	Local Housing Strategy	To agree the Local Housing Strategy	Yes	Cllr Hugh Irving / Peter McHugh / Sue Lewis



County Council Forward Work Plan

Meeting		Item (description / title)	Purpose of report	Council Decision required (yes/no)	Author – Lead member and contact officer
<b>Council Briefing</b> June (tbc)	1	Talented Athletes Grant	To consider funding arrangements for the grant	N/A	Cllr Huw Jones / Rhian Roberts
<b>September 2014</b>	1	Capital Plan	To discuss previous years outturn and update of 5 months of current year	Yes	Cllr Julian Thompson-Hill / Paul McGrady / Richard Weigh
<b>February 2015</b>	1	Treasury Management Strategy Statement 2015/2016	To approve the TM Strategy Statement 2015/2016	Yes	Cllr Julian Thompson-Hill/ Paul McGrady / Richard Weigh <b>To be added as an annual report every February.</b>

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Note for officers – Full Council Report Deadlines

Meeting	Deadline	Meeting	Deadline	Meeting	Deadline
<i>January</i>	<b>13 January</b>	<i>February</i>	<b>11 February</b>	<i>April</i>	<b>25 March</b>

Updated 04/02/2014 – SLW

# County Council Forward Work Plan

Council Work Programme.doc