

Meeting of:	CABINET <u>APPENDIX C</u>
Date of Meeting:	12 MARCH 2024
Report Title:	PROPOSED USE OF LAND TRANSACTION TRANSFER PROTOCOL WITH CARDIFF CAPITAL REGION FOR LAND AT BRYNMENYN & BRYNCETHIN
Report Owner / Corporate Director:	CORPORATE DIRECTOR COMMUNITIES
Responsible Officer:	JANINE NIGHTINGALE CORPORATE DIRECTOR COMMUNITIES
Policy Framework and Procedure Rules:	The transfer of land via an options agreement to the Cardiff Capital Region City Deal (CCR), at a jointly agreed red book valuation will be undertaken under the provision of the Land Transaction Transfer Protocol.
Executive Summary:	<p>This report summarises the proposal to use an Options Agreement arrangement with the Cardiff Capital Region City Deal (CCR), under the Land Transaction Transfer Protocol. This will enable CCR to have an option to purchase surplus local authority land at Brynmenyn and Bryncethin, subject to conditions and red book valuation.</p> <p>The report outlines the conditions that are required to be satisfied to protect the Council's interests , including that a joint agreed Red Book valuation is used for the transfer, based on a planning permission being determined favourable, that the land remains in public sector ownership, can only be used for the intended planning purpose, that the land is offered back to the Council at the value it was transferred if the project does not proceed and that all finances are in place for the transfer.</p> <p>The report recommends delegating authority to Corporate Director – Communities, in consultation with the Chief Officer - Legal & Regulatory Services, HR & Corporate Policy and the Chief Officer, Finance, Housing & Change, to draft & execute the agreement when all conditions are duly met.</p>

1. Purpose of Report

- 1.1 The report will outline the proposed use of an Options Agreement arrangement with the Cardiff Capital Region City Deal (CCR), under the Land Transaction Transfer Protocol. If agreed, this will enable CCR to have an option to purchase surplus local authority owned land at Brynmenyn and Bryncethin, subject to conditions and red book land valuation.

2. Background

- 2.1 In September 2023, the Cabinet made the difficult decision to withdraw from the Hybont Green Hydrogen Project with CCR, Welsh Government and Marubeni Europower Limited (MEL). This was due to the Council's challenging Medium Term Financial Strategy (MTFS) and inability to meet the significant financial commitments required to complete due diligence, including financial, technical and legal also an inability to meet the timescale for the project. It was agreed by Cabinet that the Council would continue dialogue with partners including Welsh Government and for them to identify an alternative route forward with MEL.
- 2.2 Since the withdrawal of BCBC from the project, CCR is now considering being a key partner and investor in the project and is currently applying the rigours of due diligence and reviewing the business case and investment potential. CCR's interest in this green hydrogen project is borne from the likelihood it will be a key part of the energy mix, as they aim to decarbonise the Southeast Wales industrial economy and it could also provide investment and job creation in the local economy.
- 2.3 The project will be subject to several variables being in place such as planning permission and operators licensing and permitting, these are discussed from paragraph 2.7 below. However, what is key, is the availability of investment from CCR to make the project deliverable and the appropriate land on which to develop the project itself. The availability of land is the subject of this Cabinet Report and the use of the Land Transaction Transfer Protocol (LTTP) to enable an Options Agreement to be put in place to enable CCR to purchase the surplus BCBC land, subject to several conditions being met.
- 2.4 Before the use of the LTTP is examined in detail, it is considered beneficial to outline the planning, operating licences and permitting processes that are also needed to be in place to allow this project to progress.

Planning Permission

- 2.5 The development of any facilities for the Hybont Project, including a solar array at the Claypits in Bryncethin and the Green Hydrogen production and a filling station at land at Brynmenyn, will require planning consent. The Local Planning Authority, part of BCBC, would determine an application of this scale by presenting it to the Development Control Committee (DCC), made up of cross party elected members. This committee will receive a detailed Planning Officers report with a recommendation to either grant or refuse permission, based on whether the use of

the land is deemed appropriate. The development control committee can only make decision on land use and cannot make decisions on areas such as the safety of the production or operations. These are subject to separate licence and permit agreements. It is likely that this Hybont Project planning application will be determined at a Special Planning Committee in late April, subject to all the appropriate detailed information being submitted by the applicant.

- 2.6 The Welsh Government has also reserved the right to “Call In” the application for a decision to be made by Ministers. Once the planning officers report is completed with a recommendation in place, this will be sent to Planning and Environmental Decisions Wales (PEDW) Officers for consideration. If they do not wish to “call in” the application, then the DCC can continue to determine the application, or grant any permission subject to confirmation from PEDW that they do not wish to “call in”. However, should they wish to “call in” the application then it will be determined nationally by PEDW and Welsh Government and their decision will then override any decision that has been taken locally.

Licences and Permits

- 2.7 Hydrogen production, storage, and transportation is very heavily regulated in the UK and the Hybont Project will require approval and a wide range of permits and Licences in place, to be able to safely operate, produce and store green hydrogen for the project. The range of statutory regulators that are involved in granting these permits and licences include the Health & Safety Executive (HSE), Natural Resources Wales (NRW), The Coal Authority, Welsh Water and the National Grid.
- 2.8 The Council is the Hazardous Substances Authority and as such has responsibility for granting a Control of Hazardous Substance License. However, the Council’s role is administrative in nature, in that it is for the two statutory consultees, HSE and NRW, to agree if it is appropriate for a hazardous substance licence to be approved. Only when the agreement from these two regulators is in place, will the Development Control Committee, grant this licence.
- 2.9 The operating team within MEL are working through the other permits and licences that will be required for the Hybont Project currently with the appropriate statutory regulators. These are not the responsibility of the Council and do not affect our ability to continue with the LTTP. Whilst not an exhaustive list, the following sets out major permits, licences, or permissions that will be required: -
- **Coal Authority Permit from the Coal Authority** – This permit allows work to be undertaken on land that is considered as a potential coal risk. It requires submission of risk assessments and method statements to ensure compliance with Coal Authority requirements.
 - **Control of Major Accident Hazards Consent (COMAH) from the Health and Safety Executive** – This consent is a set of legal requirements that aim to prevent and mitigate the effects of major accidents that involve hazardous substances. The regulations apply to all businesses that handle or store large quantities of

hazardous substances in the UK. The regulations require businesses to assess the risks associated with their activities and to take measures to prevent or reduce the likelihood of a major accident occurring. Businesses are also required to have an emergency response plan in place in case of a major accident. It is broken down into two tiers: Upper Tier: 50 tonnes and Lower Tier 5 tonnes. The HyBont facility is not expected to require classification as either a lower-tier or upper-tier COMAH site.

- **Environmental Permit from Natural Resources Wales** – This permit authorises an industrial facility operator to carry out activities that have the potential to cause pollution or harm to the environment or increase flood risk. The purpose of an environmental permit is to ensure that the activities are carried out in a way that protects the environment and human health and it will set out specific conditions that the operator must comply with such as emission limits, monitoring requirements and reporting obligations.
- **Trade Effluent Consent from Welsh Water** – This is legal permission that allows the hydrogen production site to discharge liquid waste or effluent from their premises into the public sewer system. The water company will assess the application and set appropriate limits and conditions for the discharge of the effluent to ensure discharges are appropriate.
- **Permission to work within Vicinity of Water Main from Welsh Water** – This permission granted by Welsh Water will permit construction, maintenance, or repair work to be carried out near their water mains or infrastructure to ensure protection of assets.
- **NGED Grid Connection Agreement G99 from National Grid** - This agreement is required for power generators to connect on the National Grid Electricity Distribution network as per Electricity Networks Association Engineering Recommendation G99.

3. Current situation / proposal

- 3.1 We now turn to the subject of this Cabinet Report, which is the proposed use of an Options Agreement arrangement with the Cardiff Capital Region City Deal (CCR), under the Land Transaction Transfer Protocol. If agreed, this will enable CCR to have an option to purchase surplus local authority owned land, subject to conditions and an agreed red book valuation.
- 3.1 The Land Transaction Transfer Protocol is considered best practice guidance for the disposal and transfer, of land and property assets between publicly funded bodies in Wales that are identified as “surplus.” It is the responsibility of the relevant public body to determine whether the land is “surplus,” but it will generally be the case if the

land does not meet any of the following criteria:

- it is currently used/required to deliver BCBC's operational functions.
- there is a clearly evidenced plan to use the land to deliver BCBC's future operational functions.
- it is held for commercial purposes and/or is integral to continuity of service delivery.
- the land is vital for business contingency.

3.3 The two areas of land subject to this LTTP are, first a 17.47 hectares (43.18 acre) site of rough grazing land at Bryncethin, known locally as the Clay Pits , with its boundary shown as red in Appendix A. The second area is a 1.72 hectares (4.24 acres) site of undeveloped and unmanaged land with a Local Development Plan industrial use designation and is immediately adjacent to the Brynmenyn Industrial Estate, with its boundary shown as red at Appendix B. Both sites are in BCBC ownership, are vacant, have no plans for future development or business continuity and are declared surplus. For these reasons the use of the Protocol for the purposes of a Options Agreement for a proposed disposal of the land to CCR is considered an acceptable mechanism legally for proceeding.

3.4 There are a number of key principles that need to be followed with the Protocol. The first is that the organisations involved, that is the Council and CCR, should commission an independent valuation report to settle the price to be paid and to value assets at market value, in accordance with Royal Institute of Chartered Surveyors (RICS) standards. The Council will agree that the value of the land will be determined by the red book protocol. In simple terms, a Red Book valuation involves a RICS Registered Valuer assessing the land and providing a formal report of the current market value of the property. The current estimated value of the two parcels of land with the benefit of planning permission being in place, is circa £1 million. The Option Agreement would need to contain this valuation mechanism whereby both parties jointly agree the valuation in accordance with the Protocol after the last of the conditions has been satisfied and the Option notice has been served.

3.5 Another principle of the LTTP is that it should be used for the transfer of land/property to meet an operational requirement and not a speculative purpose. The Protocol states that, if a public body identifies land as being surplus to requirements, best practice requires that property which is formally declared as surplus should be disposed of as expeditiously as possible. However, it does acknowledge that consideration should be given to the longer- term in respect of planning use and the fact that the longer-term benefits may outweigh the costs savings of a quick turnaround. In this case, the proposed Option Agreement falls into the latter category

where the land will have a considerably higher value once planning permission is obtained. It is proposed that the Option Agreement will be conditional upon planning permission for the Hydrogen Demonstrator Project being determined favourably and that it would only be exercised should this be the case. This also supports the Protocol's condition that the land will be used for an operational requirement, rather than being acquired with no specific purpose in mind.

- 3.6 However, it should be recognised that once the land has been transferred to CCR there is no restriction on the land that prevents it from being used for any other purpose and there would be no obligation on CCR to build out in accordance with the planning permission. The Council will impose such a restriction on use in the Option Agreement and it is proposed that this includes a restriction that the land can only be used for the intended purpose of the planning consent. This may impact on the market value, but it does protect the interests of the Council. In addition, there will be a provision in the Option Agreement that should the project not proceed, or the land no longer be required, then it must be offered back to the Council at the value at which it was transferred. This is to ensure that the land stays within public sector ownership and is not passed onto a private sector user.
- 3.7 Internal transfers of land within the public sector, should not normally involve claw-back or overage but it may be appropriate in certain circumstances to include a clawback provision in transfers between public bodies outside the same accounting umbrella. The Protocol refers to the UK Government's Cabinet Office which recommends that unrestricted market value transfers would not normally include a requirement for any clawback provision from one public sector body to another. This is not the case with the proposed option agreement with CCR, as there will be conditions that protect the Council's interest with regard to the land remaining within public sector ownership, the use of the land being only for the purposes of the planning consent and that the land value will be based on the land having an approved planning consent in place. Therefore, the Council will reserve the right to include an overage or claw back provision in the Options Agreement, should it be deemed necessary at the time of entering the Agreement, to protect its interests.
- 3.8 A further provision in the Protocol, is that there should be an approved business case in place for the land acquisition with the confirmed availability of funding. A Strategic Outline Case ("SOC") was presented to the CCR investment panel in November 2023, which was supportive of the recommendation for a proposed equity investment from CCR in return for a 15% shareholder stake in the project to deliver the Hydrogen Demonstrator Project. Following on from that approval, there will now be a more detailed analysis by CCR, in order to develop a Full Business Case, which is intended to be approved at the first meeting of the newly formed Corporate Joint Committee in May 2024. In addition, Department of Energy Security and Net Zero (DESNZ) funding from UK Government has been awarded to the project, which enables the green

hydrogen to be distributed at a viable price to off-takers and thus removes the risk that was outlined in the SOC.

- 3.9 There are still funding risks associated with the project with regard to specific legal and commercial considerations, aligned to the involvement of the Japanese Government through its New Energy and Industrial Technology Development Organisation (“NEDO”) and that, if there is a material delay in planning permission being obtained or changes are necessitated to the scheme then this could impact on the finance ask. In these circumstances, if planning permission is not granted within the timescales proposed, there is a risk that funding at the level required for the Project to proceed from NEDO may not be achieved. If this was the case, and the project ceased, then dependent on timeframe, either the land Option Agreement would not be exercised from the Council to CCR or the condition in the Options Agreement for the land to be passed back to the Council would be exercised.
- 3.10 The final point of note from the protocol is that it is recommended that an acquiring organisation ensures they have the power to hold property assets prior to engaging and that all public bodies must ensure that every action taken is within its powers or it may be challenged as unlawful. The Cardiff City Region City Deal is transferring into a Corporate Joint Committee (CJC) on the 1st of April 2024 and will have the power to hold property assets, so this will not present an issue.
- 3.11 It is noted from the narrative above that the Land Transaction Transfer Protocol is a robust mechanism for allowing surplus land holdings to move from one public sector body to another, at an agreed valuation. It is clear, that there are a number of conditions that will be needed within the Options Agreement to protect the interests of the Council. Including in summary, the following: -
- That a jointly agreed Red Book valuation is used for the transfer, based on a planning permission being determined favourable, to ensure best consideration for the land.
 - That the land remains in public sector ownership and cannot be transferred or disposed of to a third party or private sector organisation.
 - That the land is only used for the intended purpose of the planning consent.
 - That should the project not proceed, the land will be offered back to the Council at the value at which it was transferred under the protocol.
 - That agreement in principle can be given to the option agreement, subject to a Full Business Case (FBC) approval from CJC in May 2024 and confirmation that funding is in place for the land transfer at the jointly agreed red book valuation.

3.12 Once the Option Agreement is in place, the transfer of the land can only take place once CCR/CJC have served an Option Notice on the Council, the timing of which is at the discretion of the CCR/CJC, unless a condition is agreed regarding the timescale for the service of the Option Notice.

4. Equality implications (including Socio-economic Duty and Welsh Language)

4.1 The protected characteristics identified within the Equality Act, Socio-economic Duty, and the impact on the use of the Welsh Language have been considered in the preparation of this report. As a public body in Wales the Council must consider the impact of strategic decisions, such as the development or the review of policies, strategies, services, and functions. It is considered that there will be no significant or unacceptable equality impacts as a result of this report.

5. Well-being of Future Generations implications and connection to Corporate Well-being Objectives

5.1 The Well-being of Future Generations (Wales) Act 2015 Assessment based on the 5 ways of working and any requisite mitigating measures have been set out below: -

- *Long-term:* The proposed Hybont project was intended to test a new green hydrogen technology for delivering net zero carbon energy, as a key part of the Council's 2030 Net Zero Carbon Strategy. It is also part of the UK and Welsh Government vision for a hydrogen energy economy and would contribute to the Government target of producing 5GW of hydrogen by 2030. The transfer of land for the project will contribute to this national agenda.
- *Prevention:* The transfer of the land at best consideration for the green hydrogen project would deliver carbon footprint reductions, preventing further harm to the environment and protecting the environment for future generations. The 2030 strategy will now be reviewed to assess the impact of this decision.
- *Integration:* The transfer of the land for the project, should planning permission be secured, would bring the development of a solar array and a supply of green electricity to the land adjacent to the Council's Bryncethin Depot. There will be opportunities for the Council to learn lessons from this best practice and look to further its own environmental objectives with regard to renewable energy.
- *Collaboration:* The transfer would be undertaken through the Land Transaction Transfer Protocol with our public sector partners Cardiff Capital Region City Deal (CCR), who will shortly become a Corporate Joint Committee (CJC). This will ensure that best consideration and value is achieved for the land and that it remains within public sector ownership.
- *Involvement:* The long-term future direction of the project will be dependent on the continued collaboration of Welsh Government and the CJC with Marubeni Europower Limited, now that BCBC can no longer be involved. However, the transfer of the land to our public sector partners will ensure that best consideration

and value is achieved for the land and that it remains within public sector ownership.

6. Climate Change Implications

- 6.1 The proposed transfer of the land to CCR/CJC is for a use that will bring forward the generation of green electricity via a proposed solar array on the Clay Pits site and the production of green hydrogen on the site at Brynmenyn. Both parts of this project, if planning consent is approved and all the statutory licences and permits agreed, will be seen to benefit the climate change agenda.

7. Safeguarding and Corporate Parent Implications

- 7.1 There are no safeguarding or corporate parent implications arising from this report.

8. Financial Implications

- 8.1 There are two areas for financial consideration, arising from this report. The first is the revenue costs associated with preparing the joint valuation report and the options agreement. These will be funded from a budget allocation within Corporate Landlord for asset disposals.

- 8.2 The second area is the expected capital receipt for the value of the land, currently estimated at circa £1 million, with the benefit of a favourable planning permission in place. As set out above, this must be jointly agreed and prepared via an independent Red Book Valuation as described in paragraph 3.4 above. The Options Agreement will not be exercised until all the conditions as set out in paragraph 3.11 above are satisfied. In addition, should the land not be required for the project, then it will be offered back to the Council at the value at which it was transferred. This will protect the Council's financial interests moving forward and ensure that the land remains in public sector ownership. It is also recommended that any capital receipt received by the Council is afforded a ring-fenced protection until such time as it is clear that the project will proceed, to ensure that there are funds available should the land be returned to the Council's ownership.

9. Recommendations

- 9.1 It is recommended that Cabinet:

1. Note the contents of this report and the statutory requirements for planning consent and various licences and permits, that sit outside of the Land Transaction Transfer Protocol.
2. Delegate authority to Corporate Director – Communities, in consultation with the Chief Officer - Legal & Regulatory Services, HR & Corporate Policy and the Chief Officer, Finance, Housing & Change, to draft and enter into the Option Agreement with the CCR/CJC based on the principles set out in this report, and agree the valuation of the land and conditions.

3. Agree that any capital receipt received by the Council, is afforded a ring-fenced protection until such time as it is clear that the project will proceed, to ensure that there are funds available should the land be returned to the Councils ownership.
4. Agree that a subsequent report will be brought back to Cabinet should the Option Agreement or project not proceed, in order the land can be returned to the Council for the agree value at which it was disposed and that a decision on the future of the two parcels of land can be agreed.

Background documents

19th September 2023 Cabinet Paper – Hybont Project Gateway Review

14th June 2022 Cabinet Paper – Bridgend Net Zero Carbon – Hydrogen Technology Demonstrator

Appendix A – Land at the Clay Pits in Bryncethin



Appendix B – Land at Brynmenyn

NOTES

Scale at A1 1:500

Do not scale from drawing & all dimensions are in meters.

All levels are in metres and relate to AOD (ordnance survey)

Red line is site boundary

