

## REPORT TO CABINET

13 December 2016

**Cabinet Member:** Councillor Gareth Thomas

**Subject:** The Future of Education Provision in the Berwyn Catchment Area

**Contact Officer:** Iwan T Jones – Corporate Director

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### Recommendation

The recommendation is to consult with the governing bodies of the schools of Y Berwyn catchment-area, on the option to abandon the proposal to establish a Voluntary Controlled 3-19 Learning Campus (VC, Church in Wales) in the town of Bala, in accordance with section 55 (5) of the 2013 Schools Standards and Organisation Act. The intention being to return to the Cabinet in January 2017 and report on the outcome of the consultation and make recommendations on the way forward.

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### 1. INTRODUCTION

- 1.1 The purpose of this report is to seek the Council Cabinet's permission to re-visit the proposal to establish a 3-19 Learning Campus, Voluntary Controlled (VC, Church in Wales) in the town of Bala following the receipt of correspondence from the solicitors of the Diocese of St Asaph stating their lack of support for the proposal in its current form.
- 1.2 In September 2016, a letter was received from the solicitors of the Diocese of St Asaph (**Appendix 1**) stating that the Diocese could not support the proposal to establish the Learning Campus in its current form. The main reason being that they do not accept that it is neither appropriate nor legally possible for the Council, or any other local authority, to act as a promoter of a proposal to establish a voluntary school with a religious character.
- 1.3 As a result of this stance, the matter is being returned to the Cabinet for its consideration.

### 2. BACKGROUND

- 2.1 The Council has implemented the 'Excellent Primary Education for Children in Gwynedd' Strategy since it was adopted in April 2009. At its meeting on 9 October 2012, the Cabinet decided on a 'Priorities Plan – Reorganisation of Education Provision' based on this strategy. In accordance with the strategy 'Excellent Primary Education for Children in Gwynedd', discussions regarding education provision in Y Berwyn catchment-area have been on-going since 2009.
- 2.2 A report was submitted before the Cabinet on **1 April 2014**, where it was agreed:
  - i. To give permission to extend the work to develop a range of models which will address strategic, managerial, and/or governance arrangements for the entire catchment area, with the aim of presenting to the Cabinet specific recommendations for statutory consultation in accordance with the requirements of Section 48 of the Schools Standards and Organisation (Wales) Act 2013.
  - ii. To authorise the undertaking of an assessment to identify and measure the need within the catchment area for education provision of a specific category and designation, and to meet the requirements of the process of identifying the recommendations as noted in i. above.
  - iii. As one of the schools in the catchment area is a Church in Wales Voluntary Aided School, (VA), to delegate to the Cabinet Member for Education, Children and Young People the right to hold a pre-consultation with the Church in Wales in accordance with the School Organisation Code 2013. Then to submit a further report to the Cabinet with the favoured option and seek permission to hold a period of Statutory Consultation on this option.

- 2.3 Following this, various discussions were held between April 2014 and January 2015 to discuss background work based on the entire catchment area. This included discussions on the long list of models, the proposed way forward, (i.e. the current direction), and an explanation of the statutory process.
- 2.4 An equality assessment was undertaken on the long list of possible models paying particular attention to various equality elements such as race, disability, language, religion or beliefs, and age. The assessment referred to the present situation and the policies and arrangements already in place to ensure that the proposal considered and agreed with equal rights requirements.
- 2.5 As a number of models on the long list noted the possibility of impacting on Church primary education provision, a further assessment by an independent consultant was commissioned. The purpose of this assessment was to assess the need for different types of schools in the catchment area in order to ensure that the need at local level would be considered when reaching a decision on the favoured option. The assessment highlighted the fact that the quality of education was the most important factor to parents when choosing a school for their child – with 79% of the respondents stating that this is the most important factor in a school. There were no specific views either way regarding the category of the school. It confirmed that educational matters – quality, good relationship with the school, standard of the resources and the learning environment are the main factors considered as important in a school.
- 2.6 The Council have held regular discussions with Church in Wales representatives from the start of the school reorganisation process in the Berwyn catchment area. In accordance with the School Organisation Code (006/2013) a pre-consultation period was held with the Church in Wales between 15 December 2014 and 19 January 2015. The response of the Church in Wales was received through a letter dated 19 January 2015. The view of the Church was as follows:

“After careful consideration of the options, the Diocese of St Asaph concurs that option 3 to establish a 3-19 lifelong learning campus is the most appropriate for further consideration and consultation. However for the reasons given in this response it is felt that the status of the campus should be voluntary controlled or voluntary aided”

- 2.7 Following the pre-consultation, and the completion of a full options appraisal, the model which included the closure of Ysgol Bro Tegid, Ysgol Beuno Sant and Ysgol Y Berwyn, and establish a 3-19 years Learning Campus Welsh Language, Voluntary Controlled on the current site of Ysgol Y Berwyn was favoured. A further report was submitted before the Cabinet on 19 February 2015 seeking permission to commence a statutory process to complete the process of re-organising schools in the catchment-area. At the meeting, it was resolved:
- i. *To undertake a process of statutory consultation in accordance with the requirements of Section 48 of the School Standards and Organisation (Wales) Act 2013 to close Ysgol Bro Tegid, Ysgol Beuno Sant and Ysgol y Berwyn. The intention is that the schools will close on 31 August 2018.*
  - ii. *To undertake a process of statutory consultation in accordance with the requirements of section 48 of the School Standards and Organisation (Wales) Act 2013 on the preferred option, which is to establish a Welsh Medium 3-19 Lifelong Campus with voluntary controlled (VC) status, on the current Ysgol y Berwyn site. The intention is that the school will open on 1 September 2018.*
  - iii. *To undertake a process of statutory consultation on the federalisation of the three rural schools in the Berwyn catchment, Ysgol Bro Tryweryn, Ffridd y Llyn and OM Edwards.*
- 2.8 In accordance with the statutory requirements of the School Organisation Code (006/2103), and the School Standards and Organisation (Wales) Act 2013, a period of statutory consultation on the proposal was held with relevant consultees between 11 March and 28 April 2015.
- 2.9 On 2 June 2015, a report was presented to the Cabinet which included all the observations received during the consultation period. It was stated in a report to the Cabinet on 2 June 2015 that the Church

“...has confirmed their desire and intention to work closely with the community in order to demonstrate their intention of co-operating in order to establish a Welsh Medium Christian school which will serve the whole community and provide high quality education.”

The same report stated that, in order to alleviate concerns raised regarding the proposed church status, the Church in Wales had agreed to the following:

- i. Representation on the Governing Body reduced to two seats from four, and offering two seats to other denominations in order to reflect the character and traditions of the area
- ii. The Church is completely open to supporting any name that the Shadow Governing Body gives the Campus
- iii. The Church is completely supportive of the development of the Campus as an establishment that will strengthen the Welsh language.

2.10 In its meeting on 2 June 2015, the Cabinet resolved to:

- i. *To approve the proposal for the closure of Ysgol Bro Tegid, Ysgol Beuno Sant and Ysgol y Berwyn on 31 August 2018 and for a Voluntary Controlled (VC) Welsh Medium 3-19 Learning Campus to be established on the existing site of Ysgol y Berwyn to open on 1 September 2018.*
- ii. *To approve the issue of statutory notices on the proposal in (i) above in accordance with the requirements of Section 48 of the Schools Standards and Organisation (Wales) Act 2013.*
- iii. *Following discussion on the comments received during the consultation regarding the importance of appointing a Head teacher and the need to appoint well in advance, to approve the appointment and the funding of the Head teacher for the 3-19 Learning Campus from the savings gained from the scheme, at least one year prior to the opening of the school in September.*

2.11 In accordance with the decision reached by the Cabinet on 2 June 2015, a statutory notice was issued on 17 June 2015 and a statutory objection period was held from 17 June to 15 July 2015. The following is a summary of the content of the Statutory Notice:

- (a) *DISCONTINUE* YSGOL Y BERWYN, Y Bala, Gwynedd LL23 7RU, YSGOL BRO TEGID, Y Bala, Gwynedd, LL23 7BN, YSGOL BEUNO SANT, Y Bala, Gwynedd, LL23 7UU (Voluntary Aided, Church in Wales School), on 31 August 2018.
- (b) *ESTABLISH* a new 3-19 SCHOOL Welsh Medium, (Voluntary Controlled, Church in Wales School) on 1 September 2018. The 3-19 SCHOOL will be on one site, that is the current site of Ysgol Y Berwyn, Y Bala, Gwynedd, LL23 7RU.

2.12 Following the objection period, the Cabinet were asked to consider a formal report on the objections and the responses given prior to reaching a final decision whether or not to implement the proposal. In their meeting on 15 September 2015, the Cabinet resolved:

- i. *To implement the proposal to close Ysgol Bro Tegid, Ysgol Beuno Sant and Ysgol y Berwyn in Bala on 31 August 2018 and establish a 3-19 Learning Campus, Welsh-medium, Voluntary Controlled, (VC, Church in Wales), ("The Campus"), on the existing Ysgol y Berwyn site to open on 1 September 2018*
- ii. *That Gwynedd Council will conduct a review of the school's performance which will include a review of the quality of education provided, educational progress, the pupils' social and cultural experiences, the use of resources, and any effect of the Voluntary Controlled, (VC, Church in Wales), category on the above following two years from the opening date of the Campus. This will include consulting with parents, prospective parents and residents of the area in order to reach an opinion on the suitability of the education and the church status.*

2.13 The Cabinet's decision came into effect on 30 September 2015, and all consultees involved in school organisation in Bala received a letter informing them of the decision. In accordance with the statutory requirements of the Code (2013), the period for referring the proposal to the Welsh Ministers came to an end on 27 October 2015 – the decision was not referred.

### 3. UPDATE

3.1 On 9 September 2016, a letter was received from the solicitors of the Diocese of St Asaph regarding the Berwyn project (**Appendix 1**). In brief, the letter states that the Diocese cannot support the proposal in its current form as they do not accept that it is neither appropriate nor legally possible for the Council or any

other Local Authority, to act as a promoter for a proposal to establish a voluntary school with a religious character. This followed on from detailed correspondence between Church in Wales and the Welsh Government, with the Church strongly objecting to the concept and provision contained in the 2013 Schools Standards and Organisation Act. It is noted in the letter:

*“The diocese of St Asaph will not be able to consider such a school so promoted as a Church in Wales school. Nor does your authority have the power to have it designated as such. Your notice should have made it clear that the diocese would promote the new school.”*

3.2 The letter also states that the Diocese is of the view that the only solution would be to issue a revised Notice jointly signed by the Diocese of St Asaph and Gwynedd Council. In the same letter, the Diocese expressed concerns that the Ysgol Beuno Sant site has not been incorporated in the plans for the Campus. Consequently, the Council was asked to agree either to:

- i. Incorporate the Ysgol Beuno Sant site in the new Learning Campus plans; or
- ii. Agree to the sale of the Ysgol Beuno Sant Site prior to the school’s closure

3.3 Following the receipt of the letter, in an e-mail dated 24 October 2016 from the Diocese’s solicitor, the Diocese offered an alternative solution, that would, in their view, avoid the need to re-issue the Notice:

*“What I propose is that in view of the timetable for this project we at LBMW draft a short agreement between the diocese and the LA to the effect that despite the fact that the LA has itself purported to promote this project and has alone signed the Statutory Notice, the LA will now proceed as though the diocese had signed the Notice and will in every respect treat the diocese as the effective promoter of the new C in W school.”*

3.4 Again, this solution would be conditional on the Council’s agreement to incorporate the Ysgol Beuno Sant site in the plans for the proposed Campus. In addition, in the same e-mail, the Diocese placed a further condition on the alternative solution:

*“This proposal is conditional... on your Authority accepting that all future proposals for new Church in Wales schools in your Authority will be taken forward with the diocese being fully involved and a co-signatory with the Authority in publishing a joint Statutory Notice. If your Authority can agree to these conditions then the diocese would be prepared to move forward on this occasion as set out below”*

3.5 Correspondence was sent to the Diocese and their solicitors on 15 November 2016 (**Appendix 2**), noting the intention to report on and discuss their position at a Cabinet meeting before the end of the year. A further e-mail was received from the Diocese’s solicitors on 22 November 2016, re-confirming their stance that the only appropriate way forward would be for the Council to re-run the consultation and issue a new statutory notice, jointly with the Diocese. It was also noted that the Diocese would not object to the continuation of the current process, if the Council ensured that the Diocese was treated as the promoter of the proposal and the proposed Campus from this point forward. However, this solution was again proposed on the condition that the Council agree that any future proposal for the establishment of a voluntary Church in Wales school are developed, proposed and promoted by the Diocese rather than the Council.

#### **4. CONSIDERATIONS**

4.1 The lack of support from the Diocese to the proposal in its current form causes a significant risk to realisation of the scheme in Bala.

4.2 It is stressed that the scheme and the entire re-organisation process has been developed on the basis of partnership and transparency with the diocese of St Asaph and Bangor. There is no doubt that the Council has acted in accordance with the legislation’s statutory requirements and the associated Schools Organisation Code in developing the proposal. At this juncture, it is noted that the Council does not agree with the Diocese’s stance objecting the clause contained in the 2013 Act that empowers the Council, as a local authority, to promote voluntary Schools with a religious character. In practice, considering the key strategic implications relating to the continuation of primary and secondary education in the area, it was crucial that the Council proposed the scheme.

- 4.3 In the absence of the Church's co-operation, it must be recognised that the Diocese's stance makes implementing a proposal to establish a Voluntary Controlled, Church in Wales, Learning Campus unreasonably difficult. This conclusion is arrived at for several reasons, including the following:
- i. It is stated in the correspondence received from the Diocese of St Asaph's solicitors that the Church is unwilling to treat the new school as a Church in Wales School if the proposal and statutory notice continues in its current form. The statutory notice expressly states that the new Learning Campus will be a Voluntary Church in Wales campus. Without the co-operation of the designated religious body, it is difficult to envisage how the Council could comply with an obligation to establish a voluntary controlled Campus with a religious character.
  - ii. Schedule 3 of the 2013 Act requires the transfer of the school buildings to the Church. Completion of such proceedings would prove difficult without the consent and participation of the Church.
  - iii. The Government of Maintained Schools (Wales) Regulations 2005 requires the appointment of foundation governors to the governing body of the new Voluntary controlled school/Campus. Whilst it would be possible for a shadow body to reach a quorum without such governors, section 50 of the 2005 Education Act requires these governors to nominate an inspector to inspect the standard of religious education at a Voluntary Controlled school.
  - iv. The solution proposed by the Diocese, that they are from this point onwards to be treated as joint proposers, is subject to the agreement that the Beuno Sant site is incorporated in the new Campus plans. It was made clear in the documentation published as part of the statutory process that the Campus would be located on the site of Ysgol y Berwyn only, and that the proposal was being put forward by the Council. The Council would therefore be acting against its own proposal if it were to accept the Diocese's solution. In addition, incorporating the Beuno Sant site would ignore the Council's assessment of the requirements of the new Campus and would probably impact on the building project's budgetary requirements.
- 4.4 It should also be noted, during the statutory process, that included a consultation period and an objection period, that the diocese of St Asaph did not oppose the proposal, nor the manner in which the statutory notice was issued. The Diocese also did not exercise its right under Section 54 of the 2013 Schools Standards and Organisation Act to refer the decision to the Welsh Ministers within 28 days of the Council's decision.
- 4.5 In their letter dated 9 September 2016, the Diocese suggest that the situation could be resolved through the re-issuing of a statutory notice jointly signed by the Diocese and Gwynedd Council as well as incorporating the Ysgol Beuno Sant site in the proposed Campus plans - this would not comply with the statutory requirements of the 2013 Act's nor the associated Schools Organisation Code.
- 4.6 Section 55 (2) of the 2013 Act requires the Council, as the proposer, to implement the proposal in the form in which it was approved or decided upon, unless it determines in accordance with section 55 (5) that implementing the proposal would be unreasonably difficult, or inappropriate due to a change in circumstances since the proposal was approved. Such a determination, in accordance with section 55 (8), would equate to deciding not to implement the proposal at all, and therefore it would not be possible to close Y Bala schools or open the new Campus, without a full statutory process, including a statutory consultation being re-commenced and new proposals published following such a consultation. It would not be possible to guarantee that the current proposal would be the subject of the second consultation.
- 4.7 Considering the Diocese's stance and the alternative proposals put forward by them within the context of the 2013 Act and the associated Schools Organisation Code, it has been concluded that the Cabinet has two options in deciding the way forward for the project, namely:
- i. Either the current proposal to establish a Learning Campus on the site of Ysgol y Berwyn only, that is, without incorporating the site of Ysgol Beuno Sant in the plans, is implemented in full by the Council, despite the risk and potential difficulties caused by the diocese's lack of support; or

- ii. Subject to the outcome of a consultation with the governing bodies of the schools effected by the proposal, the Council may conclude that implementing the proposal would be unreasonably difficult or inappropriate. If that conclusion is reached, the current proposal would be abandoned and a new statutory process would have to be re-commenced to re-organise the provision in Y Berwyn catchment-area.
- 4.8 In practice, and due to the matters outlined in this section of the report except for 4.7(i) above, proceeding in a different direction, whether or not it complies with the wishes of the Church, would mean reviewing the confirmed proposal and following the process set out in Section 55(5). However, before concluding on how to proceed, the 2013 Schools Organisation Code makes it a requirement that a consultation is held with the governing bodies of schools affected.

## 5. OTHER FACTORS

- 5.1 In this section of the report, the factors and other risks that the Cabinet need to be aware of are noted:
- i. Welsh Government Capital Funding: The current scheme invests £10.27m in the Bala area, with £5.3m of this amount being a grant from the Welsh Government. The Welsh Government grant has been approved following the submission of a full Business Case to the Government. The statutory processes and the application process for the capital grant were scheduled so that they would be completed and approved well in advance of the commencement date of the construction work. Although we do not anticipate any impact on our ability to complete the construction project which is now under way, the report in January 2017 will have to evaluate and address any possible impact any change in direction may have within the context of the terms and conditions of the grant.
  - ii. Continued choice of church provision in South Meirionnydd: The need to determine the school's legal status was a matter that received detailed consideration during the consultation period, the objection period, and in the Cabinet Report dated 15 September 2015. One of the reasons and factors for consulting on a Voluntary Controlled status (VC, Church in Wales) for the proposed Campus was the joint provision that currently exists in the catchment area, that is, there is already Voluntary Aided provision (VA) at Ysgol Beuno Sant, as well as the strategic decision to ensure a continued choice of provision within a wider area in the south of the County. These factors will remain considerations as the Council considers the way forward.

## 6. NEXT STEPS

- 6.1 If the Cabinet decides to approve the recommendation presented in this report, it is envisaged that:
- i. A consultation with the governing bodies of schools in the Berwyn catchment-area, on the option to abandon the proposal to establish a Voluntary Controlled 3-19 Learning Campus (VC, Church in Wales) in the town of Bala, will be held between **14 and 29 December 2016**
  - ii. A further report will be presented to the Cabinet on **17 January 2017** to report on the outcome of the consultation and to decide whether or not to abandon the proposal. Subject to the decision, the report will also seek approval to hold a statutory consultation on the preferred model (alternative).

## 7. SUMMARY

- 7.1 Considering the Diocese's stance and the alternative proposals put forward by them within the context of the 2013 Act and the associated Schools Organization Code, it has been concluded that the Cabinet has two options when deciding the way forward, namely:
- i. Either the current proposal to establish a Learning Campus on the site of Ysgol y Berwyn only, without incorporating the site of Ysgol Beuno Sant in the plans, is implemented in full by the Council, despite the risk and potential difficulties caused by the diocese's lack of support; or,

- ii. Subject to the outcome of a consultation with the governing bodies of the schools effected by the proposal, the Council may conclude that implementing the proposal would be unreasonably difficult or inappropriate. If that conclusion is reached, the current proposal would be abandoned and a new statutory process would have to be re-commenced to re-organise the provision in Y Berwyn catchment-area.

7.2 Therefore, in seeking Cabinet's approval to the recommendation to consult with governing bodies of schools in Y Berwyn catchment-area, on the option to abandon the proposal to establish a Voluntary Controlled 3-19 Learning Campus (VC, Church in Wales) in Bala, the following matters should be considered;

- i. The correspondence from the solicitor of the diocese of St Asaph stating their lack of support for the proposal in its current form;
- ii. Apart from continuing with the current proposal if there was a wish to accept the solutions offered by the Diocese or not, it cannot be implemented without withdrawing the current proposal and commencing the process of re-consulting on an alternative proposal.

## **8. RECOMMENDATION**

The recommendation is to consult with the governing bodies of the schools of Y Berwyn catchment-area, on the option to abandon the proposal to establish a Voluntary Controlled 3-19 Learning Campus (VC, Church in Wales) in the town of Bala, in accordance with section 55 (5) of 2013 Schools Standards and Organisation Act. The intention being to return to the Cabinet in January 2017 and report on the outcome of the consultation and make recommendations on the way forward.

### **Views of the Local Members'**

Any observations by the Local Members will be presented at the meeting.

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## **OPINION OF THE STATUTORY OFFICERS**

### **The Chief Executive:**

"This latest development by the Church in Wales makes it extremely difficult for us to continue with the current proposals especially given that we rely on their co-operation to do so, and they have placed the Council in an unfortunate position.

The report outlines our choices and the recommendation seems to be reasonable given the circumstances."

### **The Monitoring Officer:**

"This report has been prepared in close consultation with the legal service and I am satisfied that its content and recommendations are appropriate."

### **The Head of the Finance Department:**

"The current situation regarding the school which is to be established in Y Berwyn should be resolved without delay, by following the appropriate procedures. We should aim to minimise the financial risk, by claiming and using the capital grant on time, avoiding any slippage in the capital project's schedule."