

CABINET

27/09/2021

MODERNISING EDUCATION PROGRAMME

MUTUAL INVESTMENT MODEL – DEED OF ADHERENCE

Recommendations / key decisions required:

It is recommended that the Cabinet:

- Approves the execution, delivery and performance of a supplemental agreement to the WEP Strategic Partnering Agreement dated 30th September 2020 (the “Deed of Adherence”) in order that from the date of execution of the Deed of Adherence the Joining Participants are able to give effect to and be bound by the terms of the WEP Strategic Partnering Agreement dated 30th September 2020 as a party to it, to facilitate the delivery of a range of infrastructure services and the delivery of education and community facilities;
- Approves the terms of the Deed of Adherence at Appendix A of this report and summarised in this report so as to give effect to the above recommendation;
- Notes that the Deed of Adherence shall be executed as a deed and attested in accordance with Article 13.5 of the Constitution; and
- Notes that in agreeing to enter into the Deed of Adherence, aside from the addition of the Joining Participants as other Participants, this in no way alters the existing terms of the Strategic Partnering Agreement dated 30th September 2020 to which the Council is a party and is required to give effect to and be bound by.

Reasons:

- The recommendations within this report gives other (joining) Councils and Further Education institutes the opportunity to benefit from the opportunities that may be provided by the Mutual Investment Model source of funding. Entering into the Deed of Adherence will not change the terms and conditions of the SPA in any way, save for adding more named parties to the list of Participants. The Council is already a party to the SPA and the terms therein continue to apply.

Relevant Scrutiny Committee Consulted: NO - will be made aware of the proposal

Cabinet Decision Required	YES – 27/09/2021	
Council Decision Required	NO	
Cabinet Portfolio Holder: Cllr. Glynog Davies (Education & Children)		
Directorate: Education & Children	Designations:	Tel Nos. / E-Mail Addresses:
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EXECUTIVE SUMMARY

CABINET 27/09/2021

MODERNISING EDUCATION PROGRAMME

MUTUAL INVESTMENT MODEL – DEED OF ADHERENCE

1 SUMMARY

The Welsh Government together with Meridiam Investments are delivering education and community facilities in Wales, under the Mutual Investment Model (MIM) of the 21st Century Schools Programme, having formed WEPCO Limited (“WEPCo”). At its meeting of 21 September 2020 the Cabinet resolved to enter into a Strategic Partnering Agreement (“SPA”) with WEPCo to facilitate the delivery of education and community facilities.

Following completion of the SPA in September 2020, other Welsh Local Authorities and Further Education Institutions now have a window within which they may enter into a short, simple supplemental agreement to the SPA, namely a “Deed of Adherence” which enables them, from the date of execution, to agree with each other person who is or who becomes a party to the SPA to be bound by the SPA (on the same terms and conditions) (“Joining Participants”).

As an existing party to the SPA (a “Continuing Participant”) the Council is required, with all other Continuing Participants, to approve and enter into the Deed of Adherence to enable the Joining Participants to become a party to and to be bound by the SPA. There is no requirement to re-execute the SPA.

The purpose of this report is to explain the process and seek Cabinet approval to enter into the Deed of Adherence to the SPA, to facilitate the delivery of education and community facilities. The Deed of Adherence is due to be completed later in 2021.

2 RECOMMENDATIONS

It is recommended that the Cabinet:

- (a) Approves the execution, delivery and performance of a supplemental agreement to the WEP Strategic Partnering Agreement dated 30th September 2020 (the “Deed of Adherence”) in order that from the date of execution of the Deed of Adherence the Joining Participants are able to give effect to and be bound by the terms of the WEP Strategic Partnering Agreement dated 30th September 2020 as a party to it, to facilitate the delivery of a range of infrastructure services and the delivery of education and community facilities;

- (b) Approves the terms of the Deed of Adherence at Appendix A of this report and summarised in this report so as to give effect to recommendation (a);
- (c) Notes that the Deed of Adherence shall be executed as a deed and attested in accordance with Article 13.5 of the Constitution; and
- (d) Notes that in agreeing to enter into the Deed of Adherence, aside from the addition of the Joining Participants as other Participants, this in no way alters the existing terms of the Strategic Partnering Agreement dated 30th September 2020 to which the Council is a party and is required to give effect to and be bound by.

3 REASONS FOR RECOMMENDATIONS

The recommendations within this report gives other (joining) Councils and Further Education institutes the opportunity to benefit from the opportunities that may be provided by the Mutual Investment Model source of funding. Entering into the Deed of Adherence will not change the terms and conditions of the SPA in any way, save for adding more named parties to the list of Participants. The Council is already a party to the SPA and the terms therein continue to apply.

4 ALTERNATIVE OPTIONS CONSIDERED

The Council understands that to access revenue funding for Band B projects from the Welsh Government, this must be under the Mutual Investment Model using WEPCo for delivery. By entering into the Deed of Adherence the Council as a Continuing Participant is allowing other Welsh Local Authorities and Further Education Institutions – Joining Participants – the ability to become a party to the SPA and access Band B revenue funding. There are no alternative delivery options for such funding.

5 BACKGROUND

The Council along with 23 other Local Authorities and Further Education Institutions entered into the WEP Strategic Partnering Agreement (SPA) with WEPCo on 30th September 2020, each being the “Continuing Participants”, and WEPCo being the joint venture company established between the Private Sector Delivery Partner (PSDP) and a subsidiary of the Development Bank of Wales.

Since completion, a further five Local Authorities and Further Education Institutions have expressed a wish to enter into the SPA to be able to draw down services from WEPCo as Joining Participants.

The Deed of Adherence (DoA)

The SPA provides for the ability for other Local Authorities and Further Education Institutions (Joining Participants) named in the OJEU Notice published 11th July 2019 to enter into the SPA on the same terms and conditions as the existing Participants (Continuing Participants). In order to access the SPA, the Joining and Continuing Participants are required to execute the Deed of Adherence, a template of which is attached to the SPA at Schedule 10.

The Deed of Adherence is a simple document, where a Joining Participant agrees with the Continuing Participants and WEPCo that with effect from the date of its execution, it is bound by the existing terms of the SPA.

What Information Does The Deed Of Adherence Require?

The Deed of Adherence sets out certain key details of the Joining Participants. The Continuing Participants have already provided the same key details on execution of the SPA. These are as follows:

- Full name and position of the person appointed to be the Participant Representative (who in the first instance shall be the representative on the Strategic Partnering Board (please see separate guidance paper on the Strategic Partnering Board) (Clause 12.1 of the SPA);
- Where WEPCo has subcontracted the Partnering Services to a Partnering Subcontractor, full name and address of the person to whom non-payment of invoices of the Partnering Subcontractor should be directed (Clause 28.5.2 of the SPA);
- Full name, position and email address for service of notice (Clause 40.1.2 of the SPA);
- Full postal address for service of notice (Clause 40.1.2 of the SPA); and
- Position of person to whom dispute resolution escalation points should be referred (if dispute cannot be resolved through consultation in good faith) e.g. the Chief Executive (Section 3.2, Schedule 22 of the SPA).

The Deed of Adherence will be executed as a deed, and will therefore require execution under seal in accordance with each Participant's internal governance arrangements.

What Does Completion Of The Deed Of Adherence Mean?

Completion of the Deed of Adherence will **not** change the terms and conditions of the SPA in any way, save for adding more named parties to the list of Participants.

Joining Participants will enjoy the same benefits from being party to the SPA as the Continuing Participants.

DETAILED REPORT ATTACHED?	YES
	Appendix A: Deed of Adherence

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report.

Signed:



Head of Access to Education

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
YES	YES	NONE	NONE	NONE	NONE	NONE

1. Policy, Crime & Disorder and Equalities

- Developments are consistent with the Authority's Corporate Strategy and the Modernising Education Strategic Outline Programme where the Mutual Investment Model has been earmarked as a potential source of funding.
- Should the Local Authority proceed with a project under the Strategic Partnering Agreement in the future then the appropriate Equalities and Community Impact Assessments will be undertaken at the appropriate time. Proposals on a project by project basis will contain appropriate equalities documentation.

2. Legal

- Approval to enter into the Deed of Adherence (DoA) is an executive function requiring a decision of the Cabinet.
- To enter into the DoA the Council will be relying upon a number of statutory powers:
 - the "well-being" powers contained in section 2 Local Government Act 2000;
 - powers contained in the Education Acts 1996 and 2002;
 - the "incidental" provisions of section 111 Local Government Act 1972.
- 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—
 - the promotion or improvement of the economic well-being of their area;
 - the promotion or improvement of the social well-being of their area, and
 - the promotion or improvement of the environmental well-being of their area
- In exercising this power the Council has had regard to the requirements of the Well-Being of Future Generations (Wales) Act 2015 ('the Act'). The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive

communities, a vibrant culture and thriving Welsh language, and is globally responsible.

- The incidental provisions of section 111 Local Government Act 1972 permit the Council to do any thing (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.
- Entering into the DoA will not change the terms and conditions of the SPA in any way, save for adding more named parties to the list of Participants. The Council is already a party to the SPA and the terms therein continue to apply. Formal approval to proceed to deliver any new project, and to enter into associated legal documentation to facilitate the same including a Project Agreement, would require further approval of the Cabinet.
- The DoA is to be executed as a deed and attested in accordance with Article 13.5 of the Constitution.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below:

Signed:  Head of Access to Education

1. **Scrutiny Committee** – Not applicable, but will be made aware of the proposal
2. **Local Member(s)** – Not applicable
3. **Community / Town Council** – Not applicable
4. **Relevant Partners** – Not applicable
5. **Staff Side Representatives and other Organisations** – Not applicable

CABINET PORTFOLIO HOLDER(S) AWARE/CONSULTED YES	N/A
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**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

Cabinet report of 21 September 2020

Title of Document	File Ref No. / Locations that the papers are available for public inspection
MEP Biennial Review	www.carmarthenshire.gov.uk Cabinet 20 th June 2016
MEP MIM 21 st Century Schools Welsh Education Partnership – Strategic Partnering Agreement	www.carmarthenshire.gov.uk Cabinet 21 st September 2020
21 st Century Schools Website	www.21stcenturyschools.org