

Meeting	Cabinet
Date	16th of January 2018
Title	Proposed Governance Arrangements for Gwynedd Council's Leisure Company
Author	Sioned Williams, Head of Economy and Community
Member	Councillor Craig ab Iago
Purpose	Present the proposed governance terms for Cabinet approval

1 The decision sought

- 1.1 To delegate authority to the Head of Economy and Community, in consultation with the Head of Legal Services, to prepare constitutional documents for a company limited by guarantee and to incorporate the main issues and principles that are recommended within this report.
- 1.2 To authorise the Head of Economy and Community, in consultation with the Head of Legal Services, to progress with registering the Company with Companies House in accordance with the Project timetable and to take any necessary steps to ensure this.
- 1.3 To confirm that the process for appointing the Board of Directors and Managing Director may begin.

2. Introduction

- 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 report presented today offers a summary of the key governance terms. Further details regarding the legal relationship will be presented later in the Spring of 2018.
- 2.3 The proposed terms were presented to the Education and Economy Scrutiny Committee on the 13th of December and their comments and recommendations have been considered within this report. Some of the other issues will also be considered when developing the other legal documents.
- 2.4 The Cabinet is asked to consider the proposed terms in order to establish the Company's legal documentation and begin the process of appointing Directors. This in turn will provide the new Company with authorised representation as we progress to the next phase of the transfer.

3. The Governance Structure and membership

- 3.1 It is proposed that at least 5 directors are on the Board and that they are elected members of the Council. 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 as Councillors.
- 3.3 It is recommended that Cabinet Members and Officers are not appointed due the likelihood of conflicts of interest. This stems out of the statutory duty placed on Directors to promote the interests of the company and their could be instances where those interests are in conflict with those of the Council. However, it is considered appropriate that a Council Officer attend the Board meetings, in an observational role only.
- 3.4 In accordance with comments made by the Scrutiny Committee, further consideration will be given to the option of supplementing the Board with Partnership and/or advisory Boards. Such arrangements can ensure stakeholder input on Company developments but further consideration towards the effective design of the arrangements will be necessary.
- 3.5 It is proposed that 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.
- 3.6 At the Scrutiny Committee in September, members 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, their annual accounts to the Cabinet, and that their performance is subject to a Scrutiny Committee, again in accordance with current arrangements.
- 3.7 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 acceptable level of independence from a taxation perspective.

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 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. In accordance with Company Law 2006 Directors are required 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 accordance with the usual process for appointing to external bodies the Cabinet Member for Housing, Leisure and Culture, in this case, will announce the decision in the form of a Decision Notice following the formal approval of the governance arrangements by the Cabinet. It's proposed that this is completed no later than 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. This is the model presented within the business case that was confirmed by the Council on the 5th of October.
- 5.2 The entity must have philanthropic and 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. Arrangements will be put in place to monitor performance and financial performance in order to ensure early and decisive action in the event of failure.
- 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 Their will be control on the Company's ability to borrow and dispose of or procure significant assets.
- 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.
- 5.7 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.
- 5.8 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. A further report on the terms and conditions of the contract between the Council and Company will be the subject of further attention of the Scrutiny Committee and Cabinet in the Spring of 2018.

6 Process for appointing the Managing Director

- 6.1 It is proposed that the recruitment process for appointing a Managing Director begins within the month.
- 6.2 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 required in order to ensure as smooth a transition as possible in addition to work in preparing the Company's business plan. The requirement to have a legal split at some point before the transfer is unavoidable, and therefore authorised representation on behalf of the Company is required.
- 6.3 As the Company will not exist for some months yet the Council will need to appoint in the first place, with the intention of transferring the Managing Director once the Company is established.
- 6.4 The intention is to appoint the Board of Directors in good time to allow the opportunity for the Board of Directors to be consulted on the appointment, however, it should be noted that this is will be a Council appointment and will be subject to the relevant appointment process.

7 Relevant timetable

- 7.1 Appointments to the Board of Directors: no later than 31/01/18
- 7.2 Appointment of Managing Director: 24/02/18

Comments from the Head of Finance

“The decision that is being sought is a key step in implementing the Council’s previous decision to establish the company. The Finance Department gives continuous input to this project, and I am satisfied that the contents of the report is a correct reflection of the agreed implementation steps. I am also satisfied that the financial consequences of the decision sought were included in the business case that was the basis of the decision to proceed with the project.”

Comments from the Head of Monitoring

“The Legal Service has already had an input to the report and have no further comments from a propriety perspective.”