



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

RECORD OF DECISIONS OF THE EXECUTIVE

DECISION MADE BY: Cabinet DATE DECISION MADE: 16th December 2014

Agenda Item 10

SUBJECT:

Medium Term Service Planning – Update Council Revenue Budget 2015/16.

**Cabinet Members Present
County Borough Councillors:**

A.Morgan (Chairman), P.Cannon, R.Bevan, A.Crimmings, M.Forey,
E.Hanagan, G.Hopkins, K.Montague and M.Webber

**Other Members in Attendance
County Borough Councillors:**

R. Lewis
P. Wasley

1. DECISION MADE:

Agreed –

- To note the information contained within the PowerPoint presentation presented by the Group Director, Corporate and Frontline Services (as attached to this decision notice), note the budget position at Final Settlement, and consider budget strategy requirements further in January 2015 in line with the Council's Budget Policy Framework;
- That following a presentation from the Director, Legal and Democratic Services (as attached to this decision notice) concerning the consultation process initiated by Cabinet and which commenced on 21st October 2014 in respect of the service change proposals relating to the funding for provision of Nursery Education and the Music Service (the 'Consultation'): -
 - To note the implications of the Supreme Court decision in *Moseley V Haringey LBC* ('the Moseley Decision').
 - In light of the Moseley Decision to extend the Consultation period until 5pm on 30th January 2015.
 - To note the additional information (as attached to this decision notice) that would be provided and made available to consultees as part of the Consultation.
 - To note that copies of the additional information would be distributed in exactly the same way as the original Consultation materials.

2. REASON FOR THE DECISION BEING MADE:

- In light of the Moseley Decision to ensure that the Consultation process provides consultees with additional information as to the range of options considered by Cabinet and identify to consultees why the proposed preferred option is the proposed preferred option being consulted upon.

3. CONSULTATION UNDERTAKEN PRIOR TO DECISION BEING MADE:

- Cabinet Report – 10th October, 2014 (and the decision taken by Cabinet to initiate the Consultation)

4. PERSONAL INTERESTS DECLARED:

- None

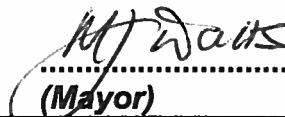
5. DISPENSATION TO SPEAK (AS GRANTED BY STANDARDS COMMITTEE):

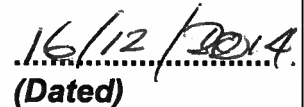
N/A

6. (a) IS THE DECISION URGENT AND NOT TO BE THE SUBJECT OF ANY CALL-IN BY THE OVERVIEW AND SCRUTINY COMMITTEE:

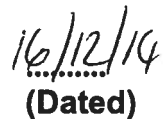
In accordance with the Overview and Procedure Rules 17.2 (a), the decision is deemed urgent and not subject to Call In due to the need to extend the Consultation which was scheduled to close at 5pm on the 16th December 2014 until 5pm on the 30th January 2015.

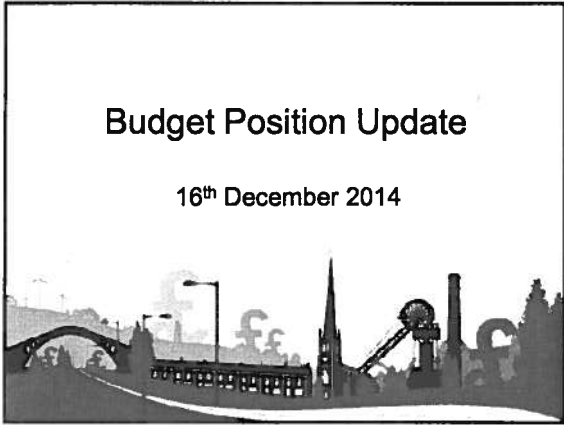
6. (b) SIGNATURE OF MAYOR OR DEPUTY MAYOR OR HEAD OF PAID SERVICE CONFIRMING AGREEMENT THAT THE PROPOSED DECISION IS REASONABLE IN ALL THE CIRCUMSTANCES FOR IT BEING TREATED AS A MATTER OF URGENCY, IN ACCORDANCE WITH THE OVERVIEW AND SCRUTINY PROCEDURE RULE 17.2:

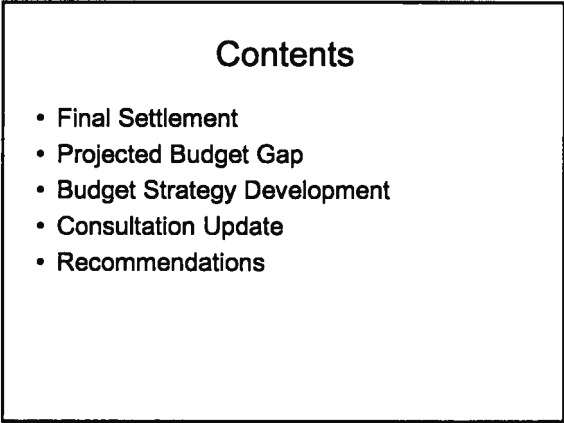

.....
(Mayor)

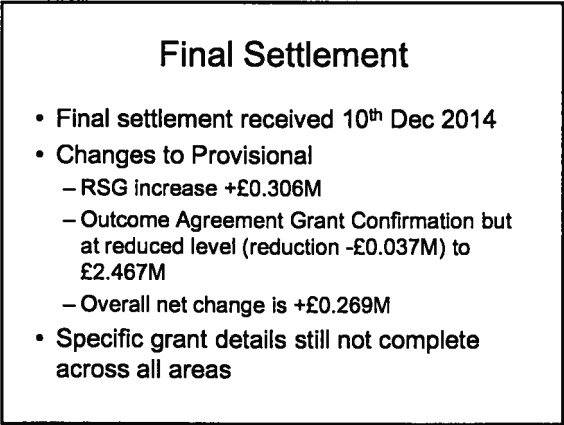

.....
(Dated)


.....
(Proper Officer)


.....
(Dated)







Projected Budget Gap

- Initial Budget gap at Provisional £30.450M
- Reduced gap, taking account of savings agreed at Provisional (Council 29th Oct):
 - Phase 2 (8th Jan Cabinet) - £2.7M
 - Leisure Services (31st July Cabinet) - £1.1M
 - Further Service Change Proposals (excluding those elements subject to ongoing consultation) (10th Oct Cabinet) - £4.004M
- **Stated gap at provisional £22.646M**

Projected Budget Gap

- Actions agreed since Provisional:
 - Senior Mgt Restructure (29th Oct Council) - £0.750M
 - Changes to One4alls (20th Nov Cabinet) - £0.245M
- **Restated gap at Final Settlement £21.382M**

Budget Strategy Development

- 'General' Budget Consultation ends 17th December 2014
- Strategy document proposals from CMT will be presented to Cabinet early in the New Year
- Cabinet strategy will be developed and consulted upon late January / early February 2015
- Budget / Council Tax agreement by 11th March 2015

Consultation Update

- Update required in respect of Nursery and Music proposals (consultation periods ending for both at 5pm 16th December)
- New case law Moseley versus Haringey LBC
- In light of decision in Moseley suggested approach is to extend the consultation period for both nursery and music to 30th January 2015 and provide a further opportunity for consultees to review and consider options
- Supplementary information to be circulated to consultees in same way as original consultation material

Recommendations

- Recommended that Cabinet:
 - Note the budget position at Final Settlement and consider budget strategy requirements further in January 2015 in line with the Council's Budget Policy Framework
 - Note the implications of the Supreme Court decision in Moseley V Haringey LBC ('the Moseley Decision').
 - Extend the Consultation period until 5pm on 30th January 2015 in light of the Moseley Decision.
 - Note the supplementary information that would be provided and made available to consultees as part of the Consultation.
 - Note that copies of the supplementary information would be distributed in exactly the same way as the original Consultation materials.

AGENDA ITEM 10 – MEDIUM TERM SERVICE PLANNING – UPDATE COUNCIL REVENUE BUDGET 2015/16

MONITORING OFFICER STATEMENT – 16TH DECEMBER 2014

As Members will recall on 10th October 2014 Cabinet took the decision to initiate a Consultation in respect of two service change proposals. The first proposal related to the funding for provision of Nursery Education and the second proposal related to the Music Service. The Consultation was launched on 21st October and was scheduled to close at 5pm today (Tuesday 16th December).

When the Council consults the Council's overriding duty is to consult fairly, given the audience it is consulting with and the requirement that adequate information is given on which consultees can respond.

After the launch of the Consultation on 21st October the Supreme Court gave judgment in respect of Moseley v Haringey LBC. The Moseley case dealt with the question of what the law relating to the duty to consult requires. This issue had not previously reached the highest court in the land so this is a landmark and important decision.

The Moseley case gives guidance on what fairness requires when the Council is consulting on a 'preferred option'. Members will be aware that in relation to both service change proposals the Consultation was based on a preferred option.

It was understood that the position prior to the Moseley decision was that there was generally no duty to provide information about an option that was not the Council's preferred option. Indeed, legal advice taken by the Council prior to initiating the Consultation confirmed this point. Cabinet therefore initiated the Consultations on this understanding.

However the Supreme Court took a much more robust approach to this principle than any Court had previously when asked to consider this particular issue. In overturning the original decision of the Administrative Court and the Court of Appeal where both Courts infact found Haringey Council's Consultation to be lawful, the Supreme Court's decision has had the apparent result of imposing rigorous further requirements on the Council in terms of the information it may now be obliged to provide to consultees. The Moseley decision means that the law relating to consultation should have infact been interpreted differently in some respects to how it had been previously.

Essentially the effect of the Moseley decision means that when the Council undertakes a consultation it must now give careful consideration as to what details of rejected options and the reasons for the rejection of those options it should give to consultees as well as why it has chosen a particular option – i.e. its preferred option over all others.

What does the effect of the Moseley decision mean for the Consultation that ends at 5pm today?

Members will note that the decision in the Moseley case was given after the Consultation was launched but prior to the Consultation period ending and clearly before any final decision is taken in respect of the service change proposals.

Whilst it still remains to be seen how the Courts will interpret the Moseley decision in relation to the specific facts of any particular case before them, given the Supreme Courts interpretation of the law, and the consequences of the decision it is considered the Council is at risk of a potential challenge on the basis that the Consultation is unlawful and that any decision taken based on that Consultation would also be unlawful. Having regard to the importance and effect of the Moseley decision officers consider it is therefore prudent to, and recommend to Cabinet that it should, extend the Consultation period in relation to these service change proposals until 30th January 2015.

By extending the consultation period by a further period of just over six weeks consultees would be given an opportunity to review the options considered by Members prior to Cabinet launching the consultation on the preferred option in addition to being provided with an explanation as to why the preferred option is preferred based on the advantages and disadvantages of each option. This would help ensure the Council is in a better position to resist any challenge as to the lawfulness of the Consultation based on the fact that it is not compliant with the principles established in the Moseley case. Although Members should note that proceeding in this manner does not mean that a challenge could not still be made on this point or indeed in respect of any other part of the Consultation exercise although clearly it would help the Council mount any defence to such a challenge.

Members have been provided with a copy of the additional information that it is proposed be provided to consultees which will address the points raised in Moseley and Members are asked to note this information.

Members are also asked to note that if they resolve to extend the Consultation period copies of the additional information would be distributed in exactly the same way as the original Consultation materials. In excess of 39,000 copies of the Consultation leaflet were distributed to parents through schools and it is intended a copy of the additional information will be provided to each parent at the commencement of the Spring term in January. The extension to the Consultation period would be widely publicised through the Council's Website, Press and Social Media. In addition further local engagement sessions would be held across the County Borough.

Any response to the Consultation received by the Council during the extended period would be treated in exactly the same way as a response received prior to the original deadline.

It is therefore recommended to Cabinet that further to its decision taken on 10th October 2014 in relation to the service change proposals in respect of funding for provision of Nursery Education and the Music Service and for the reasons I have outlined that Cabinet: -

- (i) Notes the implications of the Supreme Court decision in *Moseley V Haringey LBC* ('the Moseley Decision');
- (ii) In light of the Moseley Decision extend the Consultation period until 5pm on 30th January 2015;
- (iii) note the additional information that would be provided to consultees should Cabinet resolve to extend the Consultation; and
- (iv) note copies of the additional information would be distributed in exactly the same way as the original Consultation materials.

FUNDING FOR NURSERY EDUCATION – SUPPLEMENTARY INFORMATION

As part of developing the preferred option for consultation, a number of alternative options were considered and commentary on these alternatives is now provided below.

This supplementary information is now being made available to consultees as part of the overall consultation process. The consultation period is also being extended and will now end on the 30th January 2015 (at 5.00pm). This supplementary information should be read in conjunction with the consultation materials already available.

Option No.	Option Description	Commentary On Each Option
1	Status Quo ie retain the current level of provision	<p>Not proposed because this option would continue to fund a historic level of provision, which is above the level provided by most Councils in Wales and considered to be unaffordable going forward.</p> <p>There is no evidence to substantiate the educational and attainment benefits from the current full time (nursery) education provision as opposed to part-time provision.</p> <p>No financial savings delivered from this option.</p>
2	Full time provision from the term after the child's 3 rd birthday	<p>Not proposed because this option would continue to fund a historic level of provision, which is above the level provided by most Councils in Wales and considered to be unaffordable going forward.</p> <p>There is no evidence to substantiate the educational and attainment benefits from full time (nursery) education provision from the term after a child's 3rd birthday as opposed to part-time provision.</p> <p>If implemented, this option would deliver savings of £0.093M per year.</p>
3	Part time (half day) provision from the term after the child's 3 rd birthday	<p>Not proposed because this option would continue to fund a historic level of provision, which is above the level provided by most</p>

	and full time nursery from following September	<p>Councils in Wales and considered to be unaffordable going forward.</p> <p>There is no evidence to substantiate the educational and attainment benefits from full time (nursery) education provision from the September following a Child's 3rd Birthday.</p> <p>If implemented, this option would deliver savings of £0.313M per year.</p>
4	Part time (half day) provision from the term after the child's 3 rd birthday and part time (half day) nursery from the following September and then full time reception	<p>Not proposed because this option would result in inequitable provision across the County Borough in that children born in Autumn term will not be funded for full time until the September following, as opposed to children born in the summer term who would be funded for full time from the following term.</p> <p>If implemented, this option would deliver savings of £3.292M per year.</p>
4a	Part time (half day) provision from the term after the child's 3 rd birthday and part time (half day) nursery from the following September and then full time reception. Plus half day play funded by Council	<p>Not proposed because the funding and direct 'wraparound' childcare provision is not wholly the responsibility of the School/Council although the Council has a duty to secure sufficient childcare for its area, so far as reasonably practicable ('it's childcare sufficiency duty').</p> <p>If implemented, this option would deliver savings of £1.125M per year</p>
4b	Part time (half day) provision from the term after the child's 3 rd birthday and part time (half day) nursery from following September and then full time Reception. Plus half day play charged to the parent.	<p>Not proposed because the option of providing chargeable 'wraparound' childcare provision would be available as a local decision which would be best made based on local knowledge of supply and demand issues and which the Council can support through its Early Years and Family Support Service.</p> <p>Parents may already have childcare arrangements in place which would impact on the viability of any particular facility offering 'wraparound' provision.</p> <p>If implemented, this option would deliver savings of £3.136M per year.</p>

5	Part time (half-day) provision the term after the child's 3rd birthday and full time provision from the term after the child's 4th birthday	<p><u>PROPOSED PREFERRED OPTION</u></p> <p>This option provides an equitable funding basis (subject to capacity) and does not disadvantage children based on where their birthday falls in an academic year (i.e. which term) with all children being funded for 3 terms part time.</p> <p>It provides an effective phased introduction to full time education and has been deemed by Council officers to be "sufficient" nursery education provision to meet the needs of nursery aged children in Rhondda Cynon Taf.</p> <p>Children already in receipt of full time nursery provision during 2014/15 academic year would continue to be funded for full time provision (ie they would not be affected). The option would impact on new admissions from September 2015 and onwards.</p> <p>If implemented, this option would deliver savings of £2.166M per year.</p>
6	Part time (half day) provision from the term after the child's 3 rd birthday, and part time (half day) nursery and part time (half day) reception until the term after the child's 5 th birthday	<p>Not proposed because this option would result in funding for a phased introduction at reception year which is not considered to be in the best interests of children at that stage of education.</p> <p>If implemented, this option would deliver savings of £4.862M per year.</p>
7	Single point admission in September - Full time nursery	<p>Not proposed because this option would remove funding for pre-nursery provision in LEA maintained schools and would involve providing funding to other registered education providers.</p> <p>No savings due to cost of providing funding to other registered education providers.</p>

8	Single point admission in September - Part time nursery	<p>Not proposed because this option would remove funding for pre-nursery provision in LEA maintained schools and would involve providing funding to other registered education providers.</p> <p>If implemented, this option would deliver savings of £2.377M per year.</p>
9	Single point admission in September - Part time (half day) nursery and reception with phased full-time reception the term after children turn 5.	<p>Not proposed because this option would remove funding for pre-nursery provision in LEA maintained schools and would involve providing funding to other registered education providers.</p> <p>This option would also result in funding for a phased introduction at reception year which is not considered to be in the best interests of children at that stage of education.</p> <p>If implemented, this option would deliver savings of £3.888M per year.</p>

Note. Savings figures quoted for each option are based on a reduction in the funding provided to schools which is linked to the estimated number of pupils and the amount of time which they would be in school (full time or part time) for each option adjusted for ancillary proposals, such as charges to parents, removal of free school meals etc.

COUNCIL FUNDED MUSIC SERVICE – SUPPLEMENTARY INFORMATION

As part of developing the preferred option for consultation, a number of alternative options were considered and commentary on these alternatives is now provided below.

This supplementary information is now being made available to consultees as part of the overall consultation process. The consultation period is also being extended and will now end on the 30th January 2015 (at 5.00pm). This supplementary information should be read in conjunction with the consultation materials already available.

Option No.	Option Description	Commentary On Each Option
1a	Discontinue the Music Service	<p><u>PROPOSED PREFERRED OPTION</u></p> <p>The discontinuation of the Council run and subsidised Music service would still leave individual schools <u>with the same level of resources to engage independent providers.</u></p> <p>This option would deliver savings of £0.474M per year.</p>
1b	Discontinue the Music Service and centrally commission music tuition from other providers	<p>Not proposed because this option would introduce administration costs with little evidence to demonstrate the value added that such an arrangement could provide and at a cost of £0.203M.</p> <p>This option would deliver savings of £0.271M per year.</p>
2	Employ all staff on Local Pay and Conditions excluding curriculum teachers	<p>Not proposed because this option would potentially introduce significant staff turnover with lack of continuity issues.</p> <p>This option would deliver savings of £0.093M per year.</p>
3	Employ all staff on Local Pay and Conditions & cease to offer curriculum teaching	<p>Not proposed because this option would potentially introduce significant staff turnover with lack of continuity issues as option 2 plus a mix of providers (where schools seek curriculum teaching from other providers) could introduce greater inconsistencies.</p>

		This option would deliver savings of £0.112M per year.
4a &b	Re-launch Music Service paying staff an hourly rate term time only	<p>Not proposed because this option would increase the risk of staff turnover and the ability to engage sufficient resources to provide the service would present a significant risk to the Council which option 1 removes.</p> <p>This option would deliver savings of £0.368M per year (with payment of travelling expenses) or £0.378M per year (with no payment of travelling expenses).</p>
5	Re-launch Music Service as an agency for Approved Music Tutors	<p>Not proposed because this option requires management of an agency arrangement with additional cost implications and would not represent good value for money for the Council.</p> <p>This option would deliver savings of £0.200M per year.</p>
6	Reduce the subsidy of the Music Service (thereby increasing charge to schools)	<p>Not proposed because the increased charge to schools would result in an uncompetitive service which schools could obtain at a lower cost from other providers.</p> <p>The savings from this option would be dependent upon the level of increased charge.</p>
7	Independent management structure review	Not proposed because with this option there would still be a required management role for the Council and savings achievable (against a current management cost of £0.115M) would be likely to be marginal as compared to option 1.
8	Introduce a charge to parents for extra-curricular activities	Not proposed because this option would only deliver savings of £0.021M per year.
9	Cease to run extra-curricular activities	Not proposed because this option would only deliver savings of £0.021M per year.
10	Consideration of Partnership working	Not proposed because this option would require a longer lead-in time to deliver the savings and most likely be

		outside of the current financial planning timeframes. Savings would need to be determined.
--	--	---

Note Savings figures quoted for each option are based on reduced employee costs and / or additional income as appropriate.