

## Council – 23 November 2017

### Councillors' Questions

#### Part A – Supplementaries

1	<p><b>Cllrs Cllrs Wendy Fitzgerald, Mary Jones, Jeff Jones</b></p> <p>Will the Cabinet Member inform Council if any variations have been made to the S106 agreements in regard to the Mynydd y Gwair Wind Farm and can he also indicate how many local jobs have been gained as a result of this application and how many apprentice positions created.</p> <p><b>Response of the Cabinet Member for the Cabinet Member for Commercial Opportunities &amp; Innovation:</b></p> <p>I can confirm that to date no variations have been made to the section 106 agreement in regard to the Mynydd y Gwair Wind Farm. Under the terms of the section 106 agreement the Developer is required to carry out an independent decommissioning study. The study has recommended an increase in the decommissioning bond from £114,800 (index linked) to £1,403,037. The section 106 agreement between the Council and Innogy Renewables UK Limited will be varied to give effect to the increase in the bond.</p> <p>Information held by the Council indicates that at the beginning of September 2017, as a result of the enabling works being carried out as part of the Mynydd y Gwair Windfarm development, 95 local jobs had been gained including 3 trainees who are employed on site. There have been no apprentice positions created to date.</p>
2	<p><b>Cllrs Peter Black, Sue Jones, Jeff Jones</b></p> <p>What are the revenue and other consequences for Swansea Council of the Supreme Court judgement on 2 August 2017 on how s.49 of the Health and Social Care Act 2001 should be interpreted by Local Health Boards.</p> <p><b>Response of the Cabinet Member for Health &amp; Wellbeing:</b></p> <p>This matter involves the Forge Care Homes case (R (Forge Care Homes Ltd &amp; Ors) v Cardiff and Vale University Health Board &amp; Ors [2017] UKSC 56).</p> <p>The appeal to the Supreme Court concerned the funding of nursing care for residents of care homes who required some nursing care but for whom healthcare was not a primary need, i.e. they were in receipt of Funded Nursing Care ('FNC').</p> <p>S49 of the Health and Social Care Act 2001 (the provision has now been incorporated into s47 of the Social Services and Well-being (Wales) Act 2014). provides that a local authority is not required to fund 'nursing care by a registered nurse', defined in subsection (2) as services 'involving – (a) the provision of care, or (b) the planning, supervision or delegation of the provision of care, other than any services which having regard to their nature</p>

and circumstances in which they are provided, do not need to be provided by a registered nurse’.

The primary argument of the local authorities was that the entirety of registered nursing costs should be funded by the Health Boards, irrespective of the role the registered undertook in the care home, whilst the Health Boards argued that they were responsible for funding the cost of the registered nursing care provided to residents as part of the total care delivered to them, as defined in s49 of the Health and Social Care Act, with the costs of other tasks (such as personal and social care) falling on the Local Authorities.

The Supreme Court allowed the local authorities’ appeal. It held that both the Health Boards and Local Authorities had misinterpreted s49(2) Health and Social Care Act, and put forward what it deemed to be the correct interpretation.

The judgment indicates the demise of the task based division of Health between personal and nursing care, and instead introduces the guidance set out in paragraph 44 of the judgment – *“In my view, therefore, “nursing care by a registered nurse” covers (a) time spent on nursing care, in the sense of care which can only be provided by a registered nurse, including both direct and indirect nursing time as defined by the Laing and Buisson study; (b) paid breaks; (c) time receiving supervision; (d) stand-by time; and (e) time spent on providing, planning, supervising or delegating the provision of other types of care which in all the circumstances ought to be provided by a registered nurse because they are ancillary to or closely connected with or part and parcel of the nursing care which she has to provide”*.

There’s no indication as yet as to the stance that the LHBs will take. However, a piece of work has been commissioned to consider a cost calculating toolkit to determine level of funding of the respective organisations. This issue may also to overtaken by the move to pooled budgets and the work of Regional Partnership Boards.

In Swansea, the calculation of funding the social care element has been sufficient, and it is not envisaged that the decision in the Forge Care Homes judgment will have any significant financial impact on the local authority. It’s likely to have a greater impact on the Local Health Board.

**3 Cllrs Jeff Jones, Chris Holley, Peter Black**

Will the Leader comment on the report of the Chief Executive of Neath Port Talbot Council dated 4th October 2017 relating to concerns about the implementation of the Swansea Bay City Deal. In particular that:

the March agreement commits the Welsh Government to 'explore' the retention of a proportion of any additional National Non Domestic Rates generated by City Deal projects but little or no progress has been made on this and it is unclear how this will operate in practice;

- that the full financial impact of the City Deal agreement on partner councils is unclear and that because the ARCH project has been asked to look for 'alternative sources of funding' and that it is unlikely this will come from the Welsh Government it is possible that local government will need to plug any gap in the £100m City deal funding;
- that the absence of capitalisation directions by either the Welsh or UK

Government could prevent the council funding capital projects that do not result in a long term asset on their balance sheet;

- that the contribution/funding conditions to be imposed by the two governments have yet to be married up with the Joint Working Agreement in final form and that it has not yet been settled as to who approves these conditions;
- That there is unease as to the ability of individual councils to veto flawed business cases so as not to lose financial control;
- a lack of clarity as to whether projects will require revenue or capital expenditure or both

**Response of the Leader:**

While the report accurately describes the risks that were identified and being managed by the City Region, it did not represent the most up to date position by the time it was discussed by the NPT Cabinet. Indeed a statement was issued from all four leaders following the recent JC meeting which highlighted the good progress being made. Managing risks and issues are an essential part of delivering major capital projects. The risks identified by the NPT report reflect the ongoing discussions to finalise the relevant agreements and this is normal practice. The public and private sector partners across Swansea Bay are wholly committed to delivering the City Deal. A joint working agreement and joint committee will soon be approved, meaning we can start drawing down money early next year from the UK Government. Business cases for some of the 11 City Deal projects are already being submitted, with preparatory work having already started on some sites, which shows the level of confidence we have in the projects. The City Deal will open up jobs across South West Wales, boost skills and opportunities, and put Swansea Bay at the forefront of global digital innovation. Our intention is to deliver many of the projects as soon as possible to ensure local people benefit in the near future. Both Governments remain content with the progress being made on the Swansea Bay Deal.

**4 Cllrs Peter Black, Jeff Jones, Mary Jones**

Will the Leader comment on the view taken by Neath Port Talbot Council that it is prepared to engage in discussions so as to establish a formal Joint Committee to oversee the City Deal process but not until the Joint Working Agreement has been finalised including a resolution of the issues identified in section B of report of the Chief Executive of Neath Port Talbot Council dated 4th October 2017 so as to provide clarity, remove ambiguity and reduce risk. How does this impact on the ambition to secure quick wins from the City Deal and what further delays will arise as a result of Carmarthenshire Council having instructed external solicitors to seek a new Joint Working Agreement as revealed in a Freedom of Information request response dated 20 October 2017.

**Response of the Leader:**

There are no impacts to making quick progress on delivery of the projects. The Joint Working Agreement is with lawyers' at the moment, with the aim for approval by all councils, as well as both governments, by the end of the year, allowing funds to flow from early next year. As such I do not envisage any delays. It is worth noting that the time taken to get this point for the Swansea

	Bay JC is significantly shorter than other City Deals.
5	<p><b>Cllrs Mary Jones, Peter Black, Chris Holley</b></p> <p>In the light of the Welsh Cabinet Secretary for Finance and Local Government's response to a question in the Senedd on Wednesday 25 October that governance documents need to be agreed by all four councils and then by both governments before any money can be released can the Leader give an update on what arrangements are being put in place, when they will be finalised and when governance documents will be presented to full council for discussion? What scrutiny process will be included in those governance arrangements? Does he envisage any delay from the need to establish an economic strategy board chaired by a private sector representative.</p> <p><b>Response of the Leader:</b></p> <p>City Deal representatives have been meeting in a 'shadow' format, which means the structure will be able to hit the ground running when the joint working agreement is approved. In addition, we have had confirmation from both governments that money can be drawn down on a project by project basis as and when the respective business cases are approved providing the flexibility needed for delivery. A full report will be presented to each Council in due course and will include reference to the role of scrutiny across the four authorities. I do not envisage any delay associated with establishing and recruiting the economic strategy board.</p>
6	<p><b>Cllrs Chris Holley, Peter Black, Wendy Fitzgerald</b></p> <p>Will the Leader comment on the impact on the 'Internet Coast' proposal submitted to the Welsh and UK Governments in February 2016 of the abolition of the City Region Board and the departure of its Chair. What expertise is available to take this forward. What work has been undertaken in the last six months to take this forward. And what funding is available to bring this project to completion.</p> <p><b>Response of the Leader:</b></p> <p>I do not envisage any adverse impact from the abolition of the City Region Board. The City Deal now requires robust and effective governance to support its delivery and that is what we are putting in place. We have had rigorous challenge sessions with both the Welsh and UK Governments where both project and overall governance was fully tested. All private sector partners are still on board, with Sir Terry Matthews leading on the digital theme of the City Deal and other expert private sector expertise being secured to deliver each of the other key themes. A number of key industry individuals have been secured and work is progressing well.</p>
7	<p><b>Cllrs Irene Mann and Peter May</b></p> <p>This question is about the HMO licensing fee paid by licence holders to the council.</p> <p>Please can the cabinet member clarify that this money is only to be spent on</p>

the HMO Licensing function and that the income should equate to the expenditure.

Last year, after various attempts, during the HMO scrutiny exercise a full breakdown of how this fee was spent for the previous financial year was obtained.

Shortly after the scrutiny enquiry and extra HMO officer was employed albeit on a 4 day week.

Please can we have the following information for the year 2016/17. For the avoidance of doubt we would like the information in this specific format.

Income

Fees from licence holders.

Expenditure

- a. HMO related staff costs.

Please provide this by individual post and the amount of pro rata salary the member of staff actually spends on HMO licensing. The reason that this specific breakdown is asked for is that during the scrutiny discussion the oral evidence revealed that individual staff posts were split between HMO Licensing duties and other work. For example, if a post was paid £30,000 and the officer was only an HMO Licensing officer for 0.7 of the time then you could only £21,000 to the staff cost.

- b. Other administrative costs related to the HMO Licensing function (please specify precisely what they are). During the detailed breakdown eventually supplied to the scrutiny committee, they were found to be very small.

**Response of the Cabinet Member for Housing, Energy & Building Services:**

When HMO licence fees are set they may only be set on a cost-recovery basis related to the local authority's HMO licensing function. The fees are set to cover a five year period i.e. the maximum period for which an HMO licence may be issued.

Income

As explained to Scrutiny Working Group, licence fees are required to be paid in full when an HMO licence application is made. The fee paid covers a maximum five year period (i.e. the life of an HMO licence). A proportion of the fee is therefore carried across that period as 'receipts in advance'. This means even though the fee is paid in full in one particular financial year, it is able to be utilised in that year and subsequent years over the term of the licence. This is permitted and should not be interpreted as a surplus.

The licence fee income for expenditure in 2016/2017 was £241k.

Expenditure

a. As has previously been explained, Officers dealing with HMO licensing also deal with a variety of other private sector housing and public health work. It is not possible to provide a pro-rata salary breakdown by post as requested as the information is not recorded in this way.

	<p>HMO licence fees are set on the average time spent dealing with a licence application and associated work, again as has been previously explained.</p> <p>In 2016 – 2017 the total salary cost (including on-costs) of Officers working on HMO licensing as part of their remit was £330k. Across those officers an estimated average of 70% of time was spent on HMO licensing = £231k.</p> <p>As confirmed to Scrutiny Working Group on 8<sup>th</sup> March 2017, since 1<sup>st</sup> April 2017 there has been one additional Environmental Health Officer whose work includes HMO licensing.</p> <p>b. As explained to the Scrutiny Working Group fee-related work which applies to HMO licensing includes review, consultation and declaration of additional scheme including legal notification occurs usually every five years. Reporting and performance monitoring is ongoing.</p> <p>Other administrative costs include printing, stationery, postage and training directly related to HMO licensing and costs were approximately £4,500 for 2016 – 2017.</p>
8	<p><b>Cllrs Chris Holley, Graham Thomas, Lynda James</b></p> <p>Will the Leader/Cabinet Member tell Council what is the current position with the lease arrangement for the LC and have there been discussions about the other council run leisure facilities.</p> <p><b>Response of the Leader / Cabinet Member for Culture, Tourism &amp; Major Projects:</b></p> <p>The Community Leisure Centres and the LC formed part of a Lot of facilities within a Competitive Dialogue procurement process. This process commenced in April 2017 and submissions were received by a number of bidders in August. Following full evaluation, a report will be considered by Cabinet over the coming months to determine the recommended next steps and other options available.</p> <p>The current lease and management agreement for Bay Leisure Ltd to operate LC is due to expire at the end of February 2018, however in order to ensure that the procurement exercise mentioned is fully completed, a short term extension with Bay Leisure to 30<sup>th</sup> September 2018 is currently being explored between parties.</p>
	<b>Part B – No Supplementaries</b>
	None.