

# Y BWRDD GWEITHREDOL

## 29/07/19

### TIR A DDELIR MEWN YMDDIRIEDOLAETH GAN GYNGOR SIR GAERFYRDDIN

#### Argymhellion / penderfyniadau allweddol sydd eu hangen:

1. Yn rhinwedd ei swydd fel ymddiriedolwyr, mae'n dirprwyo ei gyfrifoldebau drwy ganiatáu i swyddogion sefydlu panel annibynnol i gynghori'r Bwrdd Gweithredol mewn perthynas â hyn ac unrhyw ymddiriedolaethau eraill.
2. Bod aelodau'r panel annibynnol yn derbyn y cyfraddau y Panel Annibynnol Cymru ar Gydnabyddiaeth Ariannol ar gyfer aelodau cyfetholedig.
3. Wrth ddirprwyo ei bwerau, mae'n cytuno i'r Panel annibynnol gynnal ei ymchwiliadau ei hun mewn perthynas â'r ymddiriedolaeth hamdden sy'n berchen ar y tir y mae'r adroddiad hwn yn ymwneud ag ef.
4. Ar ddiwedd ei ymchwiliadau bod y Panel Annibynnol yn adrodd i'r Bwrdd Gweithredol gyda'i argymhellion.
5. Er budd pennaf yr ymddiriedolaeth, penderfynu a ddylid derbyn neu wrthod yr argymhellion yn yr adroddiad a dderbyniwyd gan y Panel Annibynnol.

#### Rhesymau:

Sicrhau bod proses dryloyw ar waith i reoli'r gwrthdaro buddiannau sy'n ymwneud â'r ymddiriedolaeth hon a phob ymddiriedolaeth arall.

**Angen ymgynghori â'r Pwyllgor Craffu perthnasol:** Nac oes

**Angen i'r Bwrdd Gweithredol wneud penderfyniad:** Oes 29/07/19

**Angen i'r Cyngor wneud penderfyniad:** Nac oes

**Aelod y Bwrdd Gweithredol sy'n gyfrifol am y Portffolio:** Cyng. Glynog Davies  
(Addysg a Phlant)

Y Gyfarwyddiaeth:	Swyddi:	Rhifau Ffôn / Cyfeiriadau E-bost:
Cymunedau ac Addysg a Phlant		
<b>Enw Pennaeth y Gwasanaeth:</b> Ian Jones	Pennaeth Hamdden	01267 228309 <a href="mailto:ijones@sirgar.gov.uk">ijones@sirgar.gov.uk</a>
Simon Davies	Pennaeth Mynediad i Addysg	01267 246471 <a href="mailto:SiDavies@sirgar.gov.uk">SiDavies@sirgar.gov.uk</a>
<b>Awdur yr adroddiad:</b> Sara Griffiths	Rheolwr Tim Moderneiddio	01267 246618 <a href="mailto:SMGriffiths@sirgar.gov.uk">SMGriffiths@sirgar.gov.uk</a>
Steve P Murphy	Uwch Gyfreithiwr, Gweinyddiaeth a'r Gyfraith	01267 224693 <a href="mailto:SPMurphy@sirgar.gov.uk">SPMurphy@sirgar.gov.uk</a>

## EXECUTIVE SUMMARY

# EXECUTIVE BOARD 29/07/19

### LAND HELD IN TRUST BY CARMARTHENSHIRE COUNTY COUNCIL

#### **Background**

As part of the authority's 21st Century School Modernising Education Programme, the Department of Education & Children is seeking to replace the Pembrey Primary School building. The existing school buildings comprises of a mixture of both single and two storey flat roof buildings, which is supplemented by mobile classrooms to meet with pupil demand and to provide a Flying Start facility. The school buildings are reaching the end of their operational life and as a result are falling into disrepair. The buildings do not conform to Welsh Government standards.

On the east side and immediately adjacent to the school site there is a separate independent playing field which is utilised by the school for team sports. This recreational land is held in trust by the authority.

The most feasible, cost effective and least disruptive means of replacing the existing school building would be to incorporate as part of the overall development, the aforementioned recreational site lying to the east of the site.

#### **Recreational land held in trust**

The Recreational Site is subject to a Charitable Scheme made on the 23rd November, 1981.

The following description of the site was provided by the Valuation Office Agency in November 2018.

*'This plot is irregular in shape and has an area of approximately 2.02 acres. It is an uneven, gently sloping site and is grassed in most part with a short tarmac path near its entrance and a small area of rubber surfacing in the play area. The play area is a fenced off area in the north-eastern element of the plot which accommodates a set of swings only. The rest of the plot is a recreational area which includes an unmarked junior rugby pitch. It is predominantly a residential location with a school located directly to the west. There is an active railway line that runs along the plots southern boundary.'*

A plan showing site photographs together with the site location can be seen in

#### **Appendix A.**

Whilst it is acknowledged that the recreational site is used by Pembrey Primary School, the recreational site is otherwise used informally. Although this area could be considered as a Local Equipped Area of Play (LEAP), due to there being very little equipment thereon, it did not fully meet the functions and role of a LEAP.

### **Proposed school development**

The authority's vision is to provide high quality school facilities and to improve the teaching and learning experiences at the school as well as providing benefit to the local community. The proposed development will provide enhanced recreation opportunities by providing a sports pitch and MUGA (Multi Use Games Area), which will be available for community use at such times as shall be agreed with the school. The intention is to make the school a community hub and be a multi-use space for pupils and the community alike. The relocation of the sports pitch/facilities as part of the phased development lends itself well to provide opportunities where facilities can be shared and enhanced.

### **Conflict of interest**

The legislation (Charities Act 2011), does not allow the trustee, to make a decision when there is conflict with the authority in another capacity. i.e. As trustee of this land and as Executive Board for the Local Education Authority.

This matter was raised with the Charity Commission, its response can be found in **Appendix B** and should be noted.

### **Recommendation**

To manage the conflict of interest and to ensure that the Executive Boards acts in the best interest of this and other trusts, whilst ensuring that it meets with legislation (Charities Act 2011), the following actions are recommended.

- ❖ The Executive Board to give delegated authority to its officers to set up an Independent Panel of at least 3 members. In doing so, officers to ensure that individuals are recruited with the appropriate skills set.
- ❖ A clear directive to be given to the panel in respect of the trust.
- ❖ It must be made clear to the panel that it must act in the best and sole interest of the trust and not of Carmarthenshire County Council.
- ❖ The panel to produce a report with their recommendations at the end of their investigations.
- ❖ The Executive Board to resolve whether to accept or reject the report.
- ❖ The Executive Board to authorise officers to write to the Charity Commission explaining the problem, stating that legal advice has been received and asking the Commission to approve the proposed course of action in appointing an independent panel.

Once the panel members are recruited, an initial meeting should be arranged with officers giving clear guidance and term of reference:

The panel to be advised that a report must be submitted to Executive Board, demonstrating that the following has been undertaken:

- ❖ Proper consultation with the inhabitants of where the trust is held, with attention given to relevant bodies and current users of the facility;  
The Panel will be responsible for organising the public notice under Section 121 of the Charities Act 2011 and organising the public consultation meetings.
- ❖ The panel to act in the best and sole interest of the trust and not of the authority.

- ❖ If applicable, the panel to consider if the facilities currently provided can be met in other ways at alternative sites by assessing their size and usefulness.
- ❖ The panel to properly conclude whether the land/facility is required.

To deal with professional matters such as expert services from a surveyor, valuer and lawyer, the panel should seek to employ its own independently of the authority, if there is not a suitably qualified member within the panel itself.

To assist with matters such as administrative support, arranging venues for public consultation, the panel can request the support from officers if required.

<b>DETAILED REPORT ATTACHED?</b>	<b>YES</b> Appendix A - Showing location plans Appendix B – Letter from Charity Commission
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## 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:**        **Ian Jones**                                **Head of Leisure**  
                         **Simon Davies**                                **Head of Access to Education**

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>

### **1. Policy, Crime & Disorder and Equalities**

Compliance with the Charities Act 2011 and any requirements of the Charity Commission will be required.

### **2. Legal**

It will be necessary to follow the required procedures set out in the Charities Act 2011. Should there be a land transfer or disposal of land, it would be the Trustees' responsibility to ensure that the Trust benefits from this transaction, whilst also ensuring that the trust is safeguarded at all times.

### **3. Finance**

1) Any fees incurred by panel members for carrying out the investigation at the standard IRPW rates for co-opted members. 2) Professional fees incurred by any proposition, including surveying, legal, advertising etc.

### **4. ICT**

None

### **5. Risk Management Issues**

Officers to ensure that a transparent process is followed in recruiting suitable candidates with the necessary expertise for the Independent Panel.

### **6. Staffing Implications**

The authority to provide administrative support and facilities as required by the Independent Panel.

### **7. Physical Assets**

Possible disposal and or transfer of land/facility.

# CONSULTATIONS

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

Signed:     Ian Jones           Head of Leisure  
              Simon Davies       Head of Access to Education

## 1. Scrutiny Committee – N/A

**2. Local Member(s)** – Discussions have been held with Cllr. Hugh Shepherdson and Cllr. Shirley Matthews for the proposal at Pembrey only. Both fully support the proposal. For all other trusts, relevant members will be consulted.

**3. Community / Town Council** – No discussions have taken place to date relating to the Pembrey proposal. As with any trust, the Community or Town Council will be consulted as part of the process delegated to the Independent Panel.

**4. Relevant Partners** – No discussions have taken place to date at Pembrey. Should the proposal be supported, all relevant partners and stakeholders will be consulted as part of the process delegated to the Independent Panel. This applies to Pembrey and all other trusts.

**5. Staff Side Representatives and other Organisations** – No discussions have taken place to date. Should the proposal be supported, all relevant organisations would be consulted as part of the process delegated to the Independent Panel, if relevant.

## Section 100D Local Government Act, 1972 – Access to Information List of Background Papers used in the preparation of this report:

Title of Document	File Ref No. / Locations that the papers are available for public inspection
Local authorities as charity trustees	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/352409/Local_authorities_as_charity_trustees.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/352409/Local_authorities_as_charity_trustees.pdf</a>
Councillors' guide to a council's role as charity trustee	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/351608/council_as_charity_trustee_overview.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/351608/council_as_charity_trustee_overview.pdf</a>
Manage a conflict of interest in your charity	<a href="https://www.gov.uk/guidance/manage-a-conflict-of-interest-in-your-charity">https://www.gov.uk/guidance/manage-a-conflict-of-interest-in-your-charity</a>