

Meeting	Education and Economy Scrutiny Committee
Date	24th of January 2019
Title	Establishing a Council controlled company
Author	Sioned Williams, Head of Economy and Community
Member	Councillor Craig ab Iago
Purpose	To update the Scrutiny Committee on progress against the approved business case and to outline the arrangements in place to address the comments made by the Education and Economy Scrutiny Committee at its meeting on the 26 <sup>th</sup> of June 2017.

## 1 Introduction

1.1 The Scrutiny Committee is aware of the current plans to transfer our Leisure Centres to a Council controlled Company. The purpose of this report is to inform the Committee of the latest situation and to explain how the proposed arrangements deal with the Scrutiny Committee's comments on the business case which was presented on the 26<sup>th</sup> of September 2017.

1.2 The Scrutiny Committee will also remember that further information on the governance arrangements were presented on the 13<sup>th</sup> of December 2017 and that some of the comments were addressed at that time. By now we are in a position to elaborate more on the arrangements and proposed contract which will be subject to the Cabinet's approval later in February.

1.3 It should be noted that some work is required between now and February however and that the penultimate contract is currently being negotiated with the Company and its solicitors.

1.4 The Scrutiny Committee is asked to consider the current situation and assess whether the original comments have been addressed in line with expectations.

## 2 The current situation

2.3 To remind Members, the 3 work streams to the transfer are:

- a) The commissioning element, which articulates what we are asking the Company to provide, and the conditions for doing so. This is crystalized in various legal documents,
- b) The element of commissioning the Company, which includes the Company's management, legal and governance arrangements,
- c) And the third element, which entails the work of converting the service to operate as an independent business to the Council.

2.4 During July and December updates were sent to all Council Members, staff and other stakeholders.

2.5 Since then the majority of the work has been focussed on finalising the contract and leases. The contract is structured as follows:

2.3.1 Contract:

Schedule 1 – Definitions

Schedule 2 – General Terms and Conditions of the Contract

Schedule 3 – Service Specification

Schedule 4 – Financial provisions and contract sum

Schedule 5 – Service performance, review and monitoring

Schedule 6 – Variations, Change of Law and Termination

Schedule 7 – Fees and charges and review process

Schedule 8 - Human Resources, TUPE and Pensions

Schedule 9 –Dispute Resolution

Schedule 10 – Utilities responsibilities and other ancillary matters

Schedule 11 – Property Issues

Schedule 12 – Policies the Company should comply with

Schedule 13 – Service Level agreements for services provided by the Council

Schedule 14 – List of managed premises

Schedule 15 – Data and Data Protection Act

Schedule 16 – Hire Protocol

2.3.2 Twelve leases that include:

General terms and covenants

Schedule 1: Property, rights and third party agreements

Schedule 2: Permitted use

Schedule 3: Fixed and portable equipment

Schedule 4: Repairs and Maintenance Responsibilities

Schedule 5: Condition Surveys

2.3.3 Business Plan for Byw'n Iach Cyf.

2.6 The contract is a comprehensive legal document which has been developed in collaboration with specialist legal and VAT advisors. The current draft is consistent with the key issues that were approved in the original business case, but these are still subject to any changes from the negotiation process and/or Cabinet.

2.7 During its meeting on the 26<sup>th</sup> of September the Education and Economy Scrutiny Committee reviewed the business case and submitted their comments and findings to the Cabinet and Full Council meetings.

The table below notes the comments made at the time and outlines how the contract and associated arrangements address these.

<b>Minutes from the Education and Economy Scrutiny Committee on the 26/09/17</b>	<b>Outline of how the plan addresses the comments</b>
Loss of democratic control by establishing the new company	Despite there being a change in the management relationship between the Council and Company, in the sense it will be changing to a legal relationship, the Cabinet Member, as the commissioner of the Company, will be accountable to the same democratic processes
Lessons learnt from other Councils that had adopted a similar model.	<p>A series of discussions have been held with Councils from England and Wales and this in turn has highlighted differences in the adopted models and areas within those models; this reflects the size of this type of transfer but also differing objectives, cultures and politics.</p> <p>A common theme was the importance of maintaining a close and constructive relationship between the Council and Company, especially in the immediate period following the transfer. A number of technical lessons were also identified and have informed our implementation plans.</p>
The importance of considering the risk of conflicts as the Directors would be accountable to the Company's act and to Gwynedd Council.	<p>This was a consideration in the original business case and plans to mitigate this were outlined at the Education and Economy Scrutiny Committee and Cabinet on the 13<sup>th</sup> of December 2017 and 16<sup>th</sup> of January 2018 respectively.</p> <p>The issue cannot be removed entirely but the membership of the Board and the Council's constitution provides appropriate measures to manage this.</p>
Concern regarding the status of the Welsh language within leisure centres and the importance of the Council's role in safeguarding the language from further decline.	<p>Both protecting and promoting the Welsh Language was one of the business case's criteria and was one of the key factors for selecting this model.</p> <p>This will be managed partly through the Council's role as sole owner of the Company, with the articles noting that Welsh will be the internal language of the Company. This</p>

	is enforced further within the contract which provides a contractual obligation to conform with the Council's Welsh Language Policy.
The Company's intention to support centres which were a financial failure.	In accordance with the business case, the proposed contract commissions the Company to provide 12 leisure centres along with the same level and range of facilities and programmes. If the Company wanted to change this then they would require prior consent from the Council.
Building management arrangement.	The building management arrangements are stated in the leases and Contract schedules; the nature of these clauses vary from specific rights in terms of the use of the buildings to the type of behaviours we expect the Company to follow as tenants of our buildings. These clauses have been drafted to reflect the current use of the centres and provide control measures to deal with any deviations. These include protection for current tenants of the buildings for the remainder of their leases, and the repairs and management responsibilities and associated protocols.
Staff savings.	<p>The business case did not determine any staff savings in relation to the number of jobs or terms and conditions. Furthermore, TUPE regulations protect the rights of staff that are in scope for transfer. Since the Council's decisions to establish the Company, staff have received regular progress updates and have had the opportunity to attend a series of workshops that explain the transfer in more details. All staff have also had the opportunity to provide input into the Company's business plan</p> <p>If the Company wanted to undertake significant changes this would need to be stated in their annual business plan, which will be subject to the Head of Economy and Community's approval.</p>
The Council's right to appoint members to the Company's Management Board.	The Company's articles states that the Council, as sole Member, has the right to appoint to the Company's Board of Directors

Ensure that the Company would not follow the same path at CCG, where the Welsh language was not essential to the post of the director.	There are fundamental differences in the legal model adopted for CCG and Byw'n Iach Cyf. The Council will not be involved in employment appointments but in relation to this comment the Contract includes an obligation on the Company to conform with the Council's Welsh Language Policy.
Importance of appointing a dynamic and proactive leader with a strong developmental vision.	A Managing Director has been appointed, in shadow form initially as the Company is not operational and Trading as of yet. These characteristics have been incorporated into the person specification and job description and were an important consideration during the appointment process.
Ensure an innovative vision to develop the service	As far as possible, the contract sets the need for the company to ensure continuous improvement and aims to provide an appropriate balance between empowering the company to do so. The company will present their annual business plan to the Council which will outline it's vision and objectives for the year ahead and beyond. This will be subject to annual approval by the Head of Economy and Community.
The company's commitment to working towards the objectives of the Well-being of Future Generations Act.	It is expected that the company will incorporate the Act whilst providing services to residents and other bodies, and it is asked to show that through its annual business plan.

### 3 Conclusions

- 3.1 The Scrutiny Committee's comments have been a valuable contribution in the process of establishing Byw'n Iach Cyf, outlining the service to be provided in the future via the Contract, and in establishing implementation steps. We have taken into account every comment when preparing the work and I hope that this is reflected in the table above.
- 3.2 The work has been very onerous and it is fair to say that we as a team have learnt quite a lot from the process. Despite the significant work remaining before the transfer, I am confident that we have made good progress that will enable us to achieve the aim of transferring the service on the 1<sup>st</sup> of April 2019, and of course deliver key savings to the Council.