



CABINET - 1ST JULY 2020

**SUBJECT: MUTUAL INVESTMENT MODEL 21ST CENTURY SCHOOLS
WELSH EDUCATION PARTNERSHIP – STRATEGIC
PARTNERING AGREEMENT**

**REPORT BY: CORPORATE DIRECTOR FOR EDUCATION AND
CORPORATE SERVICES**

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to update members on a Welsh Government scheme linked to the Mutual Investment Model (MIM) 21st Century Schools and Colleges Band B programme.
- 1.2 The report seeks approval from Cabinet for the Council to enter into a Strategic Partnering Agreement with the Welsh Education Partnership Co (WEPCo) to enable us to use the Strategic Partnering Framework in the future if required, in order to facilitate the delivery of education and community facilities.

2. SUMMARY

- 2.1 Welsh Government has been procuring a Private Sector Delivery Partner to work with it on the delivery of education and community facilities throughout Wales, under a strategic partnering framework.
- 2.2 The successful private sector partner and a subsidiary of the Development Bank of Wales (known as WGCo) will be required to form WEPCo, which will deliver infrastructure services to the Participants in Wales. The Participants to the arrangements will be a number of Local Authorities and Further Education Institutions. The Participants and WEPCo will enter into a Strategic Partnering Agreement.
- 2.3 The aim of the Strategic Partnering Agreement is to provide a process for efficient and effective planning, procurement, design, build and/or finance and maintenance of education and community-based facilities in Wales. The Strategic Partnering Agreement is the mechanism by which this can be achieved and will be signed by the Council in September 2020.
- 2.4 As part of the Council's 21st Century Schools and Colleges Band B programme, Welsh Government has agreed in principle to a Municipal Investment Model (MIM) delivered within Caerphilly Borough with an equivalent build value in the range £28m – £32m. The size and nature of this project is yet to be determined and would be subject to business case approval by the Welsh Government.

- 2.5 The purpose of this report is to explain the process and seek approval to enter into a Strategic Partnering Agreement with Welsh Education Partnership Co to facilitate the delivery of education and community facilities. Members should note that there will be a nominated 'Participant Representative' who will be Sue Richards, Head of Education Planning and Strategy who will sit on the Strategic Partnering Board on behalf of the Council.
- 2.6 By signing into this agreement this will ensure the Council has the option to access this framework should this be required in line with the 21st Century Schools Strategic Planning.

3. RECOMMENDATIONS

3.1.1 Cabinet are asked to:

- a) Note the information contained in the report
- b) Approve the execution, delivery and performance of the Strategic Partnering Agreement with the Welsh Education Partnership Co in September 2020 to facilitate the delivery of a range of infrastructure services and the delivery of education and community facilities.
- c) Approve the Strategic Partnering Agreement at Appendix 1 of this report and summarised in Appendix 2 of this report so as to give effect to recommendation (b), subject to recommendation (d) below
- d) Gives delegated authority to the Director of Corporate Services and Education, after consultation with the Monitoring Officer and the Cabinet:
 - (i) approve the final terms of the Strategic Partnering Agreement
 - (ii) approve any further deeds and documents which are ancillary to the Strategic Partnering Agreement approved here
- e) Approve the nomination of Sue Richards, Head of Education Planning and Strategy, and Andrea West, 21st Century Schools Manager, to be the Council's 'Participant Representative' to sit on the Strategic Partnering Board (SPB);
- f) Note that in agreeing to enter into the Strategic Partnering Agreement, the Council is not being asked to decide to proceed with any Project, and that nothing within the Strategic Partnering Agreement commits the Council to make any such commitment. Any decision to proceed with a Project will be reported back to Members in future report(s) for decision as there will be funding implications for the Council.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 To ensure the Council is able to access the Strategic Partnering Agreement should it decide to progress with a MIM project, at any point during the lifecycle of the Band B 21st Century Schools and Colleges Programme. A further report to Council will be necessary before the Council commits to a project.

5. THE REPORT

- 5.1 The "Mutual Investment Model", or MIM, was formally launched by the Welsh Government on 28th February, 2017 and is a platform for delivery of the "Taking Wales Forward" agenda. The MIM has been designed to finance major capital projects due to a scarcity of capital funding.

- 5.2 The MIM is intended to support additional investment in social and economic infrastructure projects and help to improve public services in Wales. Under the MIM, the private sector partners will build and maintain public assets, and in return the Council supported by funding from the Welsh Government will pay a fee to the private partner, which will cover the cost of construction, maintenance and financing the project. At the end of the contract the asset reverts to the Council.
- 5.3 The MIM model is a form of Public, Private Partnership but it differs from the previous PFI model insofar as long term community benefits are secured, government influence on the model is increased, transparency is embedded in the contract and soft services, which were often a bone of contention in PFI contracts, are omitted.
- 5.4 The Welsh Government has been procuring a private sector partner to work with it on the delivery of education and community facilities in Wales, under the MIM 21st Century Schools Programme. It will be the only means of delivering revenue funded Band B projects. The Welsh Government is expected to select and appoint a preferred bidder during the summer of 2020. The successful private sector partner and a subsidiary of the Development Bank of Wales (known as WGCo) will be required to form WEPCo, which will deliver infrastructure services to the Participants in Wales.

The Strategic Partnering Agreement (SPA)

- 5.5 The Participants to the arrangements will be a number of Local Authorities and Further Education Institutions. The Participants and WEPCo will enter into a Strategic Partnering Agreement (SPA). The SPA provides for how the parties act together over the long term in a collaborative partnering, non-adversarial and open manner to support the effective planning, procurement and delivery of education and community facilities in Wales and the delivery of infrastructure services. The SPA is due to be signed in September 2020.
- 5.6 The initial term of the SPA is 10 years. This may be extended by 5 years by any one or more Participants. Under the SPA, WEPCo is required to provide partnering services to the Participants. These services include (i) project development and delivery; (ii) supply chain assembly and management and (iii) other professional services necessary to fund and deliver education and community facilities.
- 5.7 If a Participant receives funding for a 21st Century Schools and Colleges Band B MIM Programme project, WEPCo has the exclusive right to develop proposals for the delivery of that project (Project Development Partnering Services) within the first 10 years of the SPA.
- 5.8 To reiterate in entering into the SPA does not bind the Council in any way. However, the Council will be required to appoint a representative to act on its behalf in relation to the SPA. The identity of the representative may change at any time following written notice to WEPCo and all other Participants. Each representative may also at any time, by written notice to WEPCo, authorise others to exercise the functions and powers of the Council. Appendix 2 provides a more detailed summary of the SPA.

The Strategic Partnering Board (SPB)

- 5.9 The SPB will act as the primary mechanism for managing WEPCo's performance. The SPB will be the central forum in which the Participants can work together with WEPCo, Welsh Government and Stakeholder Representatives to ensure that the key principles of the SPA are met. Participant representation will be required on the SPB.

- 5.10 The SPB's role will be to approve the Strategic Delivery Plan (SDP); ensure any new project proposals are consistent with the SDP; monitor WEPCo's performance against agreed Key Performance Indicators; approve any extension to the SPA term; and approve any proposed disposal of interest in share capital resulting in a loss of control by WEPCo (or subsidiary).
- 5.11 The Council's Representative(s) will be expected to be a senior representative of the Council, with the appropriate authority to make decisions on behalf of the Council, hence it is proposed that Sue Richards, Head of Education Planning and Strategy, and Andrea West, 21st Century Schools Manager, are recommended to be the Council's representatives.
- 5.12 The Council's Representative will attend the SPB meetings at least once every three months, together with representatives of each Participant, WEPCo, Welsh Government and other stakeholder representatives as agreed by the Participants.
- 5.13 As part of the Council's 21st Century Schools and Colleges Band B programme, Welsh Government has agreed in principle to a Municipal Investment Model (MIM) delivered within Caerphilly Borough with an equivalent build value in the range £28m – £32m. The size and nature of this project is yet to be determined and would be subject to business case approval by the Welsh Government.

6. ASSUMPTIONS

- 6.1 It is assumed that once the Authority has signed up to the Strategic Partnering Agreement, the Authority may access the framework should it identify the need to do so.

7. LINKS TO RELEVANT COUNCIL POLICIES

- 7.1 Caerphilly's Shared Ambitions Strategy: To raise standards and ensure our learners are healthy, confident, proud and ambitious and can access high quality educational opportunities, settings and experience.
- 7.2 Caerphilly's Wellbeing Objectives 2018 to 2023. This proposal will assist the Authority in meeting these objectives in particular the following:
Well-being Objective 1 – Improve Education opportunities for all.

8. WELL-BEING OF FUTURE GENERATIONS

- 8.1 The Well-Being of Future Generation (Wales) Act 2015 is about improving the social, economic, environmental and cultural wellbeing of Wales. It requires public bodies to think more about the long-term, working with people and communities, looking to prevent problems and take a more joined up approach. This will create a Wales that we all want to live in, now and in the future. The Act puts in place seven well-being goals:
- A prosperous Wales.
 - A resilient Wales.
 - A healthier Wales.
 - A more equal Wales.
 - A Wales of cohesive communities.
 - A Wales of vibrant culture and thriving Welsh Language.

- A globally responsible Wales.

8.2 The Act sets out the sustainable development principle against which all public bodies in Wales should assess their decision-making. The aim of the legislation is to ensure the well-being of future generations through maximising the contribution public bodies make towards the well-being goals. In using the sustainable development principle, it is incumbent that the authority considers the whole of the population it serves and considers the effect of its actions on future generations. The principle, also known as the five ways of working is assessed below:

- **Long Term** – This is an opportunity to access a service over a 10-year period should this be identified locally.
- **Prevention** – Ensuring that the Authority is not missing out on the opportunity to maximise transparency and economies of scale.
- **Integration** – To improve the efficiency of delivery for education and community-based facilities across the region of Wales, as a whole
- **Collaboration** – Working in partnership on a National Level on the delivery of the 21st Century Schools MIM programme.
- **Involvement** – Ensuring that the Authority is party to the framework and meets the necessary deadlines for engagement.

9. EQUALITIES IMPLICATIONS

9.1 At this stage there are no Equality implications identified and arising from the report.

9.2 Should a project be identified, equalities consideration will be taken pursuant to s. 149 Equality Act 2010, to include a full Equalities Impact Assessment.

10. FINANCIAL IMPLICATIONS

10.1 Welsh Government has agreed in principle to a Municipal Investment Model (MIM) delivered within Caerphilly Borough with an equivalent build value in the range £28m – £32m. Whilst the Authority would not make a capital contribution a monthly Unitary Charge would be payable for 25 years following handover. The quantum of the Unitary Charge is not yet known but it has been confirmed that 75% of the charge would be funded by WG.

10.2 All funding is subject to a full business case approval by Welsh Government and full consultation and will require a decision of Council.

10.3 To confirm MIM is a way to invest in public infrastructure in Wales. It has been designed by the Welsh Government to finance major capital projects due to a scarcity of capital funding.

11. PERSONNEL IMPLICATIONS

11.1 There is no specific Personnel implication directly resulting from the report.

12. CONSULTATIONS

- 12.1 The draft report was distributed as detailed below. All comments received have been reflected in this version of the report.

13. STATUTORY POWER

Local Government Act 2000,
Education Acts 1996 and 2002, and
Local Government Act 1972.

Author: Andrea West, 21st Century Schools Manager

Consultees: Sue Richards, Head of Education Planning and Strategy
Christina Harrhy, Chief Executive
Richard Edmunds, Corporate Director of Education and Corporate Services
Keri Cole, Chief Education Officer
Dave Street, Corporate Director, Social Services & Housing
Mark S. Williams, Corporate Director Communities
Councillor Barbara Jones, Deputy Leader and Cabinet Member for Education and Achievement
Councillor Teresa Parry, Chair of Education for Life Scrutiny Committee
Councillor Carol Andrews, Vice Chair of Education for Life Scrutiny Committee
Steve Harris, Interim Head of Business Improvement and Acting Section 151 Officer
Lynne Donovan, Head of People Services
Anwen Cullinane, Senior Policy Officer, Equalities, Welsh Language & Consultation
Rob Tranter, Head of Legal Service and Monitoring Officer
Ros Roberts, Business Improvement Manager
Jane Southcombe, Education Finance Manager
Mark Williams, Interim Head of Property Services
Steve Pugh, Corporate Communications Manager.

Background Papers:

Education for Life Scrutiny Committee – 19/04/2018

Subject: 21st Century Schools and Education Band B Proposals

Appendices:

Appendix 1: WEP Strategic Partnering Delivery Model – Governance Advice to Local Government for Entering into the Strategic Partnering Agreement.

Appendix 2: Update on the WEP Strategic Partner Procurement 7th April 2020.

WEP STRATEGIC PARTNERING DELIVERY MODEL

GOVERNANCE ADVICE TO LOCAL GOVERNMENT FOR ENTERING INTO THE STRATEGIC PARTNERING AGREEMENT

1 INTRODUCTION

- 1.1 The Welsh Government has been procuring a private sector partner for the MIM 21st Century Schools Programme that is expected to select and appoint a preferred bidder by September 2020. In order to give effect to this procurement key contracts need to be entered into and approvals obtained. The purpose of this advice note, directed to Local Authorities, is to explain the process and advise on the steps that need to be taken for September.
- 1.2 The WEP Strategic Partnering Agreement (**SPA**) is the agreement to be entered into between the Local Authorities and Further Education Institutions (**Participants**)¹ and WEPCo (being the joint venture company established between the Private Sector Delivery Partner (**PSDP**) and a subsidiary of the Development Bank of Wales). This is due to be executed in September 2020.
- 1.3 The SPA provides for how the parties act together over the long term in a collaborative partnering, non-adversarial and open manner to support the effective planning, procurement and delivery of education and community facilities in Wales and the delivery of infrastructure services.
- 1.4 The initial term of the SPA is 10 years. This may be extended by 5 years by any one or more Participants. Under the SPA, WEPCo is required to provide partnering services to the Participants. These services include (i) project development and delivery; (ii) supply chain assembly and management and (iii) other professional services necessary to fund and deliver education and community facilities.
- 1.5 The most likely outcome for a Participant that becomes a party to the SPA is that they proceed to develop a project or projects using the Approval Process in the SPA resulting in the execution of a Project Agreement which will govern the design, build, finance and maintenance of schools. In order to benefit from that process Participants need to execute and be a party to the SPA.
- 1.6 The purpose of this advice note is to explain what is required for Local Authority Participants to enter into the SPA in September 2020.

2 APPROVAL PROCESS, THE FORWARD PLAN AND CALL-IN

Member approval

- 2.1 Approval to enter into the SPA is likely to require a member decision. As an executive function, this responsibility lies with the Cabinet. For the reasons set out below, we would advise Local Authorities to take this decision **no later than July 2020**. If the decision is not taken at this time the Local Authority is likely to miss the deadline for execution of the SPA in September 2020.
- 2.2 This note assumes that Cabinet meetings will resume in the coming months. As a result of the Covid-19 pandemic, and following the Prime Minister's announcement on 23 March 2020 introducing strict measures to prevent all non-essential contact, we recognise that future physical meetings may not be possible. In that case, Local Authorities should be reassured that the Leader may personally discharge any executive functions or arrange for them to be discharged by another member of the Cabinet under s.15 Local Government Act 2000, avoiding the need for meetings of the Cabinet altogether. For further information please see **COVID-19 Emergency: Welsh local authority governance and decision making**.

¹ Note those named as a "Contracting Authority" in the OJEU notice will be entitled to sign and enter into the SPA.

Lead-in times

- 2.3 Local Authorities tend to have extended lead-in times in the run up to Cabinet decisions, requiring the matter to be considered by the senior management team of officers; undertaking wider group engagement and sometimes taking matters first through the Scrutiny or other committee(s). All of this should be factored into the lead-in times for Cabinet decision, which can bring forward the decision-making timetable by 6-8 weeks.

Forward plan

- 2.4 Additionally, Local Authorities should look to have this on their forward plans a month in advance of the Cabinet decision. We would advise the report title and description should be sufficiently high level to permit ongoing development of the Cabinet report and recommendations between listing of the decision on the plan in May/June and the taking of the decision. We suggest something along the following lines:
- 2.4.1 A simple report title such as, "*MIM 21st Century Schools Welsh Education Partnership – Strategic Partnering Agreement*"; and
- 2.4.2 A high level description such as, "*Approval to enter into a Strategic Partnering Agreement with Welsh Education Partnership Co to facilitate the delivery of education and community facilities*".
- 2.5 A forward plan entry such as this provides a degree of latitude to expand the scope of the decision to be taken. Taking the decision in June or July means that Local Authorities will be seeking Cabinet approval to enter into the SPA before the document is in its final form, and perhaps before a preferred bidder has been selected (anticipated July 2020). Whilst we do not envisage many changes to the documentation at preferred bidder stage of the procurement, it is nevertheless prudent to allow a degree of flexibility in the final form of the Cabinet report that still accords with the forward plan. For instance, an entry such as this provides scope to include a delegation(s) to an officer to approve the final terms of the SPA and/or a recommendation for approval to use the Approval Process under the SPA for any Pathfinder projects that a Local Authority may be seeking to pursue in the coming months (please see **Approval process for Pathfinder Projects** for further information).

Scrutiny and call-in

- 2.6 Local Authorities will also need to build in time for scrutiny and call-in, once the Cabinet decision has been taken. Typically, the period for call-in lasts for 5 working days following publication of the minutes of the Cabinet's decision. It is not unusual for a call-in not to be received until the last day of the call-in period.
- 2.7 If a valid call-in is received from councillors during the period for call-in, a meeting of the Overview and Scrutiny Committee will need to be held to consider the decision and determine whether to refer it back to the Cabinet for further consideration. Ordinarily, the Overview and Scrutiny Committee should meet within 10 working days of the end of the call-in period, and the Cabinet within 10 working days of the Overview and Scrutiny Committee meeting. Local constitutional arrangements may require meetings are to be held sooner than this.
- 2.8 During the call-in process, the Cabinet's decision may not be implemented. It may only be implemented after the Cabinet has met to consider the Overview and Scrutiny Committee recommendations, or after the Overview and Scrutiny Committee has met if it decides to take no further action. A full call-in process, with both an Overview and Scrutiny Committee meeting and a second meeting of the Cabinet, can delay implementation by 3-6 weeks depending how quickly the meetings can be arranged. By taking the decision in June or July this will provide sufficient time for any call-in.

- 2.9 If no valid call-in is received during the period for call-in, the decision can be implemented upon expiry of the period for call-in – usually around a week to ten days after the Cabinet meeting has taken place.
- 2.10 This note assumes that Overview and Scrutiny Committee meetings will resume in the coming months. The Coronavirus Act 2020 provides, at section 78, for the passing of secondary legislation by Welsh ministers to permit remote meetings for non-executive committees. This power may be used to extend the provisions made by the Welsh Government regarding remote attendance at full council and non-executive committee meetings in section 4 of the Local Government (Wales) Measure 2011, to remove the requirement for 30% of members to be present in the room. For further information please see **COVID-19 Emergency: Welsh local authority governance and decision making**.
- 2.11 It is recognised that the timing of a Cabinet decision in July 2020 poses some practical difficulties - owing to the summer recess, the Cabinet will not ordinarily meet during the month of August and all councillors will generally be less available. This could impact upon the call-in process, should a valid call-in be received. For this reason, Local Authorities may wish to bring the decision forward to June 2020, to allow for any call-in to be managed during July.
- 2.12 Figure 1 below provides a sample timetable based on a Cabinet decision on 15 June 2020 and a call-in period of 5 days during which a valid call-in is received. This is indicative only and will vary according to local governance requirements within Local Authorities' individual constitutions.

Fig.1 Illustrative timetable based on a decision on 15 June 2020 and a call-in period of 5 days

DATE	ACTION
April/May 2020	Engagement with senior management team of officers Undertaking wider group engagement Engaging with Scrutiny or other committee(s) as necessary
Early May 2020	Include proposed decision of 15 June 2020 in latest version of forward plan
5 June 2020	Cabinet report published (5 clear working days advance publication)
15 June 2020	Meeting of the Cabinet
17 June 2020	Minutes of Cabinet meeting published, triggering call-in period. Decision cannot be implemented until the call-in process is complete
18 – 24 June 2020	5 day call-in period Valid call-in received
1 July 2020	Officer's report published, responding to call-in (5 clear working days advance publication)
8 July 2020	Meeting of Overview and Scrutiny Committee to consider the call-in This meeting takes place within 10 working days

	of the conclusion of the call-in period
22 July 2020	Meeting of the Cabinet to consider the recommendations of the Overview and Scrutiny Committee This meeting takes place within 10 working days of the Overview and Scrutiny meeting to consider the call-in
22/23 July 2020	Minutes of Cabinet meeting published, decision implemented immediately
August 2020	Delegated officer decision on final terms of the SPA / documents for Pathfinder Projects (if necessary, see section 3 and 4 below)
September 2020	Execution of SPA

3 CABINET REPORT

- 3.1 Local Authorities will be seeking Cabinet approval to enter into the SPA before the document is in its final form, and perhaps before a preferred bidder has been selected (anticipated July 2020). The report will need to include sufficient detail to enable members to make an informed decision at a stage slightly earlier than may have otherwise occurred if it were not for the need to execute the SPA by September 2020.
- 3.2 The Cabinet report will need to adhere to the requirements of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 (SI 2001/2290) (“**the 2001 Regulations**”) and will need to provide sufficient detail to ensure that the Cabinet are able to demonstrate that they have taken into consideration all relevant factors and have disregarded all irrelevant factors. The report should describe the reasons for the decision; what the SPA does and what signing the SPA means for the Local Authority including any potential liabilities and risks as well as benefits. We will be providing a draft Cabinet report to assist Local Authorities, which will explain the SPA in the context of these points. We will be including recommendations in the following terms:

3.2.1 *It is recommended that Cabinet:*

- (a) *Notes the outcome of the Preferred Bidder Stage of the Competitive Dialogue Procedure under the Public Contracts Regulations 2015 as outlined in this report;*

OR

- (a) *Notes the progress of the Preferred Bidder Stage of the Competitive Dialogue Procedure under the Public Contracts Regulations 2015 as outlined in this report;*
- (b) *Approves the entering into of the Strategic Partnering Agreement with the Welsh Education Partnership Co to facilitate the delivery of education and community facilities, in [September] [Autumn] 2020;*
- (c) *Approves the Strategic Partnering Agreement [and associated legal document(s)] at Appendix XX of this report and summarised in paragraphs XX of this report so as to give effect to recommendation (b), subject to recommendation (d) below;*
- (d) *Gives delegated authority to the [Director for Children’s Services], after consultation with the monitoring officer:*

- (i) *To approve the final terms of the Strategic Partnering Agreement, including any amendments to the Strategic Partnering Agreement [and associated legal document(s)] approved here as may be necessary, for reasons including but not limited to [ensuring consistency between them and] finalising any outstanding areas; [and*
- (ii) *To approve any further deeds and documents which are ancillary to the Strategic Partnering Agreement [and associated legal document(s)] approved here, as described in paragraph XX of the Strategic Partnering Agreement]*
- (e) *Notes that in agreeing to the Strategic Partnering Agreement [and associated legal documents], it is not being asked to decide to proceed with any Pathfinder Project, and that nothing within [the Strategic Partnering Agreement] [any of them] commits the Council to make any such commitment. Any decision to proceed with a Pathfinder Project will be reported back to Cabinet in future report(s) for decision;*

OR

- (e) *Approves the use of the Approval Process as set out in paragraph XX of the Strategic Partnering Agreement to enter into Pathfinder projects as described in paragraphs XX of this report subject to recommendation (f) below;*
- (f) *Gives delegated authority to the [Director for Children's Services], after consultation with the monitoring officer to approve [the final terms of XX] to proceed with the Pathfinder projects as referred to above at recommendation (e) above.*

4 DELEGATED DECISION MAKING

- 4.1 Whilst it is not envisaged that the draft SPA will change substantially once a preferred bidder is approved, we would advise that the Cabinet recommendations should include a delegation to the Council's relevant Director to agree the final terms of the SPA and make any necessary minor amendments to it, should these be required. This will cover the Local Authority in the event that the SPA is not in a final form that can be agreed by the Cabinet, either because a preferred bidder is yet to be appointed or for any other reason. We suggest that the delegated authority requires the relevant Director to exercise their authority in consultation with the Council's monitoring officer, to enable the Council's senior governance advisor to have consultative input.
- 4.2 A delegation to the relevant Director to agree the final terms of the SPA will require a further decision report to be prepared for that Director, setting out any amendments to the SPA to be approved. Like the Cabinet report, this delegated authority report will need to include all financial and legal considerations and address in full the reasons for the decision(s) and alternative options considered. We will provide a draft delegated authority report for Local Authorities.
- 4.3 The process for approving delegated decisions by officers is relatively straightforward. Once the report is prepared, the relevant Director will need to consult any required consultees, such as the Council's monitoring officer. There should be formal written record of this consultation which, subject to any additional local constitutional requirements, can be documented simply within the delegated authority report.
- 4.4 It is important to note that a decision with consultation is not a collective decision – it remains a decision for the individual named officer. The officer should:
 - 4.4.1 exercise their discretion through taking into account all relevant matters;
 - 4.4.2 ignore irrelevant matters;

4.4.3 apply their mind to the question by giving due weight to those matters; and

4.4.4 come to an independent judgment by making the decision themselves.

5 WHAT HAPPENS IF CABINET APPROVAL IS NOT IN PLACE BY SEPTEMBER 2020

5.1 The purpose of the SPA is to enable Participants to proceed to develop a project or projects using the Approval Process within the SPA, resulting in the execution of a Project Agreement. In order to benefit from that process Participants need to execute and be a party to the SPA.

5.2 Whilst there is a mechanism within the SPA that will allow for those Participants (named in the OJEU) to sign up after September 2020 by way of a deed of adherence (**DoA**), this will create several complexities:

5.2.1 Where any Participant is to sign the DoA this will require all existing parties to re-execute the SPA. This will require all Participants to take further decisions to re-enter the SPA, creating delays in the delivery of Pathfinder Projects

5.2.2 Where any Participant is not signed up to the SPA by the September 2020 deadline, it is unlikely that they will have a Pathfinder Project or be included in the first Annual Business Plan of WEPCo. This will cause delays in the delivery of any education project.

6 NEXT STEPS

6.1 Local Authorities should now be looking at setting the decision-making process in motion:

6.1.1 Firstly, identify the internal approvals process to be followed in order to take the decision to Cabinet. This will be determined by local arrangements and may include some or all of the following: consideration by the senior management team of officers; undertaking wider group engagement; consulting the Scrutiny or other committee(s);

6.1.2 Secondly; the decision should be put on the forward plan for a June or July meeting – preferably June. This needs to be done a month before the decision is due;

6.1.3 Prepare the draft Cabinet report. This should be an ongoing, iterative process informed by the stages of consultation as set out above at 6.1.1 and the ongoing progression of the project. Bevan Brittan will provide a draft report and will work with and support Local Authorities to refine the report as required to fit individual circumstances and needs.

BEVAN BRITTAN LLP

April 2020

Update on the WEP Strategic Partner Procurement 7th April 2020

You will recall my communication dated 22 November 2019. I am writing to give you the latest update on our WEP Strategic Partner Procurement.

Please note below our timetable that was published in our ITPDSB. Since the last update we have continued in dialogue with our three bidders:

- **BAM PPP PGGM and Robertsons Capital Projects**
- **Equitix Holdings Limited**
- **Meridiam Investments II SAS**

On 14th February we received Draft Bids. We reviewed and sent comments back on the Draft Bid submissions to inform the next stage of dialogue. On 20th February we held a “meet the Bidders” event at the Yr Hafod facilities in CP2 it was well attended by Participants and other Stakeholders.

The final intensive stage of Dialogue known as Boot camp was due to commence at the Principality Stadium on Monday 16th March 2020. On 14th March a member of the core team and one of the advisers both took ill with corona virus symptoms. Due to the ensuing events with the COVID-19 pandemic we decided to delay the start of boot camp to make arrangements for it to be conducted remotely via Microsoft Teams or other remote methods where required. All legal derogations were signed off by SROs to enable dialogue to be concluded. I am pleased to inform you that after two weeks of very intensive remote engagement separately with the three bidders (which included involvement from bid team members based across Europe) at 18.30 hrs on 3rd April we successfully Closed Dialogue and invited Final Bids on our Strategic Partner Procurement which is in line with our original procurement programme.

Bidders are required to submit their Bids by 12 noon on 27th April 2020. We have a detailed programme for the evaluation in place and we have organised for the consensus scoring meetings to take place remotely if necessary. We are hopeful that we will still be able to appoint our Selected Bidder in accordance with our timetable as set out below.

Matter	Date(s)
Issue of ITPDSB to Bidders	21 October 2019
Commencement of Dialogue with Bidders	28 October 2019
Christmas Break	18 December 2019 - 5 January 2020
Continuation of Dialogue with Bidders	6 January 2020
Return of Draft Bid	17:00 hours 14 February 2020
Recess	17 February 2020 - 13 March 2020

Boot Camp	16 March 2020 - 3 April 2020
Close of Dialogue	3 April 2020
Return of Bids	12:00 noon 27 April 2020
Evaluation of Bids and approvals	27 April 2020 - 3 July 2020
Appointment of Selected Bidder	3 July 2020
Standstill	4 July 2020 - 14 July 2020
Following formation of WEPCo, signature of WEPCo Shareholders' Agreement	September 2020
Signature of Strategic Partnering Agreement	September 2020

Update on Stakeholder Engagement

- Bevan Brittan is acting as legal adviser to the collective LAs and FEIs presentations successfully took place on 16th and 17th December in Llandudno (16th) Bedwas (17th am) and Llanelli (17th pm) to introduce the Bevans team and give an update on the procurement and next steps to signing the Strategic Partnering Agreement.
- Bevan Brittan has set up a portal for all Stakeholders to access to assist them with getting to a point where they have the appropriate approvals to sign the Strategic Partnering Agreement with WEPCo in September.
- We are still assisting Local Authorities and FEIs with development of their Pathfinder MIM Schemes so that they can be ready to be taken to WEPCo once it has been established.
- We urge all Local Authorities and FEIs to sign up to the arrangements with WEPCo regardless of whether they have a MIM Scheme as WEPCo also offers Strategic Support Partnering Services which can assist Stakeholders with estates planning or associated activities.