

Notice of 'Call-In'

Committee: Overview & Scrutiny Committee

1. Decision Subject To Call-In:

Proposed Use Of Land Transaction Transfer Protocol With Cardiff Capital Region for Land At Brynmenyn & Bryncethin:

Decision Date: 12th March 2024, **Decision Notice Date:** 13th March 2024.

2. Member(s) of the Committee Wishing to Call the Decision In

Name
Cllr Freya Bletsoe – Chair Scrutiny Committee 2
Cllr Ian Spiller
Cllr Tim Thomas
Cllr Martin Williams

3. Reasons for the Call-In

Various reasons as listed below:

- The report presented to cabinet did not contain sufficient information for Cabinet to make a fully informed decision nor did they seek additional information through questioning. There are significant concerns about the soundness of their decision.
 - The Land Transfer Protocol applies to 'surplus' land. The paper did not adequately prove nor did the cabinet seek evidence that the parcels of land in question are actually 'surplus' or how this conclusion was arrived at.
 - For example, during the recent budget scrutiny process officers advised that all land and property was subject to a review to identify opportunities for consolidation, repurposing or disposal by lease or sale/transfer. It would be expected that the outcome of this process would be available to support the claim that the land is surplus. The land in question could be used for any number of purposes to support BCBC operations. To a member of the public it could be considered that the decision to designate the land as surplus is predetermined as a means of transferring to CCRD as opposed to being as a result of a robust and transparent review. The cabinet should have explored this further to assure themselves that the land is actually surplus.
 - The paper didn't state whether or not there had been any third party approach for the land either for a commercial sale or for a community use. For example, until recently Bryncethin RFC had planning consent on part of the land in question (Clay Pits). Therefore, it does suggest that there may be other third-party interest in the land which has not been considered or therefore weighed against the land transfer to CCRD.
 - There is no evidence that alternative uses have been explored.

- The cabinet paper states that the transferred land can only be used for an operational purpose and expressly forbids any speculative use. The CCRD by its very nature is a speculative organisation. It loans to and invests in third party organisations and projects on a speculative basis to generate economic benefit and financial return. In this instance CCRD will be using the land to invest in a speculative commercial arrangement with Marubeni, a multinational company whose primary purpose is to deliver profits to its shareholders. The cabinet failed to question whether this is a proper operational purpose under the legislation. The cabinet also failed to question the proposed commercial arrangement between CCRD, Marubeni and any other potential partners to satisfy themselves that the land transfer is in fact lawful. The CCRD (future Joint Committee) has no inherent 'operational purpose' for holding land in the sense that the Act intended. Its primary purpose is commercial speculation and as such the cabinet should have commissioned independent legal advice and deferred its decision pending this.
- The cabinet stressed that this decision would retain the land in public ownership. This may be strictly true but is also disingenuous. Public ownership implies for public use or benefit. In the event that the land is transferred to CCRD then it will be made available to Marubeni a commercial entity who will use the land to generate a profit. CCRD would only receive a 15% stake in the hydrogen project therefore 85% would be held by other partners who may not be public bodies or have the public interest at heart. It is not clear if the land will form part of the 15% stake. This transfer does not protect the land for public use as the wider public would understand that phrase.
- The transfer agreement states that if the project does not proceed then the land will be offered back to BCBC but there was no clarity regarding what will happen to the land if the project succeeds then fails or when the production of hydrogen ends at some future point.
- No consideration has been made of alternative means of land transfer such as lease or open market disposal.
- There has been no consideration as to whether the BCBC could re-engage with the project with the contribution of land acting as an equity stake. This could secure a long term revenue stream.
- The cabinet has failed to consider the public interest and indeed the strong local opposition to the scheme. Transferring the land for this purpose without consultation with local residents and businesses is not aligned with the principles of the Future Generations and Wellbeing Act. There will be considerable alarm that following the cabinet's decision to withdraw from the project that the project is potentially proceeding under a different guise without local influence and control. The impact upon residents wasn't referenced let alone considered.
- Given that planning and other permissions have yet to be granted notwithstanding any other concerns this decision is premature. Given all of the protections and caveats that have been included regarding specific land used and the ringfencing of funds until and IF planning consent is granted it would surely have been more appropriate to defer this decision until AFTER consents and permissions were obtained.
 - The report notes that there are revenue costs associated with the valuation of the land and its transfer. Would it not therefore be

prudent for transfer to be suspended until after all consents and permissions were obtained to mitigate against abortive costs. It must be recognised that there have already been significant abortive costs expended on this scheme. Why are BCBC expected to meet these costs in any case?

- The differential in estimated land value of £1,000k and £250k with and without planning consent is a concern. Given that the enhanced value and completion of the land transfer is dependent on a successful planning application, should the cabinet have considered that in making this decision at this time they may have inadvertently placed pressure on the Development Control Committee?
- Given the issues outlined above there is a real risk that this decision could leave the council open to future legal challenge.
- The decision has not been properly considered and requires further scrutiny.

4. Date of Call-In: 19th March 2024