

To: Members of the Cabinet

Date: 13 January 2021

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Dear Councillor

You are invited to attend a meeting of the **CABINET** to be held at **10.00 am** on **TUESDAY, 19 JANUARY 2021 BY VIDEO CONFERENCE.**

Yours sincerely

G. Williams  
Head of Legal, HR and Democratic Services

## **AGENDA**

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

#### **1 APOLOGIES**

#### **2 DECLARATION OF INTERESTS**

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

#### **3 URGENT MATTERS**

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 MINUTES (Pages 7 - 14)**

To receive the minutes of the Cabinet meeting held on 15 December 2020 (copy enclosed).

**5 BUS EMERGENCY SCHEME** (Pages 15 - 92)

To consider a report by Councillor Brian Jones, Lead Member for Waste, Transport and the Environment (copy enclosed) seeking Cabinet agreement to sign up to the Bus Emergency Scheme 2 to secure financial support for the bus sector and establish a relationship with Flintshire County Council as the lead regional authority.

**6 ESTABLISHMENT OF SPORT NORTH WALES PARTNERSHIP** (Pages 93 - 124)

To consider a report by Councillor Bobby Feeley, Lead Member for Well-being and Independence (copy enclosed) seeking Cabinet's support in principle for the establishment of the Sport North Wales Partnership.

**7 HOUSING RENT SETTING & HOUSING REVENUE AND CAPITAL BUDGETS 2021/22** (Pages 125 - 150)

To consider a report by Councillor Julian Thompson-Hill, Lead Member for Finance, Performance and Strategic Assets (copy enclosed) seeking Cabinet approval for the Denbighshire Housing annual rent increase, the Housing Revenue Account Capital and Revenue Budgets for 2021/22 and Housing Stock Business Plan.

**8 BUDGET 2021/22 - FINAL PROPOSALS** (Pages 151 - 170)

To consider a report by Councillor Julian Thompson-Hill, Lead Member for Finance, Performance and Strategic Assets (copy enclosed) setting out the implications of the Local Government Settlement 2021/22 and proposals to finalise the budget for 2021/22.

**9 FINANCE REPORT** (Pages 171 - 188)

To consider a report by Councillor Julian Thompson-Hill, Lead Member for Finance, Performance and Strategic Assets (copy enclosed) detailing the latest financial position and progress against the agreed budget strategy.

**10 CABINET FORWARD WORK PROGRAMME** (Pages 189 - 192)

To receive the enclosed Cabinet Forward Work Programme and note the contents.

**PART 2 - CONFIDENTIAL ITEMS**

No Items

## **MEMBERSHIP**

Councillor Hugh Evans  
Councillor Bobby Feeley  
Councillor Huw Hilditch-Roberts  
Councillor Richard Mainon

Councillor Tony Thomas  
Councillor Julian Thompson-Hill  
Councillor Brian Jones  
Councillor Mark Young

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## LOCAL GOVERNMENT ACT 2000

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### Code of Conduct for Members

### DISCLOSURE AND REGISTRATION OF INTERESTS

I, *(name)*

a \*member/co-opted member of  
*(\*please delete as appropriate)*

**Denbighshire County Council**

**CONFIRM** that I have declared a \***personal / personal and prejudicial** interest not previously declared in accordance with the provisions of Part III of the Council's Code of Conduct for Members, in respect of the following:-

*(\*please delete as appropriate)*

Date of Disclosure:

Committee *(please specify)*:

Agenda Item No.

Subject Matter:

Nature of Interest:

*(See the note below)\**

Signed

Date

\*Note: Please provide sufficient detail e.g. 'I am the owner of land adjacent to the application for planning permission made by Mr Jones', or 'My husband / wife is an employee of the company which has made an application for financial assistance'.

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## **CABINET**

Minutes of a meeting of the Cabinet held by video conference on Tuesday, 15 December 2020 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; Tony Thomas, Lead Member for Housing and Communities; 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, Hugh Irving, Alan James, Arwel Roberts, Rhys Thomas, Graham Timms and Emrys Wynne

## **ALSO PRESENT**

Chief Executive (JG); Corporate Directors: Communities (NS) and Economy and Public Realm (GB); Heads of Service: Legal, HR and Democratic Services (GW) and Finance and Property (SG); Framework Manager (TS); Community Benefits Manager (KB); Democratic Services Manager (SP); Scrutiny Coordinator (RE), and Committee Administrators (KEJ & SLW)

The Local Democracy Reporter was also in remote attendance to observe proceedings.

## **POINT OF NOTICE**

Due to the current restrictions on travel and requirement for social distancing as a result of the coronavirus pandemic the meeting was held remotely by video conference and was not open to the general public. All members had been given the opportunity to attend as observers and the Local Democracy Reporter had also been invited to observe.

### **1 APOLOGIES**

There were no apologies.

### **2 DECLARATION OF INTERESTS**

The following members declared a personal interest in agenda item 6 – Finance Report –

Councillor Meirick Davies – School Governor Ysgol Cefn Meiriadog

Councillor Arwel Roberts – Trustee Cylch Meithrin Ysgol Dewi Sant

### **3 URGENT MATTERS**

Statements were made on the following –

- (i) The Corporate Director Communities reported upon the difficult decision to close primary schools early for face to face learning from 16 December with remote learning for pupils on 17 and 18 December. The decision had been made following discussions with the Lead Member for Education, Head of Education and in partnership with the county's primary schools. It was felt that making a decision for schools to remain open for the full week was untenable given the position in Wales and with other primary schools closing across North Wales. The Lead Member for Education also expressed his disappointment that Welsh Government had decided to close secondary schools in favour of remote learning from 14 December. At that time there had only been 5 recorded cases of Covid-19 in Denbighshire's schools with 98% of pupils in school as of 14 December which demonstrated the effective control measures within schools, with less control following the school closures and potential community impact.
- (ii) Councillor Julian Thompson-Hill referred to a briefing note emailed to members providing an update on the latest tranche of Welsh Government grant funding to support local businesses affected by Covid-19 administered by the council. The additional grants had been made available following further restrictions within the hospitality, tourism, leisure, retail and supply chain sectors from 4 December 2020. An overview of the two schemes had been provided with final guidance issued late the previous week. Staff had worked tirelessly to put the necessary arrangements in place to administer the schemes and tribute was paid to their hard work in that regard. Those businesses in the hospitality sector who were in receipt of the firebreak grants would have a payment processed that week with over 400 businesses receiving payments totalling over £1.4m.
- (iii) The Leader felt it was timely at the end of 2020 to reflect on the challenges faced by the authority over the last year. Main thoughts were with residents and their families who had suffered due to the Covid-19 virus across Denbighshire and the wider region. He thanked all staff for their work and commitment, many of who had gone above and beyond the call of duty, keeping day to day services running and protecting the vulnerable and supporting local businesses. Thanks were also extended to public service partners for their support and to members, with particular acknowledgement of the work of Group Leaders, in the operation of democratic processes. It was a relief to note that vaccines were being made available and the authority would play its part in rolling out the vaccination programme. In the meantime a bleak winter was being faced with the rolling average of people testing positive for the virus across Wales rising and the reality of long term lockdown after Christmas. In closing the Leader wished everyone safe and well and a peaceful and relaxing Christmas.

### **4 MINUTES**



The minutes of the Cabinet meeting held on 24 November 2020 were submitted.

**RESOLVED** that the minutes of the meeting held on 24 November 2020 be received and confirmed as a correct record.

## **5 DCC COMMUNITY BENEFITS POLICY**

Councillor Julian Thompson-Hill, Lead Member for Finance, Performance and Strategic Assets presented the report seeking Cabinet approval of the proposed Community Benefits Policy.

In June 2019 the Programme Board for Young People and Housing approved the creation of a Community Benefits Hub (CB Hub) to support and enable services to include community benefits in contracts at the earliest opportunity to increase value for council spend. A CB Hub Manager and Officer had been appointed earlier in the year and developed the policy which had been presented to all Member Area Groups and reviewed by Communities Scrutiny Committee who recommended the policy for approval. The policy would provide a framework for both internal and external stakeholders and work to support the CB Hub in monitoring the outcomes delivered from community benefits. The council spent approximately £116m annually so there was scope to make some significant benefits as a result. The community benefits referred to in this case were not financial benefits but in-kind benefits such as training and apprenticeships etc. Although S.106 agreements fell outside the remit of the policy the CB Hub had taken on a 'clearing house' role in that regard to ensure maximum community benefit was derived.

The CB Hub Manager provided some further background reiterating the significant council spend on third party goods, works and services and the potential to gain additional benefits in kind from that spend. The current policy stipulated contract spend above £1m should consider community benefits. The proposed policy reduced that threshold to works contracts of more than £100k and goods services contracts of more than £25k in order to open up a significant proportion of the council spend to attracting community benefits. However those thresholds would not apply automatically with a request and support approach to community benefits and engagement with procurement and commissioning teams in that regard. Adoption of the policy would demonstrate the council's commitment to community benefits, validate the council's approach to enable opportunities to secure available benefits and maximise the value of spend for residents, and embed community benefits into procurement processes. The policy would also complement the council's carbon zero ambition with potential for community benefits to contribute to carbon mitigation and reduction measures.

The Head of Legal, HR and Democratic Services and the CB Manager responded to members' questions as follows –

- in terms of apprenticeships there were a number of opportunities the council was pursuing through Working Denbighshire but the purpose of the CB policy was to consider the benefits that could be secured through procurement spend. However a number of placements had been secured through the community

benefits approach and the CB Hub was working closely with Working Denbighshire to maximise any potential opportunities in that regard

- clarified the role of the legal and planning departments with regard to S.106 agreements and explained that the CB Hub had taken on the role of monitoring and tracking the S.106 agreements to ensure they were properly delivered. It was confirmed that details of that work could be shared with members
- acknowledged the potential to expand the remit of the CB Hub but confirmed the current priority to ensure community benefits were embedded within the procurement process and considered at an early stage together with effective monitoring of those community benefits to ensure they were delivered
- assurances were provided that the CB Hub was working collaboratively with Community Support Teams in terms of wind farm and other community funding both to avoid duplication and ensure they were not working at crossed purposes
- provided an illustrative example of community benefits in practice involving small contracts for consultancy services, specifically in the delivery of social care, with consultants asked to commit a number of hours of remote care to offer to some of those community groups forming to access wind farm funding
- explained that the CB Hub was working with different departments to ascertain the most appropriate community benefits within the different communities which must also be relevant and aligned to the substantive part of the contract and be within reasonable expectation of what the contract would be able to provide and proportionate to the size of the contract.

Cabinet recognised the merits of the policy and the Chief Executive also voiced her support for the work which aligned with the council's aim of putting communities at the heart of its work. She also confirmed that the Senior Leadership Team had fully endorsed the policy and thanked the CB Hub for all their hard work in that regard.

**RESOLVED** that Cabinet –

- (a) *approves the Community Benefits Policy document, and*
- (b) *confirms that it has read, understood and taken account of the Well-being Impact Assessment attached as Appendix 2 to the report as part of its consideration.*

## **6 FINANCE REPORT**

Councillor Julian Thompson-Hill presented the report detailing the latest financial position and progress against the agreed budget strategy as outlined below –

- the net revenue budget for 2020/21 was £208.302m (£198.538m in 2019/20)
- an overspend of £2.476m was forecast for service and corporate budgets (the overspend included £2.7m paid for 'income loss' grant for Quarter 2)
- highlighted current risks and assumptions relating to individual service areas together with the financial impact of coronavirus and Leisure ADM budgets
- detailed required savings and efficiencies of £4.448m agreed including corporate savings relating to triennial actuarial review of Clwyd Pension Fund (£2m); 1% schools savings (£0.692m); service savings (£1.756m)

- provided a general update on the Capital Plan, Housing Revenue Account and Housing Capital Plan.

Cabinet was also asked to approve the use of grant allocations as recommended by the Strategic Investment Group relating to (1) Schools Maintenance Grant, (2) Recovery from February Floods (Highway Assets), and (3) Childcare Capital Grant and those elements were further elaborated upon at the meeting.

Councillor Thompson-Hill reported upon the latest financial position in detail, particularly with regard to the financial impact of Covid-19, including grant funding secured to date and the position on claims for the council. The £2.475m forecasted overspend (£5.492m last month) included £2.7m paid in respect of the 'income loss' grant for Quarter 2 (full claim amounted to £3.233m.). Narrative had also been provided around service variances with movements from the previous month highlighted. Although corporate budgets currently showed a nil variance it was likely that all discretionary spend and contingencies would be released in order to help fund the position with risks still remaining around the Council Tax Yield and the Council Tax Reduction Scheme. Un-earmarked General Balances may also need to be reviewed as the impact of the pandemic continued to be felt.

The Lead Member and Head of Finance responded to questions as follows –

- the disallowed column in respect of claims submitted related to elements of the claim which Welsh Government (WG) had determined were not eligible and therefore would not be paid. On the expenditure side claims of £119,649 had been disallowed which related to elements WG did not consider to be additional expenditure and in some cases it was difficult for services to judge eligibility but the guidance provided by WG had become clearer over time and the council had become more adept at the claims process and practised open book accounting. Income loss claims disallowed amounting to £642,922 had mainly been attributed to initial claims for HRA losses and cross authority charges. HRA losses had been disallowed for regulatory reasons as they had to be treated the same as Registered Social Landlords and claims for income from other local authorities were no longer eligible following a regional agreement that those contract payments between authorities would be met. Consequently the total amount disallowed did not represent income lost that would not be regained but reflected a refining of the process for particular services
- the holding column in respect of the claims submitted related to those elements of the claim for which WG had requested additional information and evidence before determining whether or not the claim would be paid, and further information on the methodology used for calculating loss of income for car parking was used as an illustrative example. Work was ongoing with WG in that regard and there was confidence that most of the holding figure for Quarter 2 would be paid by year end. There was some concern regarding claims submitted in respect of elements such as planning fees where WG considered there to be a delay in funding and the same approach had been taken to Council Tax yield where money was still owed – that loss would not be crystallised until year end and bad debt provision. However WG had agreed to review the position on Council Tax in January and it was hoped by then to also have further clarity on some of the other holding elements to report back to

Cabinet. Given the scale of the claims on the income side no income had been assumed in the monitoring report which represented the worst case scenario and a reduction in the overspend was expected on payment of future claims in Quarters 3 and 4. As most income was dependent on the tourist element the loss of income and associated risk decreased over the winter months

- with regard to past references in the Rhyl Queen's Market Redevelopment project detailed within the report the Leader confirmed that the wording would be re-considered for future reports to reflect the most recent progress and position
- the list of schools building maintenance works in the report included all items put forward for grant funding. Given the finite amount of funding available officers had carried out a prioritisation exercise of the works required as the basis for allocation of that funding and the items with figures in the cost estimate column were the priority works proposed to be carried out. Those works not selected would be carried forward for consideration as part of future funding allocations
- recovery from February floods – in terms of the revenue element the council had not qualified for emergency response funding because it did not meet the £250k spend threshold with approximately £115k incurred in direct response. However the WG confirmed they would make capital funding available to be spent in the current financial year for damage caused and the council had submitted a list of schemes with estimates amounting to approximately £1.3m and indications were that a formal grant award for the full amount would be forthcoming
- in response to questions raised by Councillor Arwel Roberts with regard to Cylch Meithrin at Ysgol Dewi Sant, Councillor Huw Hilditch-Roberts provided assurances regarding the commitment to support the situation in Ysgol Dewi Sant and Welsh Language provision and confirmed the intended investment in the site – given the type of work required there was a longer timescale but supporting the Welsh Language remained a priority for the council.

**RESOLVED** that Cabinet –

- (a) note the budgets set for 2020/21 and progress against the agreed budget strategy;*
- (b) approve the recommended use of the Schools Maintenance Grant which has been awarded to the Council by the Welsh Government, as recommended by the Strategic Investment Group and as detailed in the report and Appendices 5, 6 and 7 to the report;*
- (c) approve the recommended use of the Welsh Government indicative grant allocation awarded to the Council for damage to highways assets as recommended by the Strategic Investment Group and as detailed in the report and Appendices 8, 9 and 10 to the report, and*
- (d) approve the recommended use of the Childcare Capital Grant which has been awarded to the Council by the Welsh Government, as recommended by the Strategic Investment Group and as detailed in the report and Appendices 11 and 12 to the report.*

## **7 CABINET FORWARD WORK PROGRAMME**

The Cabinet forward work programme was presented for consideration and members noted that DCC's Climate and Ecological Change Strategy (2021/22 – 2029/30) had been rescheduled from January to February.

**RESOLVED** that Cabinet's forward work programme be noted.

## **EXCLUSION OF PRESS**

**RESOLVED** that under Section 100A of the Local Government Act 1972, the Press be excluded from the meeting for the following item 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.

## **8 ASBESTOS REMOVAL CONTRACT AWARD**

Councillor Julian Thompson-Hill presented the confidential report seeking Cabinet approval to award a works contract to a licensed Asbestos Removal Contractor with immediate effect.

The current arrangements to facilitate asbestos removal in council properties via a collaborative framework was due to expire in December 2020 and Cabinet had agreed the detail and commencement of the procurement process for a works contract in October 2020. Details of the evaluation process of the tender submissions together with the scoring mechanisms had been included within the report together with the recommended contract award. It was also recommended that the decision to award the contract be implemented immediately to ensure there was no gap in emergency cover given that the current framework ended on 20 December 2020.

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

**RESOLVED** that Cabinet –

- (a) *agree to award the works contract to the recommended named contractor as detailed in the report who are a licensed Asbestos Removal Contractor and who submitted the highest scoring submission as shown detailed in Appendix 1 to the report, and*
- (b) *confirm that the decision be implemented immediately to prevent any delay in awarding the contract to ensure no gap in emergency cover when the current framework ends on 20 December 2020.*

The meeting concluded at 11.25 hrs.

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<b>Report to</b>	Cabinet
<b>Date of meeting</b>	January 19th, 2020
<b>Lead Member / Officer</b>	Cllr Brian Jones, Lead Member for Waste, Transport & Environment Emlyn Jones, Head of Planning, Public Protection & Countryside
<b>Report author</b>	Peter Daniels, Passenger Transport Manager
<b>Title</b>	Bus Emergency Scheme

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

1.1. To introduce the next phase of the Bus Emergency Scheme (BES).

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

2.1. The report presents the wider context, the background to, and reasons for BES and seeks agreement to sign up to the BES 2 scheme.

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

3.1. That Cabinet agrees to the principles of the BES 2 agreement (Appendix 2) to secure (conditional) financial support for the bus sector and to establish a relationship with Flintshire County Council as the regional lead authority and signatory, that ensures that the ongoing emergency funding meets the authority's priorities and is delivered on its behalf.

3.2. In due course, to call for a further report on bus reform proposals relating to the future management of bus services in Wales.

## 4. Report details

### Background

- 4.1. Bus travel has been severely affected by the current health emergency. Passenger numbers have plummeted, while social distancing and additional cleansing requirements have placed added burdens and costs on operators.
- 4.2. Welsh Government (WG) and local authorities (LAs) have stepped in to support the sector with substantial financial assistance. All parties have participated in productive dialogue to discuss & agree support arrangements.
- 4.3. Before the pandemic, WG had consulted on a range of proposed changes to the way in which bus services are delivered in Wales. Pressures associated with not only the virus but also the large volume of legal work generated by Brexit and the transition period forced WG to postpone the planned Bus Bill otherwise due in the current Senedd term.
- 4.4. Owing to the significant amount of public funding for bus services from both WG and LAs, WG's preference is to see the public sector having greater influence over areas such as the networks of services provided, ticketing and integration with rail services. It also envisages a greater role for Transport for Wales (TfW), which is now responsible for rail services in Wales.
- 4.5. This raises two issues: (i) short term survival of operators and (ii) longer term reform of the sector. WG believes that these two can be linked. Short term emergency funding cushions operators, with a number of conditions attached. These are to incentivise operators to engage in planned changes that are in line with the longer-term ambitions for reform.
- 4.6. The Minister of Economy & Transport and North Wales, Ken Skates AS, has met with the leaders of all 22 LAs, along with his officials, to indicate WG's direction of travel. Further details have been included in the Wales Transport Strategy (WTS) which is the subject of consultation. More recently, the Deputy Minister, Lee Waters AS, met with all leaders to discuss the WTS but also to encourage LAs to sign up to BES 2.
- 4.7. Leaders have agreed to establish a WLGA Bus Member Group, with a focus on the longer-term proposals to reform the sector's operations. That group includes



the WLGA Leader (who is also the WLGA's Transport Spokesperson), the Deputy Transport Spokesperson, the chairs of the four regional transport bodies and the co-chairs of the WLGA Rural Forum. That Member Group met with Lee Waters on January 18th, 2021.

## **BES**

- 4.8. The problems facing operators were recognised at an early stage of the pandemic. Looking ahead, to secure their services for the future, local authorities agreed to continue making payments for contracted services even though many services were initially suspended.
- 4.9. Alongside this, WG stepped in to help operators deal with reduced income on commercially operated routes and the additional costs being incurred. Initially, WG made £29m available from a Hardship Fund, which operated from April 2020 for three months. This Fund was assembled from monies that would otherwise have been paid via Bus Services Support Grant, the Concessionary Travel Scheme and the youth My Travel Pass scheme.
- 4.10. BES 1 was then introduced in July to provide ongoing support. It continued to maintain operators' income at historic levels, based on payments under 2019 grant schemes. In return, WG signalled it expected operators to contribute to a reshaping of bus services in Wales, to include improved regional networks with greater integration with rail services, smart ticketing and timetabling.
- 4.11. BES 1.5 was introduced in August, administered by Flintshire as lead authority for the North but distributed after regional agreement. Flintshire has distributed existing BSSG since 2013. BES 1.5 provided £10m of initial 'ramp up funding' for the bus industry to support the reopening of schools and general economic activity. There followed from September an additional £35m. This funding helped to cover the cost of reinstating services suspended with travel restrictions and were needed to meet increasing demand, given capacity constraints of distancing. BES 1.5 was then extended to the end of March 2021. Operators were once again asked to sign up to a range of terms and conditions to access the BES funding.
- 4.12. WG, working with TfW, now proposes to enter into a longer-term BES 2 agreement with operators and local authorities to protect bus services. It will

operate for an initial maximum term of up to two years from the date BES 1.5 commenced (i.e. up until July 31st, 2022), unless market conditions recover sufficiently for an operator no longer to require BES support for any of its services whether they be contracted or commercial.

4.13. The key features of BES 2 are in Appendix 1. A TfW-prepared briefing note is available as Appendix 2 and the full proposed Agreement as Appendix 3).

## **Beyond BES 2**

4.14. Discussions are starting to take place in relation to the planning of future networks and the respective roles of WG, TfW, LAs and operators. It is important to note that these are not the prime focus of the BES 2 agreement. It will be important for further detailed discussions to take place with Members on these matters. This is not a reason, however, to delay the signing of the BES 2 agreement. WG does believe that BES 2 will help to engage operators in the discussions about the future, at a time when their income is more dependent than ever on public sector support. In signing up to BES 2, though, LAs are agreeing to financial support being provided to the sector. They are not committing themselves to any specific, future model of bus service management, as that will be the subject of further debate.

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

5.1. Bus services form a significant part of the 'connected communities' priority.

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

6.1. Costs are currently not available but are met from external funding sources.

## **7. What are the main conclusions of the Well-being Impact Assessment?**

7.1. This does not require a well-being assessment.

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

8.1. None carried out other than through WG and WLGA with leaders across Wales.

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

9.1. The proposed agreement is supported as it helps provide a regional response to trying to ensure that the sector and bus services can become sustainable again. Provided that the Council agrees to the BES 2 agreement, the proposals have no immediate impact on local budgets. Section 10.1 identifies the risks to the service area if we do not participate.

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

10.1. Failure to agree to the BES 2 scheme results in two risks. The first is that local bus services will no longer continue to be funded at their current level and this will result in cuts in services. Secondly, it will result in Denbighshire being out of cadence regionally, which will potentially have further implications for bus services crossing boundaries.

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

11.1. S.9 Local Government Wales Measure 2009 and S.2 Local Government Act.

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## Key Features of BES 2

- 1.1. BES 2 will continue to address the loss of farebox revenue and the additional costs associated with responding to the pandemic. Under BES 2, WG funding will sit alongside our own local funding provided through the Concessionary Travel Scheme, via the Revenue Support Grant, and regionally through the Bus Services Support Grant to make up the shortfall.
- 1.2. WG will be a co-signatory to the BES 2 agreement with bus operators, alongside TfW. Local authorities retain legal responsibilities for bus services and therefore remain central to determining which local services receive this support. They need to agree to the principle of the agreement and the relationship with their Lead Authority, in ensuring that the ongoing emergency funding meets their priorities and is delivered on their behalf. This will provide the legal basis for WG to make payments to the operators. In this way, WG can use its powers to support operators, whereas the additional funding would breach local authorities' de minimis limits for direct award contracts (further details in the briefing note in Appendix 2 and the full proposed Agreement is in Appendix 3). LAs will remain responsible for those services which they currently contract directly with bus operators. LAs will need to consider planning for contingencies, such as if the BES 2 agreement is not signed or the level of funding for BES 2 is reduced during the period of the agreement.
- 1.3. Key features of BES 2 will be as follows:
  - Maximum term until 31st July 2022 or until operators enter into an embedded partnership agreement;
  - Development and delivery of a Reference Network, intended to provide a range of benefits to communities; multi-operator ticketing; and operator sign-up to an Economic Contract at the heart of WG's Economic Action Plan (and its principles of fair work, health, decarbonisation, skills and learning etc);
  - Long term co-operation and co-ordination across TfW, LAs and operators by entering into partnerships with a clear set of obligations and shared standards;

- One agreement per operator in each of the regions that they work in, signed by Welsh Government, TfW, a lead authority and the operator;
- Operators will be allowed to make a (capped) profit on services that has not been possible under emergency funding to date.

**BUS EMERGENCY SCHEME PHASE 2 (BES 2) - BRIEFING NOTE FOR LOCAL AUTHORITIES**

This summary sets out details of the proposed BES 2 arrangements. The proposals, described under the following headings, are subject to ongoing discussions between local authorities, operators, Transport for Wales and Welsh Government:

Journey to Date and Plans for BES 2.....	1
What does BES 2 Mean for Local Authorities? .....	1
Why move to BES 2? .....	3
What results are we trying to achieve with BES 2? .....	4
What does BES 2 mean for operators? .....	5
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### Journey to Date and Plans for BES 2

Since the start of the COVID 19 pandemic Welsh Government, Local Authorities, TfW and operators have worked together to make bus services available to Welsh citizens in spite of the significant reduction in passenger numbers and associated fare income. Money is still being provided to operators on an emergency basis under the terms and conditions in the BES 1.5 agreement which expires at the end of March 2021.

**With the BES 2 agreement the public sector is planning to enter into longer term arrangements with operators, ideally by the end of January 2021, which will replace BES 1.5 from the point of signature.**

### What does BES 2 Mean for Local Authorities?

#### **Actively managing recovery from the impact of COVID-19 on local bus services**

The BES 2 agreement formalises Welsh Government's commitment to supporting recovery of bus services following the impact of COVID-19. BES 2 funding will be used to address the loss of farebox revenue and the additional costs associated with responding to the COVID 19 pandemic. Welsh Government will be a co-signatory to the proposed BES2 agreement with bus operators

**Under the terms of the BES2 agreement, operators will be required to provide bus services that meet local needs under the direction of the Lead Authority for each region, working with and on behalf of its constituent local authorities.**

The end date for the BES2 contract is 31 July 2022. This should allow enough time for revenues to recover. The contract may be terminated earlier if market conditions mean that additional Government funding is no longer required to address the impact of COVID-19.

### Funding responsibilities

The BES 2 agreement exists to provide a legal basis for funding the costs associated with the impact of COVID 19. These include the loss of farebox, duplication of buses to take account of social distancing or providing alternative services where operators give them up and the services are still needed. This applies to services that were commercial pre-COVID and to tendered services.

The BES2 agreement does not change local authorities' ability to determine where and how they spend the Revenue Services Grant (RSG). The RSG funding is not hypothecated and most local authorities spend an element of this grant on local bus service provision to fill gaps in the commercial network. BSSG (roughly £8m across Wales) is also used to secure the delivery of services to a specified standard.

The BES2 funding for COVID19 related costs sits alongside this local authority funding for local bus services and does not remove or amend local authority powers and responsibilities with regard to local bus services. The two funding streams serve different purposes. Local authorities will still need to prioritise and fund local bus services where they see fit.

Specifically:

- if a local authority chooses to cease to fund a supported contract, BES 2 funding cannot be applied to backfill that loss of funding
- local authorities remain responsible for their existing contracts and may need to vary these contracts to scale back services if BES 2 funding were to cease before fare box takings return to pre-COVID levels, unless additional sources of funding are available.

### Directing the provision of services

Working with the Lead Authority in each region, local authorities will need to jointly prioritise the routes that BES 2 funding should be applied to, taking into account the work already undertaken under BES 1.5 and using these priorities for spend:

- supporting learners' journeys to school or college on registered local bus services;
- increasing frequencies where demand exceeds capacity;
- improving accessibility to jobs and services across our regions and communities;
- supporting economic recovery; and
- ensuring social inclusion,

Under the terms of the BES2 contract, subject to the Lead Authority acting reasonably within the bounds of available funding, the bus operators will be required to provide services that meet local priorities as directed by the Lead Authority.

The BES 2 arrangements include the collaborative development of regional Reference Networks by local authorities, operators, Welsh Government and TfW. The Reference Networks will reflect local, regional and national priorities and will help to guide investment in bus services for the future. BES2 ensures local authorities have an influence over the development of a coherent Reference Network which will ultimately be delivered by a mix of tendered and commercial services.



### Implications for local bus contracts

The BES 2 agreements do not supersede the existing supported contracts (e.g. section 63 contracts) that are in place between each local authority and bus operators. The BES 2 agreements sit alongside existing contracts and provide a legal basis for the additional funding that operators are receiving in respect of their supported contracts to cover the loss of farebox and additional costs incurred, for example, with respect to complying with social distancing and cleaning requirements. The BES 2 agreements also set out the basis on which operators will exit the BES arrangements and return to the original terms of contract.

The additional funding that is being paid to operators to address the impact of the COVID 19 pandemic would breach local authorities' de minimis limits for direct award contracts. Welsh Government is a signatory to the existing BES 1.5 agreement and to the proposed BES 2 agreement in order to use its powers to support continued provision of the operators' services without breaching the de minimis cap. Welsh Government powers in this regard can be exercised for a two year term and date from the start of the BES 1.5 agreement on 1 August 2020 to 31 July 2022.

BES can impact on local contract procurement. Where a local authority wishes to tender for a new or time expired supported contract the risks associated with predicting farebox revenue, during and immediately after the pandemic, will affect tender prices. In these circumstances, bidders will be required to offer a price that they will charge while BES funding is in place and alternative prices for when BES funding is no longer available, with their tenders covering both before and after the farebox has returned to pre-COVID levels.

### Regional Working

**BES2 supports the move to improve regional co-ordination and oversight of delivery of local bus services.** Under BES 1.5, the funding was distributed to the Lead Authority in each region. Each operator signed one agreement with the Lead Authority in each region where it operates, with Welsh Government and Transport for Wales as co-signatories. The Lead Authority is then responsible for distributing the BES funding to the operators in its region. It is proposed that this model is retained for the BES 2 agreement. The responsibilities of each party will be clearly set out in the grant letter to the Lead Authority and in the BES 2 agreement, and measures are being taken to minimise the risk to the Lead Authority relating to funding and termination of the BES2 agreement.

### Why move to BES 2?

The benefit for operators is that they will be able to make a profit under the terms of BES 2. No profit has been allowed in the emergency arrangements up to now.

**The benefit for the public sector is that we can jointly better manage the recovery of bus services.** The alternative is that, as recovery begins, operators will shrink their networks to the routes and services that are commercially viable for them leaving government to support an even larger subsidised network. The BES 2 arrangements are seeking to ensure that operators are incentivised to support the recovery of the whole network and not just a limited number of commercial routes.

The public sector is taking farebox risk under BES 2 and, as farebox levels rise, this revenue will augment the funding available to work with operators to support the recovery of services. This will benefit us all in the long term by building passenger confidence in a reliable and comprehensive public transport network.

Although recovery from the impact of the COVID 19 on patronage is likely to be slow, we do not expect operators to stay within the BES 2 arrangements forever. **As passenger confidence returns and farebox recovers, we expect operators to exit the BES 2 arrangements and work with us under partnership agreements.** The partnership agreements will be based on agreed core set of principles and behaviours that will be developed with operators as part of the BES 2 arrangements.

### What results are we trying to achieve with BES 2?

BES 2 provides a mechanism for managing the recovery and reshaping of bus services to respond to the impact of the COVID 19 pandemic. Specifically:

- Address areas of high demand where social distancing has reduced available capacity
- Ensure that communities are not cut off due to low fare box revenues.
- Offer new options for meeting demand such as demand responsive transport which may be more cost effective as patterns of travel change.
- Offer better value for money for passengers by working with operators to rationalise their fare structures and develop multi operator ticketing, to the extent permitted by competition law.
- Build a better working relationship with operators to develop a robust and viable network of services for the future.
- Gain a better understanding of the costs of delivering bus services in Wales to inform future policy and funding decisions
- Reduce pollution by introducing measures to attract people out of their cars and onto public transport and by working with the industry to upgrade their fleet.

## What does BES 2 mean for operators?

Where an operator signs up to the BES arrangements (whether BES 1, 1.5 or BES 2), all the services that the operator runs – whether they are supported or formerly commercial – are included in the contract.

Each operator is expected to continue to operate routes that are largely similar to those which they operated pre-COVID, amended as necessary to respond to the crisis. This helps to maintain stability in the short term and provides a framework for decision making e.g. if an operator chooses not to run services that they used to run before COVID a decision can be made to let a tender for those services if they are still required.

Funding for the regional BES contracts will be a mix of existing sources and additional funding from Welsh Government, with operators being funded to cover all their allowable costs across all their services less their earnings from the fare box, concessionary fares, BSSG and YPT.

## What risks exist with the proposed approach?

Operators choose not to sign the BES 2 agreements and instead shrink their networks to the minimum required and/or reduce the quality of their services to make a commercial return. *Mitigation – working with operators to address their concerns and ensure that all parties see this as a beneficial arrangement.*

The BES 2 arrangements breach competition, state aid or procurement law and are rendered invalid. *Mitigation – working with lawyers to ensure that the terms are compliant with the law.*

Operators challenge the local authority's ability to let new contracts on routes where the operator has registered a commercial service. *Mitigation – the standards that will be specified as part of BES2 provide an objective way to defend the local authority's right to let a supported contract where the service offered by the operator does not meet the specified standard. Legal advice and guidance will be provided to local authorities to support this statement.*

Additional funding from Welsh Government beyond the end of March 2021 is yet to be confirmed. *Mitigation – WG have committed additional funding from September 2020 to support local bus services and officials are working to secure further funding to support these key services beyond the 2020/21 budget horizon.*

Funding operators in this way is not cost effective and/or operators are not incentivised to be efficient. *Mitigation – use the data from operators to assess the cost effectiveness of the spend and shape contract terms to incentivise efficiency.*

What changes from BES 1.5 to BES 2 and Beyond?

Activity	BES 1.5	BES 2	Beyond BES 2 - Partnership
<b>Services</b>			
Routes and frequencies operated	Operators offer routes of their choice together with ramp up services agreed with the Lead Authority following discussion with local authorities.	All services (supported and formerly commercial) to be formally specified by the Lead Authority, working with and on behalf their constituent local authorities.	Services to return to either being commercially run by operators or under supported contracts subject to the Reference Network commitments below.
Reference Network	Not defined.	Parties to develop a target Reference Network, including routes and service frequencies, that reflects long term local, regional and national ambitions.	All parties to work together to deliver target Reference Network where financially viable Government to use target Reference Network to prioritise capital investment.
Data provision	Operators providing financial and operational data to support passengers, payment and delivery	No change	No change to operational data requirements. Reduced financial data requirements for commercial services.
<b>Finance</b>			
Funding principles	Additional BES funding (over and above historic BSSG, MCF and YPT) was distributed to each Lead Authority as a WG grant.	Any additional BES funding (over and above historic BSSG, MCF and YPT) to be distributed to each Lead Authority as a WG grant.	No additional BES funding. Funding will be required to support investment, e.g. in infrastructure, to meet partnership obligations.
Payments and Reconciliation	BES funding supports the cost of all services – both formerly commercial and tendered – less farebox and other revenue. 0% margin.	One change from BES 1.5 - 2% margin offered. Subject to ongoing review.	Operators earn margin from commercial services and through tendered services.

Activity	BES 1.5	BES 2	Beyond BES 2 - Partnership
<b>Contract</b>			
Signatories	Contracts signed by the operator, the Lead Authority in each region, Welsh Government and TfW.	Same as BES 1.5.	Same as BES 1.5.
Term	Terminate on signature of BES 2 agreement or end March 2021	Contract to be terminated if additional BES funding is not available or upon exit to BES 3 or, at the latest, by 31 July 2022.	Term for partnerships to be agreed.
Existing supported contracts	Operators receive a fixed percentage of original contract price plus BES top up funding via cost reconciliation	Contracts varied as required to reflect actual delivery and receipt or BES payments or terminated if no longer required.	All local contracts return to operating under original terms.
Letting new supported contracts	No action taken	Guidance provided to ensure all bidders are given consistent information about available BES funding and that tenders are structured to manage current farebox risk.	BES no longer a factor in letting new supported contracts
Former commercial services	Contracted as part of the BES 1.5 arrangements using Welsh Government powers.	Same as BES 1.5	Either become commercial or supported services or are no longer required.
Commercial services	Assumption that receipt of BES funding means that the operator's services are not commercial.	Services can start to become commercial under BES 2 but farebox and other revenue continues to be included in overall reconciliation under BES 2.	Commercial services to earn BSSG and MCF in accordance with prevailing regime but no BES payments. Commercial services to meet target Service Standards subject to viability.

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**DATED**

**2021**

**(1) WELSH MINISTERS**

**- and -**

**(2) TRANSPORT FOR WALES**

**- and –**

**(3) [*LEAD REGIONAL TRANSPORT AUTHORITY*]**

**- and –**

**(4) [*OPERATOR*]**

**AGREEMENT**

relating to

Bus Emergency Scheme 2 in respect of the  
areas of the following [*insert all Local  
Authorities in the Region*]

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**BETWEEN:**

- (1) **WELSH MINISTERS** ("Welsh Government");
- (2) **TRANSPORT FOR WALES** of 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("**TfW**");
- (3) [**LEAD REGIONAL TRANSPORT AUTHORITY**] of [address] acting for and on behalf of [List names of Constituent Local Authorities] ("**Lead Authority**"); and
- (4) [**OPERATOR**] of [address] registered in England and Wales with company number [number] ("**Operator**"),

(together the "**Parties**").

**BACKGROUND:**

- A Welsh Government has been taking action to help bus operators in Wales, including the Operator, get through the inevitable uncertainty of the COVID-19 affected operating conditions, and that such action has enabled the Operator to continue provision of services which could not have been provided by the Operator without this financial support since March 2020. The Operator further acknowledges that the provision of this support has enabled the Operator to retain customers and a network of services which may otherwise have been lost or reduced significantly, and that this will support the Operator's business in recovering following relaxation of rules on social distancing and other factors which affect bus travel at the date of this Agreement.
- B Funding has been provided by the Welsh Government to bus operators in Wales pursuant to the Bus Hardship Funding letter dated 2 April 2020, the Bus Emergency Scheme 1 letter ("**BES 1**") and Bus Emergency Scheme 1.5 letter ("**BES 1.5**") which provided money to bus operators (including the Operator) through the Lead Authority on behalf of its Constituent Local Authorities. Those letters set out conditions to the Operator receiving such funding (together the "**Previous BES Funding Arrangements**").
- C In continuing to provide Bus Emergency Scheme funding, Welsh Government wish to move to a lasting partnership between bus operators and the public sector. Working together will enable a fundamental reshaping of Wales' local bus services, through a new approach to managing services, sharing data and information and establishing standards for routes, services, fares and tickets to meet the needs of passengers in a world affected by COVID-19, climate change, new transport choices and changes to working patterns.
- D It is intended that funding provided under this new BES 2 agreement ("**Agreement**") will ensure that support provided to bus operators is more directly aligned with the provision of bus services that meet with the aim of supporting the management and interaction across transport modes including smart ticketing, unified routing, integrated timetabling and will do this both by Welsh Government funding pursuant to section 7 Transport (Wales) Act 2006 to support the provision of public service obligations by operators reflecting the services agreed by the public sector to continue to be provided by the operators (including both supported and formerly commercial services) and the parties also agreeing a framework for long term partnership which will continue to cover both supported and commercial bus services into the future.
- E Welsh Government and Transport for Wales have agreed to: (i) consult with bus operators before making policy changes which affect or are impacted by local bus services and give full

consideration to the views expressed, consistent with their duties under the Well-being of Future Generations (Wales) Act 2015; (ii) ensure funding arrangements are clear, communicated and executed in a timely fashion; (iii) recognise and take account, wherever possible in designing policy for bus regulation of the real costs of operating services, bus provision and employee matters; and (iv) ensure requests for information to bus operators are targeted, minimise unnecessary burdens on operators and involve no more work than is required to achieve the relevant purposes.

- F This Agreement is intended to provide a step in ensuring that services and funding are aligned, whilst providing a framework for development of future partnership working between the public sector and bus operators, which can be built upon over the coming years, including to secure co-production in the design and delivery of bus transport services. In particular: (i) Welsh Government and TfW shall engage fully and openly with bus operators in the development of the National Transport Delivery Plan, including policies for the delivery of zero carbon bus fleets and for the development of interventions to improve bus journey times through tackling congestion; and (ii) the Constituent Local Authorities shall take action to enhance highways infrastructure, bus facilities and service information, subject to the availability of funding.
- G The Parties acknowledge that the contribution of the Welsh Government, TfW and local government to delivering quicker, more reliable and predictable services through traffic and congestion reduction and the introduction and improvement of bus priority is crucial to the successful delivery of bus services.
- H As a result this Agreement includes specific requirements in respect of the continued funding and provision of services including specifying the terms of an umbrella partnership arrangement between the Parties, other bus operators and the Lead Authority (on behalf of Constituent Local Authorities in the Region and other Local Authorities affected by the partnership) to support Welsh Government's wider objectives.
- I The Parties acknowledge that this Agreement includes a reconciliation process which shall take into account the costs and revenues from all Local Services provided by the Operator, including Supported Services, Formerly Commercial Services and Commercial Services. For the avoidance of doubt, the assessment of whether the Operator has been over or under compensated and the calculation of any margin due shall be based on the net position on costs and revenues across all the Operator's Local Services.
- J It is acknowledged that this Agreement is not intended to amend the basis of payments of BSSG and Concessionary Travel Scheme which shall continue to be paid in accordance with their terms subject to any future reform of such payments with Welsh Government may undertake.

## **IT IS AGREED:**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement:

- 1.1 Unless the context otherwise requires, the following expressions shall have the meanings set out below:

<b>"ADR Notice"</b>	has the meaning given to it in clause 25.4;
<b>"Agreement"</b>	has the meaning given to it in Recital D;

<b>"Alternate Lead Authority"</b>	means each of [Flintshire County Council], [Monmouthshire County Council], [Swansea Council], [Ceredigion County Council], and [Powys County Council] which may be appointed to assist with disputes in accordance with clause 6.7; <b>[Note: delete Lead Authority from this list.]</b>
<b>"BES 1"</b>	has the meaning given to it in Recital B;
<b>"BES 1.5"</b>	has the meaning given to it in Recital B;
<b>"BES 2 Funding"</b>	means funding provided by the Welsh Government to the operators in Wales pursuant to the terms of this Agreement;
<b>"BES Funding Period"</b>	means the period of the BES Previous Funding and the BES 2 Funding;
<b>"BES Previous Funding"</b>	means funding provided by the Welsh Government to operators in Wales pursuant to the Previous BES Funding Arrangements;
<b>"BSSG"</b>	means Bus Services Support Grant awarded to a Lead Authority by Welsh Government to support and maintain the core strategic bus network, improve connectivity and quality, provide certain bus and other local transport services, and develop close and effective partnership working;
<b>"Change in Covid-19 Impact Event"</b>	means any new event or circumstances (or change to event or circumstances) which occurs following the Effective Date which arise as a direct result of the COVID-19 Virus and which adversely impacts the Operator's ability to perform its obligations under this Agreement including but not limited to the introduction of lockdown measures, travel restrictions or amended social distancing measures in the United Kingdom;
<b>"CMA"</b>	means the Competition and Markets Authority of Victoria House, Southampton Row, London WC1B 4AD;
<b>"Commercially Sensitive"</b>	means in relation to a Disclosing Party that the disclosure of such information is either a trade secret or if disclosed would prejudice the commercial interests of that Party, and shall include any Operator Information identified as Commercially Sensitive in Part 4 of Schedule 4;
<b>"Commercial Service"</b>	means a Local Service which a bus operator provides on a commercial basis and not pursuant to any Existing Supported Services Contract or New Supported Services Contract;
<b>"Confidential Information"</b>	means, in relation to a Disclosing Party: <ul style="list-style-type: none"> <li>(a) information of whatever nature concerning the business, assets, liabilities, dealings, transactions, policies or affairs of the Disclosing Party including all trade secrets, financial, marketing and technical information, ideas, concepts, technology, processes,</li> </ul>

knowledge and know-how, together with all details of a Disclosing Party's, customers, suppliers, prices, discounts, margins, information relating to research and development, current trading performance and future policy or business strategy and all other information of a like nature; and

- (b) any information which is expressly indicated to be confidential or commercially sensitive or which, due to the nature and circumstances of its disclosure or its content might reasonably be considered to be confidential (whether or not marked as such),

in each case in whatever form or medium (including written, electronic, visual and oral) such information is recorded or kept and whether or not created for the purpose of entering into this Agreement or otherwise, and shall include, for the avoidance of doubt, any Operator Data identified as Confidential Information in Part 4 of Schedule 4;

**"Constituent Local Authorities"**

means a group of local authorities in Wales who are working together and are represented by the Lead Authority (and **"Constituent Local Authority"** shall be construed accordingly);

**"COVID-19"**

means the virus identified and named "COVID-19 virus" by the World Health Organisation which was characterised as a pandemic by the World Health Organisation on 11 March 2020;

**"Data Protection Laws"**

means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("**GDPR**") and the Data Protection Act 2018, together with the Privacy and Electronic Communication Regulations 2003 and all codes of practice issued by the Information Commissioner;

**"Defaulting Party"**

means a Party who commits a material breach of its obligations under this Agreement;

**"de minimis contracts"**

means Local Services contracts entered into pursuant to section 63 of the Transport Act 1985 which have been procured on a direct award basis to secure the provision of such public transport services as are considered appropriate to meet any public transport requirements which would not otherwise be met, pursuant to the exceptions allowed under section 91 Transport Act 1985 by the Service Subsidy Agreements (Tendering) Regulations 1985 as amended;

**"Disclosing Party"**

means a Party that discloses Confidential Information to one or more Receiving Parties under this Agreement;

<b>"Dispute"</b>	means a dispute or difference arising out of or in connection with this Agreement or any such matter which a Party deems (acting reasonably) to constitute a dispute;
<b>"Economic Contract"</b>	has the meaning given to it in the Welsh Government "Prosperity for All - Economic Action Plan";
<b>"Effective Date"</b>	means the date of this Agreement;
<b>"EIR"</b>	means the Environmental Information Regulations 2004;
<b>"Existing Supported Services"</b>	means any Local Services operated pursuant to the terms of an Existing Supported Services Contract;
<b>"Existing Supported Services Contracts"</b>	means contracts for the provision of Local Services in Wales by the Operator that were entered into before the Effective Date pursuant to: <ul style="list-style-type: none"> <li>a) terms let by or on behalf of the Welsh Government pursuant to section 7 of the Transport (Wales) Act 2000;</li> <li>b) contract terms let by one or more local transport authority pursuant to section 63 of the Transport Act 1985 (including, for the avoidance of doubt, any de minimis contracts); or</li> <li>c) any other contract let by one or more local transport authorities in accordance with sections 89 – 92 of the Transport Act 1985;</li> </ul>
<b>"FOIA"</b>	means the Freedom of Information Act 2000;
<b>"Force Majeure Event"</b>	means any event or occurrence (including fire, flood, violent storm, pestilence, explosion, malicious damage, act of terrorism, epidemic, pandemic, any industrial action by the workforce of an affected Party or by the workforce of a critical or key supplier, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made) which: <ul style="list-style-type: none"> <li>a) without prejudice to the operation of clause 11.6, the affected Party could not reasonably have provided against before entering into this Agreement;</li> <li>b) materially adversely affects the ability of a Party to perform its obligations (in whole or in part) under this Agreement;</li> <li>c) which is outside the reasonable control of an affected Party;</li> <li>d) having arisen, could not reasonably be avoided or overcome by the affected Party;</li> </ul>

- e) occurs in the United Kingdom; and
- f) is not attributable to any act or failure to take reasonable preventative action by an affected Party;

<b>"Former Commercial Services"</b>	has the meaning given to it in clause 15.1;
<b>"Funding Review(s)"</b>	means the review carried out in accordance with Schedule 5;
<b>"Good and Efficient Operator"</b>	has the meaning given to it in Section 1 to Schedule 3;
<b>"Gross Cost Contract"</b>	means a contract whereby the procuring authority retains the right to receipt of passenger revenue and therefore carries the financial risk in respect of the level of passenger revenue received in respect of services provided under such contract;
<b>"Historic"</b>	means up to 1 March 2019;
<b>"Insolvent Party"</b>	has the meaning given to it in clause 11.3;
<b>"Intellectual Property Rights"</b>	means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>"Lead Authority"</b>	means a local authority in Wales acting as the Lead Regional Transport Authority for one or more of its Constituent Local Authorities;
<b>"Lead Authority Dispute"</b>	means a Dispute which involves the Lead Authority and may therefore be resolved in accordance with clause 25.3;
<b>"Legislation"</b>	means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any Welsh law within the meaning given to it in section 1(3) of the Legislation (Wales) Act 2019, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972 (as amended), in each case in the United Kingdom;

<b>"Local Service"</b>	has the meaning given to it in the section 2 of the Transport Act 1985 and for the avoidance of doubt, this shall not include: services which are not registrable pursuant to section 6 of the Transport Act 1985, including any services which are provided where a railway service is temporarily interrupted under section 40 Railways Act 2005;
<b>"Net Cost Contract"</b>	means a contract whereby the operator retains all passenger revenue and takes the risk in respect of the level of passenger revenue received in respect of services provided under such contract;
<b>"New Supported Services"</b>	means any Local Service operated pursuant to the terms of a New Supported Services Contract;
<b>"New Supported Services Contract"</b>	means contracts for the provision of Local Services in Wales by the Operator that were entered into after the Effective Date pursuant to: <ul style="list-style-type: none"> <li>a) terms let by or on behalf of the Welsh Government pursuant to section 7 of the Transport (Wales) Act 2000;</li> <li>b) contract terms let by one or more local transport authority pursuant to section 63 of the Transport Act 1985 (including, for the avoidance of doubt, any de minimis contracts); or</li> <li>c) any other contract let by one or more local transport authorities in accordance with sections 89 – 92 of the Transport Act 1985;</li> </ul>
<b>"New Supported Services Contract Tendering Assumptions"</b>	has the meaning given to it in clause 17.3;
<b>"Operator Data"</b>	means Operator data required to be provided under this Agreement which are confidential or commercially sensitive to the Operator as identified in Part 4 of Schedule 4;
<b>"Operator Companies"</b>	<b>Group</b> means the Operator and any subsidiary, holding company or subsidiary of any holding company of the Operator or any other company or structure established by the owners of the Operator and <b>"Operator Group Company"</b> shall be construed accordingly;
<b>"Part 1 Competition Test"</b>	means the test for making and varying quality partnership schemes, making and varying ticketing schemes, and inviting and accepting tenders under section 89 or 91 of the Transport Act 1985 (subsidised services) as set out in Schedule 10, Part 1 to the Transport Act 2000 as modified;



<b>"Part 2 Competition Test"</b>	means the test for certain agreements, decisions and practices as set out in Schedule 10, Part 2 to the Transport Act 2000 as modified;
<b>"Permitted Use"</b>	means the use of data for any purpose specified in Part 3 of Schedule 4;
<b>"Personal Data Disclosing Party"</b>	has the meaning given to it in clause 22.3;
<b>"Personal Data Receiving Party"</b>	has the meaning given to it in clause 22.3;
<b>"Previous BES Funding Arrangements"</b>	has the meaning given to is in Recital B;
<b>"Priorities"</b>	has the meaning given to it in clause 6.2;
<b>"Procurement Programme"</b>	has the meaning given to it in clause 17.2;
<b>"Public Sector Parties"</b>	means Welsh Government, TFW and each Lead Authority acting for its Constituent Local Authorities and <b>"Public Sector Party"</b> shall be construed accordingly;
<b>"Quality Partnership Schemes" or "QPS"</b>	means a quality partnership scheme as specified in section 114(1) Transport Act 2000;
<b>"Receiving Party"</b>	means a Party which receives Confidential Information from a Disclosing Party;
<b>"Reconciliation Payment"</b>	has the meaning given to it in clause 9.5;
<b>"Reference Network"</b>	means: <ul style="list-style-type: none"> <li>a) the initial reference network in accordance with clause 8.1; and</li> <li>b) the developed reference network, developed in accordance with the provisions of clauses 8.2 to 8.6 as it may be varied from time to time;</li> </ul>
<b>"Region"</b>	means the geographical area for which the Lead Authority and its Constituent Local Authorities are responsible;
<b>"Register of Variations"</b>	means a register for each Region, specific to the Operator, detailing each service contract, the agreed variation to the specific service, which has been reviewed and signed by the relevant Constituent Local Authority, the form appended at Schedule 7;
<b>"Regulation 1370/2007"</b>	means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road as amended,

including, but not limited to, by the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020;

<b>"Request for Information"</b>	shall have the meaning set out in the FOIA or any apparent request for information under the FOIA;
<b>"Service Failure Points" or "SFPs"</b>	has the meaning given to it in Part 4 of Schedule 3;
<b>"Services"</b>	has the meaning given to it in clause 2.1;
<b>"Service Payment"</b>	has the meaning given to it in clause 9.1;
<b>"Service Specification"</b>	means the specification to which the Operator agrees to provide Local Services as determined in accordance with clause 6, including but not limited to, compliance with the requirements of Schedule 1;
<b>"Service Standards"</b>	means the service standards which will apply to different classifications of routes across Wales, developed in accordance with clause 8.6;
<b>"State Aid and Procurement Constraints"</b>	has the meaning given to it in clause 19.2;
<b>"Subsidised Network"</b>	has the meaning given to it in clause 8.3;
<b>"Term"</b>	has the meaning given to it in clause 3.1;
<b>"Umbrella Partnership Agreement"</b>	means the framework voluntary partnership agreement agreed in accordance with clause 5;
<b>"VPA"</b>	means a voluntary partnership agreement as described in section 46 of the Local Transport Act 2008, amending section 153(2) of the Transport Act 2000;
<b>"Wales Transport Strategy"</b>	means the draft strategy for the future of transport in Wales, setting out Welsh Government's ambitions for the next twenty (20) years and their priorities for the next five (5) years in the form of the consultation document published here: <a href="https://gov.wales/llwybr-newydd">https://gov.wales/llwybr-newydd</a> and developed during the Term;
<b>"Welsh Bus Open Data Agreement"</b>	means the agreement to be entered into between (1) TfW and (2) the Operator in relation to the Operator providing certain data to TfW which will enable TfW to build a consistent data set for all services in Wales to improve services for passengers; and
<b>"Working Days"</b>	means any day of the week other than a Saturday, Sunday or Bank Holiday.

- 1.2 the Schedule(s) form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement shall include the Schedule(s);
- 1.3 references to clauses or paragraphs appearing in the main body of this Agreement are, except where expressly stated to the contrary, references to clauses and paragraphs of this Agreement;
- 1.4 references to any part or paragraph appearing within a Schedule are, except where expressly stated to the contrary, references to such part or paragraph of that Schedule;
- 1.5 references to this Agreement are references to this Agreement as varied, assigned and/or novated in accordance with the provisions of this Agreement from time to time;
- 1.6 references to any other agreement or document are to such agreement or document as varied, assigned or novated from time to time; and
- 1.7 any reference to any Legislation will include any subordinate legislation made under it and will be construed as a reference to such Legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

## **2. SCOPE OF AGREEMENT**

- 2.1 This Agreement shall apply in respect of all Local Services provided by the Operator in the Region, including:
  - 2.1.1 Existing Supported Services; and
  - 2.1.2 Former Commercial Services;
  - 2.1.3 Commercial Services; and
  - 2.1.4 New Supported Services,(together the "**Services**").
- 2.2 Where and to the extent any Existing Supported Services are provided by the Operator pursuant to an Existing Supported Services Contract which is a Gross Cost Contract, clause 12 shall apply.
- 2.3 Where and to the extent any Existing Supported Services are provided by the Operator pursuant to an Existing Supported Services Contract which is a Net Cost Contract, clause 13 shall apply.
- 2.4 Where and to the extent any Local Service provided by the Operator is a Former Commercial Service the provisions of clause 15 shall apply in respect of Former Commercial Services.
- 2.5 Where and to the extent any Local Service provided by the Operator is a Commercial Service, clause 16 shall apply to the Operator in respect of the provision of those services.
- 2.6 Where and to the extent any Local Service provided by the Operator is provided pursuant to a New Supported Services Contract let by a Lead Authority or one of its Constituent Local Authorities after the date of this Agreement the provisions of clause 17 shall apply.
- 2.7 Where any provision of this Agreement is specified as being carried out by one Public Sector Party pursuant to this Agreement, the Public Sector Parties may agree that a representative of

another Public Sector shall be able to exercise such rights or may be required to carry out such function or obligation, provided that prior to such exercise, the Public Sector Parties shall jointly notify the Operator of such change of responsibility, and the party originally subject to such obligation shall notify the Operator of the basis upon which the new Public Sector Party is entitled to exercise the relevant powers. To the extent that this clause relates to the discharge of a statutory duty, the performance of such duty shall not be carried out by another Public Sector Party pursuant to this clause 2.7, save to the extent expressly agreed by such Public Sector Parties or in the event where TfW is performing such duties on behalf of the Welsh Government.

- 2.8 It is acknowledged that the Operator and Operator Group Companies may choose to change the way that they provide Local Services. Notwithstanding this, it is acknowledged by the Operator that this Agreement is entered into in respect of all Local Services provided by the Operator in the Region, and the Operator shall procure that, where there is any change in the operation of such services, that any alternative Operator Group Company providing such Local Services shall enter into an agreement on equivalent terms with the Public Sector Parties, and where and to the extent that they do not, or where any other action is taken by the Operator or any Operator Group Company to seek to provide services which are the same or similar to Local Services provided by the Operator in the Region outside the terms of this Agreement, the Operator shall indemnify the Public Sector Parties against all costs, losses, expenses and claims arising from the Local Services or services similar to the Local Services (including Commercial Services) being provided by the Operator or an Operator Group Company in a manner not subject to the provisions of this Agreement or an agreement on equivalent terms.

### **3. TERM**

- 3.1 This Agreement shall commence on the Effective Date and shall continue until 31 July 2022 (being the date falling two (2) years after the start date of BES 1.5), unless terminated earlier in accordance with the terms of this Agreement ("**Term**").

### **4. WELSH GOVERNMENT REQUIREMENTS**

- 4.1 As a condition of receipt of BES 2 Funding, the Operator shall comply with Welsh Government's minimum funding requirements as specified in Schedule 1.
- 4.2 Where the Operator is in material breach of any condition contained in Schedule 1 and the Operator fails to remedy such material breach (such remedy to include taking all reasonable steps to ensure that such breach is not repeated) within ten (10) Working Days of notification (or such other period of time as is reasonable given the nature of the breach and the steps required to remedy such breach), then the Operator shall pay compensation to the Lead Authority, pursuant to the process and calculated in accordance with Schedule 3.
- 4.3 The Operator shall maintain adequate insurances to cover against the risks which may be expected to arise in connection with the delivery of their obligations under this Agreement, including, but not limited to, insuring all property required to perform such obligations. The Operator shall provide the Lead Authority with proof of such insurances promptly upon request.

### **5. PARTNERSHIP**

- 5.1 The Operator shall use reasonable endeavours to agree the terms of an Umbrella Partnership Agreement, within three (3) months from the Effective Date and in the form of the draft agreement included at Section 1 of Schedule 1 with:

- 5.1.1 the Lead Authority (on behalf of Constituent Local Authorities in the Region and other Local Authorities affected by the partnership);
  - 5.1.2 TfW;
  - 5.1.3 Welsh Government; and
  - 5.1.4 other bus operators in the Region.
- 5.2 The Lead Authority, Welsh Government and TfW shall use reasonable endeavours to agree the terms of the Umbrella Partnership Agreement with the Operator and other bus operators in the Region.
- 5.3 The Parties acknowledge that that Umbrella Partnership Agreement shall provide a framework for development of detailed partnerships in the Region including, where appropriate, VPAs and QPS, and shall include as a minimum terms which:
- 5.3.1 establish a partnership board which shall govern the partnership, set strategy and objectives of the partnership, monitor and report on the performance of the partnership and resolve disputes;
  - 5.3.2 define the parties' obligations in respect of the continued delivery of the Wales Transport Strategy which may be in the form of transport plans which set out implementation dates, or processes to agree such plans, including, but not limited to those matters specified in Schedule 2;
  - 5.3.3 define obligations with respect to the Reference Network in accordance with clause 8;
  - 5.3.4 establish key performance indicators;
  - 5.3.5 invest in provision of Local Services;
  - 5.3.6 confirm review processes for the partnership using annual reviews and/or change procedures;
  - 5.3.7 rectify a breach of the terms of the Umbrella Partnership Agreement; and
  - 5.3.8 terminate the Umbrella Partnership Agreement.

## **6. SERVICE SPECIFICATION**

- 6.1 From the Effective Date, the Operator shall operate its Local Services as it did under the terms of the BES 1.5, unless agreed otherwise with the Lead Authority prior to the Effective Date.
- 6.2 The Operator shall consult and agree with the Lead Authority and each Constituent Local Authority in whose area a Local Service operates by the Effective Date or by no later than thirty (30) days of the Effective Date, the specification of the services (including routes, frequencies and hours of operation) that the Operator shall provide. In determining the specification of the services the Parties shall have regard to:
- 6.2.1 supporting learners' journeys to school or college on registered local bus services;
  - 6.2.2 increasing frequencies where demand exceeds capacity;

- 6.2.3 improving accessibility to jobs and services across our regions and communities;
  - 6.2.4 supporting economic recovery; and
  - 6.2.5 ensuring social inclusion,
- (together the "**Priorities**"),

provided that the services shall be affordable within the BES 2 Funding allocated to the Operator in accordance with the terms of this Agreement.

- 6.3 The agreed Service Specification will be recorded in the form appended at Schedule 6 and shall be updated with any changes, agreed from time to time and subject to being deliverable within the BES 2 Funding provided to the Operator pursuant to the terms of this Agreement.
- 6.4 The Operator shall act in good faith to discuss and agree with the Lead Authority and the relevant Constituent Local Authorities any changes in the Local Services required at regular intervals as agreed by the Parties, to ensure that the Local Services continue to meet local needs.
- 6.5 The Operator shall take all reasonable steps to respond and comply promptly with reasonable requests from the Lead Authority to amend the Local Services operated including:
  - 6.5.1 the routes used by those services;
  - 6.5.2 the hours of operation;
  - 6.5.3 the vehicles used or levels of provision; and
  - 6.5.4 the timetables of such services.
- 6.6 If, in exceptional circumstances, the Operator cannot reach agreement with the Lead Authority and any Constituent Local Authority on the Local Services to be operated in accordance with clause 6.4, then the Operator shall seek to agree the reasonable level of services to be provided with the Lead Authority who shall act reasonably to determine an appropriate service requirement in the context of the BES 2 Funding available and the requirements of the Lead Authority and the relevant Constituent Local Authority, and where such agreement is reached, these service requirements shall apply.
- 6.7 Where following discussion with the Lead Authority in accordance with clause 6.6, agreement can still not be reached with the Operator then either party may refer the matter as a Dispute, save that where the Lead Authority has a reasonable belief that the Operator has not engaged in good faith with any Constituent Local Authority covered by their operations and this forms part of the Dispute then such Dispute shall be referred as a Lead Authority Dispute in accordance with clause 25.3.

## **7. DATA PROVISION**

- 7.1 The Operator shall provide:
  - 7.1.1 the data specific in Section 1 of Part 4 of Schedule 3 in accordance with Part 3 of Schedule 3;
  - 7.1.2 the data specified in Part 1 of Schedule 4, in accordance with Part 3 of Schedule 3; and

- 7.1.3 the data specified in Part 2 of Schedule 4, in accordance with Part 3 of Schedule 3.
- 7.2 The data provided pursuant to this Agreement (including, but not limited to that provided pursuant to clause 7.1) may be used by the Welsh Government, TfW, the Lead Authority and Constituent Local Authorities in the Region solely for the Permitted Uses specified in Part 3 (Permitted Uses) of Schedule 4. Where such data is identified as Confidential or Commercially Sensitive as specified in Part 4 of Schedule 4, the relevant Public Sector Parties shall manage such data as Confidential Information in accordance with clause 21 and clause 23 and Commercially Sensitive in accordance with clause 23.
- 7.3 Where any Public Sector Party wishes to use any data provided by the Operator pursuant to this Agreement for any use which is not a Permitted Use they shall only do so having obtained the consent of the Operator, such consent not to be unreasonably withheld.
- 7.4 Where any data is identified as being Commercially Sensitive pursuant to Part 4 of Schedule 4 then each Public Sector Party shall ensure that, even where such data is being utilised in accordance with the Permitted Use that such data is only disclosed in accordance with clauses 21 to 23, and that where the output from the use of such data is disclosed in any manner which could be accessed by any other operator or prospective operator of Local Services, that such data or outputs are aggregated or presented in such a way that no Commercially Sensitive information is published (for example, where information in respect of crowding on buses is presented through using a traffic light system).
- 7.5 The Parties acknowledge and agree that the data provided pursuant to this clause 7 shall not be used by any Party for:
- 7.5.1 the purposes of monitoring and/or reporting to the Traffic Commissioner or the DVSA in respect of the Operator's service performance in respect of reliability and timekeeping for any local services operated by that Operator; or
- 7.5.2 any purpose relating to the potential introduction of a Quality Contract Scheme pursuant to the Transport Act 2000 by any Local Authority or the introduction by any Local Authority of any similar form of franchising arrangement under subsequent legislation,
- without the Operator's prior written consent.
- 7.6 Where any Public Sector Party analyses Operator Data for a Permitted Use with the intention to use that analysis for policy or decision making processes which may materially affect the Operator, such Public Sector Party shall use reasonable endeavours to engage with the Operator prior to use, to allow the Operator to inform such analysis. The Operator acknowledges that compliance with this obligation may not always be practicable, and in particular that a Public Sector Party shall not be obliged to comply with this obligation to the extent that it would breach clause 7.4.
- 7.7 The Operator shall keep and maintain full and accurate records and accounts on everything to do with this Agreement throughout and for seven (7) years after the date of expiry or termination of this Agreement.
- 7.8 Where a Public Sector Party is required to audit any information provided by the Operator pursuant to this Agreement, including where Welsh Government has reasonable grounds to believe that any information provided is materially incorrect, then they may appoint an auditor. The Operator shall allow such appointed auditor access to their premises, upon reasonable notice, to verify all accounts and records of everything to do with this Agreement (which is

relevant to the issue identified) and provide copies for the audit upon request, subject to clause 21.

- 7.9 The Operator shall provide information to the auditor and reasonable co-operation at their request.
- 7.10 Where any auditor identifies that any information provided by the Operator to any Public Sector Party is materially false or incomplete the relevant Public Sector Party shall be entitled to assess the impact of such false or incomplete information and where this has led to an under-payment to any Public Sector Party or over-payment from any Public Sector Party of the Service Payment, such Party shall be entitled to recover the difference between the amount originally calculated and the amount calculated following correction of the information found to be false or incomplete, and such amount shall be immediately payable by the Operator to such Public Sector Party.
- 7.11 The Operator agrees to use all reasonable endeavours to enter into the Welsh Bus Open Data Agreement within three (3) months of signing this Agreement, and shall, in any case, enter into such agreement within six (6) months of signing this Agreement. In the event of a conflict between the terms of the Welsh Bus Open Data Agreement and this Agreement, the Parties agree that this Agreement shall take priority during the Term of this Agreement and upon termination or expiry of this Agreement, the Welsh Bus Open Data Agreement shall take priority.
- 7.12 The Parties acknowledge that TfW use third party suppliers to extract/receive and process data and that clauses 21 and 22 shall apply to the use and processing of such data by such third parties.

## **8. REFERENCE NETWORK**

- 8.1 The Parties agree that the initial Reference Network reflects the routes, frequencies and hours of operation of local bus services in Wales prior to COVID-19, specifically as at 29 February 2020 modified by:
- 8.1.1 any key seasonal variations as demonstrated in the preceding year e.g. a summer tourist timetable; and
- 8.1.2 any changes to services implemented by agreement with a Local Authority or the Lead Authority prior to the Effective Date.
- 8.2 The Parties agree that for the purposes of continued improvement in the provision of local bus services in Wales, it will be necessary to develop a revised Reference Network which sets out the target requirements for routes and services to be provided across Wales. The Reference Network shall be developed in accordance with this Agreement, including the provision of services in accordance with clauses 12 to 17 below, as well as any changes to services agreed pursuant to Schedule 1. The Parties agree that the Reference Network shall be developed in respect of each Region in line with the local and regional rankings of the Priorities and in support of a coherent Wales wide Reference Network.
- 8.3 The Parties, together with other operators in the Region, shall work together to develop a revised Reference Network by 30 June 2021. This network will supersede the initial Reference Network and reflect Regional priorities. As part of developing the revised Reference Network, historical and current passenger demand data will be used to objectively identify the elements of the Reference Network which will require long term Government support. These elements of the Reference Network will be referred to as the "**Subsidised Network**".



- 8.4 The development of the Reference Network shall include:
- 8.4.1 use of data provided by all parties with an interest in the provision of bus services within the Region, including operators, Lead Authorities, Local Authorities, TFW and Welsh Government;
  - 8.4.2 consideration of regional strategic Priorities for the provision of Local Services;
  - 8.4.3 examination of existing routes;
  - 8.4.4 exploration of options for new routes;
  - 8.4.5 the viability and affordability of the proposed routes; and
  - 8.4.6 consideration of investment or other measures that may be required to support any revised Reference Network.
- 8.5 The Lead Authority shall manage compliance with the Reference Network in accordance with the requirements set out in Schedule 1.
- 8.6 As part of the development of the Reference Network, the Operator shall use all reasonable endeavours to agree a set of Service Standards pursuant to Schedule 1 with the Lead Authority and TFW which will apply to different classifications of routes across Wales. The Operator, the Lead Authority and TFW shall use all reasonable endeavours to complete this classification by 30 June 2021.

## **9. PAYMENTS AND RECONCILIATION PROCESSES**

- 9.1 The Lead Authority shall pay the Operator a service payment calculated in accordance with Part 2 of Schedule 3 ("**Service Payment**"), in relation to the Services provided pursuant to and in accordance with this Agreement. If the Operator disputes the amount of the Service Payment then such dispute shall be resolved in accordance with clause 25.
- 9.2 For the avoidance of doubt, the Operator shall not be entitled to recover more than once in respect of the same amount, including that the Operator shall not be entitled to recover any amount payable pursuant to the Previous BES Funding Arrangements pursuant to this Agreement.
- 9.3 In the event that the Operator is successful in obtaining any other governmental support or support from any Lead Authority or one of its Constituent Local Authorities or other such body that is offered in relation to the impact of and/or recovery from the impacts of COVID-19, this shall be taken into account in relation to the relevant Service Payment such that the Operator does not benefit from double recovery or double counting.
- 9.4 The Operator shall comply with the reconciliation process detailed in Part 3 of Schedule 3. The Parties acknowledge that Schedule 3 assesses the basis on which the Operator is paid, and includes provisions to ensure that such payments, following reconciliation, do not lead to over-compensation or illegal state aid. Notwithstanding any other remedies that the Lead Authority, TFW or Welsh Government may have pursuant to this Agreement or otherwise for provision by the Operator of false or misleading information, it shall be a material breach of this Agreement for the Operator to fail to accurately provide the information specified in Schedule 3. For the avoidance of doubt, it will be necessary to provide information in respect of all Local Services provided by the Operator, including any Commercial Services, to ensure transparency of costs and revenues and to ensure that the calculation of the Assumed Margin pursuant to Schedule 3

shall take into account the costs and revenues from all Local Services provided by an Operator (including Former Commercial Services and Commercial Services).

- 9.5 Where following any reconciliation process carried out pursuant to Part 3 of Schedule 3, the Lead Authority identifies that an overpayment or an underpayment has been made, the Lead Authority shall be entitled to require either clawback of such amount or pay such amount ("**Reconciliation Payment**"), calculated in accordance with Part 3 of Schedule 3. The Lead Authority shall provide the Operator with detailed calculations confirming the Reconciliation Payment to be returned to the Lead Authority or paid to the Operator.
- 9.6 The Parties acknowledge and agree that TfW, working with the Lead Authority, may carry out Funding Reviews on behalf of Welsh Government in accordance with the provisions of Schedule 5 and the Parties shall agree, acting reasonably, such amendments to this Agreement, as may be reasonably required to reflect the outcomes of each Funding Review.

## **10. EXIT FROM BES 2**

- 10.1 The Parties agree and acknowledge that by no later than 1 August 2022, it is all Parties' intention that all of the Operator's Local Services which operate in Wales shall either be:

10.1.1 operated as a Commercial Service; or

10.1.2 operated pursuant to a New Supported Services Contract or the original terms and conditions of an Existing Supported Services Contract (including in each case any such contract which is let as a *de minimis* contract).

- 10.2 Where all Local Services operated by the Operator in Wales are operated in accordance with clause 10.1 then the Parties acknowledge that:

10.2.1 no further payments shall be made pursuant to this Agreement; and

10.2.2 provided that any Umbrella Partnership Agreement and any associated partnership arrangements shall not be terminated as a result of the termination of this Agreement,

any Party shall otherwise be entitled to terminate this Agreement by agreement with the other Parties (all acting reasonably).

## **11. TERMINATION**

- 11.1 This Agreement, or a Party's participation in this Agreement, may be terminated in accordance with the provisions of this clause 11.

### **Defaulting Party Material Breach**

- 11.2 In the event of a material or persistent breach of this Agreement by a Defaulting Party, the non-Defaulting Party may give four (4) weeks' written notice of their intention to terminate this Agreement, setting out in sufficient detail the acts or omission of the relevant Defaulting Party giving rise to such breach or breaches. If the Defaulting Party does not, to the reasonable satisfaction of the non-Defaulting Party, remedy the breach or breaches and the consequences of such breach within such notice period, the non-Defaulting Party may terminate this Agreement. Where, pursuant to Part 4 of Schedule 3 Service Failure Points have been allocated for the same trigger in three (3) consecutive months this shall be deemed to be a material breach which the Operator has been unable to remedy.

## **Insolvency**

- 11.3 Any non-Defaulting Party may by written notice terminate its participation in this Agreement where another Party ("**Insolvent Party**"):
- 11.3.1 passes a resolution for its winding up or summons a meeting to pass any such resolution (other than for the purpose of and followed by a solvent reconstruction or amalgamation);
  - 11.3.2 has a petition for a winding-up order presented against it (other than for the purpose of and followed by a solvent reconstruction or amalgamation);
  - 11.3.3 has an application made to court, or an order made, for the appointment of an administrator or any step is taken to appoint an administrator in respect of the Insolvent Party;
  - 11.3.4 has a receiver, administrative receiver, receiver and manager or similar officer appointed by any person of all or any part of the Insolvent Party's property, assets or undertaking;
  - 11.3.5 makes a proposal for a voluntary arrangement as defined in Section 1 of the Insolvency Act 1986;
  - 11.3.6 enters into any other arrangement with its creditors or any of them;
  - 11.3.7 takes or suffers any other action in consequence of debt including, without limitation, giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or
  - 11.3.8 has a proposal or threat to do any of the above acts or things made; or an event analogous to the aforesaid occurs in whatever jurisdiction.

## **Continuing Force Majeure**

- 11.4 No Party shall be liable to any other Party for any delay in, or failure to perform its obligations under this Agreement arising (in whole or in part) from any Force Majeure Event, provided that the affected Party shall:
- 11.4.1 as soon as reasonably practicable, send to the other Parties a written notice setting out the circumstances of the event and its anticipated effect; and
  - 11.4.2 use all reasonable endeavours to minimise the effect of any such circumstances.
- 11.5 If the affected Party's ability to perform its obligations under this Agreement is materially adversely affected (in whole or in part) due to a Force Majeure Event continuing for a period of six (6) months or more, any Party may terminate the affected Party's participation in this Agreement with immediate effect by serving written notice to the other Parties, provided that no such notice shall be served until the Parties have met in good faith to discuss and seek to agree whether this Agreement should continue in modified form (agreement to such not to be unreasonably withheld).
- 11.6 Notwithstanding any other provision under this Agreement, the Parties agree that they were aware of COVID-19 and that the existence of COVID-19 in itself shall not constitute a Force Majeure event save that a Change in COVID-19 Impact Event may be deemed to be a Force

Majeure Event provided it satisfies the criteria set out in sub-paragraphs (b) to (f) (exclusive) of the definition of Force Majeure.

### **Termination by agreement of the Parties**

- 11.7 This Agreement may be terminated in respect of all Parties or in respect of any one party at any time with immediate effect by written consent of all Parties that it be so terminated.
- 11.8 This Agreement shall be terminated in respect of any Party that disposes of its business in accordance with clause 28.2.
- 11.9 In the event that the Operator either: (i) changes the way that they provide Local Services and does not comply with clause 2.8; or (ii) disposes of its business and does not comply with clause 28.2, the Operator acknowledges and agrees that such breach shall be dealt with in accordance with clause 11.2 and the non-Defaulting Party is entitled to terminate this Agreement.

### **Exit from BES 2**

- 11.10 This Agreement may be terminated pursuant to clause 10.2.

### **Funding Reviews**

- 11.11 This Agreement may be terminated on notice provided by Welsh Government to the Operator, in accordance with paragraph 1.3.3 of Schedule 5 following a Funding Review.

### **Operator withdrawal**

- 11.12 This Agreement may be terminated on no less than fifty six (56) days' notice (or such other period of notice as the Traffic Commissioner may require in respect of de-registration of Local Services at the date the notice is given) from the Operator to the other Parties, in the event that the Operator intends to withdraw from the Welsh bus market, such termination to occur on the date of withdrawal from the Welsh bus market.
- 11.13 In the event where the Operator intends to withdraw from the Welsh bus market and terminates this Agreement in accordance with clause 11.12, the Operator shall provide Welsh Government with a reasonable opportunity to purchase any assets of the business which it intends to dispose of, on fair terms.

### **Effect of Termination**

- 11.14 The termination of this Agreement for any reason:
- 11.14.1 shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the date of termination, including, for the avoidance of doubt, any payments to be made to the operator pursuant to Part 3 of Schedule 3;
- 11.14.2 shall not prejudice the rights or remedies which any Party may have in respect of any breach of the terms of this Agreement prior to the date of termination; and
- 11.14.3 shall not impact upon any clawback of BES 2 Funding which is to be made (including any clawback of BES 2 Funding still to be calculated) in accordance with Schedule 3.

## **12. EXISTING SUPPORTED SERVICES: GROSS COST**

12.1 The Parties acknowledge that the Operator operates Existing Supported Services on the date of this Agreement which are contracted in whole, or in part, pursuant to Existing Supported Services Contracts.

12.2 Where an Existing Supported Services Contract is let as a Gross Cost Contract:

12.2.1 the Operator acknowledges that the relevant Constituent Local Authority (or Welsh Government where the Existing Supported Services Contract is let pursuant to section 7 Transport (Wales) Act 2006) remains at risk for passenger revenue, and that any payments made to the Operator in respect of such Local Services pursuant to this Agreement shall relate solely to additional costs incurred by the Operator in providing services in accordance with the terms of such Gross Cost Contract, as a result of the impact of COVID-19 (and related measures) on the operation of that Existing Supported Services;

12.2.2 the Operator (and the Lead Authority on behalf of the relevant Constituent Local Authority) agree that each Existing Supported Services Contract shall be varied to:

12.2.2.1 allow such additional payments to be made by the Lead Authority on behalf of the Constituent Local Authority to the Operator in accordance with the terms of this Agreement; and

12.2.2.2 revise the services provided in agreement with the Constituent Local Authority and the Lead Authority and align payment with the revised services.

It is acknowledged that the variation in such payments shall be limited to those which are required to deal with the impact of COVID-19, and that the modifications are not substantial within the meaning of Regulation 88 (1)(f) Utilities Contracts Regulations 2016 or Regulation 72(1)(f) Public Contract Regulations 2015, as the case may be;

12.2.3 the Operator agrees that more than one amendment may be made pursuant to clause 12.2.2, during the term of this Agreement, provided that those changes shall be made solely for the purposes of reflecting required changes to local bus services to reflect the impact of COVID-19, and that such changes shall not change the economic balance of the contract in favour of the bus operator nor alter the overall nature of the Existing Supported Services Contract;

12.2.4 the Operator and the Lead Authority acknowledge that the payments made pursuant to this Agreement in respect of such Gross Cost Contracts are made pursuant to a valid variation to the Existing Supported Services Contracts between the Constituent Local Authority and the Operator. The Parties agree to execute such other documents, including to update the Register of Variations at Schedule 7, as may be required to effect such variation, and the Lead Authority undertakes to obtain any variation documents executed by the Constituent Local Authority as may be required to effect such variation; and

12.2.5 on a continuing basis, the Lead Authority may carry out a further review of each Existing Supported Services Contract to assess whether any further variation is needed or determinate whether the service remains necessary to be supported in accordance with the review process under clause 6.4.

### **13. EXISTING SUPPORTED SERVICES: NET COST**

13.1 The Parties acknowledge that the Operator operates Existing Supported Services on the date of this Agreement which are contracted in whole, or in part, pursuant to Existing Supported Services Contracts.

13.2 Where such Existing Supported Services Contract is a Net Cost Contract:

13.2.1 the Parties acknowledge that the Operator is at risk for passenger revenue under the terms of the Net Cost Contract with the relevant Lead Authority or one of its Constituent Local Authorities (or Welsh Government where the Existing Supported Services Contract is let pursuant to section 7 Transport (Wales) Act 2006), and that any payments made to the Operator in respect of such Local Services pursuant to this Agreement shall relate solely to:

13.2.1.1 additional costs incurred by the Operator in providing services in accordance with the terms of such Net Cost Contract, as a result of the impact of COVID-19 (and related measures) on the operation of that Existing Supported Services; and

13.2.1.2 the impact on passenger revenue beyond that which was foreseeable by the Operator and/or the Lead Authority or one of its Constituent Local Authorities at the time that such Existing Supported Services Contract was let,

13.2.2 the Operator (and the Lead Authority on behalf of the relevant Constituent Local Authority) agree that each Existing Supported Services Contract shall be varied to:

13.2.2.1 allow such additional payments to be made by the Lead Authority on behalf of the Constituent Local Authority to the Operator in accordance with the terms of this Agreement; and

13.2.2.2 revise the services provided in agreement with the Constituent Local Authority and the Lead Authority.

It is acknowledged that the variation in such payments shall be limited to those which are required to deal with the impact of COVID-19, and that the modifications in respect of any changes to service provision are not substantial within the meaning of Regulation 88 (1)(f) Utilities Contracts Regulations 2016 or Regulation 72(1)(f) Public Contract Regulations 2015, as the case may be, and that the payments in respect of loss of passenger revenue are made due to the immediate and continuing risk of disruption of passenger services as a result of the loss of that passenger revenue,

13.2.3 the Operator agrees that more than one amendment may be made pursuant to clause 13.2.2.2, during the term of this Agreement, provided that those changes shall be made solely for the purposes of reflecting required changes to local bus services to reflect the impact of COVID-19, and that such changes shall not change the economic balance of the contract in favour of the operator nor alter the overall nature of the Existing Supported Services Contract;

13.2.4 the Operator agrees that, where payments made relate to the impact of COVID-19 on passenger numbers, the extent to which those payments relate to costs which would have been funded from passenger revenue, save for the effect of COVID-

19, that the Lead Authority shall be entitled to limit the payments made in respect of such costs for the period that the risk associated with passenger revenue loss is materially greater than that which was reasonably foreseeable at the date of the relevant agreement;

13.2.5 payments made by the Lead Authority to the Operator pursuant to this Agreement in respect of Existing Supported Services pursuant to a Net Cost Contract shall be only made for the period, and to the extent that, the provision of services under the relevant Net Cost Contract are affected by COVID-19;

13.2.6 the Operator and the Lead Authority acknowledge that the payments made pursuant to this Agreement in respect of such Net Cost Contracts are made pursuant to a valid variation to the Supported Services Existing Contract between the relevant Constituent Local Authority and the Operator. The Parties agree to execute such other documents, including to update the Register of Variations at Schedule 7, as may be required to effect such variation, and the Lead Authority undertakes to obtain any variation documents executed by the Constituent Local Authority as may be required to effect such variation; and

13.2.7 on a continuing basis, the Lead Authority may carry out a further review of each Existing Supported Services Contract to assess whether any further variation is needed or determinate whether the service remains necessary to be supported in accordance with the review process under clause 6.4.

#### **14. REVERTING TO ORIGINAL CONTRACT TERMS FOR EXISTING SUPPORTED SERVICES**

14.1 The Parties acknowledge that any Existing Supported Services Contract varied in accordance with clause 12 and 13, shall revert to the terms specified immediately prior to such variation (subject to any other variation to such contract agreed by the Parties to that contract) when all or some of the following criteria are achieved (in each case as agreed with the relevant Local Authority, acting reasonably):

14.1.1 the revenue in respect of that service returning to pre-COVID levels;

14.1.2 the service operating to a specification materially the same as that pre-COVID, subject to any other variation of such contract; and

14.1.3 the Operator choosing to return to the terms of the original Existing Supported Services Contract.

#### **15. SUPPORT FOR FORMER COMMERCIAL SERVICES**

15.1 The Parties acknowledge that the Operator has historically operated Commercial Services, but due to the effects of COVID-19, those Commercial Services were no longer commercially viable and support for the continuation of the services was required from Welsh Government. Such support was received through BES Funding provided pursuant to the Previous BES Funding Arrangements. The Parties further acknowledge that the Previous BES Funding Arrangements were implemented on the basis of payments being made under the following powers:

15.1.1 use of grant aid under section 154 Transport Act 2000; or

15.1.2 payments made pursuant to section 7 of the Transport (Wales) Act 2006,

**("Former Commercial Services").**

- 15.2 The Operator acknowledges that in the absence of Service Payments made pursuant to this Agreement the Operator would not be able to continue to operate the relevant Former Commercial Service or would not be able to operate the Former Commercial Services to the Service Standards.
- 15.3 The Lead Authority acknowledges that it would not have funded such Former Commercial Services to the Service Standards unless provided with financial support by Welsh Government.
- 15.4 The Lead Authority agrees to support the Former Commercial Services pursuant to the terms of this Agreement on the basis that the operation of the Former Commercial Service is required to meet public service obligations, with support being provided for provision of such public service obligations through the payment of Service Payments on behalf of Welsh Government in accordance with Schedule 3 (pursuant to section 7 Transport (Wales) Act 2006), provided that the Operator in operating the Former Commercial Services, shall at all times comply with the prevailing Service Specification.
- 15.5 The Parties acknowledge that the reconciliation process at Part 3 of Schedule 3 shall take into account the costs and revenues from all Local Services provided by the Operator, including Supported Services, Formerly Commercial Services and Commercial Services. For the avoidance of doubt, the assessment of whether the Operator has been over or under compensated and the calculation of any margin due shall be based on the net position on costs and revenues across all the Operator's Local Services.

**16. COMMERCIAL SERVICES**

- 16.1 Where the Operator registers a Commercial Service which does not comply with the applicable Service Standards, then save where the specification of such Commercial Service has been agreed in accordance with clause 16.2.2, the Operator acknowledges and agrees that Welsh Government or any Local Authority in the area in which such service is operated may determine that notwithstanding the operation of the Commercial Service, that the service in question is not being provided to the applicable Service Standard required, in accordance with section 7(4) Transport (Wales) Act 2006 or section 63(5) Transport Act 1985 and that Welsh Government or the relevant Local Authority may determine that a service that meets the applicable Service Standard may be let in accordance with clause 17 (subject to the application, where relevant, of the Part 1 Competition Test).
- 16.2 Where the Operator registers a Commercial Service which will operate:
- 16.2.1 in accordance with the applicable Service Standards; or
- 16.2.2 in accordance with a variation to the Service Standards as agreed by the Operator, Lead Authority and TfW on the grounds that, for example, the specified standard for the hours of operation or frequency of the service are not financially viable or required,

then the Parties acknowledge that such service shall be operated as a Commercial Service for the purposes of this Agreement, but shall for the avoidance of doubt, remain subject to the terms of this Agreement, the Umbrella Partnership Agreement and any future partnership agreement developed pursuant to the terms of the Umbrella Partnership Agreement.

- 16.3 The Parties acknowledge that the reconciliation process at Part 3 of Schedule 3 shall take into account the costs and revenues from all Local Services provided by the Operator, including



Supported Services, Formerly Commercial Services and Commercial Services. For the avoidance of doubt, the assessment of whether the Operator has been over or under compensated and the calculation of any margin due shall be based on the net position on costs and revenues across all the Operator's Local Services.

## 17. SERVICES TENDERED AFTER THE DATE OF THIS AGREEMENT

17.1 The Parties agree that the Lead Authority or one of its Constituent Local Authorities or Welsh Government may let New Supported Services Contracts including where:

- 17.1.1 an Existing Supported Service Contract expires or terminates;
- 17.1.2 the Operator chooses to cease operation of a Former Commercial Service; or
- 17.1.3 a new route is identified as part of the Reference Network which is not operated as a Commercial Service or any Commercial Service does not comply with clause 16.2,

in each case where the relevant Local Authority or Welsh Government determine that the provision of such service is appropriate for meeting public transport requirements in the relevant area.

17.2 The Operator acknowledges that, no later than 1 August 2021, the Lead Authority (working with its Constituent Local Authorities) shall set out a programme to tender key services that are otherwise at risk of not meeting the requirements of clause 10.1 prior to 1 August 2022 when this contract shall terminate ("**Procurement Programme**"). The Procurement Programme shall be developed in consultation with the Operator and other operators and plans to tender New Supported Service Contracts within the Procurement Programme shall be prioritised to take account of:

- 17.2.1 the prevailing bus market conditions including any continued impact of COVID-19 on the performance of the bus market, such as passenger levels and revenues;
- 17.2.2 the estimated time frame for meeting the requirements of clause 10.1; and
- 17.2.3 the extent to which each service is required for the purposes of operating the Reference Network and delivering its intended benefits.

The Procurement Programme shall be reviewed by the Lead Authority and its Constituent Local Authorities every month and revised as necessary in consultation with the Operator, other operators and stakeholders to take account of changes which affect the priorities detailed in clauses 17.2.1 to 17.2.3.

17.3 Where a Lead Authority, one of its Constituent Local Authorities or Welsh Government tenders a New Supported Services Contract following the date of this Agreement, the tender for such New Supported Services Contract shall specify the assumptions that are to be made by all bidders regarding payments (if any), to be made pursuant to this Agreement to the operator of services under that New Supported Services Contract, and the relevant Public Sector Party shall ensure that the same assumptions are provided to all tenderers for such Contract ("**New Supported Services Contract Tendering Assumptions**"); or

17.4 the Parties acknowledge, that where any Public Sector Party, specifies New Supported Services Contract Tendering Assumptions as part of a tender process for a New Supported Services Contract and the Operator enters into such New Supported Services Contract, the Lead

Authority shall make payments under this Agreement in respect of such New Supported Services Contract in accordance with the New Supported Services Contract Tendering Assumptions.

## 18. SURVIVAL

18.1 This clause 18 and the following provisions (and any clauses/Schedules referred to in them/and or necessary in order to give effect to them) shall survive termination of this Agreement:

18.1.1 clauses 1 (*Definitions and Interpretation*);

18.1.2 clause 20 (*Intellectual Property*),

18.1.3 clause 21 (*Confidentiality*),

18.1.4 clause 22 (*Data Protection*),

18.1.5 clause 23 (*Freedom of Information*),

18.1.6 clause 25 (*Dispute Resolution*);

18.1.7 clause 36 (*Governing Law and Jurisdiction*); and

18.1.8 Schedule 3 (*Compensation*) to the extent required for the purposes of any reconciliation of payments following the date of termination,

which shall continue in force after such termination.

## 19. FUNDING AND CONSTRAINTS

19.1 Each Party shall be responsible for funding their own obligations under this Agreement, save where the funding of any obligation is expressly specified in this Agreement, and otherwise in accordance with this clause 19. Where and to the extent any obligation of the Lead Authority pursuant to this Agreement to pay the Operator is dependent upon Welsh Government paying an equivalent amount to the Lead Authority, Welsh Government shall indemnify the Lead Authority against any claims from the Operator arising directly from any delay or failure by Welsh Government to make such payment to the Lead Authority.

19.2 It is acknowledged that funding from (or provisions of works, services or supplies which have been funded by) the Welsh Government is subject to constraints on public spending, including the application of UK and EU rules in respect of state aid and procurement ("**State Aid and Procurement Constraints**"). It is acknowledged that Welsh Government, TFW and the Lead Authority shall not be required to fund or deliver anything pursuant to this Agreement which would be in breach of such requirements.

19.3 Where any Party is unable to perform an obligation under this Agreement due to State Aid and Procurement Constraints the Parties agree to work together in good faith to determine those changes required to this Agreement whilst not breaching such requirements. It is acknowledged that this may include the Parties working together to identify exemptions which may be applicable and where necessary engaging with third parties including the CMA in order to implement the terms of this Agreement.

## **20. INTELLECTUAL PROPERTY RIGHTS**

- 20.1 To the extent that any Intellectual Property Rights are generated pursuant to the terms of this Agreement, the Parties agree that:
- 20.1.1 such Intellectual Property Rights shall remain the absolute property of the Party which generated such rights; and
  - 20.1.2 such Party shall hereby grant to the other Party a perpetual, irrevocable, non-exclusive, fully paid up and royalty free licence (with the right to sub-licence) to use such Intellectual Property Rights for any purpose relating to this Agreement or any successor agreement.

## **21. CONFIDENTIALITY**

### **General**

- 21.1 The Parties agree that the provisions of this Agreement shall not be treated as Confidential Information and may be disclosed without restriction.
- 21.2 Each Receiving Party shall:
- 21.2.1 keep the Disclosing Party's Confidential Information confidential;
  - 21.2.2 use the Confidential Information (or any part thereof) only in connection with performing its obligations under the Agreement; and
  - 21.2.3 subject to clause 21.4 and 23, not disclose the Confidential Information to anyone without the prior written consent of the Disclosing Party.
- 21.3 Data provided by the Operator pursuant to clause 7 or otherwise pursuant to the terms of this Agreement shall be deemed to be Confidential Information where it is identified as such in the table at Part 4 of Schedule 4.

### **Exceptions**

- 21.4 The consent referred to in clause 21.2.3 shall not be required for the disclosure by a Receiving Party of any Confidential Information which:
- 21.4.1 is disclosed to:
    - 21.4.1.1 the CMA; or
    - 21.4.1.2 the Department for Transport,
  - 21.4.2 at any time comes into the public domain otherwise than as a result of breach of this Agreement by the Receiving Party;
  - 21.4.3 is disclosed to the Receiving Party's officers, contractors or agents, in each case to the extent required to enable the Receiving Party to carry out its obligations under this Agreement provided that the Receiving Party makes such person aware of the Receiving Party's obligations under this Agreement and the Receiving Party requires such person to observe the same restrictions on the use of the relevant information as are contained in clause 21.2;

- 21.4.4 is disclosed to the Receiving Party's professional advisers who are bound to such Receiving Party by a duty of confidence which applies to any information disclosed;
- 21.4.5 is disclosed to the Receiving Party's auditors (pursuant to clause 7.8) who are bound to such Receiving Party by a duty of confidence which applies to any information disclosed, to the extent that the statutory provisions under which the auditor was appointed allow for such duty of confidence to be imposed upon the auditor;
- 21.4.6 is received from a third party who is not in breach of any relevant duty of confidence whether express or implied;
- 21.4.7 is independently developed without access to the Confidential Information; or
- 21.4.8 is required to be disclosed by any applicable law or regulatory requirement to which the Receiving Party is subject or pursuant to any order of the court or other competent regulatory authority or tribunal.
- 21.5 These restrictions and prohibition on use, exploitation, communication and disclosure set out in this clause 21 shall continue to apply after the expiration or termination of the Agreement in respect of any Confidential Information for such period of time as such information remains Confidential Information..

#### **Required Disclosure**

- 21.6 If the Receiving Party becomes required, in circumstances contemplated by clause 21.4.8 to disclose any Confidential Information, the Receiving Party shall (save to the extent prohibited by law) give to the Disclosing Party such notice as is practical in the circumstances of such disclosure and shall co-operate with the Disclosing Party, having due regard to the Disclosing Parties' views, and take such steps as the Disclosing Party may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

#### **Remedy**

- 21.7 The Public Sector Parties acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of this clause 21 and that a breach by any Public Sector Partner of this clause 21 may result in immediate and irreparable competitive injury. The Public Sector Parties therefore agree that in addition to any other remedies that may be available, by law or otherwise, the Operator shall be entitled to seek injunctive relief against any breach or threatened breach of this clause 21 by the Public Sector Parties.

## **22. DATA PROTECTION**

- 22.1 In this clause 22, the expressions "**Process/Processing**", "**Controller**", "**Processor**" "**Data Subject**", "**Personal Data Breach**" and "**Supervisory Authority**" shall have the same meaning as in the Data Protection Laws.
- 22.2 Each Party shall Process Personal Data under this Agreement as a separate Controller, and shall comply at all times with its respective obligations under Data Protection Laws.
- 22.3 In respect of any disclosures of Personal Data by one Party ("**Personal Data Disclosing Party**") to another Party ("**Personal Data Receiving Party**"), the Personal Data Receiving Party shall:

- 22.3.1 only Process the disclosed Personal Data where reasonably necessary for the purposes of performing its obligations, or exercising its rights, under this Agreement (including in respect of any onward disclosures to third parties);
  - 22.3.2 not transfer Personal Data outside the EEA without the prior written consent of the Personal Data Disclosing Party; and
  - 22.3.3 notify the Personal Data Disclosing Party without undue delay upon becoming aware of any Personal Data Breach involving the Personal Data.
- 22.4 Each Party shall co-operate with the other, to the extent reasonably requested, in relation to:
- 22.4.1 any requests from Data Subjects to exercise rights under the Data Protection Laws;
  - 22.4.2 any other communication from a Data Subject concerning the Processing of their Personal Data; and
  - 22.4.3 any communication from a Supervisory Authority concerning the Processing of Personal Data, or compliance with the Data Protection Laws.

### **23. FREEDOM OF INFORMATION**

- 23.1 The Operator shall cooperate to facilitate the Public Sector Parties in complying with their respective obligations under the FOIA and the EIR, together with any guidance and/or codes of practice issued from time to time by the Information Commissioner or the Secretary of State, in the manner provided for in this clause 23, which shall apply whenever any Public Sector Party receives a Request for Information which in that Public Sector Party's reasonable opinion is likely to involve the disclosure of Confidential Information.
- 23.2 Where the relevant Public Sector Party receives a Request for Information in relation to Operator Confidential Information it shall notify the Operator in writing of the Request for Information as soon as practicable after receipt and in any event within five (5) Working Days of receiving a Request for Information and shall consult in good faith with the Operator to ascertain whether disclosure of the requested information would be likely to prejudice the commercial interests of the Operator for the purposes of section 43(2) of FOIA or regulation 12(5)(e) of EIR.
- 23.3 Where the relevant Public Sector Party receives a Request for Information relating Operator Confidential Information, the relevant Public Sector Party shall keep the Operator fully informed and the Operator shall provide all necessary assistance reasonably requested by the relevant Public Sector Party to enable the Welsh Government or TFW to respond to a Request for Information in accordance with Section 1 and Section 10 of the FOIA or regulation 5 of the EIR.
- 23.4 The relevant Public Sector Party agrees that (and shall procure that the Constituent Local Authorities agree that) Operator Data shall, for the purposes of the FOIA, constitute:
- 23.4.1 exempt information pursuant to Part 2 of the FOIA which is provided to the Welsh Government, the Lead Authority and/or TFW in confidence and that disclosure of the Operator Data would constitute a breach of confidence actionable by the Operator; and/or
  - 23.4.2 exempt information pursuant to Part 2 of the FOIA in that it constitutes either a trade secret of the Operator and/or information which if disclosed to the public

would prejudice the commercial interests of the Operator and the Welsh Government, the Lead Authority and TfW will therefore treat all Operator Data as exempt for the purposes of the FOIA.

23.5 In the event that notwithstanding the provisions of clause 23.4, any Public Sector Party is bound by the FOIA to disclose any Operator Data to the public, the relevant Public Sector Party shall nonetheless provide the Operator with a minimum of 48 hours written notice prior to the disclosure of any such data.

## **24. COMPETITION AND PROCUREMENT LAW**

24.1 The Parties intend that this Agreement shall comply with competition law at the date of this Agreement.

24.2 The Parties acknowledge that the development of partnership arrangements pursuant to clause 5 of this Agreement will be subject to the application of competition law, and in particular the parties may need to apply the Part 2 Competition Test, and be satisfied (acting reasonably and by reference to the prevailing law at the time of such consideration) that any Umbrella Partnership Agreement meets the Part 2 Competition Test;

24.3 The Parties intend that:

24.3.1 this Agreement shall not breach the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016 or Regulation 1370/2007;

24.3.2 that payments in respect of, and the provision of, services by the Operator pursuant to the terms of this Agreement are consistent with the requirements of article 5 of Regulation 1370/2007.

24.4 Notwithstanding clause 24.1 to 24.3, if:

24.4.1 statements by, advice from, or decisions by competent authorities (including, but not limited to, the CMA) provides additional detail or guidance in relation to the applicability of competition law to this Agreement which may impact on the position of this Agreement or in respect of the negotiation of the Umbrella Partnership Agreement;

24.4.2 statements by, advice from, or decisions by competent authorities impact on the position of this Agreement under procurement law,

the Parties agree to:

24.4.3 meet in good faith and review the impact of such change or other developments on this Agreement; and

24.4.4 make any amendment necessary to ensure that this Agreement complies with applicable competition law or procurement law then in force in the light of such development, whilst taking account of the Parties' commercial intentions as expressed in this Agreement.

24.5 In the event that the Parties are unable to agree as to the extent and nature of such amendments within one (1) month, any party shall be entitled to refer the decision to the Dispute process in accordance with clause 25.

## 25. DISPUTE RESOLUTION

- 25.1 Where any Dispute arises between the Parties in connection with this Agreement, the Parties shall attempt to resolve the Dispute in good faith. During the period of the Dispute, the Parties shall continue to comply with their respective obligations under this Agreement.
- 25.2 Where the Parties are unable to resolve the Dispute in good faith, the dispute may be escalated to the relevant Parties' senior representatives (being a senior executive of the relevant Party with sufficient authority to bind the relevant Party in any agreement reached in respect of the Dispute) in order to try and resolve the Dispute. If the Parties' senior representatives are unable to resolve the Dispute within fifteen (15) Working Days of referral, the Dispute shall be referred to mediation in accordance with clause 25.4, save for any Lead Authority Disputes which shall be referred to resolution pursuant to clause 25.3.
- 25.3 Where a Dispute is a Lead Authority Dispute then the following shall apply:
- 25.3.1 the Lead Authority shall notify an Alternate Lead Authority (whose identity is to be agreed between the Operator and the Lead Authority or where they cannot agree the identity of the Lead Authority as determined by TfW) in writing, asking for input. Such notice shall provide background information on the issue and reasons why the Lead Authority believes the Operator has not engaged in good faith;
- 25.3.2 upon receipt of such notice, the Alternate Lead Authority shall consider the information provided in the notice and shall promptly request any additional information from the Operator that may be required to consider the dispute;
- 25.3.3 upon receipt of such additional information from the Operator, the Alternate Lead Authority shall consider all responses within fifteen (15) Working Days. The Alternate Lead Authority shall notify both the Operator and the Lead Authority of its decision; and
- 25.3.4 in the event that the Alternate Lead Authority agrees that the Operator has not engaged in good faith, then the Lead Authority may suspend or reduce BES 2 Funding paid to the Operator in respect of the disputed service or services or seek compensation in accordance with Schedule 3; or
- 25.3.5 in the event that the Alternate Lead Authority agrees that the Operator has engaged in good faith, the BES 2 Funding paid to the Operator shall continue.
- 25.4 If the Parties are unable to resolve a Dispute within two (2) months, the Parties shall attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Within ten (10) Working Days of service of referral to mediation, the mediator shall be nominated by CEDR. To initiate the mediation, one Party must serve notice in writing ("**ADR Notice**") to the other Party(s) requesting mediation. A copy of the ADR Notice should be sent to CEDR. Unless otherwise agreed between the Parties, the mediation shall start no later than ten (10) Working Days after the date of the ADR Notice.
- 25.5 If the Dispute is not resolved within ten (10) Working Days after service of the ADR Notice, any Party fails to participate or ceases to participate in the mediation before the expiry of that ten (10) Working Day period, or the mediation terminates before the expiry of that ten (10) Working Day period, the Dispute shall be finally resolved by the courts of England and Wales.
- 25.6 The Parties may by written agreement, agree to vary the time periods set out in this clause 25 to resolve a Dispute.

25.7 Any decision, judgement or settlement resulting from a Dispute determined in accordance with clause 25 shall be recorded in writing, signed by all the Parties involved, and shall be binding on the Parties. Where the Parties have submitted the Dispute to the Courts of England and Wales, the decision of the Courts of England and Wales shall be binding on the Parties.

## **26. CHANGE PROCEDURE**

26.1 The Parties acknowledge and agree that from time to time during the Term, any Party may request a change to this Agreement. A Party may present its proposal for change to the other Parties who shall consider and discuss the proposal.

26.2 Where the Parties agree to amend the Agreement to reflect the proposal, they shall as soon as reasonably practicable (and in any event within twenty (20) Working Days), evaluate the proposal to determine whether it remains in accordance with the Wales Transport Strategy and associated transport plans and propose and agree the amendments required to the Agreement.

26.3 The Parties shall take all reasonable steps to implement those amendments to the Agreement as soon as reasonably practicable. The Parties acknowledge that any changes agreed pursuant to this clause, are not subject to the general amendment clause at clause 29.

## **27. LIMITATION OF LIABILITY**

27.1 References to liability in this clause 27 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. No Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

27.2 Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:

27.2.1 death or personal injury caused by negligence; or

27.2.2 fraud or fraudulent misrepresentation.

27.3 Subject to clause 27.1 and 27.2:

27.3.1 the Public Sector Parties' total liability under and in connection to this Agreement shall in no event exceed an amount equal to the total amounts payable to the Operator up to the date that this Agreement is terminated; and

27.3.2 the Operator's total liability under and in connection to this Agreement shall in no event exceed an amount equal to the total amounts payable to the Operator under the terms of this Agreement.

## **28. ASSIGNMENT**

28.1 This Agreement is personal to the Parties and may not be assigned (whether absolutely or by way of security and whether in whole or in part), sub-contracted, transferred, mortgaged, charged, declared in trust for a third party, or otherwise disposed of in any manner whatsoever to any third party without the prior written consent of the other Parties and any such purported dealing in contravention of this clause shall be ineffective.



- 28.2 In the event that the Operator disposes of its business (or part of its business), the Operator shall act reasonably to:
- 28.2.1 ensure that the party to which its business is transferred enters into an agreement on equivalent terms to this Agreement in respect of that business (or part of the business) (including, where agreed the rights and obligations in respect of the Umbrella Partnership Agreement or any other agreement entered into to further the intent of this Agreement); and
  - 28.2.2 terminate its participation under this Agreement in accordance with clause 11.8, to the extent that the whole of business is disposed of; and
  - 28.2.3 amend this Agreement to reflect the remaining business where part of the business is disposed of.

## **29. AMENDMENT**

- 29.1 This Agreement may only be amended, modified, varied or supplemented in writing signed by or on behalf of all of the Parties to this Agreement.
- 29.2 The Parties shall, as soon as reasonably practicable following the coming into force of any legislation, regulations or statutory instruments (or any amendments to existing legislation, regulations or statutory instruments) which impacts the terms of this Agreement, review and, if necessary, amend the terms of this Agreement to account for such changes.

## **30. WAIVER**

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

## **31. NOTICES**

- 31.1 Any notice (including any approval, consent or other communication) in connection with this Agreement shall be given in writing and shall either be personally left at the address of the addressee or sent by pre-paid first class post or be sent by electronic mail. The address for service of a Party shall be its address as stated in clause 31.2 or any other address or electronic mail address notified to the other Parties in accordance with this clause 31.1.
- 31.2 The addresses for service of notices are:

### **The Operator**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

### **Welsh Ministers**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

**Transport for Wales**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

**Lead Authority**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

31.3 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with clause 31.4.

31.4 A notice is deemed to be received:

31.4.1 in the case of a notice personally left at the address of the addressee during normal working hours, upon delivery at that address or if not during normal working hours the next Working Day; or

31.4.2 in the case of a first class posted letter (within the United Kingdom), on the third Working Day after posting; or

31.4.3 in the case of an email, in the absence of a delivery error message, at the time of sending to the relevant addressee,

and for the purpose of deemed receipt under this clause 31.4, it shall be sufficient to prove that personal delivery was made or that the envelope containing the posted notice was properly addressed or the email contained the correct email address.

**32. SEVERABILITY**

If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect.

**33. THIRD PARTY RIGHTS**

33.1 Save as otherwise expressly provided for in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

33.2 Where a Lead Authority and/or Constituent Local Authority is stated as having a right pursuant to this Agreement the Lead Authority and/or Constituent Local Authority shall be entitled to exercise that right pursuant to the terms of this Agreement, notwithstanding that it is a third party.

33.3 The rights of the Parties to terminate, rescind or agree any variation to this Agreement are not subject to the consent of any other person.

#### **34. ENTIRE AGREEMENT**

34.1 Subject to clause 34.2, with the Previous BES Funding Arrangements, this Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

34.1.1 no Party has entered into this Agreement in reliance upon, and will have no remedy in respect of, any misrepresentation, representation or statement (whether made by any other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in this Agreement; and

34.1.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement and which is expressly set out in this Agreement will be for breach of contract.

34.2 Nothing in this clause 34 shall be taken to affect the terms of any Existing Supported Services Contract or New Supported Services Contract between any of the parties to this Agreement, including any amendments to such contracts effected by the terms of this Agreement.

34.3 For the avoidance of doubt, nothing in this clause 34 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

#### **35. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and by the Parties as separate counterparts but will not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

#### **36. GOVERNING LAW AND JURISDICTION**

36.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Welsh law.

36.2 Subject to the Dispute Resolution Procedure, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement including (without limitation) in relation to any non-contractual obligations.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed for and on behalf of **WELSH  
MINISTERS** by:

)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

Signed for and on behalf of **TRANSPORT  
FOR WALES** by:

)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

Signed for and on behalf of [**LEAD  
AUTHORITY**] by:

)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

Signed for and on behalf of [**OPERATOR**]  
by:

)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

## SCHEDULE 1: WELSH GOVERNMENT REQUIREMENTS

The Parties acknowledge and agree that in consideration of the Welsh Government providing the BES 2 Funding and other payments pursuant to this Agreement, the Operator shall comply with the following obligations. Failure to comply with these obligations will constitute a material breach under the terms of this Agreement:

### 1. Safety of passengers and staff is paramount

1.1 In providing Local Services the Operator shall comply with the Welsh Government's "Restarting public transport: guidance for operators" (<https://gov.wales/restarting-public-transport-guidance-operators-html>) and any updated guidance provided in response to emerging requirements to respond to the public health impact of the COVID 19 pandemic.

### 2. Reforming Service Delivery

2.1 The Operator shall support the introduction of new and emerging institutional arrangements between the Public Sector Parties that Welsh Government believe are reasonably required to more effectively support the management of bus services in Wales in the future.

2.2 The Operator shall, in good faith, engage with TfW, Welsh Government and the Lead Authorities on behalf of their Constituent Local Authorities to reform funding and reimbursement mechanisms such as BSSG and the Concessionary Travel Scheme to improve the quality and viability of the local services available to passengers in Wales.

2.3 The Operator shall work with TfW and Welsh Government and other operators to develop a vehicle replacement strategy which will help to inform Welsh Government's plans for a sustainable public transport fleet. Subject to the availability of funding and compliance with state aid rules, Welsh Government may fund measures to bring the national fleet up to the required minimum standard.

2.4 Welsh Government is in the process of updating the requirements for the Economic Contract Plan with which all bus operators in receipt of Government funding will be required to sign up to. Once the updated guidance has been published, the Operator shall produce an Economic Contract for approval by TfW, acting reasonably and on behalf of Welsh Government, within (6) six months of publication of the guidance.

2.5 Following the issue of the updated requirements for the Economic Contract Plan, pursuant to paragraph 2.4, TfW shall set out a timetable and process for the development, review, approval and monitoring of the Operator's Economic Contract.

2.6 The Parties acknowledge that, at the time of signing this Agreement, the Operator will not have had sight of the requirements for the Economic Contract Plan. TfW and Welsh Government shall work with the Operator and representatives of the bus industry to reach agreement on affordable and sustainable options for implementing such requirements.

2.7 In advance of the development of the new requirements for the Economic Contract Plan, the Operator shall commit to complying with the principles of the current Economic Contract ([found here](#)), specifically with respect to:

2.7.1 growth potential;

2.7.2 fair work;

- 2.7.3 promotion of health, including a special emphasis on mental health, skills and learning in the workplace; and
- 2.7.4 progress in reducing carbon footprint.
- 2.8 The Operator acknowledges that Welsh Government intends that the Operator's Economic Contract and delivery against the same may form a key part of:
  - 2.8.1 the evidence for the scoring of future competitions for grant funding or other contracts which make use of Welsh Government funding; and
  - 2.8.2 the conditions for other statutory and non-statutory schemes relating to the funding of the bus industry in Wales which Welsh Government may introduce in the future.

### **3. Improving the Passenger Experience**

The Operator shall use reasonable endeavours to work with the Lead Authority, the Constituent Local Authorities and TfW to increase patronage and social inclusion on bus services and the wider public transport network in Wales.

#### **3.1 Routes**

- 3.1.1 To the extent that reinstatement of the pre-COVID 19 network meets the Priorities and can be provided within the funding available, the Operator shall, by agreement with the Lead Authority, progressively re-instate the network of services that the Operator provided prior to the impact of COVID 19.
- 3.1.2 The Lead Authority shall work with the Operator and the Constituent Local Authorities to determine what changes may be required to the network of services provided by the Operator in response to changing passenger demand and patterns of travel and shall authorise such changes, including the use of alternative delivery modes, in line with the Reference Network. Such changes may include adjustments to the Operator's timetables and routes, where these are necessary to integrate the Operator's services, other bus services and modes of transport to provide passengers with improved journey times and a better experience of public transport.
- 3.1.3 During the term of this Agreement, and reflecting the material funding being provided by Welsh Government to support continued provision of Local Services by the Operator, the Operator shall seek permission from the Lead Authority prior to registering any new service. Such permission shall not be unreasonably withheld where the Operator demonstrates compatibility of such service with the Reference Network or justifies the change to the Reference Network based on passenger need and positive impact on value for money for the Lead Authority.

#### **3.2 Fares and Ticketing**

- 3.2.1 The Operator shall demonstrate that it has sought to improve value for money for passengers by confirming that it has considered options for capping and rationalising fares. No increase in fares will be allowed during the Term of this Agreement unless it is part of a proposal, approved by the Lead Authority, to improve overall value for money for passengers.

3.2.2 The Parties shall work together to develop and implement ticketing schemes for the benefit of passengers and the Operator, whether proposed on a statutory or non-statutory basis subject to compliance with competition law.

**4. Negative Conditions**

For the Term of this Agreement the Operator shall not:

- 4.1 act in a way which is primarily intended or expected to make cost effective delivery of the Reference Network more difficult;
- 4.2 carry out their business in a manner which can be shown to, overall, have the intent or expectation of reducing passenger benefits from the bus network in Wales; and
- 4.3 register Local Services which have the primary effect of undermining the value for money of the Subsidised Network (provided that nothing in this paragraph 4 shall prohibit the Operator from replacing an Existing Supported Service or New Supported Service with a Commercial Service which provides the same or better service across all hours of operation of the Supported Service.

**5. Exit from BES 2**

Where clause 10.2 applies, the Operator acknowledges that it is a condition of the payments made under this Agreement that the Operator will work with the Lead Authority, TfW and other operators to develop a set of partnership obligations which will preserve and improve the benefits to passengers embodied in the Welsh Government requirements set out in this Schedule, recognising the fact that such obligations must be compliant with competition law.

## SCHEDULE 2: PARTNERSHIP THEMES

The Parties acknowledge the following matters shall be taken into consideration when agreeing the Umbrella Partnership Agreement and may either be included within the terms of that agreement or may be included as provisions to consider in the implementation of VPAs or other partnership arrangements at a local level.

The Parties shall use the draft form of VPA appended to this Schedule at Section 1 as a template when producing the Umbrella Partnership Agreement.

In developing the Umbrella Partnership Agreement, the Parties agree to build on the Welsh Government requirements as set out in Schedule 1 and to agree a shared, enforceable set of partnership obligations to govern the partnership. Examples of such obligations include the Operators working with TfW and the Lead Authority to develop and, where agreed, implement proposals to:

1. register routes and timetables that support the journey times and interchange opportunities identified in the Reference Network;
2. consolidate core routes, including determining how passengers can benefit from services on core routes irrespective of bus operator, to the extent enabled by competition law;
3. de-duplicate and harmonise route numbering;
4. identify unserved markets and routes that could serve those markets;
5. develop and implement a code of practice on employment terms and driver standards to offer a safe and high quality service to passengers;
6. facilitate the introduction of demand responsive or other approaches to service delivery, e.g. by deregistering the existing Local Services, where it is identified that routes may be more effectively served by other means;
7. align new routes within the Reference Network where appropriate whilst allowing the Operator innovation in respect of new routes and bus services;
8. improve value and/or convenience for passengers. This shall, to the extent enabled by competition law, include working with TfW and the Constituent Local Authorities on the introduction of ticketing schemes (whether statutory or voluntary) which may:
  - 8.1 introduce pay as you go capping;
  - 8.2 rationalise fares; and/or
  - 8.3 introduce day and/or weekly tickets,
9. establish multi-operator ticketing schemes;
10. provide information to support passengers, including the prompt communication of changes to bus timetables through Traveline Cymru, Lead Authority, Constituent Local Authorities and TfW; and
11. invest in bus services alongside the Welsh Government's and Constituent Local Authorities' investment in infrastructure with the aim of improving customer experience.



**Section 1: FORM OF UMBRELLA PARTNERSHIP AGREEMENT**

## **SCHEDULE 3: COMPENSATION, PAYMENT AND RECONCILIATION**

### **Part 1: General and information provision**

The Operator shall provide such information to TFW and the Lead Authority as they may reasonably require in order to calculate support payments, reconciliation payments and compensation to be paid pursuant to this Schedule 3.

### **Part 2: Payment**

1. The Service Payment (SP) shall be calculated as follows:

$$SP = PC + AM - PR + RP - CP$$

Where:

- 1.1 Service Payment (SP): shall be calculated monthly and in accordance with the following:
  - 1.1.1 the first Service Payment under this Agreement, shall be calculated for a part month to take account of the Effective Date. Service Payments shall be paid on the same basis as BES 1.5 until the Parties agree a revised process to incorporate the provisions of this Part 1 of Schedule 3. The Parties shall use reasonable endeavours to agree the revised process by no later than sixty (60) days after the Effective Date. Once the revised process for payment has been agreed, the Parties agree that paragraphs 1.1.3 and 1.1.4 below shall be updated to reflect such agreement. Any adjustments to allow for actual costs, margin and revenue during this first period shall be taken into account as part of the reconciliation process set out in Part 3 of this Schedule;
  - 1.1.2 the Lead Authority shall on a monthly basis by no later than the [ ]th day of each month, notify the Operator of the proposed Service Payment providing reasonable detail as to how it has been calculated in accordance with this Schedule;
  - 1.1.3 the Service Payment shall be paid by the Lead Authority within [ ] days of the Operator issuing an invoice following receipt of the notice in paragraph 1.1.2 in respect of a month, in respect of provision of services for that month; and
  - 1.1.4 where this Agreement terminates or expires, other than at the end of a month, the Lead Authority shall, acting reasonably, determine the date and calculation of payment to ensure that the Operator is paid for provision of Services throughout the term of this Agreement.
- 1.2 Period Costs (PC): shall be such value as the Lead Authority may calculate in accordance with paragraph 1 of Section 1, noting that Inadmissible Costs, as set out in Section 2 to this Schedule, shall not be included in the calculation of PC;
- 1.3 Assumed Margin (AM): shall be the assumed margin payable to the Operator for provision of the Services and shall be a percentage applied to these elements of the Period Costs (PC) for the relevant period i.e. direct costs, variable costs and overhead costs. The AM shall be initially set at 2% of the value of the Periodic Cost. The Parties agree that during the Term, this assumed margin set at 2% shall be subject to ongoing review by Transport for Wales and Welsh Government to ensure that it remains an appropriate percentage to pay Operators as a margin in addition to their costs in accordance with Schedule 5;

- 1.4 Periodic Revenue (PR): shall be all revenue received by the Operator in respect of the relevant period as the Lead Authority may calculate in accordance with paragraph 1 of Section 1;
- 1.5 RP: is any reconciliation payment in accordance with Part 3, and shall be a positive figure where the Reconciliation Payment is to be made to the Operator and a negative figure where a Reconciliation Payment is to be made to the Lead Authority; and
- 1.6 CP: is any compensation payment payable pursuant to Part 4.
- 2. Where:
  - 2.1 SP is a positive figure then this amount shall be paid by the Lead Authority to the Operator, provided that the value of SP shall always be capped at a maximum at the level calculated in accordance with Section 1 (which may vary each month in line with the calculation); and
  - 2.2 SP is a negative figure then this amount shall be paid to the Lead Authority by the Operator, in each case in accordance with clause 9 and this Schedule.
- 3. The Operator shall participate in an open book reconciliation process with TfW and the Lead Authority in accordance with Part 3 to allow assessment of costs to ensure that the Operator has not been overcompensated and that payments reflect the reasonable cost of providing the Services with no more than a reasonable profit earned. Where the reconciliation process determines that the Operator has been over-compensated in any month, the value of the Monthly Costs payable in following months shall be adjusted, at the discretion of the Lead Authority (acting reasonably), such that, the Monthly Service Payment made by the Lead Authority reflects the Lead Authority's expectation of the Operator's costs in future months.
- 4. The Operator acknowledges and agrees that where it fail to provide information in accordance with Section 1 of Schedule 3, this may result in a reduction in the Service Payment to:
  - 4.1 50% in the following month; and
  - 4.2 no payment in the month following the 50% reduction,
 provided that where the operator provides such information the balance of such payment shall be made as part of the next Service Payment.

### **Part 3: Reconciliation**

- 1. The Operator shall participate in an open book reconciliation exercise with TfW and the Lead Authority to enable them to assess compliance by the Operator with the terms of this Agreement and ensure that the Operator has not been over-compensated or under-compensated for provision of services pursuant to the terms of this Agreement. The Operator acknowledges that the support provided to the Operator pursuant to the terms of this Agreement cannot lead to:
  - 1.1 over-compensation of the Operator, and where it is determined that the Operator has been over-compensated for provision of any Local Service that the Lead Authority shall be entitled, on behalf of Welsh Government, to recover the amount of any over-compensation, in accordance with this Part 3 of Schedule 3; or
  - 1.2 under-compensation of the Operator, and where it is determined that the Operator has been under-compensated for provision of any Local Service as a result of events which were outside the reasonable control of the Operator (including the impact of exceptional weather related

events and material unforeseen variations in passenger revenues), and in such circumstances the Lead Authority shall be entitled, on behalf of Welsh Government, to add the amount of any under-compensation to the next Service Payment provided in aggregate provided that the total Service Payments made to the Operator, including any such payments, shall not exceed the maximum levels calculated in accordance with Section 1.

2. The reconciliation process shall be carried out in accordance with paragraph 2 of Section 1 to this Schedule 3.
3. TfW may determine materiality thresholds for the carrying out of the reconciliation process, and determine that it would be disproportionate to carry out a reconciliation process in respect of the Operator. Such decision shall be solely at TfW's discretion, and where TfW makes any such decision, the Operator acknowledges that this shall be without prejudice to any future requirement to examine payments made to the Operator, including where this is required for the purposes of state aid, procurement or competition assessment. It is acknowledged that TfW may determine materiality thresholds by reference to level of payments made to the Operator, or such other criteria as TfW may determine are appropriate.
4. The Operator shall provide any information reasonably required by TfW or the Lead Authority on an open book basis, including, but not limited to, information specified in Part 1 to Schedule 4.
5. Information provided for this purpose may be shared with contractors that are engaged by TfW to undertake any reconciliation exercise or other analysis of the BES 2 Funding.

## Part 4: Compensation

1. Where pursuant to the terms of this Agreement, the Lead Authority or Welsh Government are entitled to be paid compensation by the Operator for breach of the terms of this Agreement, the provisions of this Part 4 shall apply, including:
  - 1.1 where the Operator is in material breach of this Agreement;
  - 1.2 where the Operator fails to agree the terms of the Umbrella Partnership Agreement, in accordance with clause 5.1;
  - 1.3 where the Operator fails to comply with the Welsh Government's "Restarting public transport: guidance for operators" in accordance with paragraph 1.1 of Schedule 1;
  - 1.4 where the Operator fails to comply with the Reference Network and associated Service Standards in accordance with clause 8; and
  - 1.5 where the Operators fails to provide data in accordance with clause 7,

and the Lead Authority shall allocate service failure points ("**SFP**") in respect of each such breach on the following basis:

<b>Trigger</b>	<b>Service Failure Points</b>
Operator fails to agree the terms of the Umbrella Partnership Agreement, in accordance with clause 5.1.	1 SFP for each day following the date on which the Umbrella Partnership Agreement remains unagreed in accordance with clause 5.1.
Operator fails to comply with the Welsh Government's "Restarting public transport: guidance for operators" in accordance with paragraph 1.1 of Schedule 1.	20
Operator fails to comply with the Reference Network and associated Service Standards in accordance with clause 8.	30
Operators fails to provide data in accordance with clause 7	20
<b>Total:</b>	<b>100</b>

Compensation Payments shall be calculated on the following basis:

$$CP = AM \times \frac{SFP}{MSFP}$$

Where:

- 1.5.1 AM means the Assumed Margin for the relevant period as calculated in Part 2 above.
- 1.5.2 SFP means the total number of Service Failure Points allocated in respect of the relevant period.

- 1.5.3 MSFP means the maximum number of Service Failure Points which may be allocated in respect of the relevant period, which shall be 100.
- 1.6 Where SFP's have been allocated for the same trigger in three (3) consecutive months or more, the Lead Authority or Welsh Government shall be entitled to terminate this Agreement in accordance with clause 11.2.

## Section 1: INFORMATION TO BE PROVIDED BY THE OPERATOR

### Definitions

**"Good and Efficient Operator"** means in the context of all other relevant provisions of this Agreement a notional bus operator, having the same commercial, regulatory and operational arrangements as the Operator and being subject to the same operational circumstances (which, for the avoidance of doubt, shall recognise the extraordinary impact of COVID-19, the existence of this Agreement and the requirement for operators to act in the national interest in response to COVID-19) as other bus operators, which complies with its legal obligations, including pursuant to this Agreement and in a timely, efficient and economical manner and with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced bus operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable;

**"Forecast Template"** means the Excel spreadsheet issued by TfW, as updated from time to time, to capture forecast revenue and costs for the purpose of calculating the Service Payment;

**"Inadmissible Costs"** means those costs which are listed in Section 2 to Schedule 3;

**"Management Accounts"** means the periodic management accounts which cover the relevant Quarter;

**"Month"** means a calendar month;

**"Operator Specific Reporting Period"** means a four-weekly, five weekly, monthly or similar cycle on which the Operator posts its accounts;

**"Quarter"** means a period of three (3) months (April to June, July to September, October to December and January to March), or such other three (3) month period as TfW may reasonably specify;

**"Reconciliation Period"** means the closest multiple of the Operator Specific Reporting Period to the Quarter, to be agreed with the Operator; and

**"Reconciliation Template"** means the Excel spreadsheet issued by TfW, as updated from time to time, to capture the actual revenue and income generated and costs incurred by the Operator for the relevant Quarter.

#### 1. Information to be provided Monthly

1.1 In order for PC and PR to be calculated in accordance with paragraph 1 of Schedule 3, for each Month, the Operator shall complete the Forecast Template which provides high level details on the forecast revenue and costs for that Month;

1.2 TfW will provide the Forecast Template for the Operator to complete and return to TfW within fourteen (14) days of the Operator issuing an invoicing following receipt of the notice from the Lead Authority notifying the Operator in reasonable detail of the proposed Service Payment or on such other date as may be agreed with TfW.

1.3 The Operator shall be required to populate the following items in the Forecast Template in respect of all Local Services that they provide, including Commercial Services, Existing Supported Services, Former Commercial Services and New Supported Services:

1.3.1 Forecast farebox revenue: based on the current month's predicted outturn plus adjustment for seasonal factors, including, but not limited to Christmas, Easter and school holidays;

1.3.2 Forecast funding: This shall reflect all funding received by the Operator, including but not limited to BSSG, Mandatory Concessionary Fare reimbursement, Young

Persons Travel payments, CJRS, Job Retention Bonus and Job Support Scheme (as amended or replaced from time to time);

- 1.3.3 Other income: This shall reflect all other income received by the Operator arising from the provision of Local Services, including but not limited to income received from advertising, maintenance and sales; and
  - 1.3.4 Forecast Cost: These shall be broken down by headings, e.g. Staff Costs, Fuel/Maintenance Costs, Overhead Costs, Interest, Depreciation etc.
- 1.4 The Forecast Template will use the information provided in line with paragraph 1.3 to calculate the value of Assumed Margin in accordance with the principles set out in paragraph 2 of Schedule 3.

## **2. Information to be provided for each Reconciliation Period**

- 2.1 In order for RP to be calculated in accordance with paragraph 1 of Schedule 3, at the end of each Reconciliation Period the Operator shall complete the Reconciliation Template which provides details on the actual revenue and income generated and costs incurred in the relevant Reconciliation Period.
- 2.2 TfW will provide the Reconciliation Template for the Operator to complete and return to TfW within fifteen (15) Working Days of the end of the relevant Reconciliation Period.
- 2.3 The Operator shall be required to populate the Reconciliation Template, which TfW may reasonably update from time to time, in respect of all Local Services that they provide, including Commercial Services, Existing Supported Services, Former Commercial Services and New Supported Services. Such information to be provided for each Month in the Reconciliation Period in question plus the figures for the same three (3) Months in the prior year (only required for submissions up to the date when the Operator has provided a full prior years' data to TfW, being data up to [31 March 2021] for most operators).
- 2.4 In the event where any of the Operator's Local Services operate across the Welsh border, the Operator shall assist with any further examination and analysis of the information provided in paragraph 2.3 above to ensure that the BES 2 Funding it receives, does not relate to the section of such Local Service which is outside of Wales.
- 2.5 Once the Operator has submitted the Reconciliation Template, this shall be evaluated by TfW to ascertain whether a Reconciliation Payment adjustment will be made to the next Service Payment following the completion of the reconciliation process in this Schedule 3.
- 2.6 In determining the level of Reconciliation Payment, TfW may request further information or evidence from the Operator as it reasonably requires, such as, but not limited to Management Accounts or receipts relating to certain transactions.
- 2.7 TfW shall use the Reconciliation Template and additional information to check whether any costs included in the template are Inadmissible Costs and may amend the Reconciliation Template to adjust the Reconciliation Payment accordingly where any costs are Inadmissible Costs.
- 2.8 Where Inadmissible Costs are identified and the Period Costs (as defined in Part 2 of this Schedule) are re-calculated, the reconciliation exercise shall include consequential adjustments and reconciliation of the Assumed Margin to reflect the change in Period Costs.



## **Section 2: INADMISSABLE COSTS**

The following costs shall be Inadmissible Costs for the purposes of this Agreement:

1. The Operator agrees and acknowledges that: (i) only reasonable costs incurred and evidenced as ongoing and repeat transactions shall be taken into account; and (ii) it shall operate efficiently during the Term.
2. The Operator shall seek approval from the Lead Authority prior to incurring any material costs which are not ongoing and repeat transactions and agree the basis upon which such transactions will be considered for the purposes of this Schedule 3. Material costs may include investment in vehicles, information technology, costs of depot purchase or refurbishment or major items of plant and equipment. The Lead Authority shall take the following considerations into account when determining the eligibility for BES 2 Funding such costs:
  - 2.1 evidence from the Operator to confirm that such expenditure was in their business plans and/or is required in the current COVID affected circumstances and cannot be deferred until patronage and farebox return to pre-COVID levels;
  - 2.2 confirmation from the Operator that they have explored all other routes for grants and funding such expenditure;
  - 2.3 a forecast of the net impact of the additional expense on their claims under this Agreement; and
  - 2.4 confirmation from the Operator that they will be able to sustain any ongoing payments for this following the cessation of the BES 2 Funding.
3. For the avoidance of doubt, the reconciliation process will not take into account any capital expenditure, exceptional (non-operating) payments or dividend payments in determining whether the Operator has generated a profit before tax, or a loss at the end of each Reconciliation Period. The Lead Authority shall determine whether any capital expenditure will be reimbursed in accordance with paragraph 2 above and will be paid in addition to the Service Payment as calculated pursuant to paragraph 1.1, of Part 2 of Schedule 3.
4. Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator including but not limited to:
  - 4.1 staff, director or officer costs in excess of that set out in the Forecast Template (except where evidenced by the Operator as appropriate to the satisfaction of the Lead Authority);
  - 4.2 costs that do not reflect the contracted position under Existing Supported Services Contracts unless such change has been agreed by the Lead Authority;
  - 4.3 new contracts entered in to by the Operator which have not been procured in compliance with the Operator's usual procurement procedures; and
  - 4.4 variations to existing contracts which have not been made in accordance with the Operator's usual procurement procedures or practice.
5. Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the TfW (in their absolute discretion) in writing.

6. Any expenses, disbursements or equivalent costs (to which the Operator's expenses policy would apply) which are incurred other than in compliance with the Operator's expenses policy.
7. Any cost that the Operator may incur as a result of it failing to comply with any applicable laws, to the extent this gives rise to a criminal liability.
8. Any payments, costs or other liabilities owed to affiliates save in respect of such payments costs or other liabilities which have been incurred by the Operator acting as a Good and Efficient Operator.
9. Costs of developing and protecting any Intellectual Property Rights which are not owned by the Operator or are so owned, but where the costs are not ancillary to an activity included in the Forecast Template.
10. Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of bus services.
11. Fines from government or regulatory bodies.
12. Any costs (including any legal costs and expenses) incurred by the Operator in pursuing any claim against or defending any claim from TfW or Welsh Government in respect of or in connection with the grant offer letter or otherwise.
13. Any costs incurred in relation to the period prior to the BES Funding Period which a Good and Efficient Operator would usually have discharged in the period prior to the BES Funding Period.
14. Any costs incurred in relation to the period prior to the expiry of the term of the BES Funding Period which a Good and Efficient Operator would usually have discharged in the period following the expiry of the BES Funding Period.
15. Interest paid or payable on any loan from any lender that was taken out after the Effective Date (and subject to not having been approved in accordance with paragraph 2 in this Section 2), noting that the cash from such loan will not be taken into account as income in the reconciliation process.
16. Except with the prior agreement of the Lead Authority or TfW (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Operator may incur as a result of the termination of any contract or other arrangement.
17. Except with the prior agreement of the Lead Authority or TfW, losses on disposals of fixed or non-current assets.
18. Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the BES Funding Period or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to or after the BES Funding Period.
19. Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was to be funded by third party.
20. Costs of complying with any audit by TfW or its agents pursuant to any grant offer letter or this Agreement.

21. Reasonable costs for external assistance to complete this proforma up to £1,500 are not Inadmissible Costs. Any amount in excess of £1,500 plus legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of this Agreement are Inadmissible Costs.
22. Legal, accountancy and other costs and expenses incurred in connection with any future arrangements between the Lead Authority or TfW and the Operator following the BES Funding Period.
23. Travel costs (including flight travel) of the Operator primarily relating to the business of their group, noting that TfW would expect the group to cover the cost of any such travel.
24. Any costs which relate to that part of a Local Service which operates outside of Wales which shall be calculated on a pro rata basis to the length of the Local Service or as otherwise more accurately evidenced by the Operator.

## SCHEDULE 4: DATA REQUIREMENTS

### Part 1: Financial Data Requirements

The Operator shall provide the following data in accordance with templates provided by TfW and updated from time to time, in respect of Commercial Services, Former Commercial Services and Local Services provided pursuant to Existing Supported Services Contracts and New Supported Services Contracts:

1. Operational costs and revenue from the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter scheme as well as costs and revenues covering a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter schemes. Where intra-group costs are shown, you must be able to show evidence that these are properly incurred costs of providing the services. These figures shall be disaggregated to show major cost and revenue sources, and shall include any payments received from local authorities and central Government such as:
  - 1.1 payments made under the Coronavirus Jobs Retention Scheme, Job Retention Bonus, Job Support Scheme and any replacement schemes;
  - 1.2 payments (and any reconciliation payments) made under BES including Service Payments received;
  - 1.3 payments pursuant to the terms of any Existing Supported Services Contract or New Supported Services Contract;
  - 1.4 payments under existing bus support arrangements including BSSG, Mandatory Concessionary Fare reimbursement and Young Persons travel payments and shall include any costs associated with the operation of such Local Services, including:
    - 1.4.1 direct costs, such as the costs of drivers, parts and fuel (fuel costs shall include the amounts payable or receivable on fuel related financial derivatives in respect of the relevant period, but exclude any "mark to market" gains or losses on financial derivatives);
    - 1.4.2 semi-direct costs, including but not limited to: the costs of engineering, maintenance, traffic pay, vehicle related costs and marketing;
    - 1.4.3 costs of additional holidays accrued by employees in the relevant claim period;
    - 1.4.4 overhead costs, including but not limited to: the costs of administration, pensions, fixed operating costs, insurance and claims;
    - 1.4.5 pensions expenses, including budgeted pension deficit repair costs, on the basis of the ongoing contributions payable for the relevant period, without adjustment to comply with accounting standards;
    - 1.4.6 operating lease costs on the basis of the lease rentals payable during the Term;
    - 1.4.7 depreciation and amortisation of property, plant, equipment, software and other applicable assets on a basis consistent with the Term; and
    - 1.4.8 reasonable PPE and safe operating costs.

2. Revenue sources to also include farebox revenue generated and all other income received by the Operator, including but not limited to income received from advertising and sales in relation to Local Services.
3. Commercial service kilometres covered by the operator's services per 4-week period during the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter Scheme and that for a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter Scheme.
4. Commercial services run and patronage data per 4 week period for the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter Scheme and that for a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter Scheme.
5. Evidence of the process that the Operator has undertaken with Constituent Local Authorities to agree services, including pursuant to the terms of this Agreement and that service changes have been properly communicated to the general public.
6. Evidence of the Operator's cost implications of removing staff from the furlough system early, reasonable costs to bring vehicles back into service, cost of screens around the driver's cab on buses, on bus capacity signage.
7. The same information as above for the equivalent period in the previous financial year.
8. Additional information (e.g. management accounts) to corroborate any submissions.

## **Part 2: Operational Data Requirements**

Where the data is available to the Operator or from its Electronic Ticket Machines, the following data shall be provided by it to support the prioritisation, co-ordination and design of services and to support the provision of information to passengers. The data may be provided direct from the Operator's Electronic Ticket Machine supplier with its permission, not to be unreasonably withheld, or direct from the Operator. The data shall be provided to TfW (or its nominated agent which may be Traveline Cymru or a local authority):

<b>Data</b>	<b>Format</b>	<b>Source</b>	<b>Scope</b>
Timetable	TransXchange 2.4 to include all stop level detail and full geographic routing information	Scheduling software or entry into an online portal for conversion to TransXchange 2.4	Current timetable
Patronage Data	Report from ETMs	Direct from ETM/Operator	Historic and current to support prioritisation of routes
Passenger Counting/Capacity	SIRI VM feed as amended to include occupancy and bus capacity information or report from ETMs	Direct from ETM/Operator	Historic and current to support passenger information and prioritisation of routes
Origin and Destination Data	Report from ETMs	Direct from ETM/Operator	Historic and current to support prioritisation and design of routes
Fares	Spreadsheet Files for Adult and child fares, zone or rider tickets, m-tickets and multi operator tickets. Move to NeTEx format from January 2021	Direct from ETM/Operator	Historic and current to support passenger information and development of quality partnership schemes and ticketing schemes
Real Time Information	SIRI SM (where currently available)	Direct from ETM/Operator	Every 5-30 seconds
	SIRI VM	Direct from ETM/Operator	Every 5-30 seconds
	TransXchange 2.4 (as a minimum standard) to include Service number, journey code and crew/duty number information for each track/leg for each service  Note that this will move to TransXChange 2.4 once the Department for Transport profile is finalised and adopted	Scheduling software or entry into an online portal for conversion to TransXchange 2.4	5 days advance notice where systems permit

### **Part 3: Permitted Use**

1. Permitted Uses of the Operator Data shall be the following purposes:
  - 1.1 calculation of payments to be made in accordance with Part 2 of Schedule 3;
  - 1.2 periodic reconciliation in accordance with Part 3 of Schedule 3;
  - 1.3 calculation of any additional payments to be made in respect of provision of any additional services to be provided pursuant to clauses 12 (Existing Supported Services: Gross Cost), 13 (Existing Supported Services: Net Cost) or 15 (Supported Services Contracts for Former Commercial Services).
  - 1.4 to support the calculation and payment of BSSG, Mandatory Concessionary Fare Reimbursement or My Travel Pass reimbursement;
  - 1.5 identification of any anomalous Operator costs and for the purposes of any audit of operator data or otherwise pursuant to clauses 7.7 to 7.10 of this Agreement;
  - 1.6 the assessment the viability of routes to support return to commerciality and determine the scope of the Subsidised Network in accordance with clause 8;
  - 1.7 to allow review of the BES 2 Funding mechanism specified in this Agreement by Welsh Government and Transport for Wales, including, but not limited to, pursuant to Schedule 5;
  - 1.8 to inform the reform of funding and reimbursement mechanisms (including BSSG and Mandatory Concessionary Fares) by Welsh Government and Transport for Wales including assessing the impact (or potential impact) of such funding mechanisms (and changes to such funding mechanisms) on the operators of local services in the Welsh bus market;
  - 1.9 to support the management of contracts (including Existing Supported Service Contracts as varied in accordance with the terms of this Agreement) that are being managed under this Agreement including in respect of the delivery of local services in accordance with the Service Specification or to the Service Standards;
  - 1.10 development of the Umbrella Partnership Agreement, and any VPA, QPS or ticketing scheme made pursuant to the terms of such Umbrella Partnership Agreement;
  - 1.11 development of the Reference Network in accordance with clause 8;
  - 1.12 provide of public information about the Operator's Local Services and other Local Services operated in Wales;
  - 1.13 provision of a support service to the Traffic Commissioner, including a registration service (subject always to clause 7.5.1);
  - 1.14 inform investment decisions by Welsh Government, TfW and Local Authorities (including the Lead Authority); and
  - 1.15 inform the broader Welsh Government response to the COVID-19 outbreak.

**Part 4: Public Sector Data Access and Confidentiality**

<b>Data provided</b>	<b>Confidential for the purposes of Clause 21</b>	<b>Commercially Sensitive for the purposes of Clause 23</b>
Schedule 3 Part 2 Payment	Yes	Yes
Schedule 3 Part 3 Reconciliation	Yes	Yes
Schedule 3 Part 4 Compensation	Yes	Yes
Schedule 3 Part 4 Section 1 Information to be Provided by the Operator	Yes	Yes
Schedule 4 Part 1 Financial Data Requirements	Yes	Yes
Timetable	No	No
Patronage Data	Yes	Yes
Passenger counting/capacity	Yes	Yes
Origin and destination data	Yes	Yes
Fares	No	No
SIRI SM	No	No
SIRI VM	No	No
TXC supplementary data	Yes	Yes



## SCHEDULE 5: FUNDING REVIEW

### 1. Funding Review

1.1 Welsh Government shall review the implementation of BES Funding on a periodic basis ("**Funding Review**"), at frequencies to be determined by Welsh Ministers at their sole discretion.

1.2 It is acknowledged that BES Funding has been provided on a discretionary basis by Welsh Government and that Welsh Government shall therefore be entitled to apply its own criteria to determine whether to continue the provision of BES 2 Funding, but such criteria may include:

1.2.1 Performance of the Bus Emergency Scheme (including this Agreement) against the available Funding in meeting the Priorities; and

1.2.2 The levels of Funding available.

1.3 The outcome of any Funding Review may include, but not be limited to, the following:

1.3.1 continuation of the BES 2 Funding on its existing terms;

1.3.2 changes to the BES 2 Funding terms, in which case the Agreement shall be varied in accordance with clause 29 to reflect the requirements of such change.

The Parties agree and acknowledge that the Operator may propose a reduced Service Standard to take account of any reduction in BES 2 Funding, save for where either:

1.3.2.1 BES 2 Funding is removed or reduced due to the removal of social distancing measures that previously impacted on transport capacity; or

1.3.2.2 Welsh Government provide an alternative grant or funding scheme in place of BES 2 Funding which is designed to provide continuity of service; or

1.3.3 ending the BES 2 Funding, in which case the Welsh Government shall use reasonable endeavours to provide the Lead Authority and the Operator with sufficient notice of such change in order to minimise the disruption to the Operator's delivery of Local Services. The minimum notice prior to ending the BES 2 Funding shall be the current period of notice to be provided to the Traffic Commissioner in respect of deregistration of Local Services except for where such decision arises as a result of UK government determining to terminate the financial settlement relating to the impact of COVID-19 on bus services or as a result of the Welsh Government budget setting round in which case the notice shall be a minimum of one (1) month.

1.4 Where BES 2 Funding is terminated pursuant to paragraph 1.3 above, no further payments shall be made pursuant to this Agreement, following such notice period, provided that nothing in this Schedule 5 shall be taken to remove the right of Welsh Government to recover monies paid to the Operator or the entitlement of the Operator to any additional payments calculated, in each case, pursuant to the reconciliation and compensation process specified in Schedule 3.

1.5 The Parties agree and acknowledge that as part of a Funding Review, Welsh Government may review the level of AM (as set out in Schedule 3) and make such adjustments as are reasonable

and necessary to ensure the continued viability of services. The review of the level of AM shall consider available Welsh Government budget, the levels of BES funding being provided to the bus industry and prevailing market conditions.

**SCHEDULE 6: FORM OF SERVICE SPECIFICATION**

<b>Operator</b>	<b>Service Registrati on Number</b>	<b>Service number</b>	<b>Route description</b>	<b>Peak Vehicle Requirement (PVR)</b>	<b>Typical weekly days of operation</b>	<b>Mon-Sat First outward departure</b>	<b>Mon-Sat Last return departure</b>	<b>Number of departures per day per direction (Mon-Fri / Sat / Sun)</b>	<b>Weekday Peak daytime frequency in minutes</b>

**SCHEDULE 7: TEMPLATE REGISTER OF VARIATIONS**

[Region and Operator Name]

No.	Contracting Authority	Contract Reference	Variation	Approver name	Signature and date of signature
1.					
2.					
3.					
4.					
5.					
6.					
7.					

<b>Report to</b>	Cabinet
<b>Date of meeting</b>	19 January 2021
<b>Lead Member / Officer</b>	Councillor Bobby Feeley, Lead Member for Well-being and Independence
<b>Report author</b>	Gary Williams, Head of Legal HR and Democratic Services
<b>Title</b>	Establishment of Sport North Wales Partnership

## 1. What is the report about?

This report is about the establishment of the Sport North Wales Partnership (SNW)

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

To seek Cabinet's support in principle for the establishment of the Sport North Wales Partnership.

## 3. What are the Recommendations?

3.1. That Cabinet supports in principle the establishment of the Sport North Wales Partnership subject to it approving the final Inter-Authority Agreement.

3.2. That Denbighshire Leisure Limited be appointed to represent the Council on the Governance Board of the Sport North Wales Partnership acting as an agent of the Council.

## 4. Report details

4.1. Sport Wales is the national organisation responsible for increasing participation and improving performance in sport in Wales, and historically has provided annual funding to each Local Authority and other partners to undertake a number of sporting programmes and interventions across North Wales;

including 'Active Young People' and the 'Free Swimming Initiative', which are delivered by Wrexham's Active Wrexham Team.

- 4.2. The Vision for Sport in Wales is to transform Wales into an 'Active Nation', supported by the Sport Wales Strategy, which envisages a Wales where everyone is Active, and was the starting point to establish a Sport Wales Partner Investment Strategy.
- 4.3. In response to this Strategy, a collaborative partnership was established in 2018, tasked with developing a shared vision and business case, leading to the formation of Sport North Wales (SNW) – the thirteen partners include the six north Wales Local Authorities, BCUHB; Public Health Wales, Housing Associations; Universities; GwE; and Disability Sport Wales – who have worked together to develop the shared Business Case and shared vision: *'To empower our communities in North Wales to be more active, leading healthier and happier lives'*
- 4.4. It is proposed that there will be five regional organisations across Wales in the future, however SNW will be the pilot region, and the structures and processes implemented in the formation of SNW will provide learning to help establish the other four regional bodies.
- 4.5. The agreed Business Case has been submitted to Sport Wales for their consideration and decision at their Board on 26 November 2020. All partners (Cyngor Sir Ynys Môn/Isle of Anglesey County Council, Cyngor Gwynedd/Gwynedd Council, Cyngor Sir Ddinbych/Denbighshire County Council, Cyngor Sir y Fflint/Flintshire County Council, Cyngor Bwrdeistref Sirol Conwy/ Conwy County Borough Council, Bwrdd Iechyd Prifysgol Betsi Cadwaladr/Betsi Cadwaladr University Health Board, GwE (Regional Education Consortium), Chwaraeon Anabledd Cymru/Disability Sport Wales, Iechyd Cyhoeddus Cymru/Public Health Wales, Prifysgol Bangor/Bangor University, Prifysgol Glyndŵr/Wrexham Glyndwr University, Cymdeithasau Tai Rhanbarthol/ Regional Housing Associations) are currently seeking formal approval from their respective organisations to support the establishment of Sport North Wales. A template report has been prepared for submission to each partner body and is attached as Appendix 1 to this report. The template report

has appended to it the Heads of Terms for the Inter-Authority Agreement that will need to be entered into by each of the partners.

4.6. If SNW is approved, the cumulative funding from Sport Wales (estimated at c. £2.7m million per annum for the region) will be directed through SNW and decisions on priority investment will be undertaken by the Partnership Board with over-sight by the Governance Board. The indicative total 5-year funding for SNW from 2021/22 to 2025/26 is £13,529,494.

4.7. The collaborative partnership has agreed to adopt a local authority 'hosted model' approach pursuant to section 2 of the Local Government Act 2000 and section 111 of the Local Government Act 1972, whereby Local Authority Members enter into an Inter-Authority Governing Agreement, which sets out clearly their roles and responsibilities in relation to the governance and structure of SNW.

4.8. As a consequence of the governance model which has been proposed, it is necessary to identify a Host Organisation to support this collaborative work, and, following partner engagement workshops, Conwy CBC registered an expression of interest in becoming the Host Authority, and submitted a Business Case to undertake the role for an initial term of five years. It is therefore proposed that Conway CBC will be the Host Authority.

4.9. The Governance Board of SNW will be made up of representatives of each of the six North Wales local authorities. It is proposed that Denbighshire Leisure Limited (DLL) represent the Council at this Board acting as agent of the Council. Any significant decisions that are required to be made by the Board may be submitted through the Council's decision making processes for ratification. DLL will report on the work of the Board through the existing contract management meetings and the Strategic Governance Board.

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

The provision of activities funded by Sport North Wales will contribute to the physical well-being of residents of all ages.

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

Currently, Sport Wales provides separate funding directly to the six local authorities as well as other organisations, which are then responsible for spending in their respective areas. However, if SNW is approved, the cumulative funding from Sport Wales (estimated at c. £2.7m million per annum for the region) will be directed through SNW and decisions on priority investment will be undertaken by the Partnership Board with over-sight by the Governance Board.

The indicative total 5-year funding for SNW from 2021/22 to 2025/26 is £13,529,494. This is for community sport; free swimming; Lottery local grant scheme; an Innovation fund; and strategic operating support. (The Lottery and Innovation Funds will be held and administered by Sport Wales but will be available for SNW to draw against).

## **7. What are the main conclusions of the Well-being Impact Assessment?**

SNW has undertaken an internal assessment of the SNW Vision against the Well Being of Future Generations (Wales) Act 2015 and Sport Wales Strategy priorities and outcomes. The SNW Partnership will have a positive impact on all seven goals of the Well-Being of Future Generations Act, by delivering the vision of Sport Wales. A separate Well-being Impact Assessment has not therefore been completed.

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

Engagement has taken place with the following partners/stakeholders:

- Cyngor Sir Ynys Môn/Isle of Anglesey County Council
- Cyngor Gwynedd/Gwynedd Council
- Cyngor Sir Ddinbych/Denbighshire County Council
- Cyngor Sir y Fflint/Flintshire County Council
- Cyngor Bwrdeistref Sirol Conwy/Conwy County Borough Council
- Bwrdd Iechyd Prifysgol Betsi Cadwaladr/Betsi Cadwaladr University Health Board
- GwE (Regional Education Consortium)
- Chwaraeon Anabledd Cymru/Disability Sport Wales
- Iechyd Cyhoeddus Cymru/Public Health Wales



- Prifysgol Bangor/Bangor University
- Prifysgol Glyndŵr/Wrexham Glyndwr University
- Adra
- Cartrefi Conwy
- Wales and West Housing Clwyd Alun Housing Association
- Grwp Cynefin Housing Association
- Tai Gogledd Cymru (North Wales Housing)
- Cartrefi Cymunedol

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

The level of funding will not change as a result of the new arrangements. However, there is a risk going forward that the regional priorities do not match local ones which may mean that further investment is required in order to meet those local priorities. Having a constructive and strong representation on the SNW Boards will help mitigate that risk.

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

There is a risk that if the Council is not a party to the Sport North Wales Partnership, it will not be in a position to influence the transformation of sport in North Wales and ensure Denbighshire continues to receive investment to develop participation in sport and physical activity

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

s2 Local Government Act 2000

s111 Local Government Act 1972

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# Sport North Wales

## Establishment of Sport North Wales Partnership

### Summary Report

Draft

October 2020

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# Sport North Wales

*Establishment of Sport North Wales Partnership*

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# Sport North Wales

*Establishment of Sport North Wales Partnership*

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## 1. Purpose

- 1.1. To request approval for XXXX to support the establishment of Sport North Wales (SNW) Partnership.
- 1.2. To request approval for XXXX to be a partner in the Sport North Wales(SNW) Partnership and/or represent XXXX on the SNW Governance Board.

## 2. Background and context

2.1. The context behind the formation of SNW is the national Vision for Sport in Wales which seeks to transform Wales into an Active Nation (<https://visionforsport.wales/>) and also the Sport Wales Strategy which envisages a Wales where everyone is Active (<https://www.sport.wales/sport-wales-strategy/>). This is the starting point for the Sport Wales Partner Investment Strategy and the rationale for SNW.

2.2. The Vision for SNW has been developed through our new and exciting collaborative partnership. This is made up of a number of well-established organisations who operate across the region – organisations that share a collective ambition to work together and to make a significant change and impact which will benefit the people of North Wales.

**‘To empower our communities in North Wales to be more active, leading healthier and happier lives’**

2.3. SNW’s collaborative approach reflects the fact that no one organisation can achieve this ambition on its own and it is vital that we work in partnership with communities and other public sector organisations, private sector and third sector to make the improvements happen.

## 3. The progress of SNW to date

3.1. In responding to the new vision for regional working, SNW has been through a number of important developmental stages since the summer of 2018. In summary it has:

- i) Obtained formal Local Authority permission to proceed with an Expression of Interest and subsequent Business Case.
- ii) Undertaken an Options Appraisal of the best governance models
- iii) Developed consensus of the governance framework i.e. a host authority for an initial term of 5 years
- iv) Developed insight piece to identify key regional issues aligned to the outcomes and identify the delivery partners / projects who are able to provide the solutions and innovation.

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## Sport North Wales

### *Establishment of Sport North Wales Partnership*

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- 3.2. After 5 years it is envisaged that SNW will be firmly established as an effective and robust regional body. It will be seen and recognised as providing clear leadership, insight and overview to effectively encourage and support innovation and challenge to those delivering physical activity across the region. SNW will add value and drive change in community commissioning and delivery by working more closely with, and within, those communities. As a result of SNW's collaborative approach, there will be evidence of real change and benefits to all communities across North Wales through a common output and outcome measurement system. This Performance Management Framework will be developed to support and benefit SNW's cross sector collaboration and will be based on learning and evidence and impact. Learning will be key in terms of future delivery.

## 4. The Transition from existing delivery arrangements to the SNW Partnership

- 4.1. The SNW Strategic Outcomes Framework contributes to the Sport North Wales Year 1 Business Case 2020/21 Transition Phase.

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Following the partner engagement workshops and the creation of the Strategic Outcomes Framework, the first North Wales Regional Plan was developed. This plan was developed and informed by the submission of six individual Local Authority based plans for 2020/21, detailing local commitment and approach to implementing the emerging Sport North Wales Strategic Framework. These LA plans align to the Strategic Outcomes Framework; they highlight the use of insight, data and information that informed the individual LA plans and priorities, in line with Sport North Wales' Intent, and approaches within the Strategic Framework.

- 4.3. The following key principles underpin the Strategic Outcomes Framework, the Regional Plan and LA plans:

- **Partners will commit to working with Sport North Wales (SNW) on the ongoing development of a shared understanding of what collaborative regional leadership, planning and delivery will look like going forward; in considering regional collaboration it will be fundamental to ensure that this happens at all levels and in all possible directions so that priorities, the thinking about how best to address these and the sharing of learning is embedded in and around the SNW Partnership**
- **Partners recognise that future decisions will be based on collective insight and learning, building on the successful aspects of the current delivery system across North Wales, as well as meeting their local needs;**
- **2021-22 will be a transition year where all partners will need to be proactively and collectively contributing during this period, to ensure we have truly collaborative and coordinated approach to North Wales; and**
- **Partners to continue to consider their Free Swim Plans, within the context of Sport North Wales, and will continue to commit to working with the Sport North Wales and Project Team, Sport Wales and Swim Wales.**

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## Sport North Wales

### *Establishment of Sport North Wales Partnership*

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4.4. The Key Principles for funding North Wales LA's 2021/2022 as part of the transition phase will be:

- **LA Partners will commit to working with Sport North Wales (SNW) on the ongoing development of a shared understanding of what collaborative regional leadership, planning and delivery will look like going forward;**
- **LA Partners recognise that future decisions will be based on collective insight and learning, building on the successful aspects of the current delivery system across North Wales, as well as meeting their local needs; and**
- **2021-22 will be a transition into a new way of working. All LA partners will need to be proactively and collectively contributing during this period, to ensure we have truly collaborative and coordinated approach to North Wales.**

4.5. As SNW gathers momentum future editions of the Regional Plan will be informed by the wider collaborative and commissioned partners who collectively will support the implementation of the regional vision.

In future regional planning exercises the process of developing the Regional Plan will be wider than just local authorities.

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## **Host authority – Conwy CBC**

5.1. It was recognised early on that the transition phase and the early years of SNW will require support from a hosting organisation. This is for three main reasons:

- **It will enable SNW, through the SNW Regional Director to focus on establishing the partnership and the outcomes to be delivered, as opposed to recruiting staff to deliver back office support**
- **It will enable SNW as a partnership to develop internal learning about the nature and extent of resources it needs internally, and which it can source externally**
- **It will enable understanding from the outset about the budget for organisational operation as distinct from that which will be focussed on the collaborative working to deliver identified outcomes**

5.2. The initial hosting of SNW will be the responsibility of Conwy County Borough Council (CCBC); this was agreed through a competitive process whereby interested parties were invited to bid to be the host organisation.

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## Sport North Wales

### *Establishment of Sport North Wales Partnership*

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5.3. The SNW Members agreed that CCBC will be the lead authority for the initial 5 years of the Partnership. The specific role of CCBC is to:

- **Be the lead and host authority and accountable body for the Sport North Wales Collaboration;**
- **Be responsible for the appointment and employment of the Regional Director;**
- **As lead and host authority, be allocated an agreed proportion of the Sport Wales Funding to contribute towards the Regional Director role and CCBC's role as the lead and host authority;**
- **As the host authority of the Collaboration, be the principal contact for engagement with Sport Wales in relation to the Sport Wales Funding and adherence to the Sport Wales governance requirements on behalf of the Collaboration;**
- **Manage the SNW Account and be responsible for the allocation of funding from the SNW Account as determined by the Governance Board;**
- **Engage employees to roles related to the management and operation of the Collaboration;**
- **Ensure that Partnership Board and Governance Board meetings are undertaken in accordance with the provisions for the board set out in [Appendix 1](#).**

5.4. In addition to the above, CCBC will provide organisational and administrative support to SNW.

## **6. Governance and Legal Framework**

6.1. The draft Heads of Terms (HOT) for the SNW Partnership is set out in full in [Appendix 1](#).

6.2. Pursuant to section 2 Local Government Act 2000 and section 111 Local Government Act 1972 the SNW Members will enter into the Inter-Authority Governing Agreement to set out clearly their roles and responsibilities in relation to the governance and structure of SNW.

6.3. SNW Partners will sign up to the Partnership and the Head of Terms for an initial term of five years from the date on which the Agreement is validly executed by the SNW Members.



# Sport North Wales

Establishment of Sport North Wales Partnership

## 7. Financial

- 7.1. Currently, Sport Wales provides separate funding directly to the six local authorities, which are then responsible for spending in their respective regions. However, if SNW is approved, it will receive cumulative funding from Sport Wales (estimated at c. £2.7m million per annum for the region) and will decide on how this money is spent across the North Wales region.
- 7.2. SNW is clear that the indicative total 5 year funding for Sport North Wales from 2021-22 to 2025-26 is as follows:

Table 7.1: Indicative total 5 year funding for Sport North Wales from 2021-22 to 2025-26

	Sport North Wales	Description
<b>WG Exchequer</b>	£4,540,307	A resource to give every young person a great start through providing person centred activities. (This currently funds community sport and is used to employ staff – Active Young People budget).
<b>Free Swim Investment</b>	£1,617,750	Hypothecated funding to deliver the requirements of the Free Swimming Initiative
<b>Lottery – local grant scheme *</b>	£4,608,937	Lottery budget: A commissioning budget to support local development opportunities with delivery aligned to the Vision for Sport in Wales.  (This includes current Community Chest and an allocation of Development Grant budgets)
<b>Innovation Fund *</b>	£2,187,500	Lottery Budget: A commissioning budget to develop new collaborative & innovative opportunities aligned to the Vision for Sport whilst delivering local / regional priorities. This resource is to be used as a tool to leverage match funding.
<b>Strategic Operating Support</b>	£575,000	To support the strategic function of the partnership through leadership, developing insight and support to operational running.
<b>Total over 5 years</b>	<b>£13,529,494</b>	

\* The Lottery and Innovation Funds will be held and administered by Sport Wales but will be available for SNW to draw against.

- 7.3. A draft budget for the initial 5 years of SNW is summarised in [Appendix 2](#). This sets out the known income for SNW and additional funding through commercial or other sources which SNW has the ambition of raising together with the Project Costs and defined Hosting Costs apportioned to Conwy.

## **8. Time-line and Approval Process**

- 8.1. SNW is submitting this business case to Sport Wales in October 2020 for assessment, in preparation for their Sport Wales Board on the 26<sup>th</sup> November 2020.
- 8.2. Partners are requested to confirm their support for the establishment of Sport North Wales (SNW) Partnership as near to the above date as possible.

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## Appendix 1: Heads of Terms for Inter-Authority Governing Agreement for Sport North Wales Collaboration

Number	Provision	Material Obligations
1.	Parties	<p><b>Conwy County Borough Council</b> of Bodlondeb, Conwy North Wales, LL32 8DU ("<b>CCBC</b>");</p> <p><b>Denbighshire County Council</b> of Wynnstay Road, Ruthin, LL15 1YN;</p> <p><b>Flintshire County Council</b> of County Hall, Mold, Flintshire CH7 6NB;</p> <p><b>Gwynedd Council</b> of Council Headquarters, Castle Street, Caernarfon, Gwynedd, LL55 1SE;</p> <p><b>Isle of Anglesey County Council</b> of Council Offices Llangefni, Anglesey LL77 7TW;</p> <p><b>Wrexham County Borough Council</b> of 16 Lord Street, Wrexham LL11 1LG;</p> <p><b>Betsi Cadwaladr University Health Board</b> of Wrexham Maelor Hospital, Croesnewydd Road, Wrexham, LL13 7TD;</p> <p><b>Bangor University</b> of College Road, Bangor, LL57 2DG</p> <p><b>Wrexham Glyndwr University</b> of Mold Road, Wrexham, LL11 2AH</p> <p><b>Disability Sport Wales</b> of Sport Wales National Centre, Cardiff, CF11 9SW</p> <p><b>GwE</b> of Bryn Eirias, Ffordd Abergele, Bae Colwyn, LL29 8BY</p> <p><b>Public Health Wales</b> of 2 Capital Quarter, Tyndall Street, Cardiff, CF10 4BZ</p> <p><b>Adra</b> of Tŷ Coch, Llys y Dderwen, Parc Menai, Bangor, LL57 4BL</p> <p><b>North Wales Housing</b> of Plas Blodwel, Broad Street, Llandudno Junction, Conwy, LL31 9HL.</p> <p><b>Wales &amp; West Housing</b> of Tŷ Draig, St. David's Park, Ewloe, Deeside. CH5 3DT</p> <p><b>Grwp Cynefin</b> of Ty Silyn, Penygroes, Gwynedd.</p> <p><b>Cartrefi Conwy</b> of Morfa Gele, North Wales Business Park, Cae Eithin, Abergele, LL22 8LJ</p> <p><b>ClwydAlyn</b> of 72 Ffordd William Morgan, St Asaph Business Park, St Asaph, Denbighshire. LL17 0JD</p> <p>each an "<b>SNW Member</b>" and together the "<b>SNW Members</b>" (except where individually defined).</p>
2.	Background and Recitals	<p>Under the brand/banner of "Sport North Wales", the SNW Members are in the process of preparing a business case, for submission to Sport Wales and Welsh Government, in relation to the creation of a collaboration which will, via CCBC as the host authority of the collaboration, receive funding directly from Sport Wales for expenditure on sport and leisure activities and projects across North Wales ("<b>Sport North Wales</b>" or the "<b>Collaboration</b>").</p> <p>The SNW Members understand that good governance is a key foundation for the success of Sport North Wales and is not only the management of day-to-day operations but rather the framework of strategy, risk management controls and processes and an organisational approach to ensure the culture, values and integrity are observed by all.</p> <p>Currently, Sport Wales provides separate funding directly to the six local authorities detailed in paragraph 1 (Parties), which are then responsible for spending in their respective regions. However, if Sport North Wales is approved, the Collaboration will receive funding from Sport Wales (estimated at c. £13.14 million over the five year term) ("<b>Sport Wales Award</b>") and will decide on how this money is spent across the North Wales region.</p>

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Number	Provision	Material Obligations
Page 108		<p>It is envisaged that the creation of the Collaboration will facilitate spending across a wider platform and support Sport North Wales' vision "to empower our communities in North Wales to be more active, leading healthier, happier lives" (the "<b>Vision</b>") which in turn aligns with the Sport Wales strategy and ultimately contributes to the sector-wide vision of "an active nation where everyone can have a lifelong enjoyment of sport".</p> <p>While parties to the Collaboration are set out in paragraph 1 of these Heads of Terms, the Collaboration Agreement ("<b>Agreement</b>") entered into by the SNW Members contains a Project Approvals Process (see paragraph 10) through which SNW Members and other delivery organisations, such as sports clubs in North Wales ("<b>Delivery Organisations</b>") are able to apply for funding from Sport North Wales to support local and regional sports projects across North Wales.</p> <p>In order to support its business case for the creation of Sport North Wales, the SNW Members need to present a legal and governance framework with their business case, to demonstrate that a strong structure is in place which will ensure that the SNW Members have representation and a decision-making process which is effective and will support achievement of the:</p> <ol style="list-style-type: none"><li>1) Objectives;</li><li>2) the Vision; and</li><li>3) the Sport Wales Governance and Leadership Framework; and</li><li>4) the Sport Wales Capability Framework.</li></ol> <p>Pursuant to section 2 Local Government Act 2000 and section 111 Local Government Act 1972, if the business case for Sport North Wales is approved by Sport Wales, the SNW Members will enter into the Agreement which sets out clearly their roles and responsibilities in relation to the governance and structure of the Sport North Wales collaboration, as set out in these Heads of Terms.</p> <p>The parties agree that the provisions contained in these Heads of Terms would govern the relationship between the parties in the Sport North Wales collaboration, if approved by Sport Wales.</p> <p>Sport North Wales will comprise two boards:</p> <ol style="list-style-type: none"><li>1) a Governance Board which has members from the six local authorities in North Wales; and</li><li>2) a Partnership Board which has wider representation from the public sector in North Wales (local authorities, health, education, housing and equalities) in addition to independent members appointed on the basis of their skills.</li></ol> <p>The Partnership Board sits under the Governance Board and has a more operational focus, (see section 8 below) with responsibility for implementing the strategic vision of Sport North Wales and ensuring Sport North Wales' Objectives are progressed successfully across the region, though with a local impact, whereas the Governance Board will oversee the governance of Sport North Wales and the activities of the Partnership Board (see section 7 below).</p>

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Number	Provision	Material Obligations
		<p>The reason for having two boards is that SNW have agreed to adopt a local authority 'hosted model' approach pursuant to section 2 Local Government Act 2000 and section 111 Local Government Act 1972. This requires the SNW Local Authority Members to enter into this Inter-Authority Governing Agreement, which sets out clearly their roles and responsibilities in relation to the governance and structure of SNW. Rather than having one board with decision-making powers held centrally by the six Local Authorities it was agreed to introduce a second board (the Partnership Board) which would have authority to implement the vision for SNW and could engage wider representation of the regional partnership as well as independent skills based board members. The dual boards approach ensures sufficient scrutiny and accountability for both strategic and operational activities, with a clear delineation between the two.</p> <p>A Regional Director, employed by CCBC, will have responsibility for the performance and success of Sport North Wales and will act as a liaison between the Partnership and Governance Board (see section 9 below).</p>
3.	Term	<p>An initial term of five years from the date on which the Agreement is validly executed by the SNW Members.</p> <p>Capable of extension by agreement of the SNW Members and Sport Wales with the length of the extension also to be agreed by the SNW Members.</p>
4	Sports North Wales' Objectives and Values	<p>Sport North Wales' Objectives, aligned with the Sport Wales Governance and Leadership and Capability Frameworks, are:</p> <ol style="list-style-type: none"> <li>1. To modernise, improve and develop a sustainable sport sector in North Wales ensuring a balance between leadership and governance to realise the Vision and set the strategic direction for North Wales through skills-based diverse Governance and Partnership Boards;</li> <li>2. Creating the conditions necessary for the sector to respond proactively and dynamically to the challenges placed on public bodies by the Future Generations (Wales) Act 2015 to consider the long-term impact of their decision-making and prioritise working with people and communities;</li> <li>3. Increase participation in sport through: <ul style="list-style-type: none"> <li>➤ acting with integrity, accountability and transparency;</li> <li>➤ prioritising workloads and areas that can make the biggest difference;</li> <li>➤ focusing on behaviour and culture;</li> <li>➤ putting participants' interests at the heart of decision-making and ensuring a participant-focused approach;</li> <li>➤ establishing a basis for conversations about how the SNW Members can improve as organisations; and</li> <li>➤ a focused outcomes framework which targets children, young adults, adults and over-60s.</li> </ul> </li> <li>4. Tackling the socio-economic challenges confronting those involved with community sport;</li> <li>5. Tackle inequality in sport and cater for the diverse nature of the sector to ensure the safety, wellbeing and welfare of all participants in sport;</li> <li>6. Ensuring a strong approach to health and safety compliance pervades all activities of the Collaboration;</li> <li>7. Ensuring that safeguarding standards are met in all areas of Sport North Wales;</li> </ol>

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Number	Provision	Material Obligations
		<ol style="list-style-type: none"> <li>8. Attracting investment from other sources of funding; and</li> <li>9. Promote equality, diversity, sustainability and inclusivity in all actions.</li> </ol>
5.	CCBC's Obligations	<p>The SNW Members agree that CCBC shall be the lead authority for the duration of the Term. CCBC shall, as the host authority:</p> <ol style="list-style-type: none"> <li>1) Be the lead and accountable body for the Sport North Wales Collaboration;</li> <li>2) Shall be responsible for the appointment and employment of the regional director ("<b>Regional Director</b>" see paragraph 9 below) and additional support staff dedicated to the Collaboration;</li> <li>3) be allocated an agreed proportion of the Sport Wales Award to contribute towards the Regional Director role and additional support staff pursuant to CCBC's role as the lead and host authority;</li> <li>4) be the principal contact for engagement with Sport Wales in relation to the Sport Wales Award and adherence to the Sport Wales governance requirements on behalf of the Collaboration;</li> <li>5) be the contractual party to an agreement with Sport Wales in respect of the Sport Wales Award on behalf of Sport North Wales ("<b>Sport Wales Award Agreement</b>");</li> <li>6) be the contractual party to any funding agreements with SNW Members or Delivery Organisations which are to receive funding in respect of Projects approved by either the Regional Director, Partnership Board or Governance Board;</li> <li>7) Manage the SNW Account (see paragraph 11 below) and be responsible for the allocation of funding from the SNW Account as determined by the Governance Board;</li> <li>8) Engage employees to roles related to the management and operation of the Collaboration;</li> <li>9) Ensure that Partnership Board and Governance Board meetings are undertaken in accordance with the provisions for the boards set out in paragraphs 7 and 8.</li> </ol>
6.	SNW Members' Obligations	<p>The SNW Members shall:</p> <ol style="list-style-type: none"> <li>1) contribute towards the strength, success and sustainability of Sport North Wales by allocating sufficient resource to the Partnership and Governance Boards and work collaboratively, in good faith and with integrity, accountability and transparency, for the benefit of North Wales;</li> <li>2) adhere to the Objectives which set out the principles, values, ethics and morals which apply to all aspects of the Sport North Wales Collaboration;</li> <li>3) develop a comprehensive customer service charter which ensures that customers are dealt with promptly, effectively and courteously at all times;</li> <li>4) ensure that fully-functioning and efficient IT systems are maintained during the term of the Agreement;</li> </ol>

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Number	Provision	Material Obligations
Page 111		<p>5) ensure that the Collaboration performs in a way which promotes and enhances the reputation of both Sport North Wales and Sport Wales through a clear marketing plan which promotes usage of and access to sport;</p> <p>6) support CCBC with any requests for information which are required to support the Collaboration in relation to dealings with Sport Wales, Welsh Government and any other funders of Sport North Wales;</p> <p>7) agree that CCBC, as the host authority for Sport North Wales, has authority to accept payment of the Sport Wales Award on behalf of Sport North Wales (which reflects what was previously a separate award by Sport Wales to each of the six local authority SNW Members);</p> <p>8) ensure that Applications proposed by other SNW Members or Delivering Organisations, pursuant to the Project Approvals Process, are given an equal and proportionate consideration;</p> <p>9) ensure that priority is given to contents of the Application, and the merit of the Application and its alignment with the Vision and Objectives, rather than the particular SNW Member or Delivering Organisation that has submitted the Application;</p> <p>10) ensure that the number and scale of Applications they submit to the Partnership and Governance Boards are reasonable and proportionate;</p> <p>11) direct all press and publicity queries related to Sport North Wales to CCBC or a nominated press officer appointed by the Governance Board of Sport North Wales;</p> <p>12) be responsible for the delivery of Projects, once approved by the Governance Board, in accordance with Project Delivery Plans, accepting that Sport North Wales' role is limited to the consideration and approval of Applications/Projects and the provision of funding rather than the actual delivery of the Projects;</p> <p>13) provide any information required by the Governance Board and CCBC to:</p> <ul style="list-style-type: none"> <li>➤ evidence that funding allocated to it for a Project has been spent on that Project;</li> <li>➤ evidence the progress of a Project which has been approved by the Governance Board;</li> <li>➤ report to Sport Wales in relation to the progress of Sport North Wales and the Projects approved by the Governance Board;</li> <li>➤ assist CCBC comply with, and demonstrate its compliance with, the Sport Wales Award Agreement;</li> <li>➤ enable CCBC to carry out its obligations under the Agreement.</li> </ul> <p>14) support CCBC's compliance with the terms of the Sport Wales Award Agreement;</p> <p>15) Reimburse CCBC for any funding which is not spent in relation to the Project for which the funding was approved;</p> <p>16) Reimburse CCBC for any costs or expenses CCBC incurs as a result of a breach of the Sport Wales Award Agreement caused by the SNW Member;</p> <p>17) Enter into any agreements, as required, in relation to the delivery of a Project using funding distributed pursuant to the Collaboration;</p> <p>18) Permit representatives of the Governance Board to carry out any inspections or audits to support evidence that:</p> <p>19) funding allocated is being spent in accordance with the Project Delivery Programme; and</p> <p>20) a Project is progressing in accordance with the Project Delivery Plan approved by the Governance Board;</p> <p>21) acknowledge Sport North Wales in any promotion of a Project which uses Sport North Wales funding and, as applicable, use any Sport North Wales branding;</p> <p>22) acknowledge Sport Wales and, if applicable, the support of the National Lottery (or any subsequent or other funders) in any promotion of a Project which uses funding from these organisations and, as applicable use their branding.</p>

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Number	Provision	Material Obligations
7.	Governance Board	<p>The balanced, inclusive, diverse and skilled Governance Board has a strategic and supervisory focus to ensure the continued success of Sport North Wales against the Objectives, overseeing the Partnership Board.</p> <p>The Governance Board comprises 1 representative appointed by each of the six local authority SNW Members which are parties to the Collaboration.</p> <p>Each of the six local authority SNW Members shall have the authority to appoint their officer representative on the Governance Board ensuring that their representative is appointed on the basis of the range of skills required to ensure a balanced, inclusive and skilled Governance Board. This representative shall be "fixed" to ensure consistency though temporary replacements may be required in certain circumstances.</p> <p>A chair shall be appointed by the Governance Board (one of the six local authority representatives).</p> <p>The Governance Board shall meet quarterly and shall:</p> <ol style="list-style-type: none"> <li>1) Review the progress of Sport North Wales, as a whole, against the Objectives and ensure that the objectives of Sport Wales are aligned with those of Sport North Wales through the Projects approved by Sport North Wales;</li> <li>2) Review the progress of approved Projects, as a whole (rather than individual Projects), unless the individual Project has a strategic regional impact;</li> <li>3) Review and approve Applications for funding with a funding value exceeding £50,000;</li> <li>4) Confirm arrangements for distribution of funding in respect of approved Projects;</li> <li>5) Provide transparent feedback to the Partnership Board in respect of any Applications which it rejects;</li> <li>6) Resolve any issues raised by the Partnership Board (both formally and pursuant to the Dispute Resolution Process);</li> <li>7) Make any decisions in respect of the customer service strategy and marketing plan which are raised by the Partnership Board;</li> <li>8) Assist with the appointment of the Regional Director, as requested by CCBC, in the event that the Regional Director has not already been appointed by CCBC, or assist with the appointment of a replacement Regional Director (again, as requested by CCBC);</li> <li>9) Assist CCBC's Director/Head of Service with their line management responsibilities in respect of the Regional Director, as requested by the CCBC Director/Head of Service (e.g. by providing feedback on the Regional Director's performance).</li> <li>10) Be responsible for monitoring the performance of the Partnership Board against Sport North Wales' Objectives and values;</li> <li>11) Be responsible for appointing the representatives to the Partnership Board, with the independent chair of the Partnership Board participating in these appointments;</li> <li>12) Invite the independent chair of the Partnership Board to meetings, as required, to participate and represent the Partnership Board; and</li> <li>13) Invite representatives from Sport Wales to meetings, as required to observe and support;</li> </ol>



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Number	Provision	Material Obligations
Page 8 of 13		<p>In advance of each meeting of the Governance Board, the Regional Director shall circulate an agenda, together with copies of all supporting documentation related to the agenda items (including Applications to be considered at the forthcoming meeting). Following each meeting, minutes shall be circulated to representatives of each SNW Member.</p> <p>The Governance Board has decision-making power in respect of the Collaboration and, subject to the Dispute Resolution Process, its decisions are binding on the SNW Members in so far as the Sport Wales Award is concerned.</p> <p>The Governance Board shall be appointed for the five year term of the Agreement.</p> <p>Meetings of the Governance Board shall require a quorum of 4 SNW Members and may take place electronically.</p> <p>The Governance Board shall consider and review the governance of the Collaboration at least once per year of the term for the purpose of determining whether any improvements or variations required to the scope and remit of either the Partnership Board, Governance Board or Collaboration itself should be introduced for the benefit of the operation of the Collaboration. Any variations shall be processed through the change control procedure set out in paragraph 13 below.</p>
	Partnership Board	<p>The balanced, inclusive, diverse and skilled Partnership Board has a wider participation than the Governance Board and is focused on the operational, day-to-day activities of Sport North Wales.</p> <p>The Partnership Board comprises 6 representatives from the existing SNW Members which are part of Sport North Wales (2 from local authorities, 1 from health, 1 from education, 1 from housing and 1 equalities).</p> <p>The Partnership Board shall also include up to 5 independent board members who are externally recruited by the Governance Board based on their skills and diversity and who represent the region of North Wales and shall work to ensure performance of the Sport North Wales' Objectives.</p> <p>Local authority representatives on the Partnership Board shall be different to those local authority representatives on the Governance Board.</p> <p>An independent chair shall also be appointed to the Partnership Board (i.e. 12 representatives in total when including the 6 SNW Member representatives and 5 independently-recruited representatives).</p> <p>The Partnership Board shall initially meet monthly (and will review the frequency of these meetings following the initial six-month period from the date of the Agreement) and shall:</p> <ol style="list-style-type: none"> <li>1) Ensure the strategic direction and Objectives of Sport North Wales are progressed successfully;</li> <li>2) Review and approve Applications:</li> </ol>

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Number	Provision	Material Obligations
Page 114		<p>3) from Delivery Organisations/SNW Members for funding between £10,000 and £50,000; and</p> <p>4) from Delivery Organisations/SNW Members for funding below £10,000 where support is requested by the Regional Director;</p> <p>5) Review Applications for submission to the Governance Board where the funding exceeds £50,000;</p> <p>6) Discuss ideas for forthcoming projects which may be worked into Applications;</p> <p>7) Provide a forum for the SNW Members' to advise and support each other (and Delivering Organisations) on the completion of Applications ensuring compliance with the Sport North Wales Objectives;</p> <p>8) Agree approach, action plans and timelines for developing Applications considering any multi-party involvement in an Application;</p> <p>9) Discuss any issues or challenges in respect of Projects which are being delivered and how the SNW Members may work together to overcome/help the Delivering Organisation/SNW Member which is delivering the Project to overcome these issues or challenges;</p> <p>10) Lead on stakeholder engagement which seeks the views, experiences, insights and suggestions from sports participants and Delivering Organisations in North Wales;</p> <p>11) Monitor the progress and adherence of the customer service charter and provide updates to the Governance Board;</p> <p>12) Monitor the progress of the marketing plan and provide updates to the Governance Board;</p> <p>13) Discuss feedback from the Governance Board in respect of any rejected Applications;</p> <p>14) Invite representatives from Sport Wales to meetings, as required to observe and support the Sport North Wales Collaboration;</p> <p>15) Be responsible for the appointment of an independent chair who:</p> <ul style="list-style-type: none"> <li>➤ acts as the Partnership Board's lead;</li> <li>➤ is an unpaid non-executive director who brings experience which will facilitate the Partnership Board's activities;</li> <li>➤ represents the Partnership Board in any discussions at the Governance Board level;</li> <li>➤ shall work closely with the Regional Director to contribute towards performance of the Objectives; and</li> <li>➤ shall participate in the Governance Board's appointment of representatives to the Partnership Board.</li> </ul> <p>In advance of each meeting of the Partnership Board, the Regional Director shall circulate an agenda, together with copies of all supporting documentation related to the agenda items (including Applications to be considered at the forthcoming meeting).</p> <p>Following each meeting, minutes shall be circulated to representatives of each SNW Member.</p> <p>The Partnership Board is an operational board which is integral to the success of Sport North Wales and the delivery of Projects which benefit North Wales but it does not have decision-making power in respect of the Collaboration or approval of Applications for delivery as Projects with a funding value above £50,000. It does, however, have the power to approve Applications for delivery as Projects with a funding value below £50,000.</p> <p>The Partnership Board shall be appointed for the five year term of the Agreement.</p> <p>Meetings of the Partnership Board shall require a quorum of 6 and may take place electronically.</p>

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Number	Provision	Material Obligations
9.	Regional Director	<p>The Regional Director, appointed by CCBC shall:</p> <ol style="list-style-type: none"> <li>1) Be responsible for the operation of Sport North Wales ensuring its activities contribute towards performance of the Objectives in accordance with this Agreement;</li> <li>2) Be responsible for liaising with the Partnership Board and presenting any issues raised by the Partnership Board to the Governance Board;</li> <li>3) Be the lead officer responsible for delivering the SNW Objectives and strategic plan;</li> <li>4) Be responsible for advising the Governance Board on any governance or risk issues of which the Regional Director becomes aware through their role;</li> <li>5) Review and approve Applications for funding with a funding value up to £10,000, requesting support from the Partnership Board if required;</li> <li>6) Sit on both the Partnership and Governance Boards in a reporting capacity;</li> <li>7) Work with, and on behalf of, the Governance Board to lead the strategic direction, development and profile of Sport North Wales regionally in accordance with the Vision and strategic plan to facilitate achievement of Sports North Wales' Objectives and values for the benefit of North Wales;</li> <li>8) Represent the Governance Board on the Partnership Board;</li> <li>9) Work closely with the independent chair of the Partnership Board to contribute towards performance of the Objectives;</li> <li>10) Represent Sport North Wales in discussions with Sport Wales and other stakeholders and partners, providing updates in relation to the activities and progress of Sport North Wales (as requested);</li> <li>11) Promote the brand of Sport North Wales and create contacts throughout the UK to maximise Sport North Wales' visibility and profile;</li> <li>12) Be responsible for securing further funding for Sport North Wales in addition to that received from Sport Wales; and</li> <li>13) Secure sponsorship (both corporate and non-corporate) for Sport North Wales Projects and activities.</li> </ol>
10.	Project Approvals Process	<p><b><u>Value Levels</u></b></p> <p>If the level of funding requested is £10,000 or under, the Regional Director shall have the power to approve Applications from a Delivery Organisation or SNW Member.</p> <p>If the level of funding requested is £50,000 or under, the Partnership Board shall have the power to approve Applications from a Delivery Organisation or SNW Member.</p> <p>If the level of funding requested is above £50,000, the Partnership Board shall determine whether an Application from a Delivery Organisation or SNW Member is approved for consideration by the Governance Board; and the Governance Board shall have the power to approve the Application.</p>

Number	Provision	Material Obligations
Page 116		<p><b><u>Applications – First Step and Content</u></b></p> <p>Applications to the Regional Director (if funding requested is below £10,000) or Partnership Board (if funding requested is above £10,000), whether from a Delivery Organisation or SNW Member, shall follow an approved template form and detail:</p> <ul style="list-style-type: none"> <li>a. The name of the Delivery Organisation or SNW Member;</li> <li>b. The nature and scope of the proposed project and financial values attributed to the main elements of the project;</li> <li>c. the level of funding requested from Sport North Wales;</li> <li>d. the level of funding which the Delivery Organisation/SNW Member will contribute to the project from its own (or other) resources;</li> <li>e. A "<b>Project Delivery Plan</b>" which includes: <ul style="list-style-type: none"> <li>f. targets and outputs;</li> <li>g. milestone dates for the key elements of the project;</li> <li>h. deliverables;</li> <li>i. an explanation of how the project aligns with Sport North Wales' Objectives and values;</li> <li>j. an explanation of the benefits to the Delivery Organisation/SNW Member and North Wales as a region if the project is approved, together the "<b>Application</b>".</li> </ul> </li> </ul> <p><b><u>Consideration of Applications</u></b></p> <p>The Regional Director shall consider Applications for funding below £10,000 as and when they are submitted to them. The Regional Director may request support from the Partnership Board when considering Applications for funding below £10,000.</p> <p>The Partnership Board shall consider Applications with a value exceeding £10,000 at the relevant monthly Partnership Board meeting.</p> <p>The Governance Board shall consider Applications approved by the Partnership Board at the next Governance Board quarterly meeting following the Partnership Board meeting in which approval was given to the Application.</p> <p><b><u>Rejected Applications</u></b></p> <p>If an Application is not approved by the Regional Director, the Partnership Board or the Governance Board, a summary of the reasons for rejecting the Application shall be provided to the Delivery Organisation/SNW Member that submitted the Application in addition to providing feedback on areas to develop if the Application is to be re-submitted in the future.</p> <p>A re-submitted Application shall be reviewed in the same way as an Application submitted for the first time and re-submission does not guarantee that an Application will be approved by the Regional Director/Partnership Board on its second, or future, submission.</p>

Number	Provision	Material Obligations
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 117</p>		<p><b><u>Application Approval Considerations</u></b></p> <p>In determining whether an Application is approved by the Regional Director, Partnership Board or Governance Board, the following shall be considered:</p> <ul style="list-style-type: none"> <li>a. the alignment of the Application with the Vision, Objectives and Values;</li> <li>b. the Application's promotion of the principles of the customer service charter;</li> <li>c. the Application's outputs and deliverables in relation to North Wales as a region;</li> <li>d. the deliverability of the proposed project (including the applicant SNW Member's capacity to deliver and the relevant timeframe for delivery);</li> <li>e. the level of funding required and the availability of funding to Sport North Wales.</li> </ul> <p><b><u>Application Approval Requirements</u></b></p> <p>To be approved by the Regional Director, the Application must satisfy the above considerations.</p> <p>To be approved by the Partnership Board, the Application requires more than 50% approval from the Partnership Board representatives in attendance. If the initial vote is a 50:50 split decision, the Application shall not be approved by the Partnership Board.</p> <p>To be approved by the Governance Board, an Application requires more than 50% approval from the Governance Board representatives. If the initial vote is a split 50:50 decision, the chair shall have the casting vote.</p> <p><b><u>Approved Applications (Projects)</u></b></p> <p>If an Application is approved, the Regional Director, Partnership Board or Governance Board shall confirm:</p> <ul style="list-style-type: none"> <li>a. that the Application, once approved, is a "<b>Project</b>";</li> <li>b. the level of funding awarded for delivery of the Project;</li> <li>c. steps which the Delivery Organisation/SNW Member must confirm before the funding is committed to the Project;</li> <li>d. any agreement that the Delivery Organisation/SNW Member must enter into with CCBC before it receives any funding in respect of the Project; and</li> <li>e. the frequency of payment of instalments of funding (if not provided in full at the outset of a Project being approved).</li> </ul> <p>Following approval of the Project, the Delivery Organisation/SNW Member must deliver the Project in accordance with the Project Delivery Plan and any agreement entered into by the Delivery Organisation/SNW Member and CCBC in respect of delivery of the Project.</p>

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Number	Provision	Material Obligations
11.	Separate Account	<p>In order to ensure effective financial management controls and systems are maintained, CCBC shall maintain a separate account into which the Sport Wales Award is paid ("<b>SNW Account</b>"). This account shall transparently show the transactions in relation to the Sport Wales award and shall be subject to open book accounting such that all parties have a clear understanding of:</p> <ol style="list-style-type: none"> <li>1) The transactions into and out of the account; and</li> <li>2) The values of these transactions.</li> </ol> <p>Any queries in relation to the SNW Account may be discussed by the Partnership Board and Governance Board.</p>
12.	Employees	<p>As a contractual arrangement, employees of each SNW Member shall remain employed by the respective SNW Member and there is no intention that these employees TUPE-transfer to another SNW Member as a result of the Collaboration.</p> <p>If employee posts at a SNW Member, funded from Sport Wales Award, become vacant for employees in a SNW Member, the Collaboration shall:</p> <ol style="list-style-type: none"> <li>1) Consider the role which has been vacated and whether there is a requirement, for the Collaboration as a whole, to replace the role; and</li> <li>2) Then consider the best approach to replace this role by consideration of the skills required to contribute towards success of the Collaboration; and</li> <li>3) Determine which SNW Member is best-placed to employ the replacement employee (which is not necessarily the SNW Member from which the employee departed).</li> </ol> <p>The Regional Director. Partnership Board and Regional Director shall advise in relation to replacement of departed employees.</p>
13.	Change Control Procedure	<p>Any of the SNW Members may request an amendment to the scope, nature, structure or operation of the Collaboration and/or any term of the Agreement (a "Change") in accordance with the process outlined below (the "Change Control Procedure"):</p> <p>Where an SNW Member requests a Change:</p> <p>The relevant SNW Member will submit a written request for a change (a "Change Request Notice") to the Governance Board setting out as much information as is necessary to enable the Governance Board to prepare a written record of the Change which may be approved by the parties pursuant to this Change Control Procedure (a "Change Control Form"); and the Governance Board will, unless otherwise agreed, circulate a Change Control Form to all SNW Members after the next Governance Board meeting following dispatch of the Change Request Form by the relevant SNW Member.</p> <p>The Change Control Form shall contain sufficient information to enable the all parties to assess the Change, including as a minimum:</p>

# Sport North Wales

## Establishment of Sport North Wales Partnership

Number	Provision	Material Obligations
Page 119		<ul style="list-style-type: none"> <li>➤ the title of the Change;</li> <li>➤ the originator of the Change and date of request;</li> <li>➤ description of the Change;</li> <li>➤ details of the effect of the proposed Change on:</li> <li>➤ the Collaboration;</li> <li>➤ the Vision;</li> <li>➤ any existing or future Projects; and</li> <li>➤ any other term of the Agreement;</li> <li>➤ the date of expiry of validity of the Change Control Form; and</li> <li>➤ provision for signature by the SNW Members and the chairman of the Partnership Board.</li> </ul> <p>If, following the circulation a Change Control Form pursuant to this Change Control Procedure:</p> <ul style="list-style-type: none"> <li>➤ all of SNW Members and the Governance Board agree to the terms of the relevant Change Control Form, they will each sign it and the signed Change Control Form will amend this Agreement; or</li> <li>➤ any of the SNW Members or the Governance Board do not agree to any term of the Change Control Form, then the party proposing the Change may refer the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.</li> </ul> <p>No Change will come into effect until a Change Control Form has been signed by the authorised representatives of all SNW Members and the chair of the Governance Board.</p> <p>Each party will bear its own costs in relation to compliance with the Change Control Procedure.</p>
	14.	Statutory Functions
15.	Dispute Resolution Procedure	The SNW Members agree to resolve any dispute or issue between themselves in accordance with the procedure set out at Schedule 1.
16.	Termination	<p>The Agreement shall terminate on expiry of the initial five-year term unless:</p> <ol style="list-style-type: none"> <li>a. terminated earlier by mutual agreement of SNW Members; or</li> <li>b. extended further by mutual agreement of SNW Members.</li> </ol>

# Sport North Wales

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Number	Provision	Material Obligations
		For the avoidance of doubt, any extension or termination of the Agreement shall be agreed by all SNW Members and not simply members present at a particular Governance Board meeting.
17.	Succession	<p>This Agreement shall be binding on and be to the benefit of, the parties to this Agreement and their respective Successors and permitted transferees and/or assignees. References to a party in this Agreement shall therefore include that party's Successors, permitted transferees and/or assignees.</p> <p><b>"Successor"</b> shall mean "any legal entity, organisation, charity, partnership, company or other legal personality which subsumes, merges with, acquires or otherwise replaces any of the SNW Members following a Change of Control, organisational restructure, act of Parliament, Change in Law, or act of Government.</p>
18.	Exit	<p>Without affecting any other right or remedy available to it, any SNW Member may unilaterally opt to become an <b>"Exited Party"</b> to this Agreement subject to the service of a written notice of not less than six months' (an <b>"Exit Notice"</b>) to the other parties.</p> <p>Notwithstanding the provisions of (1) above, the transition of an SNW Member to an Exited Party in accordance with the terms of this agreement, shall not, for the avoidance of doubt, discharge an Exited Party from any obligations or liabilities arising in connection with its obligations under this Agreement prior to the Exit Date.</p> <p>An <b>"Exited Party"</b> shall be "an SNW Member that ceases to be a party to this Agreement after the Exit Date"; and</p> <p>The <b>"Exit Date"</b> shall be "the date stated on a duly served Exit Notice as the date an SNW Member will become an Exited Party. For the avoidance of doubt, the Exit Date shall be a date not less than six months from the date of the Exit Notice.</p>
19.	Freedom of Information	The SNW Members acknowledge that they all have obligations to comply with the Freedom of Information Act 2000 and shall promptly assist each other with compiling information required to respond any request which relates to the Sport North Wales collaboration.
20.	Entire Agreement	<p>The SNW Members agree that this Agreement is the entire agreement and understanding between the parties in relation to the governance of the Sport North Wales collaboration.</p> <p>The parties cannot rely on other documents, oral agreements, representations as to the governance of the Sport North Wales collaboration unless such obligations are covered in the Agreement.</p>
21.	No Partnership	The Agreement is not establishing a formal partnership between the SNW Members and does not authorise any party to make commitments for the other, except to the extent that such commitments are set out in the Agreement.



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## Sport North Wales

### *Establishment of Sport North Wales Partnership*

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Number	Provision	Material Obligations
22.	Governing Law and Jurisdiction	The Agreement is subject to English and Welsh law and the exclusive jurisdiction of the Courts of England and Wales.
23.	Third Party Rights	A person or entity other than the SNW Members does not have any rights under the Contracts (Rights of Third Parties Act) 1999 to enforce any term of the Agreement.
24.	Counterparts	The Agreement may be executed in counterpart and by electronic means.
25.	Additional Provisions	Further provisions are to be confirmed in the Agreement relating to:  <ol style="list-style-type: none"><li>1) severability;</li><li>2) amendments; and</li><li>3) <b>[ADDITIONAL BOILERPLATE CLAUSES]</b></li></ol>

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## SCHEDULE 1

### Dispute Resolution Procedure

If any dispute arises out of, or in connection with the Collaboration, the SNW Members shall follow the procedure set out below.

- 1) Through its representative on the Partnership Board, the SNW Member shall give written notice to the Partnership Board of its issue, setting out its nature and full particulars, together with relevant supporting documents in advance of a Partnership Board meeting ("**Issue Notice**").
- 2) At the next Partnership Board meeting following circulation of the Issue Notice, the Partnership Board shall attempt in good faith to resolve the issue, taking a holistic view to resolution of the issue considering the collaborative objectives of Sport North Wales.
- 3) If the Partnership Board is unable to resolve the issue at the Partnership Board meeting, it will escalate the issue for consideration at the next Governance Board meeting. The Governance Board shall attempt in good faith to resolve the issue and make any proposals to the SNW Member which raised the issue initially to resolve the issue.
- 4) If the SNW Member does not accept the resolution or proposals of the Governance Board, the parties shall attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing ("**ADR Notice**") to the other parties to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start no later than 14 days after the date of the ADR Notice.
- 5) If the mediation is not resolved within 28 days after service of the ADR Notice, the dispute shall be finally resolved by the courts of England and Wales.

# Sport North Wales

Establishment of Sport North Wales Partnership

## Appendix 2: Draft SNW 5 Year Budget

Income	2021-22	2022-23	2023-24	2024-25	2025-26
<b>Sport Wales</b>					
Active Young People	1,003,520	953,344	905,677	860,393	817,373
Free Swimming Initiative	323,550	323,550	323,550	323,550	323,550
Operational	159,119	115,000	115,000	115,000	115,000
	<b>1,486,189</b>	<b>1,391,894</b>	<b>1,344,227</b>	<b>1,298,943</b>	<b>1,255,923</b>
<b>Other Programme Grants</b> (SNW will apply for grants which will support programmes in the region)	0	0	0	0	0
<b>Additional Commercial Income</b> e.g. Events and Corporate Partners	0	50,000	60,000	70,000	100,000
<b>TOTAL INCOME</b>	<b>1,486,189</b>	<b>1,441,894</b>	<b>1,404,227</b>	<b>1,368,943</b>	<b>1,355,923</b>
<b>Operating Expenditure</b>					
<b>Staff costs</b>					
Regional Director - based on £60k salary	82,000	82,984	83,980	84,988	86,007
P/T Administrator	23,089	23,551	24,022	24,502	24,992
	<b>105,089</b>	<b>106,535</b>	<b>108,002</b>	<b>109,490</b>	<b>110,999</b>
<b>Host authority costs</b>	<b>14,300</b>	<b>14,300</b>	<b>14,300</b>	<b>14,300</b>	<b>14,300</b>
<b>Partnership costs</b>					
Office costs - stationery, phones etc	1,250	1,250	1,250	1,250	1,250
Office accomodation	6,000	6,000	6,000	6,000	6,000
Training	1,000	1,000	1,000	0	0
Translation	4,080	4,080	4,080	4,080	4,080
Marketing / publicity	7,200	7,200	7,200	7,200	7,200
Travelling	2,500	2,500	2,500	2,500	2,500
External Audit fee	1,500	1,500	1,500	1,500	1,500
Procurement	2,000	2,000	2,000	2,000	2,000
Monitoring and Evaluation	6,000	6,000	6,000	6,000	6,000
Contingency (10%)	3,200	3,200	3,200	3,000	3,000
	<b>34,730</b>	<b>34,730</b>	<b>34,730</b>	<b>33,530</b>	<b>33,530</b>
<b>Governance &amp; Partnership Boards</b>					
Meeting; travel	5,000	5,000	5,000	5,000	5,000
<b>SNW Ring Fenced Projects</b>					
SW Active Young People	1,003,520	953,344	905,677	860,393	817,373
SW Free Swimming Initiative	323,550	323,550	323,550	323,550	323,550
<b>SNW Projects</b>	0				
	<b>1,327,070</b>	<b>1,276,894</b>	<b>1,229,227</b>	<b>1,183,943</b>	<b>1,140,923</b>
<b>TOTAL EXPENDITURE</b>	<b>1,486,189</b>	<b>1,437,459</b>	<b>1,391,259</b>	<b>1,346,263</b>	<b>1,304,752</b>
<b>Profit + / Loss -</b>	<b>0</b>	<b>4,435</b>	<b>12,968</b>	<b>22,680</b>	<b>51,171</b>
<b>Public Service Contribution in kind</b>					
Line Management by host authority	15,000	1 day per week, line management of Regional Director by Head of Service			
Governance Board	6,912	4 days per year, 6 LAs at Head of Service level			
Partnership Board	17,280	12 meetings per annum for 5 SNW members at Head of Service level			
<b>Total Contribution In Kind</b>	<b>39,192</b>				

## Sport North Wales

Establishment of Sport North Wales Partnership

### 2b: Transition year and set-up costs

	£		
IT costs - purchase of laptops	2,000		
Purchase of Mobile phones	300		
Recruitment Cost	3,000		
Operational costs	1,250		
Legal costs	3,000		
Translation	4,080		
Marketing / publicity	2,000		
Project management	2,813		
Contingency/Flexibility	1,400	10% contingency	
<b>Total</b>	<b>19,843</b>		

### 2c: Hosting costs

	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5		
Central Support Cost (finance support, p	10,000	10,000	10,000	10,000	10,000	Best estimate	
Legal costs (DWF as retainer)	3,000	3,000	3,000	3,000	3,000	£3k pa retainer	
Contingency/Flexibility	1,300	1,300	1,300	1,300	1,300	10% contingency	
<b>Total</b>	<b>14,300</b>	<b>14,300</b>	<b>14,300</b>	<b>14,300</b>	<b>14,300</b>		

<b>Report to</b>	<b>Cabinet</b>
<b>Date of meeting</b>	<b>19<sup>th</sup> January 2021</b>
<b>Lead Member / Officer</b>	<b>Councillor Julian Thompson-Hill / Liz Grieve Head of Communities &amp; Customers</b>
<b>Report author</b>	<b>Geoff Davies, Lead Officer – Community Housing</b>
<b>Title</b>	<b>Housing Rent Setting &amp; Housing Revenue and Capital Budgets 2021/22</b>

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

- 1.1. To seek approval from Cabinet for the Denbighshire Housing annual rent increase, the Housing Revenue Account Capital and Revenue Budgets for 2021/22 and Housing Stock Business Plan.

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

- 2.1. It is a statutory requirement to set budgets and rent levels before the start of the new financial year. The budget must be consistent with the assumptions within the Housing Stock Business Plan (HSBP) which has been designed to maintain Welsh Housing Quality Standard throughout the 30 year business plan.

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

- 3.1. That the Housing Revenue Account Budget for 2021/22 (Appendix 1) and the Housing Stock Business Plan (Appendix 2) be adopted.
- 3.2. That rents for Council dwellings be increased in accordance with the Welsh Government (WG) Policy for Social Housing Rents to an average weekly rent of £93.89 with effect from Monday 5th April 2021.
- 3.3. Cabinet are asked to note the additional report (appendix 3) on Cost Efficiencies, Affordability and Value for Money prior to approving this rent increase.

3.4. That the Committee confirms that it has read, understood and taken account of the Well-being Impact Assessment (Appendix 4) as part of its consideration.

## **4. Report details**

4.1. The latest forecast outturn for the HRA for 2020/21 is detailed in Appendix 1, in line with the monthly monitoring report. Balances, at year end, are forecast to be £1,379m.

The proposed budget for 2021/22 is also detailed in Appendix 1. The budget has been calculated to ensure we can deliver our revenue services, the capital investment programme to maintain the quality standard of our homes and develop our new build programme.

We are anticipating significant additional costs in future years due to likely new decarbonisation standards for our existing stock. All social landlords in Wales are anticipating additional funding from WG to support any announcement on this.

In addition, we expect Local Authorities to be able to bid for Social Housing Grant (SHG) for new build programmes for the first time in 2021. Our current programme of 170 additional homes has been incorporated within the HSBP.

### **Welsh Government Rent Policy**

Welsh Government developed a policy for social housing rents that will be applied consistently by all social landlords and reflect the type; size; location and quality of the Landlord's properties.

In December 2019 the Welsh Government announced a five year rent policy. The policy agrees an annual rent uplift to CPI +1% from 2020/21 to 2024/25 using CPI from the previous September. For 2021/22 this is 1.5% (CPI at 0.5% +1%).

To enable landlords to restructure rents if required, up to an additional £2 per week can be charged to individual homes, on condition that the total rent income collected increases by no more than CPI +1%. We are not proposing to add the additional £2 to any property. This means that:

- The overall total increase across all stock is 1.5%.
- The average weekly rent will be £93.89
- The average weekly rent increase will be £1.38

As part of the WG rent policy, the council will be required to ensure that any rent increase considers affordability for tenants, value for money and an assessment of cost efficiencies. Information on this is attached in appendix 3.

Whilst 2020 has been a difficult year for household finances and this will continue into 2021, we are satisfied that affordability of our weekly rents with the rent increase has been considered as we have to balance our ability to invest in our housing stock for the benefit of all our tenants, consider well managed growth through our new build and provide services to support our households effectively.

### **Housing Stock Business Plan (HSBP)**

As part of the budget process it is necessary to review the Housing Stock Business Plan and this is achieved through a due diligence exercise on an on-going basis to review the assumptions used and to validate the robustness of the financial model. In addition the review undertakes a sensitivity analysis.

The current Housing Stock Business Plan assumes a minimum balance of £1m is maintained over the mid-term to mitigate against any future risks.

The HSBP maintains borrowing to fund capital works such as the new build and improvement programmes. The level of borrowing is closely monitored as this is related to annual capital financing costs. All council's in Wales have reached agreement with Welsh Government to remove the borrowing cap from HRA's as per the Deed of Termination of HRA Subsidy Voluntary Agreement 20th March 2019. This repealed the previously agreed cap introduced by the Housing Act 2014 settlement payment.

Local Authorities in Wales are still required by Regulation to have regard to the Prudential Code when carrying out their duties under Part 1 of the Local Government Act 2003. Therefore any borrowing undertaken by LHAs following the abolition of the borrowing cap will continue to be "unsupported" and any increase is for Local Authorities to manage within their existing resources.

Welsh Government are currently working with councils in Wales with HRA's, to determine and agree appropriate debt levels.

### **Service Charges**

Service chargeable income collects actual costs for specific services and overall shows a slight decrease over last year to £377,608. Individual properties may be subject to a varied charge. The average charge per property is £2.14 per week.

### **Welsh Housing Quality Standard**

The Council achieved the Welsh Housing Quality Standard to all the Housing Stock in September 2014. Capital spend has been included in the HSBP which ensures sufficient resources are available to continue to maintain and exceed this standard over the 30 year plan. Denbighshire Housing is investing in our stock and our neighbourhoods going above WHQS where we think it is appropriate for the benefit of our customers and the longer term improvement of our housing stock.

The stock condition survey has identified repairs, maintenance and improvement costs for the next 30 years which have subsequently been built into the business plan and shall inform the developing asset management plan.

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

- 5.1. Housing is a Corporate Priority and the 5 year capital program will provide a boost to the local economy by maximising the local employment, training and supply chain opportunities for local people and businesses.

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

- 6.1. The Housing Revenue Account is ring fenced and costs of implementation are covered by income through rents and service charges.



## **7. What are the main conclusions of the Well-being Impact Assessment?**

7.1. The Council appreciates that any increase in weekly rent could have an impact on some of our customers' ability to meet their weekly commitments.

The Housing service will continue to offer advice and support to all customers to ensure that customers can manage their finances effectively and maximise their income. Rent collection performance remains excellent and arrears are amongst the lowest in Wales.

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

8.1. The Denbighshire Tenants and Residents Federation (DTARF) have been consulted and the reason for the rent increase and the impact on the HRA business plan has been fully explained to the group.

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

9.1. A full review of the Housing Stock Business Plan (HSBP) has confirmed that the Plan remains robust and financially viable. There are sufficient resources to support the management and supervision of the housing service and the investment needs of the stock. Balances are at a prudent level while allowing the funding of new capital expenditure to be provided in the most cost effective way.

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

10.1. The risk is a failure to follow the Housing Stock Business Plan and to set budgets accordingly could lead to financial concerns and potential intervention by Welsh Government.

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

11.1. Rent policy is determined by the Housing (Wales) Act 2014. The Housing Revenue Account is ring-fenced by statute.

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## APPENDIX 1

<b>Housing Revenue Account ~ 2021/22 Budget Setting</b>				
<b>2019/20</b>		<b>2020/21</b>		<b>2021/22</b>
<b>Final Outturn</b>		<b>Original Budget</b>	<b>Forecast Out-turn M9</b>	<b>Proposed Budget</b>
<b>£</b>	<b>Period 9 - December 2020</b>	<b>£</b>	<b>£</b>	<b>£</b>
	<b><u>EXPENDITURE</u></b>			
2,484,450	Supervision & Management - General	2,668,895	2,675,507	2,748,583
497,107	Supervision & Management - Service Charges	544,105	547,774	562,838
4,947,811	Repairs and Maintenance	4,929,000	5,030,388	5,103,000
<b>7,929,368</b>	<b>Total Housing Management</b>	<b>8,142,000</b>	<b>8,253,669</b>	<b>8,414,421</b>
5,670,615	Item 8 Capital Charges	6,501,000	6,220,730	6,362,000
1,536,297	Capital Funded from Revenue	1,871,000	2,581,000	2,485,000
228,686	Provision for Bad Debts	319,000	319,000	345,000
<b>15,364,966</b>	<b>Total Expenditure</b>	<b>16,833,000</b>	<b>17,374,399</b>	<b>17,606,421</b>
	<b><u>INCOME</u></b>			
15,804,974	Rents (net of voids)	16,023,974	15,791,780	16,372,000
349,096	Service Charges	399,000	390,052	394,000
180,287	Garages	191,000	175,202	180,000
13,666	Interest on Balances & Other Income	135,152	10,000	7,000
<b>16,348,023</b>	<b>Total Income</b>	<b>16,749,126</b>	<b>16,367,034</b>	<b>16,953,000</b>
	<b>Surplus / Deficit (-) for the Year:</b>			
<b>2,519,354</b>	<b>General Balances</b>	<b>1,787,126</b>	<b>1,573,635</b>	<b>1,831,579</b>
1,683,770	Balance as at start of year ~ General	2,666,827	2,666,827	1,659,462
<b>-1,536,297</b>	<b>Earmarked Balances</b>	<b>-1,871,000</b>	<b>-2,581,000</b>	<b>-2,485,000</b>
<b>0</b>	FRS Adjustment	<b>0</b>	<b>0</b>	<b>0</b>
2,666,827	Balance as at end of year ~ General	2,582,953	1,659,462	1,006,041

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APPENDIX TWO					
	0	1	2	3	4
SUMMARY	2020-21	2021-22	2022-23	2023-24	2024-25
	£'000	£'000	£'000	£'000	£'000
<b>CAPITAL EXPENDITURE</b>	<b>M9 Outturn</b>				
WHQS Improvements & Maintenance	6,942	6,703	6,492	6,712	6,814
New build	7,008	12,718	10,468	7,840	0
Acquisition of existing properties	500	500	500	500	0
Acquisition of Land	0	0	0	0	0
Other Improvements	426	743	785	415	421
	14,876	20,663	18,245	15,468	7,235
<b>CAPITAL FUNDING</b>					
Major Repairs Allowance	2,401	2,401	2,401	2,401	2,401
Capital Receipts	422	2,020	1,200	920	0
Borrowing	7,332	12,545	11,743	10,793	3,493
Other Funding Sources	2,140	1,212	1,055	0	0
Capital Expenditure funded by HRA	2,581	2,485	1,846	1,354	1,341
	14,876	20,663	18,245	15,468	7,235
<b>REVENUE EXPENDITURE</b>					
Management	3,223	3,311	3,441	3,573	3,671
Repairs & Maintenance	5,030	5,103	5,217	5,409	5,563
Interest	3,155	3,309	3,681	4,005	4,132
Capital Financing Charge	3,277	3,189	3,167	3,793	4,379
	14,685	14,911	15,506	16,780	17,746
<b>REVENUE INCOME</b>					
Gross Rental Income	16,209	16,661	17,272	18,062	19,024
Garages	175	180	185	191	197
Service Charges	390	394	398	402	406
Voids	-417	-289	-299	-312	-329
Bad Debts	-319	-345	-346	-348	-351
WG Affordable Housing Grant (AHG)	210	135	135	135	135
Interest on Balances	10	7	5	5	5
Other Income	0	0	0	0	0
	16,258	16,743	17,351	18,135	19,087
<b>BALANCES</b>					
Surplus / Deficit (-) For Year	1,573	1,832	1,844	1,354	1,341
Capital Expenditure funded by HRA	2,581	2,485	1,846	1,354	1,341
Balance Brought Forward (HRA Reserve)	2,667	1,659	1,006	1,005	1,005
Surplus / - Deficit after CERA	-1,008	-653	-2	-0	0
Balance carried forward	1,659	1,006	1,005	1,005	1,005

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## Appendix 3

### Housing Rent Setting 2021/2022

#### Efficiency, Value for Money and Affordability.

From this year, as part of the annual Rent Increase process, Welsh Government has required landlords to consider an “assessment of cost efficiencies across the operating cost base, value for money and affordability for tenants”.

We have gathered existing data that we use to monitor these areas and this includes the use of the HOUSEMARK specialist housing benchmarking tool which we have used for a number of years and which is now the suggested tool for all social landlords in Wales as part of the new assessments.

This report outlines our approach to these three requirements.

#### 1) Cost Efficiencies.

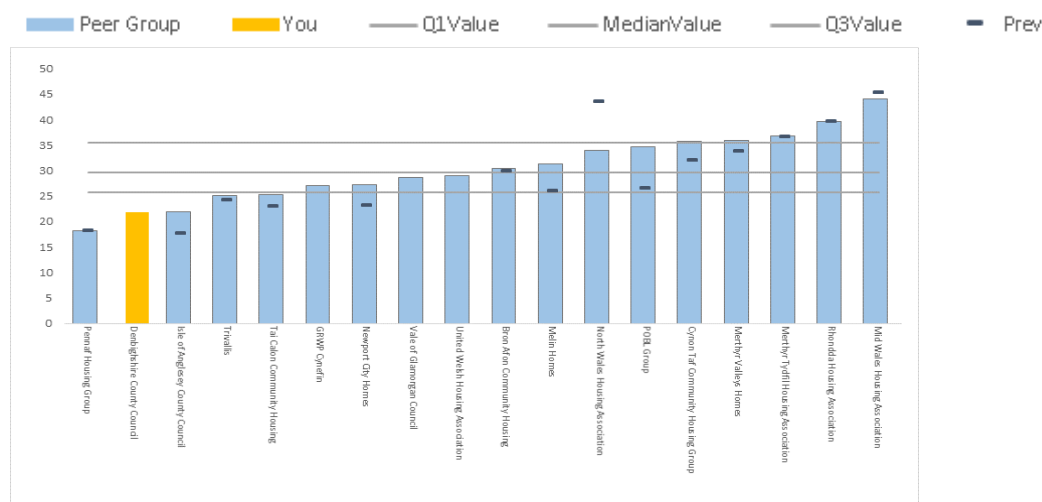
We know that we have invested in our housing stock as we achieved the Welsh Housing Quality Standard (WHQS) in 2014 and have invested since to ensure we can continue to maintain these standards. In addition we have taken a proactive approach to improving our re-let standards and have invested heavily to ensure our new tenants are able to move into and settle in a high quality home. We take the opportunity to refurbish our homes when they are empty to also deal with asbestos and general maintenance not specific to WHQS, such as plastering, given the age of some of our stock. In order to invest this level of sums through our revenue and capital streams it is vital that we manage our resources efficiently.

The graphs below are taken from data provided by HOUSEMARK and shows our costs are low compared to comparable landlords but our cash investment in our assets is high.

#### Overheads

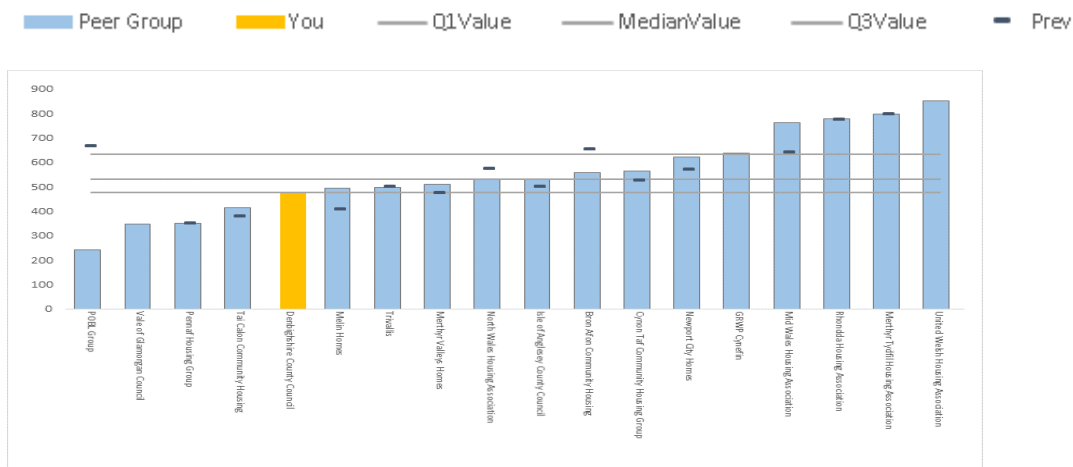
The first graph shows overheads as a percentage of our revenue costs and shows that our operating costs are amongst the lowest of comparable landlords in terms of how we compare with our benchmark group on efficiency.

#### Overheads as percentage of direct revenue costs



The graph below shows the costs of our housing management services, such as Income and Neighbourhood Management, per property compared to comparable landlords in Wales.

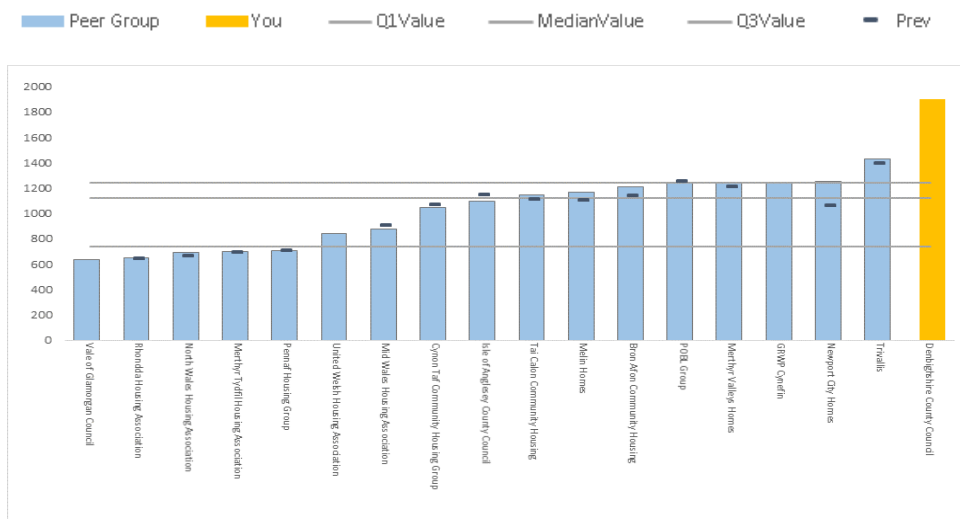
### Total cost per property: housing management



### Investment

This graph shows the cost of our investment in our homes and shows we are the most expensive which specifically reflects our commitment to expenditure on empty homes. It is worth noting that we will tend to have older stock than Registered Social Landlords.

### Total cost per property: responsive repairs and void works



The table below summarises areas where we have improved our cost or efficiency of the service.

### Efficiencies table

Action	Description	Cost	Efficiency	Cash Savings
<b>Housing Restructure</b>	In 2019 we improved the efficiency of the housing service	Neutral	More Housing Officers for the same cost	Nil



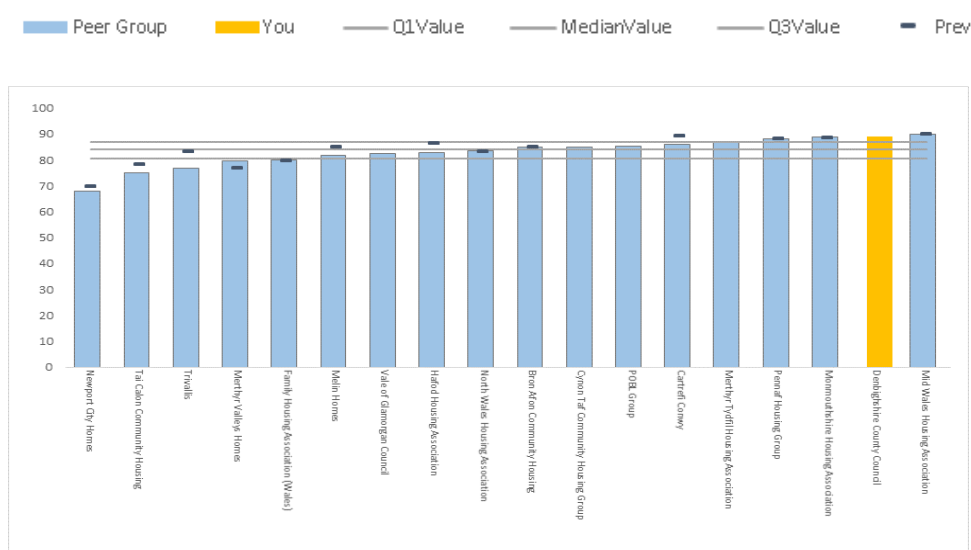
	by removing different tiers of roles.		Reduced duplication  Reduced patch sizes	
<b>Income Management</b>	We introduced predictive analytics software to target rent arrears work.	£40k	This has reduced our rent arrears by c. £50k and saved 0.9 FTE staff time which is reinvested in additional time to support tenants.	NIL (additional cost is equivalent to efficiency but service improved)
<b>Improved efficiency of workflow to DLO</b>	To support existing overheads and reduce external costs	NIL	Budgeted income for 2020/21 from the DLO has increased by £460k	NIL
<b>Maximise grant funding for new build programme</b>	New external funding gained for the first time (SHG, IHG, AHG, TRI)	NIL	New funding gained for new build programme	£3.8m in new funding
<b>New funding gained for asset capital programmes</b>	To support work to reduce carbon of stock	NIL	Optimised Retrofit Programme funding	£820k of new funding
<b>Income stream from OFGEM</b>	Income from renewable energy production	NIL	Savings for tenants energy bills and income	£48k
<b>Voids framework</b>	Procurement of framework to improve efficiency of distribution of void works to contractors	NIL	Reduced officer time when procuring major voids works	NIL

## 2) Value For Money

Our principle measure of Value for Money is feedback from customers, obtained through our bi-annual STAR survey of all tenant households. These graphs use January 2019 Survey data. The next data set used will be later in 2021.

The graph below shows our Value for Money score at 89% as being amongst the highest in Wales.

Satisfaction that rent provides VFM



### 3) Affordability

The question of the affordability of our weekly rents is more difficult to analyse as much depends on the individual circumstances of every individual household. We apply the principle that a CPI increase plus 1% every year ensures we can continue to meet costs in managing and maintaining our £300m plus worth of assets. We know costs will rise and our income needs to keep pace over the course of our business plan but also fully appreciate that household incomes, salaries and welfare benefits may not increase.

Failure to increase rent by inflation means that the impact of even a one year stagnant income is experienced for every year of our business plan afterwards as we cannot retrospectively increase to make up the difference or add an additional percentage in a future year.

#### Communication with Tenants

We have spoken to Denbighshire Tenants and Residents Federation (DTARF) about the increase and they understand the need for an inflationary increase and acknowledge that we provide a supportive approach to income management for our households.

We provide information to our tenants on how their rent money is spent. Each year with the rent increase notification letter we send all tenants a booklet which explains -

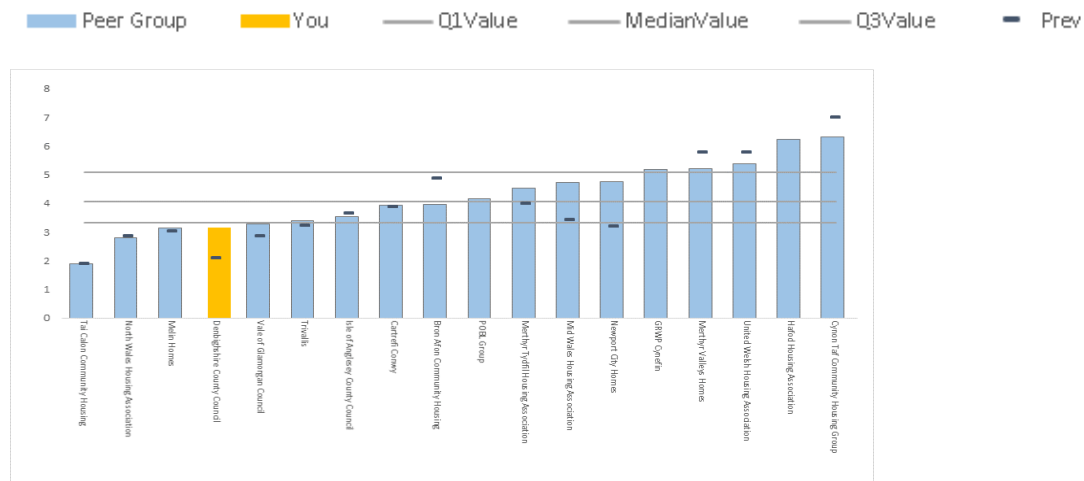
- How the average weekly rent is spent with a breakdown of our management, maintenance and finance costs.
- A breakdown of planned Income and expenditure
- Our average weekly rent compared to other North Wales Social Landlords.

The third point above, which compares our average weekly rent with other social landlords in North Wales is important as social rents can reasonably be expected to be the lowest rent levels in the housing market. Therefore affordability should be less of an issue compared to other sectors, such as the private rented sector, however we know that it is also likely that the poorest households will live in social housing.

It is important that we recognise that every household is individual and have to live according to their means. The welfare benefit system is in place to provide financial support to low income families including with housing costs. Our Income Management service has been successful in managing low rent arrears levels compared to the sector and very low number of evictions.

The graph below from HOUSEMARK shows our comparable low level of arrears.

### Total tenant arrears as % rent due (excluding voids)



### Advice & Support to promote Affordability

We offer as much advice and support as we can for households with affordable repayment terms should families fall into arrears, offer budgeting advice and make appropriate referrals for specialist support.

In addition to the Council's contract for Welfare Rights advice with Citizens Advice Denbighshire (CAD) we have entered into an additional project, **Key To Advice**, which enables the housing team to benefit from a specific worker from CAD, partly based within the team, to provide support to tenants. In addition there is a focus on fuel poverty to assist our tenants with their fuel bills and tariffs. In addition, CAD support workshops and events held in our neighbourhoods.

Highlights of April to September 2020 of the Key to Advice project

- 374 tenants supported
- £1.036m annual income gains
- Advice on £1.160m debt
- 27 tenants removed from fuel poverty

### Impact Assessment

We complete a well-being impact assessment annually with tenant representatives to consider the balance of an inflationary rent increase alongside the benefits this can have for the whole group of tenants through investment in the quality of homes, improving the energy efficiency of homes and services and projects to support families. The positive aspects of the assessment conclude that we need to maintain a pace with inflation and rising costs in order to be able to maintain the level of investment for all our households.

We also employ a Financial & Digital Inclusion Coordinator to deliver projects, workshops and initiatives to promote financial inclusion and raise awareness of money issues.

### **Conclusion**

This report outlines that Denbighshire Housing is able to demonstrate efficiency when managing and maintaining our housing assets, that our tenants believe that we offer value for money and that we provide homes that are affordable for households in the county.

# Housing Rent Setting

## Well-being Impact Assessment Report


This report summarises the likely impact of the proposal on the social, economic, environmental and cultural well-being of Denbighshire, Wales and the world.

Assessment Number:	867
Brief description:	Increasing council house weekly rents
Date Completed:	02/12/2020 09:56:04 Version: 1
Completed by:	Geoff Davies
Responsible Service:	Customers, Communications & Marketing
Localities affected by the proposal:	Whole County,
Who will be affected by the proposal?	council tenants and households
Was this impact assessment completed as a group?	Yes

# IMPACT ASSESSMENT SUMMARY AND CONCLUSION

Before we look in detail at the contribution and impact of the proposal, it is important to consider how the proposal is applying the sustainable development principle. This means that we must act "in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs."

## Score for the sustainability of the approach

 ( 3 out of 4 stars ) Actual score : 26 / 30.

## Implications of the score

Overall the provision of quality, social housing and the investment delivered by the HRA contributes significantly to the local economy, health and well being and safety of communities. The negative impact of increasing rents is the impact on individual households particularly given the pressure on households during Covid 19, however the increase is in line with Welsh Government policy and CPI inflation. An increase in outgoings may trigger an increase in benefit entitlement and these are based on government calculations on what people need to live on. There was a strong view within the group that we should not reduce our income to mask affordability and poverty issues in society generally. Detailed work is being undertaken to support all household's to mitigate against financial exclusion issues and significant developments are underway to promote resilient communities well into the future. As our rents are below other social landlords on the county there is a fear that the poorer households would choose Denbighshire Housing as their landlord for this reason and we would have a disproportionate amount of poorer households seeking housing. The group considered other costs also increasing such as utility prices and council tax and the feeling was that these are out of our control and again we should not jeopardise our business plan and what investment we can make for our tenants because of other factors in society. A clear explanation of the use of HRA resources will be given to tenants with their rent increase notification.

## Summary of impact

### Well-being Goals

- A prosperous Denbighshire
- A resilient Denbighshire
- A healthier Denbighshire
- A more equal Denbighshire
- A Denbighshire of cohesive communities
- A Denbighshire of vibrant culture and thriving Welsh language
- A globally responsible Denbighshire

- Positive
- Positive
- Positive
- Positive
- Positive
- Positive
- Positive



## Main conclusions

Whilst a rent increase can present challenges for some households particularly due to the additional pressure brought on household finances during Covid 19 we need to continue to invest in our housing stock to ensure our homes are quality and efficient to live in particularly with regards to energy efficiency. In addition we provide and fund support serves, partnerships and projects to support households, if we did not increase our rent with inflation we would not be able to maintain these levels of significant investment.

## **Evidence to support the Well-being Impact Assessment**

- We have consulted published research or guides that inform us about the likely impact of the proposal
- We have involved an expert / consulted a group who represent those who may affected by the proposal
- We have engaged with people who will be affected by the proposal

# THE LIKELY IMPACT ON DENBIGHSHIRE, WALES AND THE WORLD

## A prosperous Denbighshire

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	This will have a positive impact because a sustainable HRA will support the provision of quality social housing for people in Denbighshire into the long term. Whilst any increase in weekly out goings could have an impact on households failure to invest could jeopardise our future growth.
<b>Further actions required</b>	We have a Financial Inclusion Action Plan which will help mitigate the impact on households through a series of actions. The increased income will enable us to increase our investment in our stock, neighbourhoods and support services.

### Positive impacts identified:

<b>A low carbon society</b>	Increasing our income will allow us to investigate and invest in better ways to provide homes including low carbon homes and investing in improving the efficiency of existing stock.
<b>Quality communications, infrastructure and transport</b>	This will enable us to continue to invest in areas we own including open spaces and neighbourhoods
<b>Economic development</b>	A sustainable HRA business plan will support local businesses into the future
<b>Quality skills for the long term</b>	Increasing our income will help us to meet staffing costs and develop future opportunities
<b>Quality jobs for the long term</b>	This will enable us to continue to invest in skills through improvement works and community benefits.
<b>Childcare</b>	

### Negative impacts identified:

<b>A low carbon society</b>	
<b>Quality communications, infrastructure and transport</b>	
<b>Economic development</b>	An increase in weekly rent could have an adverse effect on families weekly income and ability to manage their childcare and work balance
<b>Quality skills for the long term</b>	
<b>Quality jobs for the long term</b>	
<b>Childcare</b>	An increase in weekly rent could have an adverse effect on families weekly income and ability to manage their childcare and work balance



## A resilient Denbighshire

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	A sustainable HRA will lead to investment and will enable us to develop more modern, innovative and resilient homes and neighbourhood environments.
<b>Further actions required</b>	Positives will be assessed through Community Benefit tool kits

### Positive impacts identified:

<b>Biodiversity and the natural environment</b>	Investment in housing stock including new build will enable us to consider community benefits including these factors
<b>Biodiversity in the built environment</b>	Investment in lower quality stock will enable us to demolish and replace homes and consider biodiversity in this process.
<b>Reducing waste, reusing and recycling</b>	Investment in housing stock including new build will enable us to consider community benefits including these factors
<b>Reduced energy/fuel consumption</b>	Investment in our housing stock is required to ensure we can maximise energy efficiency and reduce fuel use and carbon through poor performing homes.
<b>People's awareness of the environment and biodiversity</b>	Investment in housing stock including new build will enable us to consider community benefits including these factors
<b>Flood risk management</b>	Ensuring that new build schemes will achieve flood mitigation works by design

### Negative impacts identified:

<b>Biodiversity and the natural environment</b>	
<b>Biodiversity in the built environment</b>	
<b>Reducing waste, reusing and recycling</b>	
<b>Reduced energy/fuel consumption</b>	
<b>People's awareness of the environment and biodiversity</b>	
<b>Flood risk management</b>	

## A healthier Denbighshire

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	We are able to invest in promoting healthier communities for our tenants and residents.

<b>Further actions required</b>	We are able to invest in additional services such as community development staff to significantly increase our work to promote health and well being. The negative is increased could increase arrears / debt issues but our resources allow us to invest in projects to mitigate this and far reaching actions to tackle financial exclusion and debt.
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**Positive impacts identified:**

<b>A social and physical environment that encourage and support health and well-being</b>	This will allow us to continue to invest in health and well being including physical assets such as play areas and also working with our communities
<b>Access to good quality, healthy food</b>	We have staff resources to help our communities develop resilience and promote healthy lifestyles including projects to support healthy eating
<b>People's emotional and mental well-being</b>	We have staff resources to help our communities develop resilience and promote health and well being. We have a Financial Inclusion action plan to tackle debt and financial exclusion issues which will support emotional well being.
<b>Access to healthcare</b>	Through having staff resources available we are supporting a Public Health Wales project on Tackling health inequality and can continue with similar work
<b>Participation in leisure opportunities</b>	This will allow us to continue to invest in health and well being including physical assets such as play areas and also working with our communities to enhance access to leisure activities.

**Negative impacts identified:**

<b>A social and physical environment that encourage and support health and well-being</b>	
<b>Access to good quality, healthy food</b>	
<b>People's emotional and mental well-being</b>	
<b>Access to healthcare</b>	
<b>Participation in leisure opportunities</b>	

**A more equal Denbighshire**

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	Continued investment in line with inflation will support our business plan to able to continue to offer social housing and related services to those who are not served by the private housing market.

<b>Further actions required</b>	We will mitigate the negatives of the rent increase, which could disproportionately effect households with the protected characteristics through investment in financial inclusion initiatives and support services which will also benefit wider tenant population
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**Positive impacts identified:**

<b>Improving the well-being of people with protected characteristics. The nine protected characteristics are: age; disability; gender reassignment; marriage or civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation</b>	Continued investment in line with inflation will support our business plan to able to continue to offer social housing and related services to those who are not served by the private housing market.
<b>People who suffer discrimination or disadvantage</b>	Continued investment in line with inflation will support our business plan to able to continue to offer social housing and related services to those who are not served by the private housing market.
<b>Areas with poor economic, health or educational outcomes</b>	A sustainable HRA will enable us to continue to provide quality housing and also invest in support initiatives that tackle poverty and provide opportunity in our communities,
<b>People in poverty</b>	An increase in rent could have an adverse effect on households but the rise is on line with CPI inflation and will be offset by significant investment in support services in this area.

**Negative impacts identified:**

<b>Improving the well-being of people with protected characteristics. The nine protected characteristics are: age; disability; gender reassignment; marriage or civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation</b>	
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<b>People who suffer discrimination or disadvantage</b>	
<b>Areas with poor economic, health or educational outcomes</b>	
<b>People in poverty</b>	

## A Denbighshire of cohesive communities

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	A sustainable HRA business plan will enable us to maintain adequate resources to support communities.
<b>Further actions required</b>	The Business Plan has enabled us to deliver increased work with communities to focus on additional areas of work which will support community participation and resilience in the long term.

### Positive impacts identified:

<b>Safe communities and individuals</b>	A sustainable HRA business plan will enable us to maintain adequate resources to promote safe communities and tackle issues and individuals. These resources can support partnership working to work together to take a strategic approach to promoting safe neighbourhood's and also joint working to tackle issues.
<b>Community participation and resilience</b>	The Business Plan has enabled us to deliver a community development team to focus on additional areas of work which will support community participation and resilience. We are developing this through a Community Investment strategy and related work plans.
<b>The attractiveness of the area</b>	We are able to invest significantly in improving the appearance of our neighbourhoods through the HRA
<b>Connected communities</b>	The Housing team and community development work enables us to ensure that people are connected to services and network as well as through digital inclusion work
<b>Rural resilience</b>	The Housing team and community development work enables us to ensure that people are connected and ensure that our homes in rural areas are able to contribute to the rural economy by providing quality homes and investment projects and opportunities.

### Negative impacts identified:

<b>Safe communities and individuals</b>	
<b>Community participation and resilience</b>	
<b>The attractiveness of the area</b>	

<b>Connected communities</b>	
<b>Rural resilience</b>	

## A Denbighshire of vibrant culture and thriving Welsh language

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	The service adheres to the Welsh language standards but a sustainable HRA will enable us to consider opportunities to further promote the Welsh Language
<b>Further actions required</b>	This work can include providing community development activities through the Welsh language will be integral with in our Community Development Strategy.

### Positive impacts identified:

<b>People using Welsh</b>	A sustainable HRA enables us to continue to promote the Welsh Language and support staff to work in the medium of Welsh so people can use their first language to access the service. We also adopt a local lettings policy which gives priority in rural areas to people from the community to help with protecting the future use of the welsh language in our communities.
<b>Promoting the Welsh language</b>	The service adheres to the Welsh language standards but a sustainable HRA will enable us to consider opportunities to further promote the Welsh Language. This work can include providing community development activities through the Welsh language.
<b>Culture and heritage</b>	A sustainable HRA enables us to continue to promote the Welsh culture and heritage and support organisations and projects in our communities

### Negative impacts identified:

<b>People using Welsh</b>	
<b>Promoting the Welsh language</b>	
<b>Culture and heritage</b>	

## A globally responsible Denbighshire

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	Good quality social housing is key to ensuring that the local economy can thrive in Denbighshire and North Wales. The continued growth of the business plan will support future provision to meet growing need. The service will be able to develop partnerships and support other organisations who are providing series to our tenants.
<b>Further actions required</b>	The service supports the Council's corporate objectives in addition to the more specific plans such as the Housing Strategy and Homelessness Prevention Strategy. Wider health & well being is promoted in addition to the investment in the local economy.

### Positive impacts identified:

<p><b>Local, national, international supply chains</b></p>	<p>The HRA commits significant invest through stock and neighbourhood improvement programmes. In addition new build homes will add significantly to this and we have awarded a significant contract for new homes components that will be manufactured in North Wales. This supports the local economy. Community Benefits are integral to all contracts to ensure employment and training opportunities are mandatory and the impact is captured as evidence.</p>
<p><b>Human rights</b></p>	<p>The HRA investment enables us to provide jobs and opportunities which promote excellent employment practices and working conditions.</p>
<p><b>Broader service provision in the local area or the region</b></p>	<p>Good quality social housing is key to ensuring that the local economy in Denbighshire and North Wales is sustainable and supports the economic activity of the area by providing affordable housing options in the area. In addition the provision of social housing with increasing stock numbers will support a number services which seek to support households with settled and secure accommodation in safe neighbourhoods.</p>

**Negative impacts identified:**

<p><b>Local, national, international supply chains</b></p>	
<p><b>Human rights</b></p>	
<p><b>Broader service provision in the local area or the region</b></p>	

<b>Report to</b>	Cabinet
<b>Date of meeting</b>	19 <sup>th</sup> January 2021
<b>Lead Member / Officer</b>	Julian Thompson Hill
<b>Report author</b>	Steve Gadd, Head of Finance and Property
<b>Title</b>	Budget 2021/22 - Final Proposals

## 1. What is the report about?

The report sets out the implications of the Local Government Settlement 2021/22 and proposals to finalise the budget for 2021/22.

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

2.1 The Council is legally required to set a balanced and deliverable budget before the start of each financial year and to set the resulting level of Council Tax to allow bills to be sent to residents.

2.2 To provide an overview of the budget process and the impact of the Local Government Settlement and to approve the budget for 2021/22, including the level of Council Tax.

## 3. What are the Recommendations?

3.1 To note the impact of the Draft Local Government Settlement 2021/22.

3.2 That Cabinet supports the proposals outlined in Appendix 1, and detailed in Section 4, and recommends them to the full Council in order to finalise the budget for 2021/22.

3.3 To recommend to Council the average Council Tax rise of 3.8% proposed.

3.4 To recommend to Council that authority is delegated to the Head of Finance and Property in consultation with the Lead Member for Finance to adjust the use of cash

included in the budget proposals by up to £500k if there is movement between the draft and final settlement figures in order to allow the setting of Council Tax in a timely manner.

3.5 That Cabinet confirms that it has read, understood and taken account of the Well-being Impact Assessment.

## **4. Report details**

4.1 The Draft Local Government Settlement for 2021/22 was received by the council on 21<sup>st</sup> December and resulted in a positive settlement of +3.6%, compared to the Welsh average of 3.8%. The Final Settlement is expected on the 2<sup>nd</sup> March but Welsh Government (WG) have indicated that there should be very few changes.

4.2 As part of the settlement there were 'transfers in' of £1.280m which have been passported to the relevant service areas as in previous years:

- 2020/21 Teachers' Pay Grant - £0.135m
- Coastal Risk Management Programme £1.145m

4.3 The final proposals to balance the 2021/22 budget are shown in the Medium Term Financial Plan (MTFP) in Appendix 1. The main areas of growth and pressures are:

- Pay pressures of £0.870m
- Price and energy inflation of £250k
- Fire Service Charge of £162k
- Allowance for increase in Council Tax Reduction Scheme of £350k
- Schools inflationary pressures are recognised amounting to £1.205m
- Schools investment in Additional Learning Needs £1.192m
- Schools investment in small schools' sustainability £161k
- Schools demographic pressure of £718k
- £2.4m to recognise demand pressures and forecasts in Community Support Services as part of the council's long term strategy to manage care budgets
- £0.750m to recognise existing pressures in Education and Children's Services relating to Out of County Placements and Recoupment.
- £250k pressures in Waste Services have been recognised based on estimates of ongoing year pressures



- Impact of previous by Council/Cabinet decisions (eg Rhyl Flood Scheme, North Wales Economic Ambition Board): £0.276m
- £389k pressure for investment in Carbon Zero Target required in order to the 2030 target agreed by Council.
- Investment of £250k in the Ash Die-Back problem. This would make permanent the one-off funding identified in last year's budget.
- In light of the scale of the pressures and the Covid and Brexit impact still unresolved a contingency of £683k has been included

4.4 The pressures identified above amount to £9.903m. The impact of using £685k of cash in 20/21 (which has the effect of just delaying the need to identify savings) means that the total shortfall amounted to £10.588m. A draft settlement of around 8% would have been required in order to fund all these pressures. The net +3.6% settlement generates £5.42m additional revenue leaving a funding gap of £5.167m. The following items are included in the proposals in order to bridge that gap:

- Fees and Charges Income Budgets have been inflated in line with agreed Fees and Charges policy which increases external income by £0.462m.
- Operational efficiencies amounting to £690k mostly identified by services throughout the year and within Head Service delegated responsibility in consultation with Lead Members.
- Savings of £0.781m have also been identified which change service provision in some way and which were shared in detail with Cabinet and Council in the December briefings.
- 1% (£0.733m) Schools efficiency target from Schools Delegated Budgets. As school budgets are devolved, it will be for each governing body to determine how the savings will be delivered.
- It is recommended that the Council Tax increases by 3.8% which will generate £2.132m additional revenue. This compares to last year's increase of 4.3% and 6.35% the year before that.
- Finally the Council Tax Base has increased more than expected this year which means that additional Council Tax of £369k is projected.

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

Effective management of the council's budgets and delivery of the agreed budget strategy underpins activity in all areas, including corporate priorities. The proposals include allocations to continue to support priorities.

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

Details are set out in Section 4.

## **7. What are the main conclusions of the Well-being Impact Assessment?**

Well-being Impact Assessments for the Council Tax increase is included in Appendix 3.

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

In addition to regular reports to the Corporate Governance Committee, the budget process has been considered by SLT, Cabinet Briefing, Group Leaders and Council Briefing meetings. The School Budget Forum have been included in the proposals through-out the year. Trade Unions have been consulted through Local Joint Consultative Committee. The Covid pandemic has impacted on the level of consultation and engagement with the public, however plans are in place to engage early with all stakeholders during the budget process for 2022/23.

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

9.1 The aim of the budget process is to ensure that the council delivers a balanced budget. The impact of the pandemic and the uncertainty over the level and timing of financial settlements again this year has made financial planning even more challenging. However the draft settlement when it was finally issued continued a welcome return to positive settlements which hopefully recognise the important work Local Government delivers and the pressures that it faces.

9.2 The proposals set out in this report offer a balanced approach which takes into account the following principles:

- Aim to recognise and remedy in year and forecast service pressures as much as possible in order to build in resilience.
- Ensure services are challenged to deliver efficient services, but to try and minimise the impact of proposals on services users and staff.
- Keep Council Tax increases as low as practicable.
- Limit the use of Cash which only delays the need to identify savings.
- Maintain funding for corporate priorities.

9.5 Due to the very late date for the Final Settlement it is recommended that Cabinet and Council delegate authority to the Head of Finance and Property in consultation with the Lead Member for Finance to adjust the use of cash included in the budget proposals by up to £500k. WG has indicated that there are unlikely to be any material changes, however it is sensible to have a contingency plan agreed beforehand.

9.4 If the proposals in this report are not accepted, alternative proposals must be submitted to balance the budget.

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

The budget process itself is a risk management measure with the aim of identifying, assessing and agreeing budget proposals in a planned and timely way. Failure to agree these proposals without viable alternatives will risk achieving a balanced budget for 2021/22.

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

Local authorities are required under Section 151 of the Local Government Act 1972 to make arrangements for the proper administration of their financial affairs.

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## Appendix 1 FINAL PROPOSALS 2021/22

	2020/21 £'000	2021/22 £'000	2022/23 £'000	2023/24 £'000
<b>Funding</b>				
Revenue Support Grant & NNDR (RSG)	151,932	158,632	158,632	158,632
Council Tax	55,685	58,187	60,948	63,707
<b>SSA / Budget Requirement</b>	<b>207,616</b>	<b>216,818</b>	<b>219,579</b>	<b>222,339</b>
<b>Use of Balances</b>	685			
<b>Total Funding</b>	<b>208,301</b>	<b>216,818</b>	<b>219,579</b>	<b>222,339</b>
<b>Expenditure</b>				
<b>Base Budget</b>	<b>198,538</b>	<b>208,302</b>	<b>216,819</b>	<b>220,906</b>
<b>Inflation / Pressures:</b>				
Pay	1,124	870	1,019	1,019
Price - targeted	100	100	100	100
Price - NSI Energy	150	150	150	150
CTRS	350	350	350	350
Fire Authority Charge	93	162	100	100
Income Inflation		(462)	(500)	(500)
Social Services	2,600	2,397	500	500
Childrens Service	1,546	750		
Other Service Pressures		286		
Waste Pressures	1,400	250		
School Transport	600			
Schools Inflation	2,852	1,205	1,000	1,000
Schools Investment		1,353		
Schools Demography Adjustment	716	718	787	787
Covid / Brexit Contingency	358	683		
<b>Other known items:</b>				
Investment in Priorities 1	250		250	250
Investment in Priorities 2	250		250	250
Investment in Priorities 3	29	176	81	
NWEAB Growth Deal		64		
Carbon Zero Project		389		
Transfers into/out of Settlement	1,794	1,280		
<b>EFFICIENCIES / SAVINGS:</b>				
Pensions Triennial Review	(2,000)			
Service Efficiencies - BAU	(1,756)	(690)		
Service Savings		(781)		
Schools Efficiency Target	(692)	(733)		
<b>Total Expenditure</b>	<b>208,302</b>	<b>216,819</b>	<b>220,906</b>	<b>224,912</b>
<b>Funding Shortfall / (Available)</b>	<b>0</b>	<b>0</b>	<b>1,327</b>	<b>2,573</b>

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## Council Tax Sensitivity Analysis

2021/22	Increase %	Increase in Band D £	Proposed Band D £	Total Funding £000	Inc/Dec in Funding £000
	0.00%	0.00	1,384.16	56,054	0
	0.50%	6.92	1,391.08	56,335	281
	1.00%	13.84	1,398.00	56,615	561
	1.50%	20.76	1,404.92	56,896	842
	2.00%	27.68	1,411.84	57,177	1,122
	2.25%	31.14	1,415.30	57,317	1,263
	2.50%	34.60	1,418.76	57,457	1,403
	2.75%	38.06	1,422.22	57,597	1,543
	3.00%	41.52	1,425.68	57,738	1,683
	3.25%	44.99	1,429.15	57,878	1,824
	3.50%	48.45	1,432.61	58,018	1,964
	3.75%	51.91	1,436.07	58,159	2,104
<b>Current Recommendation</b>	<b>3.80%</b>	<b>52.60</b>	<b>1,436.76</b>	<b>58,187</b>	<b>2,132</b>
	4.00%	55.37	1,439.53	58,299	2,245
<b>2020/21 Increase</b>	<b>4.30%</b>	<b>59.52</b>	<b>1,443.68</b>	<b>58,467</b>	<b>2,413</b>
	4.50%	62.29	1,446.45	58,579	2,525
	4.80%	66.44	1,450.60	58,748	2,693
	4.95%	68.52	1,452.68	58,832	2,778
	5.00%	69.21	1,453.37	58,860	2,806
	5.25%	72.67	1,456.83	59,000	2,946
	5.50%	76.13	1,460.29	59,141	3,086
	5.75%	79.59	1,463.75	59,281	3,227
	6.00%	83.05	1,467.21	59,421	3,367
	6.25%	86.51	1,470.67	59,561	3,507
<b>2019/20 Increase</b>	<b>6.35%</b>	<b>87.89</b>	<b>1,472.05</b>	<b>59,618</b>	<b>3,563</b>
	6.40%	88.59	1,472.75	59,646	3,591
	6.50%	89.97	1,474.13	59,702	3,647

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# Council Tax 2021/22

## Well-being Impact Assessment Report

This report summarises the likely impact of the proposal on the social, economic, environmental and cultural well-being of Denbighshire, Wales and the world.

Assessment Number:	879
Brief description:	It is a proposed rise in Council Tax of 3.8% in order to support the 2021/22 budget.
Date Completed:	01/01/2021 15:18:41 Version: 1
Completed by:	Steve Gadd
Responsible Service:	Finance
Localities affected by the proposal:	Whole County,
Who will be affected by the proposal?	Council Tax payers in Denbighshire
Was this impact assessment completed as a group?	Yes

# IMPACT ASSESSMENT SUMMARY AND CONCLUSION

Before we look in detail at the contribution and impact of the proposal, it is important to consider how the proposal is applying the sustainable development principle. This means that we must act "in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs."

## Score for the sustainability of the approach

★ ★ ★ ★ ( 3 out of 4 stars ) Actual score : 24 / 30.

## Implications of the score

Whilst the Council Tax rise will increase the amount paid, it also allows the council to increase funding to provision in key areas such as social care and schools and maintain service levels broadly (there are some reductions but are not significant in terms of the size entire package) throughout other areas during 2021/22

## Summary of impact

Well-being Goals

A prosperous Denbighshire

A resilient Denbighshire

A healthier Denbighshire

A more equal Denbighshire

A Denbighshire of cohesive communities

A Denbighshire of vibrant culture and thriving Welsh language

A globally responsible Denbighshire

Neutral

Positive

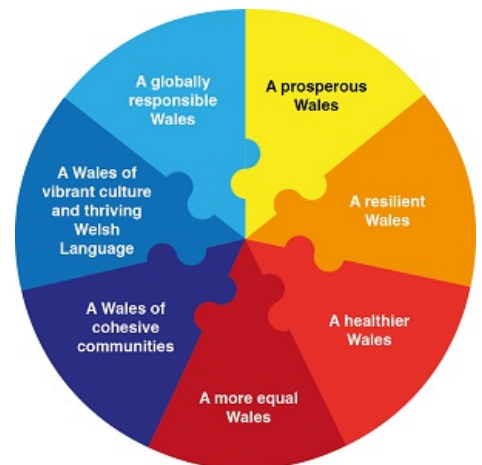
Neutral

Neutral

Positive

Neutral

Neutral



## Main conclusions

The impacts are broadly neutral. This is because the Council Tax rise proposed supports a budget that protects existing service levels and increases investment in social care, schools and in other priorities. Clearly the impact is the increased tax paid by residents. The main mitigation is that around 25% of tax payers receive financial support through the Council Tax Reduction Scheme. However, it is recognised that for some taxpayers, the proposed rise will create an additional financial burden, particularly for those with relatively fixed incomes or little disposable income.

## Evidence to support the Well-being Impact Assessment

- We have consulted published research or guides that inform us about the likely impact of the proposal
- We have involved an expert / consulted a group who represent those who may affected by the proposal
- We have engaged with people who will be affected by the proposal

# THE LIKELY IMPACT ON DENBIGHSHIRE, WALES AND THE WORLD

## A prosperous Denbighshire

<b>Overall Impact</b>	Neutral
<b>Justification for impact</b>	Whilst the Council Tax rise will increase the amount paid, it also allows the Council to increase funding to provision in key areas such as social care, waste services, children's services and schools and maintain service levels broadly. It also allows funding of a number of corporate priorities including Carbon Neutral targets, Flood Defence and coping with Ash die-back.
<b>Further actions required</b>	There will be an impact on the personal budgets of those who will not qualify for support: residents will pay more Council Tax - however there is support via the Council Tax reduction scheme for those who qualify for such support.

### Positive impacts identified:

<b>A low carbon society</b>	Funding for Carbon Zero projects are included in the overall proposals.
<b>Quality communications, infrastructure and transport</b>	
<b>Economic development</b>	Contingency in place to help finance local Covid Recovery strategy.
<b>Quality skills for the long term</b>	Investment in Schools have been included within the proposals.
<b>Quality jobs for the long term</b>	
<b>Childcare</b>	

### Negative impacts identified:

<b>A low carbon society</b>	
<b>Quality communications, infrastructure and transport</b>	
<b>Economic development</b>	
<b>Quality skills for the long term</b>	
<b>Quality jobs for the long term</b>	
<b>Childcare</b>	

## A resilient Denbighshire

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	The Council Tax rise proposed supports a budget that includes continued support in key priority areas highlighted such as biodiversity and flood risk management. The budget allows for a number of service pressures which will stand the Council in good stead to face the funding challenges of future years.
<b>Further actions required</b>	Residents will pay more Council Tax - however there is support via the Council Tax Reduction Scheme for those who qualify for such support. For those who do not qualify for Council Tax Reduction Scheme support, the Council works closely and proactively with Citizens Advice to provide help and support with personal budgeting to those residents who may require it. Flexible payment options are available over ten or twelve months.

### Positive impacts identified:

<b>Biodiversity and the natural environment</b>	Corporate Priorities in this area are being recognised in the budget proposals.
<b>Biodiversity in the built environment</b>	Corporate Priorities in this area are being recognised in the budget proposals.
<b>Reducing waste, reusing and recycling</b>	Further investment in Waste services are included in the proposals.
<b>Reduced energy/fuel consumption</b>	Carbon zero project includes investment in fleet and building to reduce energy consumption
<b>People's awareness of the environment and biodiversity</b>	Corporate Priorities in this area are being recognised in the budget proposals.
<b>Flood risk management</b>	Specific funding is included in the proposals to match fund capital investment in flood defences.

### Negative impacts identified:

<b>Biodiversity and the natural environment</b>	
<b>Biodiversity in the built environment</b>	
<b>Reducing waste, reusing and recycling</b>	
<b>Reduced energy/fuel consumption</b>	
<b>People's awareness of the environment and biodiversity</b>	
<b>Flood risk management</b>	

## A healthier Denbighshire

<b>Overall Impact</b>	Neutral
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<b>Justification for impact</b>	The proposal to raise Council Tax supports a budget that allows service eligibility criteria to be maintained as much as possible. Not implementing the proposed rise would inevitably lead to reductions in service provision.
<b>Further actions required</b>	Residents will pay more Council Tax - however there is support via the Council Tax reduction scheme for those who qualify for such support. Help to those who do not qualify for Council Tax Reduction Scheme support, flexible payment options are available. Also, the Council works closely and proactively with Citizens Advice to provide help and support with personal budgeting to those residents who may require it.

### Positive impacts identified:

<b>A social and physical environment that encourage and support health and well-being</b>	
<b>Access to good quality, healthy food</b>	
<b>People's emotional and mental well-being</b>	The Council Tax proposal supports a budget that maintains activity and service eligibility criteria in 2021/22 and provides increased funding for social care.
<b>Access to healthcare</b>	
<b>Participation in leisure opportunities</b>	

### Negative impacts identified:

<b>A social and physical environment that encourage and support health and well-being</b>	
<b>Access to good quality, healthy food</b>	
<b>People's emotional and mental well-being</b>	In some circumstances, where residents have relatively fixed incomes or little disposable income and do not qualify for support, the additional cost may cause a degree of anxiety or stress.
<b>Access to healthcare</b>	
<b>Participation in leisure opportunities</b>	

## A more equal Denbighshire

<b>Overall Impact</b>	Neutral
<b>Justification for impact</b>	The proposal to raise Council Tax supports a budget that avoids significant cuts to services received by the public in 2021/22. There are no known negative impacts on people with protected characteristics, there is an assumption that some people with protected characteristics will be eligible for council tax relief.

<p><b>Further actions required</b></p>	<p>Residents will pay more Council Tax - however there is support via the Council Tax Reduction Scheme for those who qualify for such support. If someone is eligible for Council Tax support, the support applies immediately and so there would be no delay in accessing the support. For those who do not qualify for Council Tax Reduction Scheme support, the Council works closely and proactively with Citizens Advice to provide help and support with personal budgeting to those residents who may require it. Flexible payment options are available over ten or twelve months.</p>
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**Positive impacts identified:**

<p><b>Improving the well-being of people with protected characteristics. The nine protected characteristics are: age; disability; gender reassignment; marriage or civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation</b></p>	<p>The proposals allow for additional funding to be allocated to social care budgets. There are no known negative impacts on people with protected characteristics, there is an assumption that some people with protected characteristics will be eligible for council tax relief.</p>
<p><b>People who suffer discrimination or disadvantage</b></p>	
<p><b>Areas with poor economic, health or educational outcomes</b></p>	
<p><b>People in poverty</b></p>	

**Negative impacts identified:**

<p><b>Improving the well-being of people with protected characteristics. The nine protected characteristics are: age; disability; gender reassignment; marriage or civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation</b></p>	
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<b>People who suffer discrimination or disadvantage</b>	
<b>Areas with poor economic, health or educational outcomes</b>	
<b>People in poverty</b>	Residents will pay more Council Tax. Those who qualify will be supported by the Council Tax reduction scheme. There will be some residents who do not qualify and for whom the tax rise will be an additional burden.

## A Denbighshire of cohesive communities

<b>Overall Impact</b>	Positive
<b>Justification for impact</b>	The proposal to raise Council Tax supports a budget that protects front line services and protects the investment in new priority areas to enhance community resilience.
<b>Further actions required</b>	Residents will pay more Council Tax - however there is support via the Council Tax Reduction Scheme for those who qualify for such support. For those who do not qualify for Council Tax Reduction Scheme support, the Council works closely and proactively with Citizens Advice to provide help and support with personal budgeting to those residents who may require it. Flexible payment options are available over ten or twelve months.

### Positive impacts identified:

<b>Safe communities and individuals</b>	
<b>Community participation and resilience</b>	The proposal avoids significant cuts to service levels during 2021/22 and builds in priority investment in connecting communities and resilience as part of the priority funding for 2021/22.
<b>The attractiveness of the area</b>	
<b>Connected communities</b>	
<b>Rural resilience</b>	

### Negative impacts identified:

<b>Safe communities and individuals</b>	
<b>Community participation and resilience</b>	
<b>The attractiveness of the area</b>	
<b>Connected communities</b>	
<b>Rural resilience</b>	

## A Denbighshire of vibrant culture and thriving Welsh language

<b>Overall Impact</b>	Neutral
<b>Justification for impact</b>	The proposal to raise Council Tax supports a budget that helps to maintain services received by the public.
<b>Further actions required</b>	The negatives are managed through Council Tax relief being available for those who qualify for the support, though clearly this does not address the impact on all residents.

### Positive impacts identified:

<b>People using Welsh</b>	The Council tax collection service and all correspondence is available through the medium of Welsh.
<b>Promoting the Welsh language</b>	
<b>Culture and heritage</b>	

### Negative impacts identified:

<b>People using Welsh</b>	
<b>Promoting the Welsh language</b>	
<b>Culture and heritage</b>	

## A globally responsible Denbighshire

<b>Overall Impact</b>	Neutral
<b>Justification for impact</b>	The proposal to raise Council Tax supports a budget that allows service levels to be broadly maintained in 2021/22 and so should not therefore adversely impact supply chains.
<b>Further actions required</b>	Residents will pay more Council Tax - however there is support via the Council Tax Reduction Scheme for those who qualify for such support. For those who do not qualify for Council Tax Reduction Scheme support, the Council works closely and proactively with Citizens Advice to provide help and support with personal budgeting to those residents who may require it. Flexible payment options are available over ten or twelve months.

### Positive impacts identified:

<b>Local, national, international supply chains</b>	The proposal allows for service levels to be broadly maintained during 2021/22.
<b>Human rights</b>	
<b>Broader service provision in the local area or the region</b>	It also allows funding of a number of corporate priorities including Carbon Neutral targets, Schools, Social Care, Waste services and coping with Ash die-back.

### Negative impacts identified:



<b>Local, national, international supply chains</b>	
<b>Human rights</b>	
<b>Broader service provision in the local area or the region</b>	

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<b>Report to</b>	Cabinet
<b>Date of meeting</b>	19 <sup>th</sup> January 2021
<b>Lead Member / Officer</b>	Julian Thompson Hill
<b>Report author</b>	Steve Gadd, Head of Finance and Property
<b>Title</b>	Finance Report (December 2020/21)

## 1. What is the report about?

The report gives details of the council's revenue budget and savings as agreed for 2020/21. The report also provides a summary update of the Capital Plan as well as the Housing Revenue Account and Housing Capital Plan.

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

The purpose of the report is to provide an update on the council's current financial position and confirm the agreed service budgets for 2020/21.

## 3. What are the Recommendations?

3.1 Members note the budgets set for 2020/21 and progress against the agreed strategy.

## 4. Report details

The report provides a summary of the council's revenue budget for 2020/21 detailed in Appendix 1. The council's net revenue budget is £208.302m (£198.538m in 19/20). The position on service and corporate budgets is a forecast overspend of £2.242m (£2.476m last month). Narrative around the current risks and assumptions underlying this assessment are outlined in Section 6 and Appendix 2 which also highlights the gross overspend.

The 2020/21 budget required service savings and efficiencies of £4.448m to be identified and agreed as detailed below:

- Corporate savings identified relating to the triennial actuarial review of the Clwyd Pension Fund (£2m)
- Schools savings of 1% (£0.692m)
- Service efficiencies and savings (£1.756m)

The corporate savings have already been achieved and the schools' savings are delegated to the governing bodies to monitor and deliver. On top of this £1.086m of the service savings had originally been designated as savings that have already been implemented.

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

Effective management of the council's revenue and capital budgets and delivery of the agreed budget strategy underpins activity in all areas, including corporate priorities.

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

Significant service narratives explaining variances and risks are detailed in Appendix 2, however the following should also be noted:

**Impact of Corona Virus** - The current short term strategy of working with Welsh Government has helped secure significant funding that has been detailed in previous reports. A system of monthly expenditure claims and quarterly income loss claims has been established. Due to the recent lockdown the £264m announced in August may not be sufficient but we are working with WLGA and WG to ensure the position is monitored closely.

The table below summarises the position of the expenditure claims for DCC. The 'Holding' column indicates items that WG are requesting further information on:

Month	Original total claim	Disallowed	FSM adjustment	Holding	Net Claim paid to date
March 2020	£61,701	£0	£0		£61,701
April 2020	£666,927	(£8,865)	£0		£658,062
May 2020	£1,200,170	(£21,076)	(£190,316)		£988,778
June 2020	£1,027,489	(£29,226)	(£158,614)		£839,649
July 2020	£608,569	0	(£248,013)		£360,556
August 2020	£449,370		£433,376		£882,746
September 2020	£753,407	(£33,248)			£720,159
October 2020	£808,964	(£27,234)		(£236,403)	£545,327
November 2020	£820,502	(£6,300)	(£6,032)	(£92,955)	£715,215
<b>Submitted to date</b>	<b>£6,397,099</b>	<b>(£125,949)</b>	<b>(£169,599)</b>	<b>(£329,358)</b>	<b>£5,772,193</b>

The table below summarises the position relating to the quarterly income loss claims:

Quarter	Original total claim	Disallowed	Holding	Paid by WG
Loss of income Qtr 1	£4,007,786	(£567,923)	(£122,240)	(£3,317,623)
Loss of income Qtr 2	£3,232,679	(£74,999)	(£453,378)	(£2,704,302)
<b>Grand Total</b>	<b>£7,240,465</b>	<b>(£642,922)</b>	<b>(£575,618)</b>	<b>(£6,021,925)</b>

The tables above illustrate that so far Welsh Government have paid a total of £11.794m. Quarter 3 claim is currently being collated and will be reported on next month

**Leisure ADM** – This budget line holds the residual budgets associated with Leisure including the management fee that pays for the services that would be provided in a normal year. Denbighshire Leisure Limited (DLL) is reporting monthly to the Contract Management Board on the rapidly changing financial position in this area. The Council is claiming loss of income funding from Welsh Government on behalf of DLL.

**Corporate Budgets** –Although currently showing a nil variance it is likely that all discretionary spend and contingencies will be released in order to help fund the position. As reported last month £410k of contingency budget has been allocated to services to pay for the recent pay settlement. However, risks remain around the Council Tax Yield and the Council Tax Reduction Scheme which is likely to wipe out the remaining contingency. Un-earmarked General Balances of £7.135m were carried forward into 2020/21, with prudent

minimum level of £5m or 2% of Net Revenue Budget (£4.2m) whichever is the highest. This may need to be reviewed as the impact of the pandemic continues to be felt.

**Schools** - The budget agreed by Council for 2020/21 included a total net additional investment (excluding increases in Welsh Government grants) in schools delegated budgets of just over £2.9m. The latest projection for school balances to be carried forward into 2021/22 is a net deficit balance of £1.591m, which represents an increase of £0.203m on the deficit balances brought forward into 2020/21 of £1.388m. The latest lockdown and the details of how additional costs will be funded will be monitored closely. There is a small overspend of £18k on non-delegated budgets.

**The Housing Revenue Account (HRA).** The latest revenue position assumes a decrease in balances at year end of £1,007k which is £794k more than the budgeted decrease of £213k due to the revised plan to increase the revenue contribution to capital. HRA balances are therefore forecast to be £1.660m at the end of the year. The Capital budget of £19.2m is largely allocated between planned improvements to existing housings stock (£5.3m) and new build developments and acquisitions (£13.8m). The pandemic has had an impact on delivering a number of these schemes and it is expected that £4.3m will be carried forward into next financial year in order to complete the programme of work next financial year.

**Treasury Management** – At the end of December, the council's borrowing totalled £242.171m at an average rate of 3.89%. Investment balances were £12.8m at an average rate of 0.005%.

A summary of the council's **Capital Plan** is enclosed as Appendix 3. The approved capital plan is £46.33m with expenditure to date of £23.90m. Appendix 4 provides an update on the major projects included in the overall Capital Plan.

## **7. What are the main conclusions of the Well-being Impact Assessment?**

A Well-being Impact Assessments for the Council Tax rise was presented to Council on 21 January.

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

In addition to regular reports to the Corporate Governance Committee, the budget process has been considered by CET, SLT, Cabinet Briefing and Council Briefing meetings. The School Budget Forum have been included in the proposals through-out the year. Trade Unions have been consulted through Local Joint Consultative Committee. This year also saw an engagement exercise with the public using social media, the experience of which will be built on in future years.

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

Obviously the core focus at the moment is the financial response and recovery in recovery in relation to the Covid 19 pandemic. The regular Finance Cabinet Report will continue to keep members up to date and regular updates will continue to be provided to informal Cabinet.

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

This is obviously the most challenging financial period DCC has faced. The Financial Strategy agreed by Cabinet in May aims to mitigate the following key risks:

- Failure to have a robust funding strategy could impact on the financial stability and sustainability of the Council.
- Impact on ability for the Council to deliver core services.
- Impact on capacity of the Council to achieve its priorities.

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

Local authorities are required under Section 151 of the Local Government Act 1972 to make arrangements for the proper administration of their financial affairs.

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## Appendix 1

## DENBIGHSHIRE COUNTY COUNCIL REVENUE BUDGET 2020/21

Dec-20	Net Budget	Budget 2020/21			Projected Outturn							Variance
	2019/20	Expenditure	Income	Net	Expenditure	Income	Net	Expenditure	Income	Net	Net	Previous Report
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	%	£'000
Communities and Customers	3,339	3,944	-620	3,324	4,019	-725	3,294	75	-105	-30	-0.90%	-3
Education and Children's Service	16,027	18,267	-1,141	17,126	19,983	-2,319	17,664	1,716	-1,178	538	3.14%	700
Business Improvement and Modernisation	4,501	5,188	-879	4,309	5,368	-1,106	4,262	180	-227	-47	-1.09%	-67
Legal, HR and Democratic Services	2,597	3,038	-654	2,384	2,975	-688	2,287	-63	-34	-97	-4.07%	-79
Finance and Property	4,836	6,071	-1,405	4,666	6,105	-1,439	4,666	34	-34	0	0.00%	0
Highways, Facilities and Environmental Services	15,768	25,028	-7,967	17,061	25,562	-7,482	18,080	534	485	1,019	5.97%	1,039
Planning and Public Protection	9,246	10,272	-498	9,774	10,392	-550	9,842	120	-52	68	0.70%	3
Community Support Services	35,775	38,188	-69	38,119	39,008	-319	38,689	820	-250	570	1.50%	662
Leisure - ADM	2,109	3,272	0	3,272	3,493	0	3,493	221	0	221	6.75%	221
<b>Total Services</b>	<b>94,198</b>	<b>113,268</b>	<b>-13,233</b>	<b>100,035</b>	<b>116,905</b>	<b>-14,628</b>	<b>102,277</b>	<b>3,637</b>	<b>-1,395</b>	<b>2,242</b>	<b>2.24%</b>	<b>2,476</b>
Corporate	16,888	45,541	-29,233	16,308	45,541	-29,233	16,308	0	0	0	0.00%	0
Precepts & Levies	4,806	4,899	0	4,899	4,899	0	4,899	0	0	0	0.00%	0
Capital Financing	13,652	13,724	0	13,724	13,724	0	13,724	0	0	0	0.00%	0
<b>Total Corporate</b>	<b>35,346</b>	<b>64,164</b>	<b>-29,233</b>	<b>34,931</b>	<b>64,164</b>	<b>-29,233</b>	<b>34,931</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.00%</b>	<b>0</b>
<b>Council Services &amp; Corporate Budget</b>	<b>129,544</b>	<b>177,432</b>	<b>-42,466</b>	<b>134,966</b>	<b>181,069</b>	<b>-43,861</b>	<b>137,208</b>	<b>3,637</b>	<b>-1,395</b>	<b>2,242</b>	<b>1.66%</b>	<b>2,476</b>
Schools & Non-delegated School Budgets	68,994	76,579	-3,243	73,336	76,276	-2,719	73,557	-303	524	221	0.30%	67
<b>Total Council Budget</b>	<b>198,538</b>	<b>254,011</b>	<b>-45,709</b>	<b>208,302</b>	<b>257,345</b>	<b>-46,580</b>	<b>210,765</b>	<b>3,334</b>	<b>-871</b>	<b>2,463</b>	<b>1.18%</b>	<b>2,543</b>
Housing Revenue Account	157	16,833	-16,620	213	17,374	-16,367	1,007	541	253	794		859

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## Appendix 2 - Service Variance Narrative

Service	Variance Last Month £000	Variance This Month £000	Change £000	Description
Communities and Customers	-3	-30	-27	The increase in the underspend relates to a temporary delay in recruitment to vacant posts.
Education and Children's Service	700	538	-162	This is despite new monies of £1.5M being allocated to Children's Services this financial year. The movement from last month largely relates to an increase in income from WG grants. However also a number of vacant posts have been filled internally which increases the savings as those posts then need to be filled. No costs have been included for any new placements commencing throughout the year that we don't currently know about. The budget will obviously be monitored carefully over the coming months, however it is welcome that the overspend in this area has remained close to the early projections.
Business Improvement and Modernisation	-67	-47	20	Underspend due to a vacancy saving and one-off external income for a specific project. The underspend will be placed in the new reserve set up to help fund future improvements to Ruthin Gaol.
Legal, HR and Democratic Services	-79	-97	-18	Underspends due to vacancy savings following delay due to Covid 19 - minor changes across a range of areas accounts for the movement from last month. Additional grant funding has been applied to committed expenditure which has increased the underspend this month.
Finance and Property	0	0	0	The overspend previously reported earlier in the year related to a shortfall in income due to the decision to forego rents for industrial units for April to July in response to the Covid pandemic alongside a reduction in income generally on the coastal portfolio. Most of this loss of income has now been approved and paid as part of Q1 Tranche 2, however doubts persist on how much will be received for Q2 and Q3 rental losses which may result in an overall overspend. The remaining costs are offset by vacancy savings (Chief Accountant post) due to the lockdown and an overall cost reduction exercise.
Highways, Facilities and Environmental Services	1,039	1,019	-20	£1.25m of the overspend relates to the loss of income from schools meals - this projection assumes no income for term 3 and a reduced level for the beginning of term 1. A further £337k relates to Waste due to reduced income in quarter (green waste, trade waste etc). Maximisation of external funding accounts for the small change from last month.
Planning and Public Protection	3	68	65	The service has received £253k Income Loss grant relating to reduced footfall in car parks. School Transport is currently projected to overspend by £309k, however it is assumed that the net overspend of £309k will be claimable from WG Covid Grant. If this is not the case then the overspend in PPP will increase by this amount. The movement from last month relates to an increase in projected loss of income (reduction in on street parking fines for example) which results from the recent lockdowns.
Community Support Services	662	570	-92	The project is due to additional costs over and above the £2.6m estimated and included in the budget for 2020/21. The main areas of concern are Homelessness and Community Care packages. The projection assumes that the service will again receive the £800k Workforce & Sustainability Grant. No assumption has been made about grant funding for winter pressures which tend to be announced by WG in the autumn and during the winter itself.
Leisure - ADM	221	221	0	It is assumed losses over Q3 and Q4 will be refunded from WG as they have accepted the claims for Q1 & Q2
Corporate & Miscellaneous	0	0	0	See body of report for details
Precepts & Levies	0	0	0	There are no risks in this area
Capital Financing	0	0	0	The position on capital financing is very much related to progress on capital projects and variances do not crystallise until later in the financial year.
<b>Council Services &amp; Corporate Budget</b>	<b>2,476</b>	<b>2,242</b>	<b>-234</b>	

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**Denbighshire County Council - Capital Plan 2020/21 - 2023/24**  
**Position to end December 2020**

**APPENDIX 3**

	2020/21 ORIGINAL ESTIMATE £000s	2020/21 LATEST ESTIMATE £000s	2021/22 LATEST ESTIMATE £000s	2022/23 LATEST ESTIMATE £000s	2023/24 LATEST ESTIMATE £000s
<b>Capital Expenditure</b>					
Total Estimated Payments - Other	13,293	24,253	9,176	2,850	350
Total Estimated Payments - Major Projects:					
Housing Improvement Grants	1,200	1,200			
Rhyl, New 3-16 Catholic School	1,010	939	366		
Ysgol Llanfair, New School	399	148			
Ysgol Carreg Emlyn, New School	822	119	750		
Highways Maintenance	3,253	5,294			
East Rhyl Coastal Defence Scheme	11,660	12,803	9,150	5,575	
Rhyl Waterfront and Waterpark	36	73			
Waste Service Remodelling	9,475	1,000	13,172		
Contingency	500	500	500	500	500
<b>Total</b>	<b>41,648</b>	<b>46,329</b>	<b>33,114</b>	<b>8,925</b>	<b>850</b>
<b>Capital Financing</b>					
<b>External Funding</b>	18,163	22,477	14,632	4,809	4,809
<b>Receipts and Reserves</b>	3,874	8,137	5,063	2,500	
<b>Prudential Borrowing</b>	19,611	15,715	17,728	5,925	350
<b>Unallocated Funding</b>	0	0	(4,309)	(4,309)	(4,309)
<b>Total Capital Financing</b>	<b>41,648</b>	<b>46,329</b>	<b>33,114</b>	<b>8,925</b>	<b>850</b>

Note: 2020-21 Original Estimate is the position as approved by Council on 25th February 2020

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## Appendix 4 - Major Capital Projects Update – December 2020

<b>21<sup>st</sup> Century Schools Programme – Ysgol Llanfair</b>	
Total Budget	£4.964m
Expenditure to date	£4.872m
Estimated remaining spend in 20/21	£0.092m
Future Years estimated spend	£0.000m
Funding	WG £0.180m; DCC £4.784m
<b>Narrative:</b>	
<p>This scheme is within the Band A proposals for 21st Century Schools Programme. The project has provided a new school building on a new site in Llanfair DC.</p> <p>The school are fully settled into their new environment and are reaping the benefits of the new facilities. The defect period is due to finish February Half term, the construction contractor has been very responsive to address any defects and continue to provide the school with support as and when needed.</p> <p>The swap in land whereby the Church in Wales St. Asaph Diocese will receive the footprint of the land at the new school site and the Council will receive ownership of the land in Diocese ownership at the former school site is currently progressing. Negotiations are ongoing between both parties and it is hoped that a completion can be reached shortly. Once the former site is in the Council's possession, it will be declared surplus by Education and discussions on the future use for the former school site will commence.</p>	
Forecast In Year Expenditure 20/21	£0.148m

## 21<sup>st</sup> Century Schools Programme – Glasdir

Total Budget	£11.714m
Expenditure to date	£11.577m
Estimated remaining spend in 20/21	£0.000m
Future Years estimated spend	£0.137m
Funding	DCC £3.066m; WG £8.648m
<p><b>Narrative</b></p> <p>This project has delivered a new shared school building site for Rhos Street School and Ysgol Penbarras at Glasdir, Ruthin which has been used by the schools since April 2018.</p> <p>The final account has now been settled.</p> <p>The tender for additional hard standing has been returned and is being evaluated during January 2021. It is intended to have a contractor in place by the start of February 2021. The work on site is scheduled to take 8 weeks and is planned to take place in the spring of 2021. The costs of the works, approximately £200k, will be absorbed from the overall allocation to the Ruthin projects in 2016 as part of Denbighshire's contribution to the 21st Century Schools Programme.</p>	
Forecast In Year Expenditure 20/21	£0.052m



<b>21<sup>st</sup> Century Schools Programme – Rhyl, Christ the Word School</b>	
Total Budget	£23.440m
Expenditure to date	£22.941m
Estimated remaining spend in 20/21	£ 0.134m
Future Years estimated spend	£ 0.365m
Funding	WG £5.541m; DCC £17.899m
<b>Narrative:</b>	
<p>This scheme is within the Band A proposals for 21st Century Schools Programme.</p> <p>We have just had confirmation that the project has achieved BREEAM Excellent. Snagging works continue to be completed and the works are being closely monitored.</p> <p>The budget continues to be closely monitored as the project comes to an end.</p>	
Forecast In Year Expenditure 20/21	£0.939m

<b>Rhyl Queens Market Redevelopment</b>	
Total Budget	£6.463m
Expenditure to date	£4.707m
Estimated remaining spend in 20/21	£1.393m
Future Years estimated spend	£0.363m
Funding	WG £2.811m (Additional £2.5m subject to formal confirmation. DCC Asbestos £0.252m. DCC £3.400m
<b>Narrative:</b>	
<p>Additional funds were secured from the Council at the September Cabinet meeting but further funds are still required. The funding required is being considered at the WG Capital Panel meeting scheduled for w/c January 11<sup>th</sup>.</p> <p>A preferred contractor has been selected for the remaining asbestos removal and demolition, and the contract is currently being drawn up. Hoping to start on site w/c 25<sup>th</sup> January 2021.</p> <p>The Planning Application will be submitted by the w/c 11<sup>th</sup> January 2021.</p> <p>.</p>	
Forecast In Year Expenditure 20/21	£2.209m

<b>Waste Service Remodelling</b>	
Total Budget	£16.430m
Expenditure to date	£2.779m
Estimated remaining spend in 20/21	£0.479m
Future Years estimated spend	£13.172m
Funding	WG £9.345m , DCC £7.085m
<b>Narrative:</b>	
<p>Work is ongoing in preparation for a change to the household waste collection model. The new service model will see a move to weekly collection of kerbside sorted recyclable material with a 4 weekly collection of residual/non-recyclable waste. Weekly food waste collection will continue as at present and additional services around collection of absorbent hygiene products (AHP), textiles, small electricals and batteries will also be available and will be introduced in the run up to or during the main roll out of the new kerbside sort service.</p> <p>A number of work streams are being taken forward to include:</p> <ul style="list-style-type: none"> <li>• Development of a new single central waste transfer station depot on land adjacent to the Colomendy Industrial Estate in Denbigh. Work is ongoing on detailed design with aim to issue a Tender for the initial Phase 1 / Enabling Works early 2021 with a site start in late spring 2021.</li> <li>• Specification of the new fleet required to support the new model is now completed following a number of trials/tests with the aim to undertake a procurement exercise for the new waste collection vehicles at the appropriate time in 2021 with delivery of the new fleet anticipated in the three months leading up to the planned new service roll out.</li> </ul> <p>An Options Appraisal exercise on the detail of the new recycling container design has commenced, the outcome of which will be taken forward for formal approval of a preferred option, followed by a subsequent tender and delivery schedule in time for roll out associated with proposed service change. A number of mobilisation and communication activities are ongoing to prepare for the service change and include developing the new collection routes; planning for any staffing changes/requirements and ongoing engagement and communication with stakeholders and residents.</p>	
Forecast In Year Expenditure 20/21	£1.000m

<b>East Rhyl Coastal Defence Scheme</b>	
Total Budget	£27.528m
Expenditure to date	£10.756m
Estimated remaining spend in 20/21	£2.047m
Future Years estimated spend	£14.725m
Funding	WG £23.400m; DCC £4.128m
<b>Narrative:</b>	
<p>The ongoing coastal defence scheme at East Rhyl will provide an improved standard of flood protection for around 1650 properties.</p> <p>Work on site continues to progress well and is on time and within budget. Rock armour continues to be delivered to site and more than one quarter of the rock revetment work is complete. The first of 3 new beach accesses is substantially complete. Production of the pre-cast concrete sea wall units has commenced in Norfolk.</p> <p>Work to make improvements to the Rhyl Golf Course flood storage area is 50% complete with no issues.</p> <p>Work recommenced on site on 4<sup>th</sup> January 2021 as planned after the Christmas break.</p>	
Forecast In Year Expenditure 20/21	£12.803m

## Cabinet Forward Work Plan

Meeting	Item (description / title)		Purpose of report	Cabinet Decision required (yes/no)	Author – Lead member and contact officer
<b>16 Feb</b>	1	Contract Procedures Rules	To consider the reviewed contract procedures rules which will require adoption and form part of the council constitution	Tbc	Councillor Julian Thompson-Hill / Lisa Jones
	2	DCC's Climate and Ecological Change Strategy (2021/22 – 2029/30)	To consider the final DCC's Climate and Ecological Change Strategy (2021/22 – 2029/30) and recommend to Council its adoption	Tbc	Councillor Brian Jones / Helen Vaughan-Evans
	3	Non-Domestic Rates (NDR) Write-Offs	To seek approval to write off irrecoverable NDR (business rates) as detailed within the report.	Yes	Councillor Julian Thompson-Hill / Steve Gadd
	4	Recommendations of the Strategic Investment Group	To seeking support of projects identified for inclusion in the 2021/22 Capital Plan	Yes	Councillor Julian Thompson-Hill / Steve Gadd
	5	Volunteering Policy	To discuss the new Volunteering Policy and supporting process of recruiting and managing volunteers within	Tbc	Councillor Richard Mainon / Felicity Chandler / Nicola Kneale

## Cabinet Forward Work Plan

Meeting	Item (description / title)		Purpose of report	Cabinet Decision required (yes/no)	Author – Lead member and contact officer
			Denbighshire County Council, to ensure meaningful volunteering experiences for all.		
	6	Changes to Denbighshire's Street Naming and Numbering Policy	To seek approval of proposed changes to the policy	Yes	Councillor Richard Mainon / Emma Jones
	7	Welsh Government Targeted Investment Programme	To seek delegated authority to officers relating to the WG Targeted Investment Programme following an extension of the scheme	Yes	Councillor Hugh Evans / Gareth Roberts
	8	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Steve Gadd
	9	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator
<b>23 March</b>					
	1	Awel Y Dyffryn Extra Care Housing – Appointment of Care Providers	To seek approval to appoint 2 care providers for ECH older persons and Learning Disability	Yes	Councillor Bobby Feeley / Phil Gilroy / Emily Jones-Davies
	2	Corporate Plan (Oct to Dec)	To consider a performance update on the Corporate	Tbc	Councillor Julian Thompson-Hill / Iola McGregor

## Cabinet Forward Work Plan

Meeting	Item (description / title)		Purpose of report	Cabinet Decision required (yes/no)	Author – Lead member and contact officer
			Plan		
	3	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Steve Gadd
	4	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator
<b>27 April</b>					
	1	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Steve Gadd
	2	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator
<b>25 May</b>					
	1	Finance Report	To update Cabinet on the current financial position of the Council	Tbc	Councillor Julian Thompson-Hill / Steve Gadd
	2	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator

## Cabinet Forward Work Plan

Meeting	Item (description / title)		Purpose of report	Cabinet Decision required (yes/no)	Author – Lead member and contact officer
<b>29 June</b>	1	Annual Performance Review	To consider the Annual Performance Review	Tbc	Councillor Julian Thompson-Hill / Iolo McGregor
	2	Finance Report	To update Cabinet on the current financial position of the Council		Councillor Julian Thompson-Hill / Steve Gadd
	3	Items from Scrutiny Committees	To consider any issues raised by Scrutiny for Cabinet's attention	Tbc	Scrutiny Coordinator

*Note for officers – Cabinet Report Deadlines*

<i>Meeting</i>	<b><i>Deadline</i></b>	<i>Meeting</i>	<b><i>Deadline</i></b>	<i>Meeting</i>	<b><i>Deadline</i></b>
<i>February</i>	<b><i>2 February</i></b>	<i>March</i>	<b><i>9 March</i></b>	<i>April</i>	<b><i>13 April</i></b>

Updated 12/01/2021 - KEJ

Cabinet Forward Work Programme.doc