

# Pecyn Dogfennau Cyhoeddus

Penallta House,  
Tredomen Park,  
Ystrad Mynach,  
Hengoed CF82 7PG

Tŷ Penallta,  
Parc Tredomen,  
Ystrad Mynach,  
Hengoed CF82 7PG



[www.caerphilly.gov.uk](http://www.caerphilly.gov.uk)  
[www.caerffili.gov.uk](http://www.caerffili.gov.uk)

Am unrhyw ymholiad yn ymwneud â'r agenda hwn cysylltwch â Emma Sullivan  
(Rhif Ffôn: 01443 864420 Ebst: [sullie@caerphilly.gov.uk](mailto:sullie@caerphilly.gov.uk))

**Dyddiad: Dydd Iau, 13 Ebrill 2023**

Bydd y cyfarfod hwn yn cael ei ffrydio'n fyw ac yn cael ei recordio a bydd ar gael i'w weld ar wefan y Cyngor, ac eithrio trafodaethau sy'n ymwneud ag eitemau cyfrinachol neu eithriedig. Felly, bydd delweddau/sain yr unigolion sy'n siarad ar gael yn gyhoeddus i bawb trwy'r recordiad ar wefan y Cyngor: [www.caerffili.gov.uk](http://www.caerffili.gov.uk)

Mae croeso i chi ddefnyddio'r Gymraeg yn y cyfarfod, mae angen o leiaf 3 diwrnod gwaith o rybudd os byddwch chi'n dymuno gwneud hynny. Bydd gwasanaeth cyfieithu ar y pryd yn cael ei ddarparu ar gais.

I bwy bynnag a fynno wybod,

Bydd cyfarfod y **Cyngor** yn cael ei gynnal yn y Siambr, Tŷ Penallta a thrwy Microsoft Teams ar **Dydd Mercher, 19eg Ebrill, 2023** am **5.00 pm** i ystyried materion a gynhwysir yn yr agenda canlynol. Gall aelodau'r Cyhoedd neu'r Wasg fynychu'n bersonol yn Nhŷ Penallta neu gallant weld y cyfarfod yn fyw drwy'r ddolen ganlynol: <https://civico.net/caerphilly>

Yr eiddoch yn gywir,

**Christina Harrhy**  
PRIF WEITHREDWR

## AGENDA

Tudalennau

- 1 I dderbyn ymddiheuriadau am absenoldeb
- 2 Datganiadau o Ddiddordeb.

A greener place Man gwyrddach



Atgoffi'r Cynghorwyr a Swyddogion o'u cyfrifoldeb personol i ddatgan unrhyw fuddiannau personol a/neu niweidiol mewn perthynas ag unrhyw eitem o fusnes ar yr agenda hwn yn unol â Deddf Llywodraeth Leol 2000, Cyfansoddiad y Cyngor a'r Cod Ymddygiad ar gyfer Cynghorwyr a Swyddogion.

I dderbyn ac ystyried yr adroddiad canlynol:-

- 3 Terfyniad Gwirfoddol Arfaethedig o Gontract Menter Cyllid Preifat Ysgolion Cyngor Bwrdeistref Sirol Caerffili.

1 - 38

### **Cylchrediad:**

Pob Aelod a Swyddog Priodol

### **SUT FYDDWN YN DEFNYDDIO EICH GWYBODAETH**

Bydd yr unigolion hynny sy'n mynychu cyfarfodydd pwyllgor i siarad/roi tystiolaeth yn cael eu henwi yng nghofnodion y cyfarfod hynny, weithiau bydd hyn yn cynnwys eu man gweithio neu fusnes a'r barnau a fynegir. Bydd cofnodion o'r cyfarfod gan gynnwys manylion y siaradwyr ar gael i'r cyhoedd ar wefan y Cyngor ar [www.caerffili.gov.uk](http://www.caerffili.gov.uk) ac eithrio am drafodaethau sy'n ymwneud ag eitemau cyfrinachol neu eithriedig.

Mae gennych nifer o hawliau mewn perthynas â'r wybodaeth, gan gynnwys yr hawl i gael mynediad at wybodaeth sydd gennym amdanoch a'r hawl i gwyno os ydych yn anhapus gyda'r modd y mae eich gwybodaeth yn cael ei brosesu.

Am wybodaeth bellach ar sut rydym yn prosesu eich gwybodaeth a'ch hawliau, ewch i'r [Hysbysiad Preifatrwydd Cyfarfodydd Pwyllgor Llawn](#) ar ein gwefan neu cysylltwch â Gwasanaethau Cyfreithiol drwy e-bostio [griffd2@caerffili.gov.uk](mailto:griffd2@caerffili.gov.uk) neu ffoniwch 01443 863028.



## **SPECIAL COUNCIL – 19<sup>th</sup> APRIL 2023**

**SUBJECT: PROPOSED VOLUNTARY TERMINATION OF THE CAERPHILLY CBC SCHOOL PFI CONTRACT**

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

---

### **1. PURPOSE OF REPORT**

- 1.1 To provide details of a proposal to voluntarily terminate the Caerphilly CBC School PFI Contract and to seek Council approval of the proposal.

### **2. SUMMARY**

- 2.1 The report provides details of a proposal to voluntarily terminate the Council's School PFI Contract.
- 2.2 The Welsh Government has requested that all Welsh local authorities with PFI contracts review them to assess whether they continue to offer value for money.
- 2.3 Over a number of years, the Council has sought to achieve savings from the School PFI Contract, to ensure value for money services are being provided to the schools and to minimise affordability implications.
- 2.4 The Council has considered all options including increasing the contract management, reviewing the services provided to identify and implement savings, and using mechanisms in the Contract such as benchmarking to reduce costs. However, despite the funding support from Welsh Government there continues to be a significant affordability gap between the Council's normal school funding levels and the payments made to the Contractor. As such, a business case has been prepared setting out details of a proposal to voluntarily terminate the School PFI Contract.
- 2.5 The report on the proposed voluntary termination was originally scheduled for Council consideration on 15 March 2023, but this was deferred to 19 April 2023 to allow all interested parties more time to fully consider the proposal and provide further views before a final decision is made.
- 2.6 The business case is based on a proposed termination date of 31 July 2023. However, due to the rearranged date for Council consideration of the proposal this termination date is no longer achievable. If Council approves the proposal, then the earliest termination date is now likely to be October 2023.

### **3. RECOMMENDATIONS**

- 3.1 Council is asked: -
- 3.1.1 To approve the proposal to voluntarily terminate the Council's School PFI Contract.
- 3.1.2 To agree that delegated authority be given to the Head of Financial Services and Section 151 Officer, the Head of Legal Services and Monitoring Officer, and the Cabinet Member for Finance and Performance to agree the final terms of the termination.
- 3.1.3 To agree that the final compensation sum and other associated external adviser costs will be funded through a combination of existing PFI reserves and borrowing.
- 3.1.4 To agree that the borrowing requirement will be determined by the Head of Financial Services and Section 151 Officer in line with the requirements of the CIPFA Prudential Code for Capital Finance in Local Authorities.
- 3.1.5 To note that a further report will be presented to Council following the payment of the compensation sum setting out details of the funding of the payment, the revenue budget savings arising, and the options for utilising the savings.

#### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 To seek from Council the required approvals to commence the voluntary termination process.

#### **5. THE REPORT**

##### **5.1 Background**

- 5.1.1 Caerphilly County Borough Council entered into a concession agreement (the "Contract") with Machrie Limited (the "Contractor") on 6 April 2001 in relation to a project (the "Project") for the provision of two new schools to replace the existing facilities at Fleur de Lys (Ysgol Gyfun Cwm Rhymni) and Pengam (Lewis Boys School). The Contract was for the Design, Build, Finance and Operate ("DBFO") of the new schools and was procured under the Private Finance Initiative ("PFI").
- 5.1.2 The Project was an early PFI scheme in Wales. The Welsh Government supports the Project through a grant, paid annually over the contract term.
- 5.1.3 The successful bidder was Ballast Wiltshier but that company, or any related companies, no longer exist.
- 5.1.4 The Contractor was originally owned by a consortium of shareholders comprising of Royal Bank Investments Ltd (49.0%), Ballast Plc (25.5%) and New Anavon Ltd (25.5%). The current shareholding of the Contractor is 100% with Machrie Limited, a specialist PFI investor which is in the same ownership structure as the now dissolved New Anavon Ltd, thus demonstrating an element of continuity in ownership. Machrie Ltd is in turn owned 100% by Machrie Burn Limited with both companies having the same two directors. Machrie Burn Limited is, in turn, wholly owned by BILF Holdco Limited.
- 5.1.5 The duration of the Contract is for 30 years from the operational start date (1 September 2002 until 31 August 2032). As such, there are just over 9 years of the Contract remaining.
- 5.1.6 Mitie Facilities Management Limited has been the services subcontractor since 2007. At the commencement of the Project that role was performed by Wiltshier FM (part of the Ballast Group). The Project requirement is for the provision of fully serviced schools. The services to be provided under the Contract are cleaning and waste management, security, building maintenance, grounds maintenance, utilities management, caretaking, catering, furniture and

equipment maintenance and renewal, and provision of a helpdesk function and emergency response.

- 5.1.7 Senior funding of circa £25.4m was provided by Royal Bank of Scotland (RBS). Lloyds Bank took over the senior funder role from RBS on 15 November 2017. This was part of a broader refinancing of the debt of a number of PFI / PPP contracts and the nature of it had no implications for the Council at the time.

## **5.2 Development of the Business Case**

- 5.2.1 Over a number of years, the Council has sought to achieve savings from the Project, to ensure value for money services are being provided to the schools and to minimise affordability implications.

- 5.2.2 The Council has considered all options associated with the Project i.e. increasing the contract management, reviewing the Project to identify and implement savings, and using mechanisms in the Contract such as benchmarking to reduce costs. However, despite the funding support from Welsh Government there continues to be a significant affordability gap between the Authority's normal school funding levels and the payments made to the Contractor.

- 5.2.3 As such, the Council is considering voluntary termination of the Contract. The Council commissioned a review of the Project to consider whether it was continuing to provide value for money. As part of that process, the Council sought to obtain a preliminary assessment of the potential costs to terminate the Project, which could then be measured against the predicted payments to the Contractor for the remainder of the Project.

- 5.2.4 Local Partnerships LLP ("Local Partnerships") provided a report to the Council in October 2018, setting out legal, financial, and commercial considerations in undertaking a voluntary termination of the Project under the terms of the Contract. The report demonstrated that significant savings could be achievable through such a termination. As a consequence, and subject to it retaining its Welsh Government grant funding, the Council has decided to progress through the required approvals, working towards termination. Welsh Government requires a business case to be provided before a termination is implemented, as it contributes the grant support payments.

- 5.2.5 Local Partnerships has since prepared a business case for the potential termination of the Project on behalf of the Council (which has now been approved by the Welsh Government), based on a combination of information provided by the Council and experience of the costs of termination, and current market intelligence. Much of the content of the business case is commercially sensitive and needs to remain confidential at this stage so as not to compromise the Council's position in its commercial negotiations and thereby impact upon achieving best value from the process. The remainder of this report sets out the key elements of the business case without disclosing the commercially sensitive or confidential information.

## **5.3 The Strategic Case**

- 5.3.1 The strategic case sets out the rationale and the background for the proposed termination and demonstrates the case for change at a strategic level.

- 5.3.2 The two PFI schools are in generally good condition and the service provision by Mitie is also to a good standard. However, the Council is faced with significant financial pressures. The strategic case for the termination is to realise savings in order to provide additional resource for all the strategic objectives of the Council.

### Strategic Context

- 5.3.3 In March 2018, the Council adopted a set of Wellbeing Objectives for 2018-2023 within its Corporate Plan. The Corporate Plan is the Council's over-arching vision, supported by clear

objectives and priorities. Within the Plan, “Improve education opportunities for all” was selected as Wellbeing Objective 1.

5.3.4 The Council’s vision for education is to raise standards and ensure learners are healthy, confident, proud, and ambitious. In Caerphilly there are bold ambitions to provide every learner with the best life chances and the Council is committed to doing this through the provision of high quality teaching, learning and leadership across its impressive 21st Century school settings. The Education Attainment Strategy “Shared Ambitions” 2019-2022 set out the strategy of how the Authority would work together to achieve the best outcomes for its young people.

Forecast Demand for the Schools

5.3.5 The Council currently has 72 primary schools, 1 VA primary school, 11 secondary schools, 1 3-18 school and 1 special school. All of these schools (apart from the VA primary school) are maintained by the Council, with only the schools in this Project having their capital expenditure funded through PFI.

5.3.6 In March 2019 the Council shared its education strategy for the coming years. Some of the key priorities within the strategy included: -

- improve outcomes at end of Key Stage 4 and 5;
- improve the performance of boys and pupils receiving free school meals;
- build on the recent increase in attendance;
- reduce the number of exclusions across secondary schools;
- focus on improving standards of literacy, particularly in years 7, 8 and 9; and
- improve the quality of teaching and learning.

5.3.7 The following table shows the number of pupils on roll and forecast at the time that the business case was prepared.

**Forecast net full time pupil numbers at the Schools shown by feeder school.**

School name	2020	2021	2022	2023	2024	2025	2026
<b>Lewis Boys (Pengam)</b>							
Coedybrain Primary	11	21	17	23	20	11	13
Derwendeg Primary	11	9	10	10	14	13	12
Glyngaer Primary	11	12	14	15	20	9	11
Greenhill Primary	8	7	16	11	12	15	15
Hengoed Primary	9	10	13	14	12	12	9
Llancaeath Primary	10	19	24	17	18	20	17
Maesycwmmmer Primary	5	8	11	15	8	11	7
Tiryberth Primary	13	11	13	7	10	6	8
Ystrad Mynach	26	25	32	36	28	33	30
<b>Total</b>	<b>104</b>	<b>122</b>	<b>150</b>	<b>148</b>	<b>142</b>	<b>130</b>	<b>122</b>
<b>Fleur de Lys (Ysgol Gyfun Cwm Rhymni)</b>							
YG Bro Allta	37	35	45	30	42	41	30
YG Cwm Dewen	29	30	24	30	30	22	23
YG Cwm Gwyddon	27	32	33	30	30	21	34
YG Gilfach Fargoed	15	21	14	20	12	18	15
YG Trelyn	23	25	19	25	26	23	26
Ysgol Bro Sannan	14	26	24	23	24	26	22
Ysgol Penalltau	26	26	27	28	28	28	27
Ysgol Y Lawnt	21	25	26	29	21	24	28
<b>Total</b>	<b>192</b>	<b>220</b>	<b>212</b>	<b>215</b>	<b>213</b>	<b>203</b>	<b>205</b>

*\*The figures in the table assume that 100% of pupils in feeder schools will apply to their secondary school whether catchment or not.*

5.3.8 The table demonstrates that there is on-going need for the schools into the medium term.

#### The Proposal

5.3.9 For the reasons outlined above there is no intention to close the schools. The strategic case in relation to the provision of the schools remains the same given the demand for the schools remains. However, the Council is faced with significant financial pressures and a need to realise savings.

5.3.10 The Contract has a further 9 years and 4 months to run (until August 2032) and an early termination could result in significant revenue savings over the remaining contract term if the services and the lease arrangements were brought back into the Council.

5.3.11 The proposal is therefore for the Council to voluntarily terminate the Contract. The Contract requires the Council to give the Contractor just under 3 months of notice of such termination.

5.3.12 The Council is conscious that it doesn't want the termination of the Contract to impact the schools in any adverse way. It will therefore take this into account in relation to the timing of termination, and the transfer of services from the Contractor to the new provider. The optimum time of the year to implement the termination to allow smooth transition of the Services would be during the school summer holidays. Therefore, with the expectation that there are no significant backlog maintenance issues, and with only two schools in the Project portfolio, it was envisaged that a summer 2023 termination date would be achievable. The business case assumption is that the requisite notice will be given to the Contractor to allow termination to take place at the end of July 2023. However, due to the rearranged date for Council consideration of the proposal this termination date is no longer achievable. If Council approves the proposal, then the earliest termination date is now likely to be October 2023.

5.3.13 The Council has in-house capability to provide the services that are currently delivered under the Contract, and most schools in the county borough use these services. However, the schools have the right to choose whichever provider(s) they want. The process to determine the basis of on-going services provisions shall only commence if and when the Council approves the business case.

## **5.4 The Economic Case**

### Introduction

5.4.1 The Economic Case covers two key areas: -

- An identification of the options available to the Council to deliver the services that are currently provided to the schools under the Contract. Once all potential options are identified a qualitative assessment is undertaken to determine what the preferred option(s) are for that service delivery should the contract be terminated.
- The preferred alternate delivery approach is then subject to a quantitative analysis to determine whether it represents better value for money than continuing with the Contract.

5.4.2 The economic case assesses the economic costs and benefits of the proposal to the Welsh economy as a whole.

### Options Appraisal

5.4.3 The current contract and service delivery position can be summarised as: -

- The schools have been built, are open, and as the strategic analysis indicates are required for the foreseeable future;

- The schools are in good condition and as at the last conditions survey there was limited backlog maintenance. The obligations under the Contract for asset maintenance and expenditure on asset renewals means the two schools benefit from higher levels of asset related expenditure than the majority of the non PFI schools' estate in the county borough, where spend is prioritised based on a number of factors e.g. condition surveys, fire risk assessments;
- Facilities Management Services (FM Services) are generally good. However, there have been issues in respect of the delivery, quality, and value for money of the catering service which have not been fully resolved to date;
- The costs of catering and cleaning under the Contract are subject to periodic price benchmarking and potentially market testing. The Council brought in independent support from Local Partnerships for the last benchmarking review in 2017, but despite focussing on ensuring a robust process was followed, the benchmarking exercises have not identified cost savings to date; and
- The Council has to supplement the costs of the Contract over and above normal levels of support to non PFI Schools.

5.4.4 Like all local authorities, Caerphilly CBC continues to face significant financial challenges. The Council is under budgetary pressure. Saving money from the PFI Contract would assist the Council in the delivery of its Medium-Term Financial Plan (MTFP) and may also provide an opportunity for some capital investment across the wider education estate. In addition, the Welsh Government has requested that all Welsh local authorities with PFI contracts review them to assess whether they continue to offer value for money.

5.4.5 In this context the available long list of options relates to both the costs of delivering the existing service specification and whether the service and asset maintenance obligations are too onerous and do not align with the rest of the Council's school estate. As such the identified long list of options is: -

<b>Option 1</b>	Do nothing (continue with the Contract delivering the current services, no savings),
<b>Option 2</b>	FM Services variation of specification (agree a contractual variation to amend or reduce the specification of some or all of the services provided by the Contract. The Contractor would still be responsible for the delivery of the amended Services specification),
<b>Option 3</b>	FM Services removal (agree a contractual variation to remove all the service delivery from the Contract in return for savings. The Contractor would be solely responsible for the maintenance and renewal of the assets),
<b>Option 4</b>	Terminate the Contract by using contractual rights based on Contractor Default (as defined in the Contract), or
<b>Option 5</b>	Terminate the Contract on a voluntary termination basis as defined in the Contract.

5.4.6 For Options 3-5, the Schools would have the option to either use the Council's own in house service provision for delivery of the Services, or to procure Services from the wider market.

#### Shortlisting of the Options

5.4.7 An initial sifting of options was undertaken to identify any that could be discounted without the need for further detailed assessment. The only option that was discounted at this stage was Option 4 (Terminate due to Contractor default). This was discounted on the basis that no events of default had occurred. The Contractor remains a going concern (per the last published accounts), the schools are in generally good condition and service performance is generally satisfactory, with no material deductions levied.

#### Qualitative assessment of the options

5.4.8 Having confirmed the short list of options, a qualitative options appraisal exercise was undertaken. This process involved a range of officers of the Council covering finance, education, procurement, and asset management, as follows: -



- Head of Financial Services & S151 Officer
- Head of Transformation & Education Planning and Strategy
- Sustainable Communities for Learning Manager
- Sustainable Communities for Learning Principal Officer
- Procurement and Information Manager
- Finance Manager (Education)
- Finance Manager (Corporate Finance)
- Interim Head of Property Services

5.4.9 The process was facilitated by Local Partnerships.

#### Process

5.4.10 Firstly, the assessment criteria were determined through consensus amongst the participants. The agreed criteria reflect the delivery of the services performances under the Contract, the financial implications for the Council, and the impact on pupil attainment and wellbeing.

5.4.11 Having determined the assessment criteria, these were given a weighting based on their importance. This was again done by consensus within the group. To make the process easier the criteria were firstly ranked and from this a percentage weighting was able to be more easily derived.

5.4.12 The assessment criteria and the related rankings and weightings are set out in the following table: -

<b>Assessment Criteria</b>	<b>Detail</b>	<b>Rank</b>	<b>Weighting (%)</b>
Strategic Flexibility / adaptability	The ease by which the option allows developments or expansion to either or both schools in terms of buildings and equipment, usage, growth, and community activity.	3	15
Maintenance of assets	The extent to which the option allows the buildings, grounds, and equipment to be maintained to a high standard, allows flexibility of use of the existing assets, and ensures that there are appropriate remedies in place for poor asset maintenance. It should be noted that day to day maintenance of assets is an activity that sits within the FM services and is something that can be delivered by caretakers. Therefore, changes envisaged in Options 2 and 3 can impact on the condition of assets as much as major lifecycle replacement works which would remain the responsibility of the Contractor in Options 1, 2 and 3.	3	15
Day to day service provision	The extent to which the option allows the provision of cleaning and waste management, catering, and caretaking services to a high standard, allows flexibility of use of the existing assets and ensures that there are appropriate remedies in place for poor service performance.	3	15
Pupil attainment	The extent to which the option provides an environment and service provision which supports pupil attainment and wellbeing.	1	30
Financial	The extent to which the option is likely to be affordable within the existing budget constraints, and the ability to flex service to meet budget constraints	2	25
			<b>100</b>

5.4.13 The rationale for the rankings and weightings are: -

- **Pupil Attainment** – it is ranked the most important and has the highest weighting as this is the rationale for having schools and related services that deliver an environment where pupils can maximise their potential.
- **Financial** – the financial pressures that the Council faces means that having an affordable solution is very important, and hence why it is considered only marginally less important than pupil attainment.
- **Strategic flexibility / adaptability, maintenance of assets and day to day services** – these criteria could not be split in importance and hence were given equal ranking and associated weightings.

5.4.14 The final phase of the process was to determine a score for how each shortlisted option performs against each of the assessment criteria. Again, a consensus score was agreed. The scoring was in a range of 1-5 as follows: -

5	Likely to exceed expectations to meet the criteria
4	Fully delivers the criteria
3	Largely delivers the requirements of the criteria
2	Only partially delivers the requirements of the criteria
1	Does not deliver the requirements of the criteria at all

5.4.15 Having scored each option against each of the assessment criteria, and applying the criteria weightings, a weighted score was able to be derived. The results of the scoring were as follows: -

		Option 1	Option 2	Option 3	Option 4	Option 5
	Weighting	Do Nothing	Specification Variation	Remove service delivery	Contractor default termination	Council voluntary Termination
Strategic Flexibility / adapdability	15.00	2	2	2		4
Maintenance of assets	15.00	5	3	4		2
Day to day service provision	15.00	2	2	4		4
Pupil attainment	30.00	4	4	4		4
Financial	25.00	1	2	2		4
<b>Total</b>	<b>100.00</b>	<b>14</b>	<b>13</b>	<b>16</b>		<b>18</b>
<b>Weighted score</b>		<b>280.00</b>	<b>275.00</b>	<b>320.00</b>		<b>370.00</b>
<b>Rank</b>		<b>3</b>	<b>4</b>	<b>2</b>		<b>1</b>

#### Rationale for Scoring

5.4.16 **Strategic Flexibility / Adaptability** – PFI Contracts are designed and structured for the delivery of new schools and for the on-going maintenance and delivery of facilities management services to those schools, in order to deliver a specification and meet requirements that were appropriate at the start of the contract. Whilst there are variation mechanisms in PFI contracts, they are clunky and can be expensive for the Council to use.

5.4.17 Therefore, keeping the assets (buildings and equipment), as well as services, relevant to delivering an ever-changing curriculum can be challenging even if the overall strategic requirements do not alter – major alterations to scope, including additional buildings, are even harder to accomplish. It requires a strong contract management team on the Council's side and a willingness to engage and adapt by the Contractor, and the FM Services provider. Based on the contract to date neither has been fully in evidence, and therefore the potential to do this

going forward is considered limited on all options that continue the PFI contract (i.e. Options 1-3), and hence the score of 2 for each.

- 5.4.18 Conversely having the asset management and service delivery back under Schools / Council day to day control allows that greater flexibility hence the score awarded.
- 5.4.19 **Maintenance of Assets** - The obligations under the Contract for asset maintenance and expenditure on asset renewals means the two schools benefit from higher levels of asset related expenditure than the majority of the non PFI schools' estate in the Borough, where spend is prioritised based on a number of factors e.g. condition surveys and fire risk assessments. The very good state of the schools and the planned renewal programme to the end of the Contract term demonstrate this. Hence Option 1 is scored as exceeding expectations.
- 5.4.20 As Option 3 is removal of service delivery from the Contract, rather than asset management, it should not have a material impact on asset maintenance but losing that joined up position with caretaking etc (as will be provided by different entities), may have a marginally negative effect and hence scores 4.
- 5.4.21 Option 2 requires reducing the specification and funding for asset maintenance and was considered to have a greater negative effect on the state of the schools' long term, as the day to day asset maintenance would be to a lower specification, meaning likely shorter replacement intervals and pressure on lifecycle budgets. Hence the score of 3.
- 5.4.22 An even worse position would arise in the event of a termination (Option 5), albeit with lower capital expenditure budgets to effect major replacement works. Capital expenditure would be allocated based on need and aligned with the rest of the school estate. This is the rationale for the low score of 2 for Option 5.
- 5.4.23 **Day to day service provision** – This criterion assesses the quality of the service provided, therefore moving to Option 2 would reduce cost but would reduce the level of service delivered. Therefore, Option 1 and 2 were given the same score of 2 but for different reasons.
- 5.4.24 Removing the services from the Contract (Option 3) and terminating the whole Contract (Option 5) allows a more cost effective service provision to be put in place, hence the scores of 4.
- 5.4.25 **Pupil Attainment** – Although there are significant differences between the service provision and asset management arrangements for each of the options, what each of the options delivers is not likely to relatively impact pupil attainment differently. Consideration was given as to whether the lower level of asset maintenance under Options 2 and 5, compared to Option 1 in particular, could have a negative effect. However, based on comparative attainment levels at PFI and non PFI schools in the county borough, this does not appear to be the case.
- 5.4.26 **Financial** – As stated earlier the costs of facilities management provision under the Contract are relatively high when compared with the Authority's own service provision. Option 1 (doing nothing) will not improve that position and is not affordable. The scoring reflects the known costs of delivering Options 1 and Option 5 within the county borough. Option 1 requires significant financial subsidy. Whilst savings can be made through Options 2 and 3, they are unlikely to materially impact the current cost.

#### Overall Result

- 5.4.27 Option 5 (Voluntary Termination of the Contract) is the highest ranked option. It scores significantly better (16%) than the second ranked option (Option 3 – removal of the services). As such Option 5 has been financially compared with doing nothing.

5.4.28 The VFM assessment compares the costs of continuing with the Contract (Do nothing) with the sum of: -

- Paying a termination sum to the Contractor to exit the Contract;
- The net costs to the Authority of on-going service provision; and
- An estimate of the net impact on tax receipts for Welsh Government.

5.4.29 The assessment in the business case is on the basis of a termination on 31 July 2023 and the assessment covers the period from 1 April 2023 (the start of the financial year in which termination is assumed to occur) to 31 August 2032 (the Contract Expiry Date). Information for the assessment has been sourced from: -

- The contractual Financial Model “Caerphilly\_Financial\_Close\_060401”. This is understood to be the latest contractual financial model and no changes have been made. Given the compensation payments are based on values from the latest agreed contractual financial model it will be important to ensure there is agreement with the Contractor at an early stage that the correct version is being used.
- Various financial information supplied by the Council relating to budgeted costs, unitary charge and other Contract payments, and the Council’s sinking fund model.

5.4.30 Due to the rearranged date for Council consideration of the proposal the 31 July 2023 termination date is no longer achievable. If Council approves the proposal, then the earliest termination date is now likely to be October 2023, but this will not materially impact on the value for money assessment.

#### Contract Termination Compensation Sum

5.4.31 The compensation payable as a result of a voluntary termination is set out in the Contract (the “Compensation Sum”). Based on Local Partnership’s understanding of how the Contract provisions should work and the relevant information in the Financial Model, a notional best and worst case Compensation Sum has been derived. This gives a reasonable range of the Compensation Sum that is likely to be paid and the transaction costs the Authority would incur in undertaking the termination process. This information is currently commercially sensitive, and if approval is given to proceed with a voluntary termination the final compensation sum will be subject to detailed negotiations with the Contractor.

#### Overall VFM Assessment

5.4.32 The HM Treasury Green Book guidance (the “Green Book”) varies in approach from the Council’s own financial assessment as it requires a ‘society as a whole’ view. In the context of this termination assessment, we are therefore required to include the tax impacts of the termination, which would be (i) the tax gross up element of the Compensation Sum, and (ii) the lost corporation tax that the Contractor is forecast to pay to Contract Expiry.

5.4.33 The Green Book requires that value for money is assessed on a net present value basis using a discount rate of 3.5% in real (i.e. uninflated) terms to which forecast inflation (2.0%) is applied using the required formula. This creates a discount rate of 5.57%. The VFM assessment shows a significant net financial benefit for both best and worst case scenarios, but this information is currently commercially sensitive.

#### Outcome of VFM Analysis

5.4.34 The analysis indicates there is a strong VFM basis for terminating the Contract given that there is both a strong qualitative case and a significant financial benefit from doing so.

5.4.35 In applying a range of cost assumptions and including contingency in the Worst Case it is not considered necessary to undertake further risk or optimism bias.

## **5.5 The Commercial Case**

5.5.1 The commercial case addresses commercial feasibility and demonstrates that the proposed solution can be delivered effectively.

### Contractual provisions for voluntary termination

5.5.2 There is a mechanism set out in the Contract for the Council to terminate voluntarily. These provisions are at Clause 46 of the Contract. These provisions have been reviewed from a commercial perspective but prior to entering into any termination process formal legal advice would be sought.

5.5.3 The basis of compensation to the Contractor from the Council is the same as for Council default (Clause 35 of the Contract). This contains defined Compensation Sum payments in relation to the senior debt, costs for the Contractor and its subcontractors, and to the shareholders' subordinated debt (referred to as junior debt in the Contract) or share capital (equity) investments. This has to be paid within 20 business days by way of one lump sum. The defined calculation allows for the Compensation Sum covering: -

- i. The outstanding senior debt including swap break costs and outstanding interest, less upside swap break gains.
- ii. Redundancy costs only for the Contractor and broader Sub-Contractor breakage costs, both only to the extent they are as a direct result of the termination.
- iii. Future forecast distributions of subordinated debt and equity for the remainder of the Contract term, each separately discounted at the Financial Model Real IRR respectively.
- iv. Less any amounts standing in accounts, but only to the extent the senior funder has a fixed charge over them.

5.5.4 The Compensation Sum is then increased so as to leave the Contractor with the calculated amount after paying tax as necessary on the relevant elements of the gross receipt (i.e. tax gross up).

5.5.5 There are standard PFI set off provisions which prevent the Council setting off any outstanding amounts from the compensation sum save to the extent it doesn't reduce the senior debt payments.

### Effecting the termination of the Contract

5.5.6 There are a number of elements of the termination process and Compensation Sum payments which either cannot be finalised at this time and / or are open to interpretation. These are explored in further detail in the business case.

### Transfer of property and assets

5.5.7 The Contractor's lease arrangements to occupy the schools terminate automatically on termination of the Contract.

5.5.8 The Council has the option that all property and assets transfer to the Council in the event of voluntary termination.

### TUPE Transfer of employees

5.5.9 Although this has not been explored in detail, Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") provisions are almost certain to apply as the same Services will continue to be delivered post a termination albeit by a new provider. Until a

decision is made on who the provider will be, the staff and TUPE implications cannot be resolved.

- 5.5.10 These will be the subject of discussion both with the Contractor and Mitie. The Council's Education and Human Resources teams have expertise and experience with TUPE transfer arrangements of staff between organisations and anticipate no significant issues.

#### Reprovisioning of the Services

- 5.5.11 In the event of termination, the schools have the right to choose who provides the services that are currently delivered under the Contract. The Council provides such services to other schools in the county borough, but the schools could select other private sector providers and / or deliver services in-house. Time has been allocated in the programme to allow the schools to make that decision and for the schools and new provider(s) to be engaged and feed into the termination and handover process with the existing Contractor.

#### Schools condition at handover

- 5.5.12 The schools were subject to a condition survey in 2018. These surveys concluded that both schools were in generally good condition. There was some backlog maintenance identified in those surveys, but the vast majority was low category, and it is likely that this would be built into the Contractor's upcoming lifecycle plans.
- 5.5.13 However, given the passage of time it is recommended that updated condition surveys are procured during school holidays prior to the issuing of a Termination Notice to obtain an up to date position. In particular, given the schools are around 20 years old, there are a number of items that would be due for major overhaul or replacement, including the boilers.
- 5.5.14 Identifying the latest assets conditions will support discussions on handover and financial settlement with the outgoing contractor, and the implications for lifecycle spend by the Council in upcoming years.

#### Risk Assessment

- 5.5.15 The most critical risks associated with the termination and with the Council providing the Services going forwards have been assessed. The allowances and risk contingency built into the business case are discussed in the economic case.

### **5.6 The Financial Case**

- 5.6.1 The financial case represents the Council's own assessment of the financial impact of terminating the Contract. This differs in some specific areas from the Green Book assessment captured in the economic case. In particular, it ignores the tax implications to government of the termination, and it factors in how the Council will fund the Compensation Sum.
- 5.6.2 The assessment demonstrates that the proposed termination significantly reduces costs compared to the current position, therefore improving affordability and budget positions. However, this is only the case if the Welsh Government continues to provide the grant support. Importantly, having reviewed the business case, the Welsh Government has now confirmed that the grant support will continue in the event of voluntary termination.
- 5.6.3 As with the economic case assessment the analysis is done over a period from 1 April 2023 (i.e. the start of the financial year in which the assumed termination date of 31 July 2023 occurs). The assessment is considered in NPV terms based on the same 5.57% discount rate as applied in the economic case. The analysis applies the same underpinning assumptions as for the economic case and includes both Best Case and Worst Case scenarios.

5.6.4 As with the VFM assessment the analysis shows a significant net financial benefit for both Best Case and Worst Case scenarios, but the details of the financial case are currently commercially sensitive. However, at a high level early indications are that the revenue budget savings for the Council may be circa £2m per annum. The actual level of savings cannot be determined with certainty unless a termination actually takes place, but it is clear that the financial benefit is significant and will make an important contribution to the Authority's Medium-Term Financial Plan (MTFP) and may also provide an opportunity for some capital investment across the wider education estate. The revised earliest termination date of October 2023 will not materially impact on the financial assessment.

## 5.7 The Management Case

5.7.1 The management case identifies the key management responsibilities and key individuals for the proposed solution.

### 5.7.2 Ultimate Responsibility

- The Chief Executive of the Authority is Christina Harray.
- The Senior Responsible Officer for the proposed termination is Stephen Harris, Head of Financial Services & Section 151 Officer.
- The Project Manager for the proposed termination is Sue Richards, Head of Transformation & Education Planning and Strategy.

### Timetable for Termination

5.7.3 Based on the contractual requirements for serving of termination notices, and the requirements in respect of negotiation of the commercial terms of the termination, as well as the logistical handover issues, the following draft timetable is set out in the business case which assumed a termination on 31 July 2023. The programme has been separated into two phases:

**Phase 1** – Council decision making process and preparation for Phase 2.

**Phase 2** – The contract termination and transition phase (this will only happen if the Council decision from Phase 1 is to terminate the contract).

Action	Date	Comment
Council business case Approval	February – March 2023	The decision making process to be as follows: - <ul style="list-style-type: none"> <li>• Joint Scrutiny (28/2/23)</li> <li>• Cabinet (8/3/23)</li> <li>• Council (15/3/23)</li> </ul> A full Council decision is required due to the need for borrowing to pay the termination compensation sum to the Contractor.
Discuss and agree process with Schools	February - March 2023	Includes how services will be delivered post the termination of the Contract. This will commence ahead of final approvals to allow sufficient time.
Appoint adviser team to manage the termination process	March onwards 2023	Includes legal, technical, commercial, and financial advisers.
Undertake surveys at schools	March/April 2023	Allows for any contractual remedies to be implemented should issues be found ahead of

		finalising the compensation sum and the assets handover.
Issue termination notice	Early May 2023	Provides the 84 days' notice required for 31 July termination.
Engage with the Contractor and funder and finalise termination sum and agree process for handover including finalising a termination settlement agreement	March – July 2023	Discussions to cover financial, commercial, and logistical / staff related issues.
Compensation sum agreed and finalised	June - July 2023	Finalise funder breakage costs.
Handover process	March -July 2023	Process to be agreed and most activity to happen in school summer holidays.
Terminate Contract	28 July 2023 (Friday)	Handover for the purposes of responsibility, insurance cover etc to happen on this date.
Contractor final accounts settled, and Compensation Sum paid	July – September 2023	Contract requires Compensation Sum to paid within 20 business days

5.7.4 If Council approves the proposal to voluntarily terminate the contract the timetable will be reviewed and updated to reflect a revised termination date of October 2023.

5.7.5 The Council will have to be comfortable with the actual termination date before issuing the Termination Notice as that is a formal contractual trigger. Therefore, engagement with the schools and the Contractor before formally starting the process will be important.

#### The Working Group

5.7.6 The Project Manager will be supported in the proposed termination exercise by a Working Group consisting of key Council Officers. In addition to the internal team, the Authority will be supported by Local Partnerships, providing commercial and financial advice in relation to the termination, and supporting the project management. Other external advisers that will need to be appointed are: -

- Legal Advisers – potentially Counsel input may be additionally required to provide advice in relation to some of the aspects of the voluntary termination Contract provisions. This would be determined on appointment of legal advice.
- Technical advisers – primarily in relation to School condition surveys and broader advice in relation to schools' condition on hand-back.
- Swap benchmark advisers – to advise on the breaking of the funding agreements and negotiation of the swap breakage cost.
- Accounting & tax advisers – due diligence on behalf of the Council relating to the financial consequences on termination of final company accounts and tax liabilities of termination.

5.7.7 The cost of external advisers has been factored into the business case.

#### Approval Process

5.7.8 Further to Cabinet endorsement of the proposed voluntary termination on 8 March 2023, Council is now requested to consider and approve the proposal.

5.7.9 If a decision is made to proceed with the voluntary termination, then Council approval is also sought for delegated authority to be given to the Head of Financial Services & Section 151



Officer, the Head of Legal Services & Monitoring Officer, and the Cabinet Member for Finance and Performance to agree the final terms of the termination.

## **5.8 Conclusion**

- 5.8.1 The business case sets out a robust case for the Council to voluntarily terminate the Contract, on the basis of the financial benefits that can be achieved. In reaching this conclusion full consideration has been given to HM Treasury's five case model as it applies to this process.
- 5.8.2 Subject to the effective management of the termination process and the risks involved the termination of the Project represents the best solution identified. This will allow the schools to continue to provide much needed educational facilities, whilst achieving savings which the Council can utilise as part of its budget planning.
- 5.8.3 In order to achieve these savings for the Council and for the benefit of the local community, no additional funding is required from the Welsh Government, now that approval to proceed and confirmation that the grant support payments will continue unchanged for the original Contract period has been provided.

## **6. ASSUMPTIONS**

- 6.1 There are a range of assumptions in the business case which are presented as best and worst case scenarios.
- 6.2 If a decision is made to proceed with the voluntary termination, then it is currently assumed that the contract can be terminated by October 2023.

## **7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 An Integrated Impact Assessment has been completed and concludes that in line with the processes and rationale outlined as part of the report being taken to Members, that Members endorse the proposal for voluntary termination of the Private Finance Initiative (PFI) agreements at Lewis School Pengam and Ysgol Gyfun Cwm Rhymni – Gelli Haf site only.
- 7.2 The Integrated Impact Assessment demonstrates that the proposal would have no impact on the current Educational provision offered at the two PFI sites.
- 7.3 The proposal will also ensure equity in terms of investment across the entire school estate.
- 7.4 Therefore, Members are asked to consider the Integrated Impact Assessment alongside the formal report and provide a final determination in support of the Voluntary Termination of the PFI contract.
- 7.5 The full Integrated Impact Assessment is available through the following links: -

[Link To Full Integrated Impact Assessment](#)

[Link To Full Integrated Impact Assessment Welsh](#)

## **8. FINANCIAL IMPLICATIONS**

- 8.1 Like all local authorities, Caerphilly CBC continues to face significant financial challenges. Saving money from the PFI Contract would assist the Authority in the delivery of its Medium-Term Financial Plan (MTFP) and may also provide an opportunity for some capital investment

across the wider education estate. In addition, the Welsh Government has requested that all Welsh local authorities with PFI contracts review them to assess whether they continue to offer value for money.

- 8.2 The financial assessment in the business case shows a significant net financial benefit for both Best Case and Worst Case scenarios. No detailed financial values are included in this report so as not to compromise the Council's position in its commercial negotiations and thereby impact upon the Council achieving best value from the process. However, at a high level early indications are that the revenue budget savings for the Authority may be circa £2m per annum. The actual level of savings cannot be determined with certainty unless a termination actually takes place, but it is clear that the financial benefit is significant. The revised earliest termination date of October 2023 will not materially impact on the financial assessment.
- 8.3 The obligations under the Contract for asset maintenance and expenditure on asset renewals means the two PFI schools benefit from higher levels of asset related expenditure than the majority of the non PFI schools' estate in the county borough, where spend is prioritised based on a number of factors e.g. condition surveys, fire risk assessments. However, the Council has supplemented the costs of the Contract over and above normal levels of support to non PFI schools. The proposed voluntary termination will result in an equitable process across all schools in terms of capital expenditure post termination.
- 8.4 The Council has in-house capability to provide the services that are currently delivered under the Contract, and most schools in the county borough use these services. However, the schools have the right to choose whichever provider(s) they want. The process to determine the basis of on-going services provision will only commence if and when the Council approves the business case.
- 8.5 If the proposed termination is approved the two schools will receive funding through the schools' funding formula for the ongoing provision of services.
- 8.6 The final compensation sum and other associated external adviser costs will be funded through a combination of existing PFI reserves and borrowing. If a decision is made to proceed with the voluntary termination, then Council approval will be sought for delegated authority to be given to the Head of Financial Services & Section 151 Officer, the Head of Legal Services & Monitoring Officer, and the Cabinet Member for Finance and Performance to agree the final terms of the termination.
- 8.7 Council will also be asked to agree that the borrowing requirement will be determined by the Head of Financial Services & Section 151 Officer in line with the requirements of the CIPFA Prudential Code for Capital Finance in Local Authorities.
- 8.8 Following payment of the compensation sum a further report will be presented to Council setting out details of the funding of the payment, the revenue budget savings arising and the options for utilising the savings.
- 8.9 It is important to note that the Council already has a legal obligation to make repayments under the existing PFI contractual arrangement and the proposal in the business case is to replace that current liability with one which provides better value for money for the Council.

## **9. PERSONNEL IMPLICATIONS**

- 9.1 Although this has not been explored in detail, Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") provisions are almost certain to apply as the same Services will continue to be delivered post a termination albeit by a new provider. Until a decision is made on who the provider will be, the staff and TUPE implications cannot be resolved.

9.2 These will be the subject of discussion both with the Contractor and Mitie. The Council's Education and Human Resources teams have expertise and experience with TUPE transfer arrangements of staff between organisations and anticipate no significant issues.

## 10. CONSULTATIONS

10.1 A briefing note has been shared with the headteachers and Chairs of Governors of the two PFI schools which is largely based on the content of this report.

10.2 Initial responses were received from the Governing Bodies of both schools, and Officer responses have been provided (see Appendix 1 and Appendix 2).

10.3 The report on the "Proposed Voluntary Termination of the Caerphilly CBC School PFI Contract" came before a joint meeting of the Policy and Resources Scrutiny Committee and the Education Scrutiny Committee on 28 February 2023. The key points raised during the meeting were as follows: -

- One Member asked what the preferred option for providing maintenance services would be should the current PFI Contract be terminated at the two schools. The Member enquired if future provision would be provided by in-house or private operators. The Head of Financial Services and Section 151 Officer advised that this would be for both schools to determine individually should Council approve the business case.
- A Member observed that if the contract was terminated, she would like to see any savings made kept within the Education service area. The Head of Financial Services and Section 151 Officer highlighted that a process to agree compensation would follow a decision to voluntarily terminate the PFI Contract under discussion. It was also outlined how the joint meeting of both Scrutiny Committees would be reconvened in the future to discuss options around any potential savings.
- One Member enquired why it had taken so long to reach this stage of the process given that Local Partnerships LLP provided their original report to Council in 2018. Members heard how the original decision to commission the development of a business case was made in 2018 and that a review of the subsequent findings had been delayed by the need to redirect resources due to the national Covid-19 pandemic. The Member also asked if legal considerations had been fully explored around the fact that the original successful bidder for the PFI contract "Ballast Wiltshier" no longer existed. Members received assurances that such matters had been fully considered. Mr Mike Read (Project Director with Local Partnerships LLP) outlined how the terms of the agreement had not changed, how the contract was now with Machrie Limited, and that external legal advice would be sought if the Council decided to voluntarily terminate the PFI contract.
- A Member expressed concern over the lack of consultation and information highlighted by the Ysgol Gyfun Cwm Rhymni governing body in Appendix 1. The Head of Transformation and Education Planning and Strategy highlighted the commercially sensitive nature of data within the Business Case and provided details of meetings that have taken place with both schools and the support that would be made available to them if the process progressed.
- One Committee Member wished to know if there was a risk that the level of compensation due as a result of terminating the PFI contract would make the decision economically unviable. The Head of Financial Services and Section 151 Officer advised that the contract would not end until a notice of termination was officially served and that this would not happen if it was not financially viable for the Council. The Member asked why the original contract had not been circulated as it was not confidential due to being initially signed by school representatives. During the ensuing discussion the issue of the need for commercial confidentiality was highlighted and it was suggested that distribution of the original contract should be discussed outside of the meeting. It was also suggested that the contract with

sensitive information redacted could be circulated to Committee Members. Members also heard how release of the contract was the subject of a recent Freedom of Information request and that this had been refused by the provider on the basis that putting the PFI contract into the public domain could affect their commercial interests.

- The Head of Financial Services and Section 151 Officer provided assurances to one Member on the provision for any slippage in terms of the timescale set out in the report.

10.4 Having noted the content of the report, it was moved and seconded that the following recommendation be forwarded to Cabinet for approval. By way of Microsoft Forms (and in noting there were 18 for, 0 against and 1 abstention) this was agreed by the majority present.

RECOMMENDED to Cabinet that they:

Consider the content of the report and support the proposal to voluntarily terminate the Caerphilly CBC School PFI Contract prior to Council consideration.

10.5 The report on the “Proposed Voluntary Termination of the Caerphilly CBC School PFI Contract” was presented to Cabinet at its meeting on 8 March 2023. During the morning prior to the Cabinet meeting a letter was received from the Chair of Governors on behalf of the Governing Body of Ysgol Gyfun Cwm Rhymni, which is attached as Appendix 3. The key points raised during the Cabinet meeting were as follows: -

- Cabinet noted that the report had been considered by the Joint Scrutiny Committee (Policy and Resources Scrutiny Committee and Education Scrutiny Committee) on 28 February 2023.
- The Cabinet Member for Finance and Performance brought to Cabinet’s attention the letter from the Governing Body of Ysgol Gyfun Cwm Rhymni, which had been received at 10.30am that morning and had been shared with the Cabinet just prior to the commencement of the meeting.
- The letter expressed the concerns of the Governing Body as to the pace with which the consultation process had been undertaken and which they felt would have been more beneficial if more time had been available for the consideration of the process. The letter highlighted concerns that some factors of the business case lacked detail and ultimately, they felt would be to the detriment of the pupil experience, particularly because of the ‘ending of life cycle’ arrangements. The Governing Body also expressed concern that they had not seen the full PFI agreement and contract and that the school would not receive adequate support going forward.
- Cabinet sought clarification in relation to the consultation process and the possible impact on pupils. It was confirmed that Officers had met with both of the PFI schools in mid-January to confirm the timescales and to provide details of the proposal. Extracts of the business case were made available in the form of a briefing note, but due to commercial sensitivities it was not possible to share the full business case. The Officer responding confirmed that as this was a purely contractual arrangement, there were clear contractual processes which had to be followed.
- Cabinet was advised that should the Chair of Governors wish to see the full details of the business case then Officers would be more than happy for him to visit Penallta House and view it confidentially, but no copies could be made available due to the commercially sensitive nature of some of the content.
- Officers also advised that it was not possible to release the PFI contract as following a recent Freedom of Information request this had been refused by the provider on the basis that putting the PFI contract into the public domain could affect their commercial interests.

- Reassurances were given that the change would make no difference to the way in which education would be delivered to the children in these schools.
- In response, an example was given in relation to Ysgol Gyfun Cwm Rhymni where the school covers 2 sites, Y Gwindy and Gellihaf. Y Gwindy is currently managed as a non PFI School, the Gellihaf site as PFI, and if the proposal was progressed it would see both sites managed in exactly the same way.
- Cabinet were reassured that if the voluntary termination progresses, then the schools would be fully supported throughout the process to ensure a smooth transition.
- The Head of Financial Services and Section 151 Officer provided clarification in relation to the life cycle costs and advised that under the PFI contact the two schools had enjoyed additional investment in terms of life cycle over a number of years but that this had come at a significant cost. Moving forward, if the termination does take place, the 2 PFI schools would be treated the same as all the other schools in the county borough in terms of capital investment.
- Clarification was then sought by Cabinet as to whether potential savings could be ring-fenced for Education. The Head of Financial Services and Section 151 Officer confirmed that this was discussed at the Joint Scrutiny Committee meeting and would be the subject of a further report at the end of the process. The report would confirm the final compensation sum that was paid, the actual level of savings arising, and would also outline options in terms of utilising the savings. It was noted that this report would not only be presented to the Joint Scrutiny Committee but also to Cabinet and Council.
- In relation to potential slippage in the timeline for the termination process it was confirmed that the business case is based on an assumed termination date of 31 July 2023. It was stressed that it is important that a decision to proceed is confirmed as the voluntary termination process is very complex and there is potential for delays. The business case recognises the potential for delays post approval and that the termination could happen at a later date without materially impacting on value for money, with October half term 2023 or Christmas 2023 being alternate options. It was reaffirmed that the schools will be fully supported throughout the process.

10.6 Following consideration and discussion, it was moved and seconded that the recommendations in the report be approved and by way of Microsoft Forms this was unanimously agreed.

RECOMMENDED that Council consider and endorse the proposal to voluntarily terminate the Caerphilly CBC Schools PFI Contract.

10.7 On 13 March 2023 the Headteacher, Chair of Governors, and a further Governor from Ysgol Gyfun Cwm Rhymni attended a pre-arranged session at Ty Penallta to confidentially read the full business case. Following this a number of further questions were submitted and these are provided in Appendix 4 along with the Officer responses.

10.8 On 13 March 2023, a decision was made to defer Council consideration of the proposed voluntary termination of the School PFI Contract from 15 March 2023 to 19 April 2023 to allow all interested parties more time to fully consider the proposal and provide further views before a final decision is made.

10.9 Reading days were also arranged for Members to confidentially read the full business case, and these were held on 27 March 2023, 5 April 2023, and 13 April 2023.

## 11. STATUTORY POWER

11.1 The Local Government Acts 1998 and 2003.

Author: Stephen Harris, Head of Financial Services and S151 Officer  
Tel: 01443 863066 E-mail: [harrisr@caerphilly.gov.uk](mailto:harrisr@caerphilly.gov.uk)

Consultees: Eluned Stenner, Cabinet Member for Finance and Performance  
(Email: [stenne@caerphilly.gov.uk](mailto:stenne@caerphilly.gov.uk))  
Cllr Carol Andrews, Cabinet Member for Education and Communities  
(Email: [andrec@caerphilly.gov.uk](mailto:andrec@caerphilly.gov.uk))  
Christina Harrhy, Chief Executive  
(Email: [harrhc@caerphilly.gov.uk](mailto:harrhc@caerphilly.gov.uk))  
Richard Edmunds, Corporate Director for Education and Corporate Services  
(Email: [edmunre@caerphilly.gov.uk](mailto:edmunre@caerphilly.gov.uk))  
Sue Richards, Head of Transformation and Education Planning and Strategy  
(Email: [richase@caerphilly.gov.uk](mailto:richase@caerphilly.gov.uk))  
Andrea West, Sustainable Communities for Learning Manager  
(Email: [westam@caerphilly.gov.uk](mailto:westam@caerphilly.gov.uk))  
Lisa Thomas, Sustainable Communities for Learning Principal Officer  
(Email: [thomal4@caerphilly.gov.uk](mailto:thomal4@caerphilly.gov.uk))  
Robert Tranter, Head of Legal Services and Monitoring Officer  
(Email: [trantrj@caerphilly.gov.uk](mailto:trantrj@caerphilly.gov.uk))  
Andrew Southcombe, Finance Manager, Corporate Finance  
(Email: [southak@caerphilly.gov.uk](mailto:southak@caerphilly.gov.uk))  
Jane Southcombe, Finance Manager, Education and Lifelong Learning  
(Email: [southj@caerphilly.gov.uk](mailto:southj@caerphilly.gov.uk))

Appendices:

- Appendix 1 Response by Governing Body of Ysgol Gyfun Cwm Rhymni regarding the potential termination of the Caerphilly CBC School PFI Contract.
- Appendix 2 Response by Governing Body of Lewis School Pengam regarding the potential termination of the Caerphilly CBC School PFI Contract.
- Appendix 3 Letter to Cllrs Morgan, Andrews, and Stenner from the Chair of Governors on behalf of the Governing Body of Ysgol Gyfun Cwm Rhymni.
- Appendix 4 Questions on behalf of the Governing Body of Ysgol Gyfun Cwm Rhymni regarding the business case for the potential termination of the Caerphilly CBC School PFI Contract.

**Response by Governing Body of Ysgol Gyfun Cwm Rhymni regarding the potential termination of the Caerphilly CBC School PFI Contract.**

**Consultation**

As the local authority has chosen to consult, the consultation must be adequate and fair. It is generally accepted that a consultation must:

- (a) **take place when proposals are still at a formative stage** - to be meaningful, consultation must be undertaken at a point where the decision-maker is still open to change its position and can be influenced by responses to the consultation. It does not appear that this is the case.
- (b) **give reasons for any proposal to permit intelligent consideration and response** – although the key driver for the proposal is the financial savings to the local authority, the wider rationale and key factors are not known. This means that it is difficult for us to provide an effective response – it would seem the only response that we could give to put our position in the most persuasive light would be focused on savings the local authority will make – that is only one element of the decision. Partial answers to some of our questions were only received on the evening prior to the deadline for responding to the Council's briefing paper, giving very little time for governors to give that intelligent consideration to the issues.
- (c) **give adequate time for consideration and response** – although the question of what is adequate time for consideration can be complex and is fact specific, we do not think the local authority can genuinely and reasonably defend the timescales it is proposing, particularly in light of the fact that a report from Local Partnerships was provided in October 2018. The urgency now being referenced is due to the Council's own actions and delays – the local authority could have chosen to engage with the school at a much earlier stage, which would have provided the school with adequate time for consideration.
- (d) **give conscientious consideration** – we trust that the local authority will feed our response into the decision-making process, including making it available to councillors involved in the decision-making process.

We are particularly disappointed with the timing of this consultation – the report pertaining to the proposal to voluntarily terminate the PFI agreement was not received until 5:02pm on Friday 10th February and was not read by the school until the morning of Monday 13th February. As we told you in our earlier correspondence, the Governing Body is required to give 5 days' notice to the EAS to convene a meeting, and naturally needs time after the meeting to formally respond to such a consultation. It has not been possible for us to convene a meeting and respond to the consultation as we would wish before the stated deadline of Friday 17th February.

Further, we are disappointed to receive partial responses to our queries on the evening prior to the deadline for responding to the Council's briefing paper.

**CCBC Officers Response:**

*The Council acknowledges the comments made in relation to consultation, however, it is important to be clear on what level of engagement is appropriate in this particular circumstance, as per the guidance in the Council's Consultation and Engagement Framework.*

*This proposal relates to a voluntary termination of a contractual agreement between the Authority and the PFI Contractor only through which the provision of building maintenance, catering facilities, cleaning facilities and caretaking facilities are provided. As such, there is a clear contractual mechanism to follow in this instance.*

*The school has been engaged with to advise them of the publication of the Report and provide information to assist them in understanding the opportunities and/or solutions which are anticipated to result from the withdrawal from the PFI arrangement with the contractor.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage.*

*To ensure openness and transparency, this document will be included as an annex to the main report going forward to Members to enable conscientious consideration.*

**Strategic Case**

It is appreciated that the local authority is faced with significant financial pressures and it appears that the local authority intends to realise savings to its education budget to provide additional resource for all the other strategic objectives. It is not clear whether these savings will be ringfenced within the education budget, or whether it could be reassigned to other budgets.

Although we acknowledge and accept the need for the local authority to raise standards and ensure learners are healthy, confident, proud and ambitious, we are concerned that the decision to voluntarily terminate the contract could have negative consequences for our school. We have raised separately our concerns about the need for equity of funding for our school – the only two campus school in the county borough. We appreciate the authorities ongoing work in this area in supporting the school although we are concerned that this decision could create further tensions and pressures on our school, possibly leading to even more concerning financial projections in the future.

We are disappointed with the Council's view that "The school funding mechanism / formula distributes funding in a consistent way to all schools. The split site issue has been addressed with a "lump sum" element of funding for each of the 2 sites". We do not believe equality of funding is the right concept - it is equity that we are seeking. There are unique challenges of running a school divided between two geographically distant sites in the county borough.



We remain concerned that the Council is unwilling to acknowledge that, and to assist with the challenges we are facing to ensure that pupils, teachers and staff in Welsh medium secondary schools (of which we are the only one in the county borough) are not adversely affected when compared to their English medium counterparts.

**CCBC Officers Response:**

*This proposal seeks to secure equality of investment across all the schools in Caerphilly County Borough dependant on need based on a number of factors e.g. condition surveys and Health and Safety. Currently the level of investment into the two PFI schools is disproportionate at present and is significantly higher when compared to all other schools.*

*There is also inequality across the two Ysgol Gyfun Cwm Rhymini sites as only the Gelli-Haf site is PFI funded.*

*With reference to the paragraphs relating to 'a two campus school' and 'Funding Formula', this is a separate matter which is outside the remit of this PFI proposal. Officers from within the Education Finance Team have met with the school to discuss the issue raised and future meetings are scheduled.*

**Impact on the school**

We very much appreciate the recognition that “the Authority is conscious that it doesn’t want the termination of the Contract to impact the schools in any adverse way”. However, we believe that the impact is not limited solely to the timing of the decision and is likely to have a greater impact during both the medium and the long term.

**CCBC Officers Response :**

*The current contractual arrangement has circa 9 years left to run at which point it would end and new arrangements would need to be implemented.*

*A full options appraisal has been undertaken, utilising both quantitative and qualitative assessment criteria which included consideration of the impact on day to day service provision, pupil attainment, maintenance of assets, strategic fit and financial fit.*

*In addition, an Integrated Impact Assessment has been undertaken to help support the Council in making informed and effective decisions.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage.*

**Transfer to new provider**

We note that the local authority has in-house capability to provide the services, which we assume is all services, that are currently delivered under the Contract. We have not

received any details about the costs of these, and therefore cannot ascertain the effect on our budget. We appreciate having the right to choose our provider.

We have asked for confirmation that we will have support to manage any TUPE transfer that might occur, including the necessary legal and HR support. It is noted that the local authority refers to “discussion both with the Contractor and Mitie. The Authority’s Education and Human Resources teams have expertise and experience with TUPE transfer arrangements of staff between organisations and anticipate no significant issues.” We assume that the Council will be solely responsible for all costs if the TUPE transfer was from the incumbent provider to the Council.

If we do not choose the local authority as the provider of services, we will need to undertake a procurement process to appoint a provider. We would welcome the chance to consider this option with the Council and ensure an appropriate project plan is put in place. We note that “Time has been allocated in the programme to allow the [school] to make that decision and for the [school] and new provider(s) to be engaged and feed into the termination and handover process with the existing Contractor”. This would appear to need urgent attention, and the school will need to be involved in the development of the timeframe to ensure it can resource as necessary, alongside the already busy duties of the school’s senior leadership team.

#### **CCBC Officers Response:**

*The School has the right to choose whichever provider(s) and level of service they want.*

*The Authority has in-house capability to provide the services that are currently delivered under the Contract, and most schools in the county borough use this service.*

*It is noted that the school is already utilising Council Catering services at their Y Gwyndy (Non-PFI) site.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage.*

#### **Capital spend**

We acknowledge that the schools are in good condition, that there is limited backlog maintenance and that our school benefits from higher levels of asset related expenditure than the majority of the non PFI schools estate in the county borough. We are concerned that the state of the school will deteriorate quickly, particularly when it would need to be considered against other priorities identified by the local authority. There is also a risk that the local authority is making a short term revenue gain at the expense, and to the detriment of, future capital requirements. We note the Council has identified that “There are also other Welsh Government Grants that maybe [our emphasis] available for investment into the school” but are disappointed that there is no certainty.

**CCBC Officers Response:**

*The Authority is fully committed to investing in the educational estate as evidenced by its ongoing Capital Maintenance programme and Sustainable Communities for Learning Programme.*

*This proposal seeks to secure equality of investment across all the schools in Caerphilly County Borough dependant on need based on a number of factors e.g. condition surveys and Health and Safety. Currently the level of investment into the two PFI schools is disproportionate at present and is significantly higher when compared to all other schools.*

*There is also inequality across the two Ysgol Gyfun Cwm Rhymni sites as only the Gelli-Haf site is PFI funded.*

**Catering spend**

We note that Local Partnerships, in their last benchmarking review in 2017, have not identified cost savings to date. We are concerned that this means we are receiving an excellent, value for money service at present, and that we will be exposed to significant turbulence in costs of alternative provision in the future.

**CCBC Officers Response:**

*The School has the right to choose whichever provider(s) and level of service they want.*

*The Authority has in-house capability to provide the services that are currently delivered under the Contract, and most schools in the county borough use this service.*

*It is noted that the school is already utilising Council Catering services at their Y Gwyndy (Non-PFI) site.*

**Pupil attainment**

We agree that pupil attainment should be ranked the most important factor in the local authority's option's appraisal. We would appreciate receiving confirmations that pupil attainment will not be negatively affected by the decision as a result of additional pressures on our already-stretched budget.

**CCBC Officers Response:**

*Although there are significant differences between the service provision and asset management arrangements for each of the options, consideration was given as to whether the lower level of asset maintenance under Options 2 and 5, compared to Option 1 in particular, could have a negative effect. However, based on comparative attainment levels at PFI and non PFI schools in the Borough, this does not appear to be the case.*

## **Day to day service provision and financial**

We note that this criterion assesses the quality of the service provided, and that voluntary termination has been assessed as allowing “a more cost effective service provision to be put in place, hence the scores of 4”. We are not sure of the basis on which this has been assessed, but it would appear to relate to the impact on the Council’s budget rather than the school’s budget. We have asked for information on how we might financially benefit from the proposal, but have not received that detail. We are concerned that we could be exposed to increasing financial budgetary pressures when compared with the fixed cost of the existing provision.

### **CCBC Officers Response:**

*Finance Officers within Education have met with the school to clarify the budget position. The schools formula funding allocation is not impacted by this proposal, the only change relates to the fact that the school will retain the identified elements of funding rather than be included within the PFI contract and claw back from the school. Discussions are continuing as further meetings have been scheduled.*

## **Scoring**

Taking account of our points above on pupil attainment, day to day service provision and financial could result in the scoring being reconsidered and to the voluntary termination option being scored second. We raise this point as it demonstrates how the assessment might be effected by different views. We appreciate that some of our concerns might not arise, but the speed at which this consultation is taking place has not allowed us to properly and fully analyse the impact on the school. We have not seen evidence that the local authority has considered the impact on the school.

### **CCBC Officers Response:**

*A full options appraisal has been undertaken, utilising both quantitative and qualitative assessment criteria which included consideration of the impact on day to day service provision, pupil attainment, maintenance of assets, strategic fit and financial fit. In addition, an Integrated Impact Assessment was carried out to identify any impact on the educational and community elements as a direct result of any decision to proceed being taken. The Integrated Impact Assessment demonstrates that the proposal would have no impact on the current Educational provision offered at the two PFI sites.*

*This proposal seeks to secure equality of investment across all the schools in Caerphilly County Borough dependant on need based on a number of factors e.g. condition surveys and Health and Safety. Currently the level of investment into the two PFI schools is disproportionate at present being significantly higher when compared to all other schools.*

### **School condition at handover**

We note that the local authority recommends undertaking an updated condition survey prior to issuing the Termination Notice to obtain an up to date position. We note the comments on the items that would be due for major overhaul or replacement, including the boilers. We have not received any indication of how any relevant costs would be funded, including whether the savings realised by the voluntary termination could be used to offset those costs. We would appreciate a commitment from the local authority to use some of the possible up to £2m per annum savings to ensure there is no adverse impact to the school. We are disappointed that the Council has not considered this and intends to “redirect a proportion of the savings from the potential termination to support Capital Expenditure across the wider school estate”.

### **CCBC Officers Response:**

*Identifying the latest assets conditions will support discussions on handover and financial settlement with the outgoing contractor, and the implications for lifecycle spend by the Authority in upcoming years.*

### **Welsh Language and equality impact assessment**

We understand that an integrated impact assessment has been completed, but have not seen this (or any other equality impact assessment) for the project and so are unable to provide any views on issues for the school which may need to be taken into account.

It is very disappointing to note that whilst the briefing note includes an assessment of impact in the following areas; strategy; maintenance of assets; service provision; pupil attainment; and finance; no assessment has been made regarding the impact on the proposal on the Welsh language and on Welsh medium education within the county borough. Ysgol Gyfun Cwm Rhymni is the only Welsh medium secondary school in Caerphilly and it's the Governing Body's view that due consideration must be given to this when making a decision on this proposal.

We note that the Council states that “This proposal does not impact on this [the WESP] as it is merely a contractual matter between the Authority and the PFI Contractor. We are surprised that this is the Council's response. It seems to raise questions about the Council's approach to the WESP and it is disappointing that the officer responsible for the WESP does not appear to have been engaged in this matter (or at least is not part of the project team identified in the briefing note).

In view of the above, the Governing Body is disappointed that the report gives no consideration to the impact on the WESP. In particular the impact on outcomes 3, 4 and 7 over the next 10 years, along with the impact on the Welsh Government's long-term objective of ensuring 1 million Welsh speakers by 2050. Once again, it's the Governing Body's view that due consideration must be given to this when making a decision on this proposal.

### **CCBC Officers Response:**

*An Integrated Impact Assessment has been undertaken to help support the Council in making informed and effective decisions whilst ensuring compliance with a range of relevant legislation, including:*

- *Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011*
- *Socio-economic Duty – Sections 1 to 3 of the Equality Act 2010*
- *Welsh Language (Wales) Measure 2011*
- *Well-being of Future Generations (Wales) Act 2015*
- *Statutory Consultation v Doctrine of Legitimate Expectation and Gunning Principles*

*The proposal is a contractual change, which will bring the PFI site at Gelli-Haf in line with the arrangements already in place at the Y Gwyndy (Non-PFI) site for the school.*

### **Wider budget setting**

We asked why the proposal was not included as part of the Council's wider public consultation on the draft budget proposals for 2023/4. The Council's response was that "This did not form part of the 23/24 Draft Budget Proposals as no decision has been made at this point". We do not understand the point being made with this response - as noted in the opening of this response, consultation should take place before a decision has been made (otherwise it is not consultation). Given the length of time that this matter has been under consideration by the Council, it remains unclear why this proposal was not included as part of the Council's wider ongoing public consultation, not least as it would have ensured greater time to consider the Council's proposal, an opportunity to raise issues and discuss them at the Council's consultation sessions and an opportunity for pupils, staff and parents to feed into the consultation.

### **CCBC Officers Response:**

*This proposal relates to a voluntary termination of a contractual agreement between the Authority and the PFI Contractor only through which the provision of building maintenance, catering facilities, cleaning facilities and caretaking facilities are provided. As such, there is a clear contractual mechanism to follow in this instance.*

### **Contract with the school**

We note that the Council has refused to release the contract which was entered into by the school, and which was signed by representatives of the school - without reason, the Council has responded to our request that "We are unable to release this information". To be clear, we are requesting a copy of the contract that was signed by our chair on behalf of the school. As a party to that contract, we are entitled to a copy, and we are disappointed that the Council is unable to release it to us.

**CCBC Officers Response:**

*This proposal relates to a voluntary termination of a contractual agreement between the Authority and the PFI Contractor only through which the provision of building maintenance, catering facilities, cleaning facilities and caretaking facilities are provided. As such, there is a clear contractual mechanism to follow in this instance.*

**Outstanding issues**

We previously wrote to officers to ask for additional information to help our Governing Body properly consider the proposal. Although the Briefing Note addresses some of our issues and questions, there remain a significant number of unknowns which have not enabled us to conclusively offer our support, or objection, to the proposals. Although we received a late response to our queries, governors have not had time to properly consider and digest those response, some of which are very brief and do not address our underlying concerns.

**CCBC Officers Response:**

*The Council acknowledges the comments made. To ensure openness and transparency, this document will be included as an annex to the main report going forward to Members to enable conscientious consideration.*

**Conclusion**

We would like to emphasise once again that we are not absolutely opposed to the proposed voluntary termination. We can see some of the advantages, but have concerns which have not been addressed. The Council's late, partial response to our queries (received very close to the closing date for comments) has not been helpful. We are therefore unable to come to a proper conclusion and are unable to confirm our support at this time, in the very short timeframe set by the local authority.

As noted in this response, if the local authority does go ahead with this proposal, there is still much work to do. We hope that the local authority will provide full support to ensure that the transition to the new arrangements is without any adverse impact to our pupils, teachers and staff, as well as the much valued staff of the current provider.

**CCBC Officers Response:**

*The Council acknowledges the comments made. To ensure openness and transparency, this document will be included as an annex to the main report going forward to Members to enable conscientious consideration.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage*

Gadewir y dudalen hon yn wag yn fwriadol



**Response by Governing Body of Lewis School Pengam regarding the potential termination of the Caerphilly CBC School PFI Contract.**

The governors of Lewis School Pengam met last night to discuss the proposals set out in the business case. The governors expressed concern as to the pace with which the process has been undertaken and felt that it would have been beneficial if more time had been available for the consideration of the proposal. There was a concern that some factors highlighted in the business case lacked detail and that ultimately there may be some future detriment to the experiences of the pupils, particularly as a result of the ending of lifecycle arrangements.

Governors understood that a more equitable arrangement in the way secondary schools are funded would be of benefit to the LEI but wished to stress that there would likely be a period of transition to the new working arrangements and new workload requirements, they expressed a hope that the LEI would support the school during that transition period.

Ultimately, governors recognised that there may well be opportunities in the new arrangement proposed by the LEI, particularly in regard to the community use of the school, more flexibility in response to budgetary pressures, or in addressing the concerns governors have had in regard to catering provision. They also believe that new arrangements may help remove some barriers to the process of sixth form/surplus places reform that have been considered in recent years.

Governors expressed a hope that the LEI and Lewis School Pengam would continue to work in close partnership moving forward and together address any unforeseen problems that emerge as this process reaches a resolution. They recognise the support the school has historically enjoyed from the LEI and would wish that to continue in the future.

**CCBC Officers Response:**

*The Council acknowledges the comments made by the Governors of Lewis School Pengam. In relation to timescales and detail, it is important to be clear on what level of engagement is appropriate in this particular circumstance, as per the guidance in the Council's Consultation and Engagement Framework.*

*This proposal relates to a voluntary termination of a contractual agreement between the Authority and the PFI Contractor only through which the provision of building maintenance, catering facilities, cleaning facilities and caretaking facilities are provided. As such, there is a clear contractual mechanism to follow in this instance.*

*This proposal seeks to secure equality of investment across all the schools in Caerphilly County Borough dependant on need based on a number of factors e.g. condition surveys and Health and Safety. Currently the level of investment into the two PFI schools is disproportionate at present and is significantly higher when compared to all other schools. The school has been engaged with to advise them of the publication of the Report and provide information to assist them in understanding the opportunities and/or solutions which are anticipated to result from the withdrawal from the PFI arrangement with the contractor.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage.*

*To ensure openness and transparency, this document will be included as an annex to the main report going forward to Members to enable conscientious consideration.*



Dear Cllrs Morgan, Andrews and Stenner,

We write to you regarding the Council's proposal to voluntarily terminate the current PFI agreement in place for Ysgol Gyfun Cwm Rhymni (Gellihaf site), as well as Lewis School Pengam.

As Governing Body, we have found the timescale involved in order to meaningfully contribute to this consultation challenging, at best, and at worst unachievable. Although we do not speak for Lewis School Pengam, we note that they have raised the same concerns - specifically:

*"The governors expressed concern as to the pace with which the process has been undertaken and felt that it would have been beneficial if more time had been available for the consideration of the proposal. There was a concern that some factors highlighted in the business case lacked detail and that ultimately there may be some future detriment to the experiences of the pupils, particularly as a result of the ending of lifecycle arrangements."*

As set out in our initial response to the consultation, as the Council has chosen to consult, the consultation must be adequate and fair. We are firmly of the opinion that has not been the case in this instance and as such do not believe that we have had the opportunity to adequately assess any impact on the school. As such, as I am sure that you will appreciate, we are extremely concerned that we are not able to appropriately fulfil our role as Governing Body for the school in relation to this matter.

We would like to emphasise once again that we are not absolutely opposed to the proposed voluntary termination, but have concerns which have not been addressed. The Council's late, partial response to our queries (received very close to the closing date for comments) has not been helpful. We are therefore unable to come to a proper conclusion and are unable to confirm our support at this time, in the very short timeframe set by the Council.

We would add that to date, we have not been provided with any version of the PFI agreement (redacted or otherwise). We have also not been provided with a copy of the contract (which is separate to the overarching PFI agreement) to which the school is a signatory. We kindly request once again that we are provided with a copy of the contract which was signed on behalf of the school. We see no reason to withhold this from us and believe the Council is acting unreasonably in withholding a copy of a contract from the signatory of that contract. We have not been given any adequate response as to why the contract we have signed cannot be provided.

We note the contributions from Council officers during the recent Joint Scrutiny Committee (Policy and Resources and Education Scrutiny Committees) meeting on 28 February 2023, specifically that:

1. Although an officer stated that officers met with the school about the proposals "*prior to the information being circulated*", we would note that those conversations have taken place over a period of weeks and not prior to that - this should be contrasted with the years during which the Council has been exploring these options. It is noted that although the officer refers to "*commercially sensitive information*", there have been several media reports on possible termination for over 2 years.
2. Although an officer gave their "*personal assurances*" that the school would be "*supported throughout*", that support has not been forthcoming so far. In order to properly consider this matter as a Governing Body, we have sought information that any reasonable person would

wish to have before responding to a consultation. As per our previous response, this lack of response means that it is difficult for us to provide an effective response.

3. We note that an officer said that “if the termination slips to the October half term, or indeed Christmas, it won’t materially affect the figures included in the business case” and that if the timeframe does slip, it “shouldn’t have a significant impact on the final savings”.

In view of these points we request that the current rate of progress is paused and that the Council meaningfully engage with the Governing Body regarding this matter. This will provide us with the necessary time in order for us to assess any impact on the school whilst also providing elected members with the appropriate information in order to make informed decisions.

We are aware that this proposal will be discussed at today’s (8th March 2023) Cabinet meeting and kindly request that the concerns and views of the Governing Body outlined in this letter are considered as part of this meeting. We note that our previous concerns (many of which remain unanswered) have been shared as part of the papers for the meeting. Although we would have preferred to have given you notice of our ongoing concerns before the day of the meeting, the speed at which this matter is being progressed by the Council means we have not had the ability to raise these points sooner.

We look forward to working collaboratively with the Council as we attempt to secure the very best for pupils that currently attend Ysgol Gyfun Cwm Rhymni, and also for pupils that will attend the school in the future.

Kind Regards,

Phil Bevan

(Chair of Governors on behalf of the Governing Body of Ysgol Gyfun Cwm Rhymni)

**Questions on behalf of the Governing Body of Ysgol Gyfun Cwm Rhymni regarding the business case for the potential termination of the Caerphilly CBC School PFI Contract.**

Dear Stephen,

Thank you for your time earlier and also for the opportunity for us to view the business case pertaining to the proposal to terminate the PFI agreement at Cwm Rhymni and Lewis School, Pengam. We also appreciate your offer to answer any questions arising from this business case and would be grateful to receive a response regarding the questions set out below.

1. The Governing Body remains concerned regarding the lack of meaningful engagement that has taken place and the timescales that have been involved. We note that an approval in principle regarding the proposed termination was received from Welsh Government in June 2022. This makes our previous point pertaining to the very short consultation period (the Governing Body had only 1 week to respond to the consultation in February 2023) even more difficult to comprehend.

**CCBC Officers Response:**

*As you will be aware, the Leader of the Council has postponed the planned Council decision from the 15<sup>th</sup> March to the 19<sup>th</sup> April providing an extended period through which we can continue our engagement and for the school to submit any further responses that it would like considered by full Council.*

*The 'in principle' approval received from Welsh Government in June 2022 was based on an earlier version of the business case that had been submitted to them by the Authority in February 2022. This case assumed a termination date of July 2022, but before progressing matters further it was important to secure Welsh Government commitment to ongoing funding to ensure that the business case remained viable.*

*The Council did not, however, receive confirmation of the continuation of Welsh Government funding necessary to proceed until June 2022, rendering the termination date unachievable.*

*The proposed termination date was subsequently revised to July 2023 and an updated financial analysis was sought from Local Partnerships, that took into consideration the time that had elapsed and would ensure the financial aspects of the business case were current. This refreshed financial analysis was received in December 2022 with the final version of the business case following in February 2023.*

2. In view of the above, we note that there is no material impact on the figures involved in the business case should the proposal slip into the later end of this calendar year. In view of this, we kindly request once again that the current rate of progress is paused and that the Authority meaningfully engage with the school's governing body in order for us to assess the impacts on the school accordingly. As I'm sure that you will appreciate, this will allow us to ensure that we are fulfilling our role effectively, and acting in the best interest of pupils that attend the school.

**CCBC Officers Response:**

*The rescheduling of the Council decision on the proposed voluntary termination means that the implementation programme will need to be reprofiled. Ideally, any new*

*arrangement would need to be introduced during a school holiday rather than mid-term, which would indicate now that either an October Half term or Christmas Holiday implementation are most likely. The longer the delay, however, the less reliable the figures will be and the need to refresh the financial analysis again should ideally be avoided.*

*As referenced previously, an additional period is now available to continue our engagement and Officers from across the Council are meeting with the School during that time to help further clarify the proposal.*

3. We note that the business case refers to a circa £932k maintenance backlog (across both schools) and trust that any follow-up survey will pay particular attention to items relating to this in order to minimise the transferable risk to the school. We would hope that any benefit gained from the Authority (for example, in reducing the compensation payable to the PFI Contractor to off-set this backlog) is passed to the schools to ensure that any maintenance issues are addressed.

**CCBC Officers Response:**

*Should the decision be taken to voluntarily terminate the PFI agreement, a full condition survey will be undertaken. This will provide an updated condition report and these works will need to be addressed by the PFI Contractor prior to the handover.*

*If for some reason the works to address the backlog maintenance are not completed in full by the PFI Contractor, then a reduction in the compensation sum payable will be negotiated which should provide the funding necessary to complete any outstanding works.*

4. We note the need for a proposal of this kind to follow guidance set out by HM Treasury's five case model. As part of the Strategic Case dimension of this model, we note the HM Treasury's Guide to that model states that due consideration must be given to wider local, regional and national policies and targets. Since the PFI agreement affects the only Welsh language secondary school in the Authority, clearly particular reference should have been made to the WESP and consequently any impact on the Welsh language. We note that neither is referred to on any occasion during the business case which remains a concern to us.

**CCBC Officers Response:**

*I can confirm that this was undertaken as part of the Integrated Impact Assessment.*

*It should also be noted that the PFI agreement applies to an English Medium Secondary and Welsh Medium Secondary School and that in the case of the Welsh Medium Secondary School, which operates over two sites, one site is managed through the PFI, while the other is not.*

5. We note that in the event of termination, the school will also be required to arrange additional costs, and specifically additional insurance to cover certain items (estimated at £23k per annum). This is the first time the Governing Body, or Headteacher, has been made aware of this and we feel that this adds weight to our argument around the lack of meaningful engagement in determining the impact on the school's budget. We

are firmly of the opinion that the fact that we are still seeking answers to our queries, 2 days before the Full Council vote on the proposal, reinforces this point further.

**CCBC Officers Response:**

*Funding for insurance is provided by the Council through the schools funding formula. Although this is unlikely, if any unique insurance circumstances relating to the Gellihaf site emerge post termination, then the implications and funding requirement will be discussed with the schools and a plan put in place for mitigation. Otherwise, the insurance costs will be met through the funding formula as is the case across all non PFI schools.*

6. We would also note from the timeline setting out the proposal that discussions around the new service provision are not scheduled to take place until June 2023. We are concerned that this does not provide us with sufficient time to assess the impact on the school's budget. To properly assess the impact on the school, we would require this information, and in particular any anticipated costs (assuming a similar level of service) to that which is currently being provided, as part of the consultation process.

**CCBC Officers Response:**

*Should the decision to terminate be forthcoming, the School will need to determine the level of service it wishes to offer in respect of catering, cleaning etc. This is consistent across all other schools within the Borough, except for the two PFI schools, and the services will need to be funded through the schools funding formula. I note your reference to assuming a similar level of service.*

*The school will have a choice as to who it engages to deliver those services, as do all schools in Caerphilly (including the Y Gwyndy site). The Council would naturally welcome the opportunity to provide some of these services as we do across many schools, but we also recognise that this will be a decision for you as a school.*

*The previously mentioned postponement of the full Council decision does enable more time for these services to be specified, costed, and tested ahead of any implementation moving forward.*

7. In view of point 6, since we are currently in the process of planning and setting our budget over the next two years, we would appreciate a commitment from the Authority that if service costs are higher (for an equivalent level of service as provided currently, and covered under the unitary charge) for 2023-24 and 2024-25 that this will be met in full by the Authority. This will allow us to plan our budget in full which as we understand it is a statutory requirement for schools by May 2023. The challenges of the school's budget in these circumstances are caused by the Authority's decision to terminate the PFI, and some of those challenges will arise in-year (for example, needing to budget for the additional insurance costs in 2023/24).

**CCBC Officers Response:**

*As a School and a Governing Body, you will recognise that the current budgetary challenges facing the school are not related to the proposed voluntary termination of the PFI contract. The Authority's Education Finance Team is, separately, working with the School to identify a plan to address those future challenges.*

*The Council also recognises and shares the Schools desire to limit the impact of the voluntary termination of the PFI contract on those challenges currently being faced.*

*As previously referenced, funding for non PFI schools is provided by the Council through the schools funding formula. This formula ensures that there is a parity in the way the funding is shared out among all schools.*

*The level of service provided and also the service provider(s) remains a choice for the school. This is also the arrangement that is currently in operation at the Y Gwyndy site.*

8. We note that the business case, and viability of terminating the PFI agreement, is dependent on grant support funding to the Authority (from Welsh Government) remaining unchanged. We would appreciate clarification around why this would be the case since a proportion of this funding would clearly be used to supplement the funding of both PFI schools. Moreover, what assurances does the Authority have that this will continue for the duration of the agreement (i.e for the next 9.5 years) if e.g. there are changes following the next Senedd elections?

**CCBC Officers Response:**

*The Welsh Government has previously requested that all local authorities with PFI contracts review them to assess whether they continue to offer value for money.*

*Following consideration of the business case for the proposed voluntary termination of the Caerphilly CBC Schools PFI contract, WG has confirmed that its financial contribution will remain in place for the next 9.5 years. WG's financial contribution is towards the funding of the capital elements of the PFI Contract.*

We appreciate your time and consideration of the above and look forward to working collaboratively with the Authority as we attempt to secure the very best for pupils that currently attend Ysgol Gyfun Cwm Rhymni, and also for pupils that will attend the school in the future.

Kind Regards

Matthew Webb and Phil Bevan

(on behalf of the Governing Body of Ysgol Gyfun Cwm Rhymni)