

Meeting	Education and Economy Scrutiny Committee
Date	13th of December
Title	Proposed Governance arrangements for Gwynedd Council's Leisure Company
Author	Sioned Williams, Head of Economy and Communities
Cabinet Member	Councillor Craig ab Iago
Purpose	To scrutinise the proposed governance arrangements for the Leisure Company and respond to some of the points raised during the last Scrutiny Committee on the 26 th of September.

1 Introduction

- 1.1 Members of the Scrutiny Committee will remember the business case behind the decision to establish a Council Controlled Company to provide leisure facilities, and that further detailed work would be required following the decision.
- 1.2 Over the past weeks that work has begun and in line with the Scrutiny Committee's request for further information, the Project Team are now in a position to outline the proposed governance arrangements for the Company.
- 1.3 The report presented today offers a summary of the key governance terms and provides an opportunity to scrutinise and comment before the Cabinet makes a decision later in January 2018. This will be the first of a number of reports which will outline the relevant detail of the proposed Company.

2 Background and Context

- 2.1 On the 3rd and 5th of October the Cabinet and Full Council approved the establishment of a Council Controlled Company, Limited by Guarantee, to provide leisure facilities in Gwynedd.
- 2.2 The next phase of work concentrates on confirming the associated legal detail of setting-up and commissioning the Company. It's prudent to start by looking at governance issues as a number of work streams are dependant on having the appropriate governance arrangements in place, it's also possible that there will be quite some lead-in time in completing some of the tasks, e.g. appointing a Managing Director.
- 2.3 This report provides a summary on the following aspects:
- 2.3.1 The proposed governance structure and membership of the Board
 - 2.3.2 The process for appointing to the Board

2.3.3 Key terms within the Company's Memorandum and Articles of Association

2.3.4 Process for appointing a Managing Director

2.4 Despite this being a Company that will be controlled by the Council it's important for it to have sufficient freedom to function effectively, in addition to ensuring VAT registration as a separate entity to the Council. To enable an effective and appropriate balance between empowering the Company and retaining the Council's priorities and democratic accountability we will be establishing two main levers of control; the governance arrangements and the contract.

2.5 At the last meeting the Scrutiny Committee acknowledged the need to scrutinise further as and when further details are developed. The comments made then are noted in Appendix 1, with the following comments considered within this report:

2.5.1 "Loss of democratic control by establishing the Company

2.5.2 The importance of considering the risk of conflicts as the director would be accountable to the Companies Act and to Gwynedd Council

2.5.3 Concern regarding the status of the Welsh language with the leisure centres and the importance of the Council's role in safeguarding the language from further decline

2.5.4 The Council's right to appoint members to the Company's Management Board. Ensure the Company would not follow the same path as CCG, where the Welsh language was not essential to the post of the director.

2.5.5 Importance of appointing a dynamic and proactive leader with a strong developmental vision"

2.6 A number of other matters are to be addressed within the contract, and the intention is to present further details of the key terms approximately April next year; further work is required between now and then to consider options and present recommendations. We will be receiving specialist legal advice during that time in addition to consulting with other authorities to learn from their lessons.

2.7 That work will include further details in relation to the key financial terms, service performance, property and human resources etc. The details presented within this report however involve the governance foundations which will allow the project to progress key work streams over the next few months.

3 The governance structure and membership options

3.1 It is proposed that 5 directors are on the Board and that elected members of the Council are appointed. Consideration towards appointing the Managing Director to the Board can be considered at a later date.

3.2 In principle, the term of the appointments would coincide with the Council term, plus a 3 month transition period if they are re-elected and if appropriate.

3.3 The legal advice provided in support of the business case advised against appointing Cabinet Members and Officers to the Board. The potential for conflicts of interests was also raised at the last Scrutiny Committee. This stems out of the statutory duty placed on Directors to promote the interests of the company and members who would have an active client side role could face a conflict of interest. For example, a role that is involved in approving the initial legal documents, including the business plan, would experience a conflict of interest if they were also involved in deciding how much resource to allocate to the Company. Similarly, any officer appointed as a Director could face a conflict of interest between the Council as their employer and their role as Director of a separate entity.

3.4 However, it is proposed that the Council nominate an officer as a Council representative, the equivalent role of shareholder representative. This would be an observational role only.

3.5 The Board of Directors could be supplemented with a Partnership and/or advisory Board that would allow wider engagement and/or the addition of expertise and skills. It is proposed that this aspect be reviewed over the coming months once further details of the contractual and advisory relationship between the Council and Company are confirmed.

3.6 The structure of the Board and its membership is a matter for the Council to determine and can be reviewed at any time. The key constraints lie around maintaining a sufficient level of control to satisfy the requirements of the "Teckal" exemptions and the need for a taxation acceptable level of independence.

3.7 The Board would meet at least quarterly and would require a quorum of 3. During the implementation, it is likely to have to meet more often than this.

3.8 At the last meeting, the Committee expressed a concern regarding losing democratic control when establishing a Company. It is proposed that the Company report to the Council in accordance with the current performance management arrangements, in addition to presenting their annual business plan to the Council, and their annual accounts to the Cabinet.

4 The process of appointing to the Board

4.1 The Cabinet or Cabinet Member will appoint the Board of Directors as with any other external body. The initial appointment will be in shadow form until the Company is formally registered.

4.2 The following broad guiding principles are suggested for deciding the membership of the Board; their intention is to form a framework to support the process but the need to strike the best balance of skills and qualities will ultimately drive the process. Directors are required by company law to have the necessary skills and knowledge to run a company and there are other factors which will lead to forming an effective and representative board:

4.2.1 The Board achieve spatial, political, gender and age balance

4.2.2 Candidates have a demonstrable understanding of the role of a Board of Directors

4.2.3 Candidates have strong communication qualities and the ability to express balanced opinions and listen to the opinions of others; ability to challenge and debate

4.2.4 Candidates have strong analytical qualities; ability to read complex subject matter and question / comment

4.2.5 Able to commit time to the role

4.2.6 The Board have the appropriate balance of skills, knowledge and experience

4.3 In line with usual arrangements for appointing to external bodies the Cabinet Member, Councillor Craig ab Iago in this instance, will consider candidates and release a Decision Notice following formal approval of the governance arrangements by the Cabinet. It is proposed that this be completed no later than the end of January 2018.

4.4 Consideration of induction arrangements and training will be considered at a later date.

4.5 No further remuneration should be paid to the Board as this is precluded under the relevant regulations.

5 Key terms of the Memorandum and Articles of Association

5.1 The recommended legal structure is of a company limited by guarantee with the company as the sole member (the equivalent of a shareholder for a commercial structure) and a board of directors. This is a familiar model to banks and other third parties and the legislation is more up to date compared to a registered Society. Similarly, it is more flexible in relation to changing the memorandum and articles of the Company.

5.2 The entity must have philanthropic or non-profit-distributing objects and purposes to achieve the taxation based savings which make this model financially advantageous. This means that the Council cannot obtain a dividend or annual payment out of any profits or obtain any financial benefit if the company is wound up. In reality, this is unlikely to be an issue considering the significant changes to income and expenditure over the last few years.

5.3 The specific objects would be confined to include leisure, recreation, health and well-being, although additional service areas could be added now or at a future date if required. It is proposed that there are no geographic limits, therefore allowing the possibility of wider trading outside of Gwynedd.

5.4 However, commercial growth would be controlled in order to ensure that the threshold of 20% external trading is not breached. It is anticipated that this, in turn, would also ensure that the service's focus remains towards the citizens of Gwynedd.

5.5 The articles are to include a provision that the internal language of the Company is Welsh and that it adopts the Council's Language Policy. The same expectation is relevant for all other Council policies and this will form part of the contract.

5.6 It is proposed that the Company's ability to change the terms and conditions of senior management is a reserved matter that requires Council approval.

5.8 The Council will commission at least 80% of the Company's business through the contract and this will include requirements in relation to raising fees, use by schools and performance standards etc. It is proposed that the full series of terms and conditions are discussed with the Cabinet in the new year.

7 Process for appointing the Managing Director

7.1 After the service's Senior Manager departure earlier in the year a temporary arrangement has been put in place. There are therefore no TUPE rights and the intention is to advertise for a new Managing Director early in the new year.

7.2 When considering the possible timetable and that the appointment and timing of the appointment is, to some extent, beyond our direct control it is important to allocate sufficient time to the process. There is a significant amount of preparatory work is required in order to ensure as smooth a transition as possible in addition to work in preparing the Company's business plan. Unavoidable, is also the requirement to have a legal split at some point before the transfer, and therefore authorised representation on behalf of the Company.

7.3 As the Company will not exist for some months yet the Council will need to appoint and transfer the Managing Director under TUPE conditions.

7.4 One comment at the last Committee was the importance of appointing a dynamic and proactive leader with a strong developmental vision. The recruitment pack is currently being prepared and there will be an emphasis on those type of qualities.

7.5 It is proposed that the role is advertised as soon as possible in January and that interviews are held in the middle of February. This could mean the role would be in place as early as March or as late as May. Or later of course if no appointment is made the first time round. The advice received during the development of the business case continuously emphasised the need to have a Managing Director in place as early as possible and that there was a risk of underestimating the amount of work involved with the transfer.

7.6 Timing this to coincide with the appointment of the Board of Directors will be key in order to ensure that they are a part of the appointment process. Failure to make timely appointments will endanger the timetable for transfer.

8 Relevant timetable

8.1 Cabinet to approve the arrangements: 09/01/18

8.2 Appointments to the Board of Directors: 31/01/18

8.3 Appointment of Managing Director: 20/02/18

8.4 Scrutinise the proposed contract: 17/04/18

8.5 Transfer to Company: ~ Autumn 2018

9 Appendix 1 – Education and Economy Scrutiny Committee on the 26th of September

§ Loss of democratic control by establishing the new company.

§ Lessons learnt from other councils that had adopted a similar model.

§ The importance of considering the risk of conflicts as the directors would be accountable to the Company's act and to Gwynedd Council.

§ 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.

§ The Company's intention to support centres which were a financial failure.

§ Building management arrangement.

§ Staff savings.

§ The Council's right to appoint members to the Company's Management Board.

§ 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.

§ Importance of appointing a dynamic and proactive leader with a strong developmental vision.

§ Ensure an innovative vision to develop the service.

§ The company's commitment to working towards the objectives of the Well-being of Future Generations Act.