

CABINET

Minutes of a meeting of the Cabinet held in the Council Chamber, County Hall, Ruthin on Tuesday, 17 December 2019 at 10.00 am.

PRESENT

Councillors Hugh Evans, Leader and Lead Member for the Economy and Corporate Governance; Bobby Feeley, Lead Member for Well-being and Independence; Huw Hilditch-Roberts, Lead Member for Education, Children's Services and Public Engagement; Brian Jones, Lead Member for Waste, Transport and the Environment; Richard Mainon, Lead Member for Corporate Services and Strategic Direction; Julian Thompson-Hill, Lead Member for Finance, Performance and Strategic Assets, and Mark Young, Lead Member for Planning, Public Protection and Safer Communities

Observers: Councillors Meirick Davies, Martyn Holland, Alan James, Melvyn Mile, Arwel Roberts, Peter Scott, Glenn Swingler, Rhys Thomas, and Emrys Wynne

ALSO PRESENT

Chief Executive (JG); Corporate Director: Economy and Public Realm (GB) and Communities (NS); Heads of Service: Legal, HR and Democratic Services (GW), Finance and Property (SG), Highways, and Facilities and Environmental Services (TW); Principal Manager – Modernising Education (GD); Programme Manager – Modernising Education (JC); Strategic Planning and Housing Manager (AL); Flood Risk Manager (WH); Legal and Procurement Operations Manager (HM); Managing Director Denbighshire Leisure Limited (JG) and Committee Administrator (KEJ)

1 APOLOGIES

Councillor Tony Thomas, Lead Member for Housing and Communities

2 DECLARATION OF INTERESTS

The following members declared a personal interest in agenda item 5 – 21st Century Schools Programme Band B Proposals –

Councillor Meirick Davies – School Governor Ysgol Cefn Meiriadog & Trefnant
Councillor Peter Scott – School Governor St. Asaph VP Infants School
Councillor Glenn Swingler – School Governor Ysgol Pendref
Councillor Mark Young – School Governor Denbigh High School

Councillors Huw Hilditch-Roberts and Bobby Feeley declared a personal interest in agenda item 8 – Implementation of an Alternative Delivery Model (ADM) for various leisure related activities/functions: lease of property because they were Directors of Denbighshire Leisure Limited.

3 URGENT MATTERS

No urgent matters had been raised.

4 MINUTES

The minutes of the Cabinet meeting held on 19 November 2019 were submitted.

Matters Arising – Page 9, Item 5 Library Strategy 2019 – 22 – the Chief Executive confirmed that the outcome of the analysis on service cost comparisons with other authorities would be reported back to the appropriate forum when completed.

RESOLVED that the minutes of the meeting held on 19 November 2019 be received and confirmed as a correct record.

5 21ST CENTURY SCHOOLS PROGRAMME - BAND B PROPOSALS

Councillor Huw Hilditch-Roberts presented the report seeking approval of the revised Strategic Outline Programme (Band B Proposals) for the 21st Century Schools Programme for submission to the Welsh Government (WG).

Cabinet had agreed the Strategic Outline Programme in July 2017 which was approved by WG in November 2017. The funding split for the Band A programme had been 50% WG and 50% local authorities but in November 2018 WG announced revised rates for Band B as follows – 65% WG contribution, for special schools including pupil referral units a 75% contribution and for Voluntary Aided 85% WG with 15% provided by the Diocesan Authority or Governing Body. Following feasibility work on schools in the review area a revised programme had emerged with the current costs likely to exceed the approved allocated programme envelope of £80m and WG contribution of £45m. The revisions to the funding rates had also reduced the potential split for Denbighshire from £32m to around £21m. A number of options had been considered on the way forward and in line with the recommendation of the Modernising Education Board, it was recommended that WG be approached to discuss a potential increase in their resources based on Denbighshire's track record of delivery and the affordability of the proposals.

The Lead Member elaborated upon the investment plans for the Band B proposals which focused on schools in the Denbigh, Rhyl and Llangollen areas and explained the reasoning behind any changes to the previously approved programme. He sought Cabinet approval of the revised programme and was keen for the proposals to be progressed. Cabinet discussed the report with the Lead Member as follows –

- Councillor Julian Thompson-Hill highlighted the need for investment in other schools which fell outside of the programme with particular reference to Prestatyn High School. The Lead Member agreed but explained that the works required in schools far exceeded the budget available and therefore it was necessary to implement a prioritisation process to target areas of greatest need. The assessment of schools for Band B had prioritised schools in terms of their overall condition but he confirmed that investment was still being made in other schools, highlighting specific refurbishment and maintenance works carried out in Prestatyn High School. As part of future plans work would need to be undertaken to measure the impact of the new Christ the Word school and the potential new Rhyl primary school on pupil numbers in the area

- Councillor Bobby Feeley asked that the reference to “permeations” be changed to “permutations” on page 11 of the report
- Councillor Mark Young sought assurances regarding communication and the Lead Member confirmed that all head teachers had been communicated with regarding the report and that there would be future wider consultation with schools and governors as matters progressed
- officers reported upon other options considered on the way forward including reducing the scope of the programme and fully funding projects outside of that programme. If Cabinet approved the recommendation and a favourable response was not received from WG other options would be reconsidered
- in terms of timescales a response back from WG was expected by March 2020.

The Lead Member and officers also responded to questions from non-Cabinet members as follows –

- providing a favourable response was received from WG officers would produce a planned programme of works and it would be possible to carry out a number of projects simultaneously as demonstrated in the Band A programme
- further explained that the lack of suitable land available in Llangollen meant it would not be possible to build a new school for Ysgol Dinas Bran as originally intended and therefore investment would instead focus on refurbishment. Councillor Melvyn Mile was keen to ensure Denbighshire pupils would not be disadvantaged and he was assured that there would be no detrimental impact in that regard. The standard of refurbishment would match that of a new building and work could be undertaken without affecting the school’s ability to function or the educational offer for pupils
- in terms of new housing developments in Rhuddlan and Dyserth work would need to be undertaken regarding the impact on pupil numbers and capacity taking into account other planned investment and the language categorisation of any potential new school would need careful consideration
- with regard to the circumstances of each individual faith school the Lead Member agreed to discuss those outside of the meeting with Councillor Martyn Holland. In terms of St. Brigid’s School the Trustees owned the land and the Trustees of the school would be required to contribute approximately £2.5m (15%) towards the proposed scheme with WG funding 85%
- in response to a question regarding the recent draft budget settlement from the Welsh Government it was confirmed there was no specific reference to the schools programme within that settlement.

Cabinet supported the report recommendations and it was subsequently –

RESOLVED that Cabinet –

- approves the revised Strategic Outline Programme (Appendix 1 to the report) for submission to the Welsh Government, and*
- confirms it has read, understood and taken account of the Well-being Impact Assessment (Appendix 3 to the report) as part of its consideration.*

6 PROPOSAL TO AMEND TERMS OF REFERENCE FOR THE STRATEGIC PLANNING GROUP

Councillor Mark Young presented the report seeking Cabinet approval of amendments to the Terms of Reference for the Strategic Planning Group.

Cabinet approved the establishment of a Strategic Planning Group (SPG) and its Terms of Reference in January 2018 to replace the Local Development Plan (LDP) Members Group. The intention was to establish a smaller, more focused Group to provide corporate leadership and guidance in taking forward the replacement LDP through to formal adoption. The Group had a non-executive role but reported back and made recommendations to Planning Committee, Cabinet and/or Council as appropriate. At the SPG meeting in July 2019 it was proposed that the Terms of Reference be amended and following further discussions at meetings of Cabinet Briefing and the SPG, the Group had recommended that –

- the core membership of the Group should not be changed
- meetings should be open to all members to attend
- members who were not core members of the Group would only be able to observe meetings and not contribute or speak
- to allow for greater flexibility for the Group to meet more frequently as required the Group should meet every two months or as agreed.

Cabinet considered the report and recommendations put forward by the SPG and there were mixed views regarding the effectiveness of mechanisms for engagement and ensuring that all members had the opportunity to input and influence discussions and recommendations, particularly given the importance of the LDP. Whilst some members felt that the process worked well for them and that ample opportunity was provided to raise issues and feedback through the Member Area Groups (MAGs) others questioned the effectiveness of the process, particularly where there were differing views on particular policies or strategies under consideration, and where meetings of MAGs were cancelled with a reliance on MAG representatives. Main areas of debate focused on the following –

- Councillor Brian Jones felt that the SPG had served its purpose and should be disbanded. He considered the Terms of Reference to be undemocratic by not allowing members to speak and felt all members should be able to input. He was aware of other members who were unhappy with the current arrangements
- the Leader advised that the Group still had much work to do and he believed the MAGs to be an important part of ensuring open communication and input into the focus and direction of the Group's work. The process worked well for Ruthin MAG and if any issues arose from observing the SPG meetings they could be raised via the MAGs. He also felt the democratic process had been observed with an opportunity for all members to be involved
- Councillor Richard Mainon highlighted that it was a non-executive Group with only six MAG members but it had an influential role in shaping the replacement LDP which would have a huge long term impact. Given the fundamentally important role of the Group he felt it was wrong to prohibit members from contributing and speaking at those meetings and he also advised that because two meetings of the Elwy MAG had been cancelled there had been no

opportunity for them to input given the current processes in place, with Elwy MAG arguably having one of the most affected areas in the county. The Group had seemed to take on a political dynamic but it was not politically balanced and he felt an appropriate way forward would be for the Group to be politically balanced and increased to twelve

- Councillor Bobby Feeley advised that she was supportive of the Group and was confident in discussing any issue with the relevant member involved. She felt that it was natural to have disagreements but did not consider it was due to politics but rather the different MAG areas within the county and she felt that members had a part to play in ensuring the success of the mechanisms in place.

The Lead Member responded to the issues raised and gave assurances that he and the team were happy to continue to meet with members to discuss matters relating to the LDP and respond to any concerns raised, and he provided some positive examples of where that approach had worked well. Officers were working hard to engage and would be attending each MAG meeting during January/February to further consult with members. The Group had deliberately been set up as a small focused Group and the MAGs were a crucial part of its success with MAG representatives being chosen by each MAG. He urged members to support and challenge the Group and its work in moving forward together for the good of the authority rather than making it a political issue. The Chief Executive responded from an officer perspective advising that there was still much work to be done on the LDP and much that required members' scrutiny. The reasoning behind a smaller focused Group was to provide detailed scrutiny on the sheer volume of work which could not be achieved through a whole Council medium but assurance could be taken that matters would be brought back before Cabinet and Council for consideration. For clarity it was stated that the Group had no decision making powers and only had the ability to make recommendations.

Councillor Huw Hilditch-Roberts put forward a scenario where there were differing opinions within the MAGs and queried at what point within the process could the local member change or influence matters. He also reiterated previous concerns of Ruthin MAG regarding the proposed reduction in employment land. The Lead Member and officers responded that every key stage of the LDP was a decision for full Council and would be for all members to debate. In terms of the MAGs it was the responsibility of the MAG representative on the SPG to report back from their MAG and they could report back where there was dissension between the MAG members. The SPG was not a decision making body and could only make recommendations. With regard to employment land in Ruthin much work had been ongoing in that regard and officers had met with local members on site and were happy to discuss any concerns raised by members. Officers would be attending all MAGs early in the New Year to discuss candidate sites put forward and the process for that which would provide further opportunity for members to raise any issues.

The Leader invited questions from non-Cabinet members. Councillor Meirick Davies felt strongly that all members should have the opportunity to speak at SPG meetings and given that the last Elwy MAG meeting had been cancelled there had been no opportunity to input into the process. Councillor Peter Scott suggested that the size of the Group be increased and to allow for an additional MAG representative and believed that substitute MAG representatives should also attend

each meeting for continuity. The Leader clarified that the proposed changes to the Terms of Reference had been recommended to Cabinet by the SPG as to how best they could move forward and the Lead Member confirmed there may be some discretion for non-Group members to speak in particular circumstances. In terms of communication the Chief Executive reported upon extensive consultation with members and wider stakeholders and reiterated that MAGs and their representatives on the SPG had a clear role in terms of communication to ensure feedback between the Groups. Councillor Alan James (Rhyl MAG representative) reported upon the hard work of the SPG and regular feedback between the Groups.

Having considered the recommendations of the SPG Cabinet voted 4 in favour of the recommendations and 3 against the recommendations and it was subsequently

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RESOLVED that Cabinet approve the draft amended Terms of Reference for the Strategic Planning Group (Appendix 1 to the report).

7 EMPLOYMENT POLICIES

Councillor Richard Mainon presented the report recommending adoption of two employment policies which had been developed in consultation with the recognised Trade Unions which covered (1) Disciplinary, and (2) Recruitment and Selection.

Cabinet was advised of the cyclical review of employment policies to ensure they were up to date, relevant and ensured good execution of responsibilities. Both policies had been produced following positive collaboration through the agreed consultation process and had been unanimously approved at the Joint Consultative Committee for Health and Safety and Employee Relations. A brief summary of each policy was provided and Councillor Mainon explained that the Disciplinary Policy better reflected the procedure followed and included a Suspension Risk Assessment document together with a fast track process to be instigated by the employee to allow cases to be dealt with in a timely manner. The Recruitment and Selection Policy included a section on Career Pathways to facilitate progressions within the authority and following new legislation the Guaranteed Interview Scheme had been removed with the inclusion of the 'Disability Confident Employer' section.

Councillor Julian Thompson-Hill supported the recommendations and level of consultation on the policies resulting in unanimous approval by both employer and employee sides of the Joint Consultative Committee. In response to a question from the Leader the Head of Legal, HR and Democratic Services elaborated upon the purpose of the fast track process which could be requested by employees in cases of low level misconduct which had been produced collaboratively with the trade unions. He also explained and highlighted the merits of the consultation process on policy development for all parties to work collaboratively.

RESOLVED that Cabinet –

- (a) approves the employment policies as detailed within the report for adoption, and

(b) *confirms that it has read, understood and taken account of the Well-being Impact Assessments (appended to the report) as part of its consideration.*

8 IMPLEMENTATION OF AN ALTERNATIVE DELIVERY MODEL (ADM) FOR VARIOUS LEISURE RELATED ACTIVITIES/FUNCTIONS: LEASE OF PROPERTY

Councillor Julian Thompson-Hill presented the report seeking Cabinet approval to grant sixteen leases, each for a term of ten years at a peppercorn rent, to Denbighshire Leisure Limited (DLL) on terms as set out within the report.

In May 2019 Cabinet agreed the establishment of DLL, a wholly Council owned Local Authority Trading Company Limited by Guarantee. The report represented another stage within that process relating to the lease of sixteen properties to DLL as identified within the report together with the notable terms. Given the various site specific issues and matters of further clarification and detail that DLL may want to raise it was recommended that the leases be granted on the basis of the draft standard lease with powers delegated to the Head of Finance and Property in conjunction with the Lead Member for Finance and the Head of Legal, HR and Democratic Services to agree minor variations in respect of those issues. Any material departure from the standard lease would be brought back to Cabinet. Reference was also made to the Land Transaction Tax element and Denbighshire's position in that regard which had been set out within the report.

Councillor Bobby Feeley advised that she had a number of points to raise regarding the leases and was pleased a mechanism was in place to agree any subsequent variations. She also questioned the level of consultation and highlighted that the Head of Leisure had not been included as part of that process. In terms of the risks identified within the report she felt that, given the unique situation in this case, there would be merit in including the risks around the Council's involvement and their obligations. To supplement that point for clarity the Managing Director Denbighshire Leisure Limited advised that there were obligations on both parties in the lease arrangements but the report had only referenced the risks around DLL and not around the Council fulfilling its own obligations in that regard. In responding to the issues raised the Lead Member and officers advised that –

- the decision was being made by the Council and therefore the report included the potential risks to the Council that needed to be considered when making the decision whether or not to grant the leases on the basis as set out in the report. The Council needed to consider its own interests and ensure it fulfilled its obligations in respect of the lease arrangements. There may be risk to DLL depending on the behaviour of the Council but that risk would not be included within the report given that the Council was not a risk to itself. The appropriate place to record the risks to DLL would be in their own Risk Register
- consultations had been carried out regarding the ADM with those as listed within the report and in terms of specific sites included consultation with Rhyl Town Council in respect of their interest within SC2, Arts Council for Wales in respect of grant funding together with Llangollen International Music Eisteddfod in respect of Llangollen Pavilion which had not been listed.

Cabinet raised further questions regarding the risks to the Council together with the split of responsibilities between the Council and DLL, particularly in terms of maintenance and repair, together with the financial implications of fulfilling the lease obligations in that regard and subsequent impact on the financial success of DLL.

The Lead Member and officers responded to questions as follows –

- the risk relating to the ADM not being as financially successful as hoped had been included in all reports relating to the ADM highlighting that in such an event any resultant additional costs would fall back to the Council to fund
- elaborated upon the Council's position regarding the Land Transaction Tax payable explaining that recent advice had determined the Council would be liable for that tax based on the value of the lease. Given that the Council provided significant financial support to DLL with the rents on a peppercorn basis there was essentially no value to the lease and a robust case would be made in that regard. Consequently it was not considered a significant risk but in the event that the position was successfully challenged by the Welsh Revenue Authority the matter would be reported back to Cabinet
- explained that DLL and the Council were separate legal entities but DLL was controlled and owned by the Council so the leases would have responsibilities for both parties. The Council was in control and responsible for fulfilling its obligations within the lease and retained responsibility for the structure and external parts of the buildings and DLL would be responsible for the internal maintenance of the sites; condition surveys would be carried out and there would be an agreed baseline beforehand in terms of the condition of assets
- the condition reports set the benchmark of how both parties would maintain the assets which remained within the Council's ownership and it was in the Council's interest to ensure they were maintained and continued operating
- the governance arrangements outside of the leases involved both an operational board and strategic board to monitor all those risks. In the event of unforeseen circumstances impacting on the successful operation of facilities the issue would likely come before both boards and the Council could ultimately decide to pay for the rectifications with resources in year. The benefit of the lease and governance arrangements would mitigate against such risks.

RESOLVED that Cabinet –

- approve the grant of 10 year leases to Denbighshire Leisure Limited for each of the sites at a peppercorn. The leases will be on the basis of the standard lease (Appendix 3 to the report). Site specific adjustments will be included within each of the leases to incorporate: annual shared user agreements, grant funder obligations, Charity Commission requirements, advice from DCC tax advisors, third party occupation as well as any other localised site arrangements; delegated authority to be given to the Head of Finance and Property Services to agree, in consultation with the Lead Member for Finance and Efficiency and the Head of Legal, HR and Democratic Services, and*
- confirms that it has read, understood and taken account of the Well-being Impact Assessment (Appendix 4 to the report) as part of its consideration.*

At this juncture (11.35 a.m.) the meeting adjourned for a refreshment break.

9 FINANCE REPORT

Councillor Julian Thompson-Hill presented the report detailing the latest financial position and progress against the agreed budget strategy. He provided a summary of the Council's financial position as follows –

- the net revenue budget for 2019/20 was £198.538m (£194.418m in 2018/19)
- an overspend of £1.678m was forecast for service and corporate budgets
- highlighted current risks and assumptions relating to individual service areas
- detailed required savings and efficiencies of £5.672m including corporate savings identified in 2018/19 (£0.5m), schools savings of 2% (£1.32m) and service efficiencies and savings (£3.852m) with an approved allocation of £616k from the Savings Achievement Contingency to offset non-achievement savings
- provided a general update on the Capital Plan, Housing Revenue Account and Housing Capital Plan.

Cabinet was also asked to approve the Council Tax Base for setting the 2020/21 budget which was a technical calculation as detailed in the report.

The Leader referred to development of the new school for Ysgol Llanfair and another major housing development in the village which together were causing severe disruption. Whilst welcoming the growth and investment in the area he felt that lessons could be learned in terms of managing a coordinated approach to road closures etc., highlighting the need for some form of engagement with developers and the community regarding communication and timetabling of specific works to minimise impact. The Lead Member reported upon the good relationship with contractors carrying out major school projects and confirmed the delivery of a communication strategy through the procurement framework. There was less control over private developers but there may be future opportunities to transfer the progress made by the Procurement Team on the Council's larger scale projects onto housing developments as time progressed. In terms of the delay caused by the foul drainage connection works there had been a cost implication as a result but it had been contained within the overall budget for the project.

RESOLVED that Cabinet –

- (a) note the budgets set for 2019/20 and progress against the agreed budget strategy, and*
- (b) approve the Council Tax Base for setting the 2020/21 budget as detailed in Appendix 6 to the report.*

10 CABINET FORWARD WORK PROGRAMME

The Cabinet forward work programme was presented for consideration and members noted the following additions/amendments –

- Gypsy and Traveller Site Provision – deferred from January to February
- North Wales Growth Bid Governance Agreement 2 – February (may be delayed)
- Recommendations of the Strategic Investment Group – February

RESOLVED that Cabinet's forward work programme be noted.

EXCLUSION OF PRESS AND PUBLIC

RESOLVED that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following items of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraph 14 of Part 4 of Schedule 12A of the Act.

11 EAST RHYL COASTAL DEFENCE SCHEME

Councillor Brian Jones presented the confidential report seeking Cabinet authorisation to vary the pre-construction contract in respect of the East Rhyl Coastal Defence Scheme based on a revised contract value.

Council had approved the construction phase of the scheme in September 2019. Due to construction activities not starting until April 2020 there was opportunity to bring forward some of the activities planned to take place during the construction phase and carry them out during the pre-construction phase. This would reduce the construction phase costs and could also reduce the overall cost of the scheme and reduce the risk of delays in dealing with unforeseen conditions. Details of the financial implications of the scheme together with the revised value of the pre-construction contract had been set out within the report. Cabinet authorisation was required given the value of the contract. In response to questions the Flood Risk Manager provided further detail of the proposed works to be carried out during the pre-construction phase and confirmed the advantages of identifying any risks at an earlier stage in the process in order to deal with them as appropriate.

Cabinet noted that the additional pre-construction activities would not increase the overall cost of the project and noted the benefits of bringing some of the planned activities forward to the pre-constructions phase. Consequently it was –

RESOLVED that Cabinet –

- (a) *authorises the variation to the pre-construction contract, based on a revised contract value as set out within the report, and*
- (b) *confirms that it has read, understood and taken account of the Well-being Impact Assessment (Appendix 1 to the report) as part of its consideration.*

12 MICROSOFT ENTERPRISE LICENSING AGREEMENT

Councillor Richard Mainon presented the confidential report regarding the procurement process for Microsoft Licensing and recommended contract award for a term of three years.

Some background was provided regarding the contract provisions and procurement process undertaken in this case. A supplementary report (circulated at the meeting) provided further detail of the tender submissions together with the evaluation criteria and assessment process leading to the recommended Microsoft Licensing Solutions Provider. Cabinet's attention was also drawn to the financials as detailed within the report and the current funding gap in years 2 and 3 and how that would be addressed. It was recommended that the decision to award the contract be implemented immediately given that the current licensing agreement ended on 29 December 2019.

Cabinet considered the recent procurement exercise and outcome of that process together with the report recommendations and it was –

RESOLVED that Cabinet –

- (a) *agree retrospectively to issue the procurement for the Microsoft Licences through the Crown Commercial Framework called RM 3733 and to award a contract to the Licensing Solution Provider (as detailed within the report circulated at the meeting) in order to place the licensing order with Microsoft, and*

- (c) *confirm that the decision must be implemented immediately in accordance with paragraph 7.25 of the Council's constitution.*

The meeting concluded at 12.22 hrs.