



## Report of the Cabinet Member for Education Improvement, Learning and Skills

Cabinet - 16 July 2020

### 21st Century Schools Welsh Education Partnership – Strategic Partnering Agreement

<b>Purpose:</b>	The Welsh Government has been procuring a private sector partner to work with it on the delivery of education and community facilities in Wales, under the Mutual Investment Model (MIM) 21st Century Schools Programme. The report explains the process and seeks approval to enter into a Strategic Partnering Agreement (SPA) with the Welsh Education Partnership Company (WEPCo).
<b>Policy Framework:</b>	<ul style="list-style-type: none"><li>• QEd Programme and Strategic Outline Programme for Band B of the 21<sup>st</sup> Century Schools and Colleges Programme</li><li>• The Corporate Plan</li><li>• Contract Procedure Rules and Financial Procedure Rules</li><li>• The Capital Budget &amp; Programme 2019/20 to 2024/25 approved by Council on 5 March 2020.</li></ul>
<b>Consultation:</b>	Finance, Legal, Procurement, Access to Services.
<b>Recommendations:</b>	It is recommended that Cabinet: <ol style="list-style-type: none"><li>1. Notes the outcome of the Preferred Bidder Stage of the Competitive Dialogue Procedure under the Public Contracts Regulations 2015 as outlined in this report;</li><li>2. Approves the Strategic Partnering Agreement at Appendix F of this report and summarised in section 3 of this report and authorises the Chief Legal Officer to enter into the agreement on behalf of the Council , subject to recommendation (3) below;</li><li>3. Gives delegated authority to the Director of Education, after consultation with the Director of Place and the Chief Legal Officer:</li></ol>

- a) To approve the final terms of the Strategic Partnering Agreement; and
  - b) To approve any further deeds and documents which are ancillary to the Strategic Partnering Agreement.
4. Approves the appointment of the Director of Place as 'Participant Representative' to sit on the Strategic Partnering Board (SPB);
  5. Notes that in agreeing to the Strategic Partnering Agreement, it is not being asked to decide to proceed with any Pathfinder Project, and that nothing within the Strategic Partnering Agreement commits the Council to make any such commitment. Any decision to proceed with a Pathfinder Project or indeed any new MIM project will be reported to Cabinet for decision.

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## 1. Summary

- 1.1 The Welsh Government has been procuring a private sector partner to work with it on the delivery of education and community facilities in Wales, under the MIM 21st century schools programme. The Welsh Government is expected to select and appoint a preferred bidder by September 2020.
- 1.2 The successful private sector partner and a subsidiary of the Development Bank of Wales (known as WGCo) will be required to form Welsh Education Partnership Co (WEPCo), which will deliver infrastructure services to the participants in Wales.
- 1.3 The participants to the arrangements will be a number of local authorities and further education institutions. The participants and WEPCo will enter into a Strategic Partnering Agreement. Under the Strategic Partnering Agreement, WEPCo will be required to provide partnering services to the participants, including (i) project development and delivery; and (ii) supply chain assembly and management. This may lead to the delivery of revenue supported Band B projects pursuant to a separate Project Agreement or, in due course, capital funded projects could be delivered through this contract structure.
- 1.4 The purpose of this report is to explain the process and seek Cabinet approval to enter into a strategic partnering agreement with Welsh

Education Partnership Co to facilitate the delivery of education and community facilities. Cabinet is also asked to approve the appointment of the Director of Place as 'participant representative' to sit on the Strategic Partnering Board.

## **2. Background**

2.1 Welsh Government funding for Band B of the 21<sup>st</sup> Century Schools Programme is being provided through £600m capital and £500m revenue funding. The revenue funding is being provided through a Mutual Investment Model (MIM), a form of private public partnership (PPP).

2.2 The "Mutual Investment Model", or MIM, was formally launched by the Welsh Government on 28 February, 2017 and is a platform for delivery of the "Taking Wales Forward" agenda. MIM has been designed to finance major capital projects due to a scarcity of capital funding. It is based on traditional PPP structures but with the following core principles embedded:

- a) an emphasis on wider community benefits;
- b) enhanced stakeholder involvement;
- c) public sector equity investment;
- d) no soft services; and
- e) effective and efficient contract management by the public sector.

2.3 The Mutual Investment Model unlike traditional forms of PPP includes long-term obligations to secure community benefits, create apprenticeships and training places for Welsh workers and for sustainable development, in which the private partner will be required to support delivery of the Well-being of Future Generations Act.

2.4 The MIM is intended to support additional investment in social and economic infrastructure projects and help to improve public services in Wales. Under the MIM, the private sector partners will build and maintain public assets under licence, and in return the Council supported by funding from the Welsh Government will pay a fee to the private partner, which will cover the cost of construction, maintenance and financing the project.

2.5 The Project Agreement for each individual project will nevertheless make it clear that the granting of the licence shall not operate or be deemed to operate as a lease and Project Co shall not have or be entitled to exclusive possession (save as to the extent expressly included within the Ancillary Rights) nor shall it have any estate, right, title or interest in and to the Site or the Facilities. Project Co shall occupy as a licensee only.

2.6 The incentive is on Project Co to ensure that Works are complete on time so that it starts receiving payment of the Monthly Service Charge. In circumstances where there is a default by the contractor, including its insolvency, then Project Co will be required to find a replacement to ensure that the Works are completed on time. The risk of contractor insolvency sits with Project Co. It will have in place security to recover any additional

costs from its contractor. If a replacement cannot be found then this, in time, is likely to lead to a Project Co Event of Default and the Senior Lenders are likely to step in to Project Co's role and find a suitable replacement (pursuant to the terms of its Direct Agreement with the Authority). The failure to do so will reduce any compensation they would be entitled to. If there is a Project Co Event of Default and no replacement then the Authority will have to pay out BUT this will be based on one of two calculations. The first is if there are willing bidders to take on the contract in which case the Participant would pay the best bid received from a bidder to take it on. If there are no willing bidders then the Participant will be liable to pay what is termed the Estimated Fair Value of the Contract i.e. what would someone have paid to take it on. The Participant will receive a benefit obviously of whatever has been constructed to date

- 2.7 The grant rate for projects funded through the Mutual Investment Model is 81%. The balance of 19% will be funded from Revenue funding.
- 2.8 A summary briefing on the Mutual Investment Model (MIM) is set out in Appendix A.
- 2.9 The Council had identified four projects which could be considered for funding through the Mutual Investment Model. The most significant by far related to the Special Schools Review, however Welsh Government has since advised that a special school project is not eligible for MIM funding and therefore capital funding would now have to be sought for this potential project. The Mutual Investment Model remains appropriate for new build projects for primary and secondary schools where there are no land ownership or other legal complications.
- 2.10 Following further discussions involving Cabinet members and having identified a number of potential MIM projects, Swansea submitted a Letter of Intent dated the 28 March 2018. This confirmed the commitment to the Welsh Government's procurement of a Private Sector Delivery Partner ("PSDP") on the Council's behalf and to be named as a Contracting Authority in the Contract Notice for the procurement of the PSDP. It also confirmed a commitment to becoming a shareholder in the Welsh Education Partnership vehicle ("WEP") and to becoming a Participant under, and signing, the Strategic Partnering Agreement ("SPA"), which will allow the Council access to the Partnering Services to deliver Qualifying Projects and such other capital schemes or Facilities Management services (relating to the provision of education sector services or community services) as the Council might wish to bring to the WEP.
- 2.11 Since then, it has now been determined that there will not be a separate shareholders agreement to be entered into by the Council at the outset. The specific finance arrangements, which might include a shareholders agreement, would be agreed at individual project approval stage and therefore considered by Cabinet at that time.

2.12 The Welsh Government has been procuring a private sector partner to work with it on the delivery of education and community facilities in Wales, under the MIM 21st Century Schools Programme. It will be the only means of delivering revenue funded Band B projects. The Welsh Government is expected to select and appoint a preferred bidder during the summer of 2020. The successful private sector partner and a subsidiary of the Development Bank of Wales (known as WGCo) will be required to form WEPCo, which will deliver infrastructure services to the Participants in Wales.

### **3. The Strategic Partnering Agreement (SPA)**

3.1 The **Participants** to the arrangements will be a number of Local Authorities and Further Education Institutions. The Participants and WEPCo will enter into a Strategic Partnering Agreement (**SPA**). The SPA provides for how the parties act together over the long term in a collaborative partnering, non-adversarial and open manner to support the effective planning, procurement and delivery of education and community facilities in Wales and the delivery of infrastructure services. The SPA is due to be executed in September 2020.

3.2 The initial term of the SPA is 10 years. This may be extended by 5 years by any one or more Participants. Under the SPA, WEPCo is required to provide partnering services to the Participants. These services include (i) project development and delivery; (ii) supply chain assembly and management and (iii) other professional services necessary to fund and deliver education and community facilities.

3.3 For the first 10 years of the SPA, WEPCo has the exclusive right to provide services to all Participants (as signatories to the SPA) including:

- a) Project Development Partnering Services to work up new “Qualifying Projects” (only) for delivery (including supply chain assembly, funding and value for money), set out in more detail in Schedule 3 (Partnering Services) of the SPA; and
- b) Project Services (design, construction, testing, commissioning and completion of the premises, hard facilities management, and installation of equipment) relating to a “Qualifying Project” subject to it becoming an “Approved Project” within the first 10 years of the SPA and for a MIM Band B project, provided that it has met the criteria set out in Schedule 5 (Approval Process for New Projects) of the SPA.

3.4 “Qualifying Projects” means those identified projects at the outset for delivery by WEPCo (as set out in a Schedule to the SPA) and all other 21st Century Schools and Colleges (Band B) MIM Programme projects, where such a project has been identified by a Participant required to enable them to provide education based services in the region.

3.5 Participants may ask WEPCo to provide on a non-exclusive basis:

- a) Project Services relating to capital projects required for the provision of education sector services (where expressly designated and approved under a Strategic Outline Programme) and/or community services;
- b) Strategic Support Partnering Services (such as estate planning, service planning and demonstrating value for money);
- c) Project Development Partnering Services in respect of potential new projects, which are not “Qualifying Projects”, but requested by a Participant;
- d) Ongoing Partnering Services and/or Project Development Partnering Services after ten years, where the initial term of the SPA has been extended; and
- e) Project Services in respect of Qualifying Projects which become “Approved Projects” after 10 years, where the initial term of the SPA has been extended.

3.6 If a Participant receives funding for a 21st Century Schools and Colleges Band B MIM Programme project, WEPCo has the exclusive right to develop proposals for the delivery of that project (Project Development Partnering Services) within the first 10 years of the SPA.

3.7 Therefore, the most likely outcome for a Participant that becomes a party to the SPA is that they proceed to develop a project or projects using the Approval Process in the SPA resulting in the execution of a Project Agreement which will govern the design, build, finance and maintenance of schools or colleges.

3.8 Appendix D provides a more detailed summary of the SPA.

3.9 The SPA commits the Participants and WEPCo to work to the following nine (9) key principles:

- a) to develop close working relationships between WEPCo and the Participants at all levels;
- b) to focus on achieving the best value for money operational performance within agreed timescales;
- c) to set in place business and cultural processes to enable the Participants and WEPCo to establish and agree challenging time and performance objectives and to meet or better them;
- d) to recognise each other’s needs, constraints, limitations, capabilities, roles and responsibilities to achieve mutually beneficial outcomes;
- e) to identify by regular monitoring, weaknesses and strengths in the relationship between and amongst the Participants and WEPCo and to work together to overcome the weaknesses and to build on the strengths;
- f) to commit to the early recognition and resolution of differences, conflicts and disputes between and amongst the Participants and WEPCo in a ‘no surprises’ environment;

- g) to appoint within each of the Participants and WEPCo co-ordinators at senior level who will support, defend and promote the long term strategic partnership between them and its principles of operation;
- h) to develop openness and trust in a transparent information and data sharing environment; and
- i) in accordance with the Equality Requirements to positively promote equal opportunities and the Ethical Employment Code by combating discrimination on the grounds of race, ethnicity, religion, nationality, gender, disability, age or sexuality and promoting good relations between all sections of the community in 'everything we do' including:
  - I. Delivering high quality Education Sector Services and (where relevant) Community Services for end users; and
  - II. Working with the local community and partners in the public, private or voluntary sectors.

3.10 The Strategic Partnering Board (**SPB**) is the guardian vehicle of these commitments.

#### **4. The Strategic Partnering Board (SPB)**

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

4.2 The SPB's role will be to approve the Strategic Delivery Plan (**SDP**); ensure any new project proposals are consistent with the SDP; monitor WEPCo's performance against agreed Key Performance Indicators; approve any extension to the SPA term; and approve any proposed disposal of interest in share capital resulting in a loss of control by WEPCo (or subsidiary).

4.3 The Council's Representative will be expected to be a senior representative of the Council, with the appropriate authority to make decisions on behalf of the Council. They should be experienced in holding a director or similar position and have the required skills to make the decisions required to be made by the SPB. The Council will need to consider any likely conflicts of interest and ensure that conflicts of interest do not prevent the chosen representative from fulfilling their role as representative as well as any other role they hold directly in the Council.

4.4 The Council's Representative will attend the SPB meetings at least every three months, together with representatives of each Participant, WEPCo, Welsh Government and other stakeholder representatives as agreed by the Participants. These meetings are to review financial and operating issues and provide strategic input into the partnering arrangements including the exchange of ideas in relation to each of the Participants' accommodation and service delivery requirements.

- 4.5 The SPB must have a quorum of five (5) Participants' representatives (one of whom must be a representative from Welsh Government) and a WEPCo Representative. If a quorum is not present at any meeting of the SPB within thirty (30) minutes of that meeting's start time, the SPA requires that the meeting is adjourned to the same time and place five (5) Business Days later. For any adjourned meeting, the quorum shall be one Participant's Representative (who must be a representative of the Welsh Government) and the WEPCo Representative. Telephone conference calls or video conferences are valid as a meeting of the SPB. Appendix E provides a more detailed summary of the role of the SPB.
- 4.6 The Director of Place is recommended as 'Participant Representative' to sit on the Strategic Partnering Board, as the lead Director for the procurement of construction related frameworks and contracts with responsibility for regeneration.

## **5. Pathfinder Projects**

- 5.1 WEPCo shall, if requested to do so by one or more Participants, develop proposals for the implementation and delivery of new projects including Pathfinder Projects through the Approval Process for New Projects set out in Schedule 5 of the SPA. WEPCo will assist Participants in developing proposals for the delivery of new projects, the preparation of an outline business case and the obtaining of all necessary approvals to progress any new project request by a Participant.
- 5.2 Pathfinder status depends on the engagement and readiness of the relevant Participant and their chosen site, and is not linked to the Welsh Government choosing specifically a scheme to be a Pathfinder. The Welsh Government team have been working with a number of Authorities to-date and it is yet unclear how many Pathfinders there may be. It is hoped that by the signature of the SPA there will be at least one Pathfinder, but Pathfinder projects may also be identified after signature of the SPA.
- 5.3 The Council had previously identified four potential projects that may be eligible for MIM, leaving three remaining with the switch of the potential special school project to capital funding. These now will require review and scoping, and depending upon the timescales it is possible that one of these projects may be progressed in time for the first phase of Pathfinder projects.
- 5.4 Schedule 5 of the SPA sets out the procedure by which WEPCo and the Participants will work together to agree which New Projects will be taken forward and approved for development by WEPCo and on what basis. Schedule 5 sets out a two stage Approval Process for such New Projects. The approval process shall only apply in relation to Qualifying Projects regardless of whether the period of ten (10) years from the Commencement Date has expired.



- 5.5 WEPCo will work with Participants to develop local delivery plans (addressing Participants' requirements) which will form part of the annual Strategic Delivery Plan (SDP). WEPCo will then review the applicability of the SDP to the provision of education services in the Participant's Region to decide which New Projects should progress. The SPB shall ensure that WEPCo's proposals for New Projects are consistent with delivery of the latest SDP.
- 5.6 WEPCo shall, without entitlement to specific or additional payment, work with the Participants and other members of the SPB to analyse and discuss the range of potential funding options for New Projects, as well as develop the Participants' requirements in relation to New Projects.
- 5.7 WEPCo will be obliged to meet the Participants' requirements for the delivery of any new project including Pathfinder Projects. Authority to proceed to deliver any new project including a Pathfinder Project, and to enter into a Project Agreement, would require further Council approval and reports will be brought back to Cabinet for determination accordingly.
- 5.8 Appendix B provides a more detailed summary of the Approval Process for New Projects under the SPA.

## **6. What Happens If Approval Is Not In Place By September 2020?**

- 6.1 Local Authorities and FEIs are strongly encouraged to sign up to the arrangements with WEPCo via the SPA regardless of whether they have a MIM Project in place as WEPCo also offers Strategic Support Partnering Services which can assist Participants with estates planning or associated activities.
- 6.2 It is recognised that Cabinet is being asked to agree to enter into the SPA before the Welsh Government has appointed a preferred bidder. As such, the SPA document is not yet in its final form. Whilst it is not envisaged that the draft SPA will change substantially once a preferred bidder is approved, it is recommended that delegated authority is given to the Council's Director of Place, in consultation with the monitoring officer, to agree the final terms of the SPA and make any necessary minor amendments to it, should these be required.
- 6.3 The purpose of the SPA is to enable Participants to proceed to develop a project or projects using the Approval Process for New Projects within the SPA, resulting in the execution of a Project Agreement. In order to benefit from that process Participants need to execute and be a party to the SPA.
- 6.4 Whilst there is a mechanism within the SPA that will allow for those Participants (named in the OJEU) to sign up after September 2020 by way of a deed of adherence (**DoA**), this will create several complexities:
- a) Where any Participant is to sign the DoA this will require all existing parties to re-execute the SPA. This will require all Participants to take

further decisions to re-enter the SPA, creating delays in the delivery of Pathfinder Projects

- b) Where any Participant is not signed up to the SPA by the September 2020 deadline, it is unlikely that they will have a Pathfinder Project or be included in the first Annual Business Plan of WEPCo. This will cause delays in the delivery of any education project
- c) There may be a procurement risk in entering into the DoA, based on time elapsed argument, if the DoA is not entered into within 6 months

## **7. Potential Procurement Risk**

- 7.1 If a Participant were to choose not to sign the SPA or the DoA and then wanted in the future to access Partnering Services or Project Services from WEPCo, it will not be able to do so in a procurement safe manner.
- 7.2 Similarly, with regards to 21st Century Schools and Colleges Band B funding, if a Participant were to choose not to sign the SPA or the DoA but then wanted to utilise WEPCo to deliver a Band B funded project (whether capital or revenue) in the future, it will also not be able to do so in a procurement safe manner.
- 7.3 Should for example, a Participant secure MIM Band B funding downstream from the Welsh Government for a project not currently identified and it was required to use WEPCo, it would not be able to do so in a procurement safe manner if it had not signed the SPA or the DoA. WEPCo has the exclusive right to develop proposals for the delivery of a 21st Century Schools and Colleges Band B MIM Programme project (Project Development Partnering Services) within the first 10 years of the SPA.
- 7.4 It is therefore recommended that Cabinet approve entering into the SPA as set out this report to ensure that the SPA can be completed in the Autumn as planned and that the Council is able to utilise the SPA from its go-live date.

## **8. The Procurement Process**

- 8.1 The Welsh Government is engaged in a competitive dialogue tender process working to the procurement timetable below at Table 1. The aim of the competitive dialogue procedure is to enable the Welsh Government as the contracting authority to "identify the solution or solutions which are capable of meeting its needs". Comprehensive dialogue has been held with each of the Bidders during the Dialogue Process.
- 8.2 On 14 February 2020 three Draft Bids were received. These were reviewed and comments sent back on the Draft Bid submissions to inform the next stage of dialogue. On 20<sup>th</sup> February a "meet the Bidders" event was held at the Yr Hafod facilities in CP2, well attended by Participants and other Stakeholders.

## 9. Impact of Covid-19

9.1 The final intensive stage of Dialogue known as 'boot camp' was due to commence at the Principality Stadium on Monday 16 March 2020. On 14 March a member of the core team and one of the advisers both took ill with coronavirus symptoms. Due to the ensuing events with the Covid-19 pandemic the decision was taken to delay the start of boot camp to make arrangements for it to be conducted remotely via Microsoft Teams or other remote methods where required. Following two weeks of very intensive remote engagement activity separately with the three bidders (which included involvement from bid team members based across Europe) at 18.30 hrs on 3 April 2020 the Welsh Government successfully Closed Dialogue and invited Final Bids in line with the original procurement programme.

9.2 Bidders submitted their Bids by 12 noon on 27 April 2020 and compliant Final Tenders were received from the three bidders. Since then Welsh Government have;

- Evaluated and completed moderation of the bids by 20<sup>th</sup> May 2020.
- Completed all necessary Welsh Government Ministerial approvals and Welsh Government assurance procedures ahead of schedule in order to move to the next milestone and select the preferred bidder.
- Selected the preferred bidder.
- Informed all bidders of the outcome of the evaluation and have sent out the Standstill/Alcatel letters together with an offer to give feedback to all three bidders.

The signature of the SPA is expected to take place in accordance with the timetable set out below.

Table 1

Matter	Date(s)
Issue of ITPDSB to Bidders	21 October 2019
Commencement of Dialogue with Bidders	28 October 2019
Christmas Break	18 December 2019 - 5 January 2020
Continuation of Dialogue with Bidders	6 January 2020
Return of Draft Bid	17:00 hours 14 February 2020
Recess	17 February 2020 - 13 March 2020
Boot Camp	16 March 2020 - 3 April 2020
Close of Dialogue	3 April 2020
Return of Bids	12:00 noon 27 April 2020
Evaluation of Bids and approvals	27 April 2020 - 30 June 2020 (original timescale 3 July 2020)
Appointment of Selected Bidder	30 June 2020 (original timescale 3 July 2020)
Standstill	1 July 2020 – 10 July 2020

Following formation of WEPCo, signature of WEPCo Shareholders' Agreement	September 2020
Signature of Strategic Partnering Agreement	September 2020

## 10. Equality and Engagement Implications and the Well Being of Future Generations Act

### Equality and Engagement Implications

10.1 The Council is subject to the Public Sector Equality Duty (Wales) and must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

Our Equality Impact Assessment process ensures that we have paid due regard to the above.

10.2 An Equality Impact Assessment (EIA) screening has been completed for the wider 21<sup>st</sup> Century Schools Band B programme with a further screening now completed for this Strategic Partnership Agreement. Whilst there are no specific equality or engagement implications at this stage in the process, all projects that are/would be the result of these agreements, would be subject to the EIA process (which incorporates the UNCRC) with the likelihood that a full EIA report would be required for each project.

10.3 In addition, all stakeholders would be fully engaged as each project is developed and in a number of cases statutory consultations would be required.

### Well Being of Future Generations Act

10.4 The Well-being of Future Generations Act (WGFGA) ensures that public bodies think more about the long term, work better with people and communities and each other, look to prevent problems and take a more joined-up approach.

10.5 Band B of the 21<sup>st</sup> Century Schools and Colleges Programme is based upon a consistent and objective assessment of each sector and school catchment, reviewing current pupil numbers and capacities with projected future demand for places and also the number of pupils nearest to each School. This seeks to define and demonstrate the need both now and in the future. This process considers not exclusively, the wellbeing of pupils,

teaching and learning, curriculum developments, the appropriate size of school and learner travel.

- 10.6 All projects have a communication plan, which is reviewed regularly. This includes the engagement strategy; school (governors, head, staff, pupils, parents as well as the wider community) are fully engaged throughout the lifecycle of projects to ensure that the views of stakeholders are fully taken into account.
- 10.7 The delivery of projects through the MIM route will still afford the opportunity to adopt the ways of working and consider how best the goals of the WBFGA can be fulfilled.
- 10.8 The Mutual Investment Model also unlike traditional forms of PPP includes long-term obligations to secure community benefits, create apprenticeships and training places for Welsh workers and for sustainable development, in which the private partner will be required to support delivery of the Well-being of Future Generations Act.

## **11. Financial Implications**

- 11.1 There are no immediate financial implications within this report, although there are potential projects within the current 21st Century Schools Band B programme envelope which may be considered for MIM funding (and any later funding Bands).
- 11.2 The MIM 21st Century Schools and Colleges Programme: Band B Guide to the MIM Programme (for Participants) May 2019 sets out the funding contributions available for MIM projects as follows:

“Welsh Government (“WG”) has established the following funding contribution principles, subject to Business Case Approval:

  - WG will fund LA/FEI 81% of the Annual Service Payment for projects delivered under a MIM Project Agreement by an individual Participant (via revenue);
  - Subject to certain conditions being satisfied, WG will provide 100% funding to support any activities which would not otherwise be required for a Capital project e.g. PPP specific Legal, Technical and Financial Advice.
  - WG will fund all other development activities on the same basis as the 21st Century Schools and Colleges Capital Programme “
- 11.3 The MIM Funding Criteria guidance note provides a breakdown of how the various activities / elements will be funded.
- 11.4 Each project will be option appraised to ensure the project is suitable for MIM funding and provides Value for Money and a comprehensive options appraisal incorporating net present value cashflows will be prepared to assess each project. If MIM funding is considered the most appropriate

and Value for Money means of delivering a project a further report will be prepared for Cabinet approval for each individual project.

- 11.5 Appendix A provides an overview of the Mutual Investment Model and further detail regarding its revenue and capital implications.
- 11.6 Fundamentally, MIM offers a significant additional stream of investment to support the priority needs identified by local authorities for Band B of the 21<sup>st</sup> Century Schools Programme. The WG continues to encourage all Local Authorities and FEIs to sign up to the arrangements with WEPCo regardless of whether they currently have a potential MIM Project, as WEPCo also offers Strategic Support Partnering Services which can assist Stakeholders with estates planning or associated activities.
- 11.7 At this stage, the Council is not committing to any project(s), so there is no firm commitment or financial implications and there will be further reports regarding any specific projects at the appropriate time.
- 11.8 It may be noted however that for each specific project, Project Co does not receive payment from the Participant until the Works are complete and the Services start to be provided (the Payment Commencement Date). Thereafter, it will be paid the Annual Service Charge until the end of the MIM Project Agreement. The Annual Service Charge (subject to performance) includes;
  - WEPCo Partnering Services in relation to Stage 2: Full design and planning.
  - Accommodation in accordance with the agreed SoA and in accordance with the size parameters.
  - External works including site connections (footpaths, roads etc) landscaping, 3G Sports pitches (where deemed to form part of the project delivery) within the red line boundary.
  - Temporary accommodation will only be funded where it is a requirement to enable delivery of the proposed solution i.e. construction on an existing site where the existing buildings must be demolished to enable the new school or college to be constructed.
  - Hard FM (maintenance and lifecycle)
  - Statutory e.g. planning applications, building control, highways, NRW, etc
  - Insurance associated with Project delivery (Project Co Insurance).
- 11.9 However, WEPCo may recover the Incurred Stage 2 Project Development Fee (pre-construction phase costs) immediately following the Stage 2 pre-construction phase report under certain conditions and if the project does not progress.
- 11.10 The charge under the Project Agreements will include a proportion of WEPCo's overheads (Ongoing Partnering Services Costs), and the Project Development Fee (for working up New Projects), and cost of Partnering Services.

11.11 There will be certain costs that will not be included in the Annual Service Charge and will be a direct project capital cost that will be incurred at the time that the cost is incurred; such costs may include;

Costs 100% funded by Participant

- Internal fees including Education, CBS, IT and Legal
- Internal costs for example legal searches
- Decant costs
- External works outside the red line boundary including s278 highway works
- Temporary accommodation if this does not form part of the solution or suitable alternatives can be found.
- Bringing all services to the site
- Site enabling works including land remediation, ecological works and demolition of existing buildings, prior to taking the scheme to WEPCo - **However** if the project is identified by Welsh Government as a Pathfinder, in which case enabling works may be funded by Welsh Government to support the programme delivery; funding will be dependent upon the availability of public capital.

Costs 100% funded by WG

- Professional adviser fees

Costs 65% funded by WG on a capital basis

- WEPCo Stage 1 Project Development Fees will be paid on a Stage 1 Approval being issued, otherwise these will be 100% funded by the Participant.
- Some furniture and equipment dependent on category otherwise this will be part of the annual charge
- ICT Hardware

11.12 The service charge would be fixed for the duration of the project (25 years), although subject to inflation

11.13 The MIM annual charge represents a significant revenue commitment, however, with a WG intervention rate of 81%, the cost falling on the authority is comparable with traditional prudential borrowing costs and makes it a realistic option for authorities. MIM also has the potential benefits previously outlined, including the effective maintenance of the asset over a long period of time.

11.14 Work is continuing to deliver the remaining investment priorities within Band B and identify any opportunities afforded by MIM and for a Pathfinder Project(s). Potential MIM schemes are included within the Band B envelope incorporated into the Capital Budget and Programme 2019-20 to 2024-25, approved by Council on 5 March 2020.

## **12. Legal Implications**

- 12.1 Approval to enter into the Strategic Partnering Agreement (SPA) is an executive function requiring a decision of the Cabinet.
- 12.2 To enter into and participate in the SPA referred to in this report, the Council will be relying upon a number of statutory powers:
- a) the “well-being” powers contained in section 2 Local Government Act 2000;
  - b) powers contained in the Education Acts 1996 and 2002;
  - c) the “incidental” provisions of section 111 Local Government Act 1972.
- 12.3 The well-being powers contained in section 2 Local Government Act 2000 permit the Council to do anything which it considers is likely to achieve any one or more of the following objects—
- a) The promotion or improvement of the economic well-being of their area;
  - b) The promotion or improvement of the social well-being of their area, and
  - c) The promotion or improvement of the environmental well-being of their area
- 12.4 The incidental provisions of section 111 Local Government Act 1972 permit the Council to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
- 12.5 The programme will need to operate in line with the Well-being of Future Generations (Wales) Act 2015. The Act sets a framework of seven goals to develop and protect the social and economic development and cultural well-being of Wales and the five ways of working to achieve sustainable development.
- 12.6 Entering into the SPA does not bind the Council in any way. However, the Council will be required to appoint a representative to act on its behalf in relation to the SPA. The identity of the representative may change at any time following written notice to WEPCo and all other Participants. Each representative may also at any time, by written notice to WEPCo, authorise others to exercise the functions and powers of the Council.
- 12.7 The power to appoint an individual to the Strategic Partnering Board (SPB) is contained within Schedule 2 Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007. Cabinet is asked to approve the Director of Place for appointment as ‘Participant Representative’ to sit on the Strategic Partnering Board (SPB).



12.8 The SPA is to be executed as a deed and attested in accordance with Article 14(5) of the Constitution.

**Background Papers:**

Report of the Cabinet Member for Children, Education & Life Long Learning  
Cabinet - 20 July 2017 - Quality in Education (QEd) – Emerging Proposals and  
Investment Priorities for the next band of the 21st Century Schools Programme

Appendix A - Summary Briefing On The Mutual Investment Model (MIM)

Appendix B - Approval Process for New Projects Summary

Appendix C - WEP Strategic Partnering Delivery Model - Frequently Asked  
Questions and Answers

Appendix D - Strategic Partnering Agreement Summary

Appendix E - Strategic Partnering Board Summary

Appendix F - Strategic Partnering Agreement - Parts of the agreement may be  
redacted and not for publication by virtue of paragraph 14 of Schedule 12A of the  
Local Government Act 1972.

### Summary briefing on the Mutual Investment Model (MIM)

#### 1. Background:

- 1.1 A presentation by the then Cabinet Secretary for Finance and Local Government in March 2016, provided an introduction to MIM as an investment approach, highlighting some of the key features, processes and governance.
- 1.2 Since this time, there have been a number of further presentations and discussions involving Cabinet members regarding the Band B programme and funding.
- 1.3 A Cabinet Report in July 2017 considered and endorsed the future proposals and investment priorities for Band B of the 21<sup>st</sup> Century Schools Programme for submission to the Welsh Government (WG). This identified four potential projects (£58.7m out of a total Band B submission of £149.7m) which best met the WG criteria at that time for funding through MIM. To deliver these projects outside of MIM would have greatly increased the existing prudential borrowing commitment for other projects, as well as requiring a far larger share of the limited traditional capital 'pot' available to the WG, so risking the delivery of those projects in Band B.
- 1.4 In December 2017, WG approved Swansea's Band B 'in principle' and in its entirety; however, it subsequently requested a review of potential MIM projects against tightened criteria, specifically:
  - To encourage market interest, "ideal facilities for MIM delivery are 100% new builds that are:
    - Secondary Schools larger than 800 places;
    - Primary schools larger than 420 places;
    - All through schools; and Further Education Colleges. "
    - "It is not value for money to put small or very complex projects (such as special schools, PRUs and very small primaries) through a MIM route."
  - "It is therefore, unfortunate that a number of projects that have been put forward for MIM, via the SOPs [Strategic Outline Programmes], are now deemed unsuitable for delivery under this funding model."

In Swansea's case, this included the potential new build special school.
- 1.6 Since this time, there have been further discussions and updates to Cabinet members outlining WG progress in establishing this procurement and delivery model. This included the WG:
  - Tendering for a single strategic partner
  - Organising independent legal representation for all stakeholders
  - Seeking to resolve specific legal issues and concerns in relation to MIM in relation potential aided sector projects

## 2. **More Recent Progress:**

### 2.1 This has included:

- Considerable work to develop detailed business cases and the early delivery of priority projects within Band B, drawing down from the available traditional capital funding within the approved programme envelope.
- Clarification of MIM approach, timescales and opportunities to support the delivery of the remaining priority projects
- The submission of tenders from potential strategic partners and the detailed evaluation of submissions by WG with a view to the appointment of the selected bidder by July 2020.
- The current request for approval to sign up with that partner, considered in this report.

## 3. **What is MIM and what are its benefits?**

3.1 The Mutual Investment Model is a form of Public Private Partnership (PPP) but unlike traditional forms of PPP includes long-term obligations to secure community benefits, create apprenticeships and training places for Welsh workers and for sustainable development, in which the private partner will be required to support delivery of the Well-being of Future Generations Act.

### 3.2 Specifically MIM:

- Allows the delivery of an additional £500 million (capital equivalent) of education infrastructure beyond WG capital borrowing limits
- Ensures that a facility is well maintained over a long period of time (25 years) and at expiry of the contract the facility must be handed back in good condition
- Places the public sector in a stronger commercial position in the event of default (such as insolvency of the Construction Contractor (such as with Carillion) or failings in construction (such as with some Edinburgh Schools) than on a comparable capital project
- Promotes the public interest through embedding within the Contract an obligation on the private sector to provide stretching community benefits
- Benefits from an expert delivery team with a proven track record of procuring, delivering and operating these complex projects

#### *Strategic partnering offers:*

- A tried and tested model (e.g. in Scotland and 'Building Schools for the Future' in England)
- Smaller MIM projects to be included
- Local Authorities to be a contracting counterparty
- Potential support for the delivery of other projects

*MIM differs from traditional capital funding in that:*

- There is no capital cost up front but an annual charge once possession is taken of the new facilities (a contractual commitment)
- There will need to be some capital funding to meet costs such as surveys and preliminary investigations and furniture and equipment etc. (IT and up-front costs to get to RIBA Stage 0) which can't be MIM funded
- The contract term and annual charge would be for a period of 25 years

*Land Ownership:*

- There is no transfer of land ownership involved in a MIM Project at any point
- The MIM Project Agreement deals with property interests in a different way to other contracts, in that ownership remains with the Authority.
- The Authority will then merely grant a licence, to use and access the Site to Project Co (set up by WEPCo). This is so that Project Co can enter and remain on those parts of the Site as necessary to carry out the Works (during construction) and/or the Services (following construction). This will extend to such rights as necessary in relation to dealing with utilities.
- Once the building is complete the End User (in this case the School) occupies the facility (as does the existing school presently) and Project Co is responsible for providing ongoing Maintenance and Lifecycle services to the Facility again under an "access protocol" which is agreed by the End User/Authority and Project Co
- Project Co has no proprietary interest in the land
- However, Project Co does have a right to be repaid by the Authority for the Facility and the Service Provision (under the Annual Charge) and it is that payment stream from the public sector to the private sector that is effectively the "security" that the Senior Debt funder relies on (rather than a "Charge" over the land and facility itself)

#### **4. Eligibility for MIM**

- 4.1 To be considered for funding through MIM a potential project would need to be:
- 100% new build on a site with no unresolved legal or other issues
  - A single project or batch of projects with a capital value of more than £15 million comprising:
    - Primary Schools
    - Secondary Schools
    - All through Schools
  - No Special Schools or PRUs would be considered appropriate for MIM

#### **5. How does MIM work?**

- 5.1 MIM differs from the Private Finance Initiative (PFI) by:
- Sharing (but not capping) profits: sharing in the earnings of a PPP by taking equity
  - Promoting the public interest through the right to appoint a Director

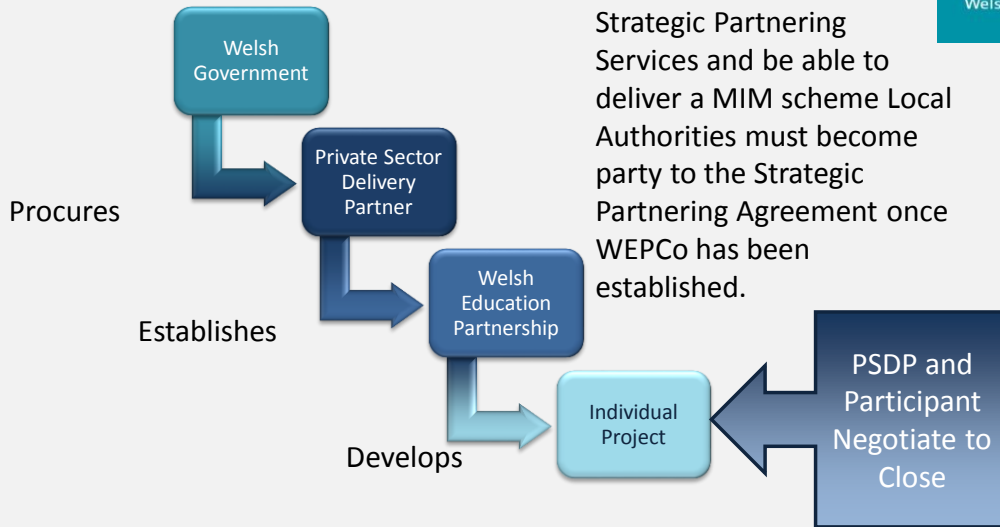
- **Not including ‘soft’ services**, such as cleaning and catering
- Embedding **transparency** about costs and performance, and the requirement to review efficiency, effectiveness and performance every two years
- **Not including equipment**, which can be funded more efficiently from public capital
- It’s provisions to secure **community benefits; and others** to help deliver the objectives of the **Well-being of Future Generations Act**; as well as incorporating a commitment to an **ethical employment code**
- Strengthened provisions around **Handover**, ensuring infrastructure is ready to be used on time at the point of Completion
- Having an improved **Change Protocol**, so allowing the adoption of changes efficiently during the construction and operational phases, at agreed costs or with known methodologies, with some low value changes being able to be performed directly by the public sector rather than Project Co.
- Low Value Maintenance work falling outside the Project Agreement.
- Energy consumption and insurance premium being treated as pass-through costs.
- *In short, MIM is similar to PFI in the funding mechanism but with many of the rough edges removed and concerns addressed – particularly regarding ‘soft’ services etc.*

5.2 Once built the following ‘hard’ facilities management services would be included within the contract:

- Asset Maintenance including all systems, Mechanical and & Electrical, and statutory testing
- Energy and utilities supply and management including energy and water efficiency
- Helpdesk
- Quality assurance and continuous improvement
- Health and safety management including fire safety
- Environmental management
- Performance monitoring and reporting
- Interface services
- Internal redecoration – to be confirmed

5.3 The diagram below shows the strategic partnering arrangements:

## WEP Strategic Partnering

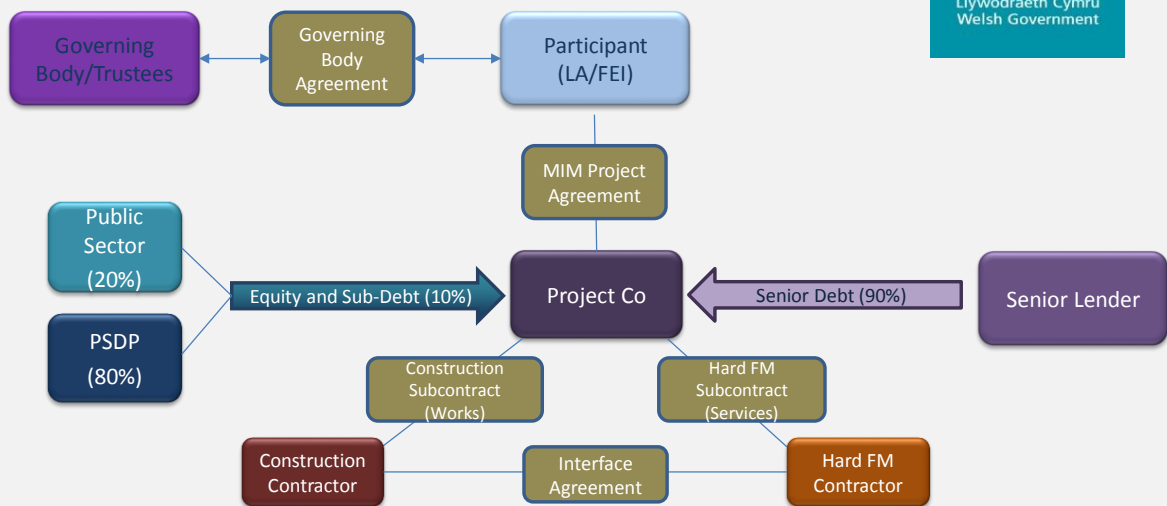


In order to access the Strategic Partnering Services and be able to deliver a MIM scheme Local Authorities must become party to the Strategic Partnering Agreement once WEPCo has been established.

### 6. Specific Issues re Aided Sector Projects

6.1 The proposed structural approach to delivering Church Schools via MIM and the strategic partnering arrangements is set out in the diagrams below:

## MIM Structure (Church Schools)

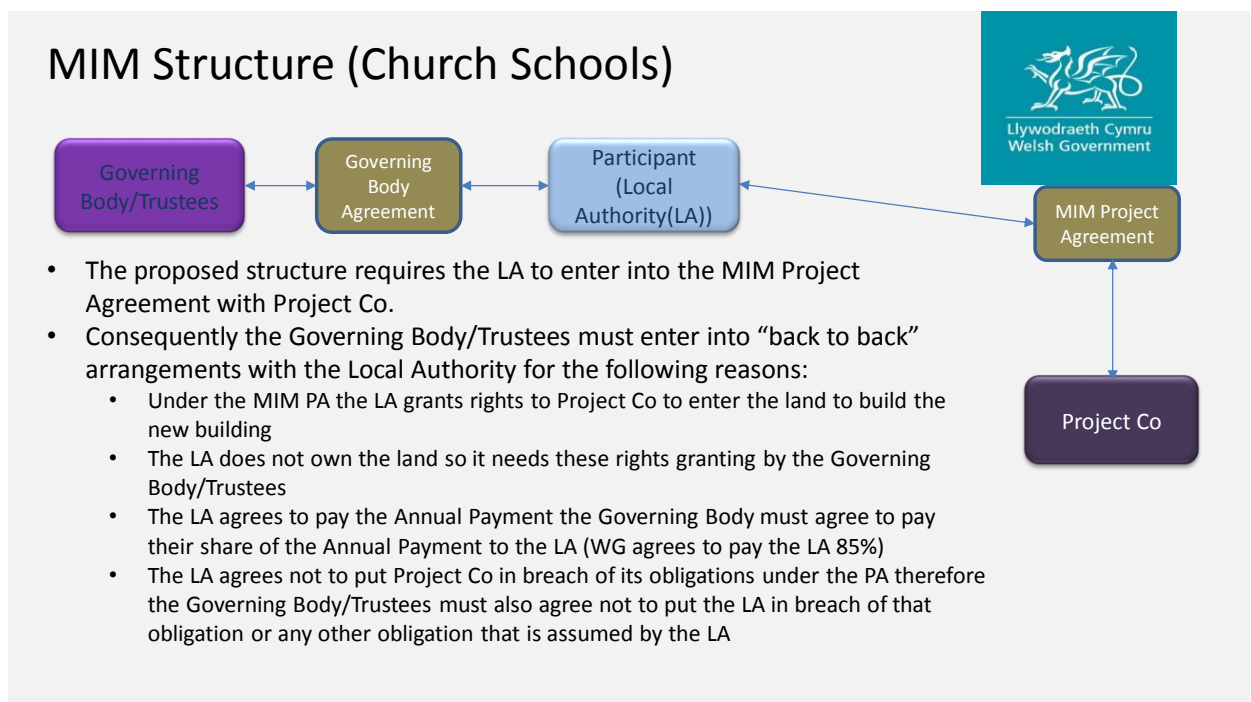


6.2 This is a model that has been accepted in England by both the Catholic and Church of England Diocesan Authorities and there are no apparent reasons why MIM is not an appropriate delivery vehicle for both church

and Local Authority (LA) maintained schools. However, the contracting authority to the Project Agreement will have to be the relevant Local Authority, which will require it to be party to the Strategic Partnering arrangements that are currently being put in place. This does not cost anything and it has been recommended that all LAs and Further Education Institutions (FEIs) in Wales sign up to the arrangements to give them the option to deliver MIM projects in the future.

6.3 One of the benefits of MIM for voluntary aided schools is that the building is maintained and life-cycled for 25 years and 85% of the cost of the facility, financing the facility and the associated maintenance / lifecycle is funded by Welsh Government. Moreover, WG have agreed in principle (subject to approval) to fund the legal fees of the Trustees to enter into the Governing Body Agreement provided that the first school's agreement will act as a standard precedent that is applicable across church schools in Wales.

6.4 In the case of a voluntary aided school, where the Diocese owns the land, the most sensible approach is for the Local Authority to enter into the MIM Project Agreement with Project Co, and agree that the provision of the licence to Project Co from the Local Authority is backed off via a Governing Body agreement with the Diocese (in this case the Landowner).



## 7. Can the Council afford MIM and does it represent good value for money?

7.1 The annual charge represents a significant revenue commitment, however, with a WG intervention rate of 81%, the cost falling on the authority is comparable with traditional prudential borrowing costs and makes it a realistic option for authorities. MIM also has the potential

benefits previously outlined, including the effective maintenance of the asset over a long period of time.

- 7.2 Fundamentally, MIM offers a significant additional stream of investment to support the priority needs identified by local authorities for Band B of the 21<sup>st</sup> Century Schools Programme. The WG continues to encourage all Local Authorities and FEIs to sign up to the arrangements with WEPCo regardless of whether they currently have a potential MIM Project, as WEPCo also offers Strategic Support Partnering Services which can assist Stakeholders with estates planning or associated activities.
- 7.3 An authority effectively needs to be 'in it to win it.' At this stage, the Council is not committing to any project(s), so there is no firm commitment or financial implications and there will be further reports regarding any specific projects at the appropriate time.

## 8. **Timeline / Next Steps**

8.1 The next steps in the WG procurement timeline are as follows:

- Evaluation of Bids and approvals 27 April 2020 - 3 July 2020
- Appointment of Selected Bidder 3 July 2020
- Standstill 4 July 2020 - 14 July 2020
- Formation of WEPCo and sign up to Strategic Partnering Agreement by all LAs and FEIs by September 2020
- Start to develop first MIM Pathfinder Projects September 2020
- The process to progress a specific MIM project is set out below and initially requires the submission of a Strategic Outline Case (SOC) and completion of the Stage 0 checklist.



## WEP Strategic Partnering Delivery Model - Approval Process for New Projects Summary

