

# North Yorkshire County Council

## Executive

Minutes of the meeting held at County Hall, Northallerton on Tuesday, 18 March 2014 commencing at 11.00 am.

County Councillor John Weighell in the Chair. County Councillors Arthur Barker, Gareth Dadd, Tony Hall, Carl Les, Don Mackenzie, Chris Metcalfe and Clare Wood.

Also in attendance: County Councillor John Clark.

Officers present: Richard Flinton, David Bowe, Carole Dunn, Pete Dwyer, Ian Fielding, Stephen Knight, John Moore and Richard Webb.

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**Copies of all documents considered are in the Minute Book**

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### **125. Minutes**

#### **Resolved –**

That, the Minutes of the meeting held on 25 February 2014, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

### **126. Questions and Statements from members of the public**

There were no questions or statements from members of the public.

### **127. Feedback from Area Committees**

#### **Considered –**

A report of the report of the Assistant Chief Executive (Legal and Democratic Services) relating to the follow meetings:

- Yorkshire Coast and Moors Area Committee held on 29 January 2014
- Hambleton Area Committee held on 10 February 2014

#### **Resolved –**

That the report is noted.

## 128. Superfast North Yorkshire Project

Considered –

A joint report of the Corporate Director – Strategic Resources and the Chief Executive of NYNet to approve a funding package for Phase 2 of the Superfast North Yorkshire Project, and to consider related issues and a prospective approach to Phase 3 of the Project.

John Moore, Chief Executive of NYNet Limited introduced the report saying that it set out the progress made to date in implementing Phase 1 of the SFNY Project and then set out proposals for Phase 2 under which BT had proposed delivering 11,100 premises above 25 Mbs, with the possibility of a further 5,000 premises being uplifted to above 25 Mbs using fibre to the remote node technology (FTTRN). He said that BT intended to use North Yorkshire as a pilot for the FTTRN technology in the Leyburn area and if the technology was shown to be effective it would then be deployed in the county. Because the allocation of fundings from BDUK included funding to be used in the area of the City of York Council, it would now be necessary to hold discussions with the City of York Council, if that Council chooses to provide match funding and wishes to spend funds quickly on BT coverage, as they would have to use the BT contract/state aid contract established by SFNY. The report recommended that it be agreed, in principle, that the City of York Council could utilise the SFNY contract with BT, with the proviso that that Council make an appropriate contribution towards the past, present and future costs of the SFNY Project Teams. Alternatively, the City of York Council could undertake separate procurement arrangement and arrange state aid. He drew attention to paragraph 5 of the report and the £7.6m allocation from BDUK, which would require match funding and said that he believed a number of potential funding sources existed and therefore no additional funding was being sought from the County Council, at this stage, although there might be a need for additional funding for Phase 3.

County Councillor Clare Wood said that she continued to have concerns about the provision of superfast broadband in semi-rural areas such as the one she represented, which consisted of a number of small villages. She said that such areas had not really benefited from Phase 1 of the programme and there seemed doubt about how much benefit would be obtained for such areas from Phase 2. She was concerned that such parts of the county were in danger of being forgotten and stressed that the intention to continue rolling out the programme with a Phase 3 must address areas such as those she represented. She believed that it was important that Phase 3 was carried through and proposed that the word “prospective” in recommendation 10.4 be deleted. In response, John Moore, Chief Executive of NYNet Limited said he understood the concern which was felt, but stressed that there was optimism that, if the FTTRN technology worked, that mechanism could resolve issues in areas such as the one represented by County Councillor Wood under Phase 2 of the programme. Certainly, he said, he would expect Phase 3 of the programme to allow parts of the county such as Richmondshire and the electoral division represented by County Councillor Clare Wood to start to catch up with the level of provision elsewhere in the county. He added that he had every intention of using the resources referred to in the report in achieve 100% of provision across the county. Once it was known whether FTTRN technology works, it could then be consolidated into the Phase 3 planning.

County Councillor Arthur Barker said that much of the electoral division he represented was similar to that represented by County Councillor Clare Wood, where some villages obtained good broadband services, whereas others did not. He said there was a need for some certainty, as soon as possible, about what could be achieved under Phase 2 of the programme. He stressed that the area he represented was not remote and super sparsely populated like some areas of the county, but there was still patchy provision of broadband. He referred to paragraph 4.2.7 of the report and questioned the suggestion that SFNY might remove the cap on satellite provision. In response, John Moore, Chief Executive NYNet Limited said that in respect of Phase 2 he was not able to give more information until the

Autumn, and BT needed to carry out their pilot project to see whether the proposed technology would work. In respect of removing the cap on satellite provision, he said that close consideration was being given to whether this contractual obligation on BT was meaningful. He said that consideration was being given to releasing BT from that obligation, if that could lead to obtaining more broadband cover in the county in other ways. He said that some resources had already been recycled to achieve that, but he was conscious of the need to avoid ending up with a small number of premises in the county which had no cover. He then referred to paragraph 6 of the report and the competitive fund of £10m established by BDUK to set up pilot projects to test innovative solutions to deliver superfast broadband services to the most difficult rural areas of the UK. He said that SFNY had offered to be a host area for the purposes of the fund. Such a project would provide satellite cover, but it would be necessary to see whether such provision would be cost effective for the consumer. County Councillor Arthur Barker queried whether that would mean broadband being delivered through three mechanisms, fibre, wireless and satellite. In response, John Moore agreed and said that some areas of the county might have all three mechanisms available. He stressed again the need to know whether FTTRN technology was effective. If it was not, SFNY would know it had gone as far as it could using BT technology, but if the technology was effective, then it was clear that more premises could be covered in that way.

County Councillor John Weighell asked whether John Moore's reference to 100% coverage meant just in the intervention area or also in the commercial area. In response, John Moore said that not all the cabinets proposed for the commercial area had yet been installed, so not all premises in the commercial area yet had superfast broadband provision. If SFNY were, in the future, to seek supplementary state aid approval it might then seek to cover premises in commercial areas which, by that time, were not served.

County Councillor Carl Les said that once the initial contract had been signed it meant good news for 90% of the premises in North Yorkshire who would get access to superfast broadband, but there was a challenge to achieve higher than the universal service commitment for the remaining 10% of premises. If the provision of broadband capability was to be seen as the fourth utility, it was right that the County Council should do all it could to obtain full coverage across the county. He said he would welcome involvement by District Councils in working through the final phase of the project and agreed with County Councillor Clare Wood that the word "prospective" should be deleted from recommendation 10.4.

## **Resolved –**

In relation to the proposed Phase 2 of the SFNY project:

- (i) the £3m of BDUK funding is accepted
- (ii) the £2.275m offered by ERDF is accepted
- (iii) a matching contribution of £3m to be funded from Corporate Miscellaneous is confirmed on value for money grounds and, consequentially
- (iv) a sum of £100k payable to NYnet to meet the net additional costs of project management for Phase 2 is confirmed, also to be funded from Corporate Miscellaneous
- (v) the offer from BT to spend the £8m for Phase 2 as detailed in paragraph 4.2 is accepted and that in addition:
  - (a) it is agreed in principle that CoYC can utilise the SFNY contract with BT to spend their SEP allocation, and
  - (b) it is accepted that this may require a consequential adjustment to the coverage achieved by the £8m, but
  - (c) with the proviso that CoYC make an appropriate contribution towards the past, present and future costs of the SFNY Project Team, the level of this contribution to be agreed by the Chairman of the SFNY Advisory Board, and

- (d) that a further report be submitted regarding the coverage to be achieved by Phase 2 once the SFNY Advisory Board has considered the various models (as referred to in paragraph 4.2) that will be submitted by BT in September 2014, and
- (e) that this report provides an analysis of the options for using the remaining USC pot for the benefit of those premises still with less than 2mbs.

The submission by SFNY, on behalf of NYCC, of an Expression of Interest, is approved and any subsequent formal requests for SEP funding, to BDUK as detailed in paragraph 5.1.4.

SFNY offering itself as a 'host area' for the purposes of the BDUK Innovation Fund is approved.

Regarding Phase 3 for the SFNY project:

- (i) the possible requirement for a further matching contribution, not to exceed £2.32m, together with a consequential need to fund any additional project management costs that will be incurred by SFNY, is noted
- (ii) SFNY is authorised to approach Borough/District Councils, in due course, to establish if they would wish to contribute to Phase 3 of the SFNY project and if so on what basis.

## **129. Yorwaste**

Considered –

A report of the Corporate Director - Business and Environmental Services seeking approval to put the necessary arrangements in place that will enable the County Council to award contracts for future waste management services to Yorwaste without a competitive procurement by relying on the 'Teckal' exemption.

County Councillor Chris Metcalfe introduced the report saying that it was seeking to put the necessary arrangements in place to allow the County Council to award contracts for future waste management services to Yorwaste without a competitive procurement, by relying on the Teckal exemption.

Ian Fielding, Assistant Director (Waste Management), asked Members of the Executive to disregard paragraph 8.4 of the report which was not appropriate and said that there were suggested changes to the recommendations in 13.1 and 13.3 which the Assistant Chief Executive (Legal and Democratic Services) would refer to. He said the proposal to change the way in which contracts were awarded to Yorwaste arose because there had been changes to the legislation under which the company had been established. This would allow improvements to the way in which services were delivered. It was proposed to transfer contracts, by novation or assignment, which were carried out by Yorwaste, though the customer for whom the service was being provided would see no change, as Yorwaste would continue to deliver the service. He said the proposed approach would give greater flexibility in setting and modifying contract terms and in how services were provided in the future. He stressed, however, that there were risks in adopting the approach, which was innovative, and it would be important to continue to ensure that value for money was being obtained when a competitive procurement mechanism was no longer being used. He advised the Executive that both the City of York Council and Yorwaste had indicated that they were comfortable with the recommendations before the Executive.

County Councillor Clare Wood said she was extremely supportive of the proposals and congratulated the officers and the Executive Member for bringing the proposal forward. She

asked, however, whether there was any likelihood that these changes could affect any decision about the future of Yorwaste, at some future time. In response, Ian Fielding, Assistant Director (Waste Management), said that the proposals before the Executive were reversible and, if at some stage, in the future, the Council wished to dispose of its interest in the company, it would no longer be possible for the company to rely on the Teckal exemption and it would be necessary to revise the arrangements.

Carole Dunn, Assistant Chief Executive (Legal and Democratic Services), referred specifically to paragraph 7.6 of the report which stated that the use of local authority powers to trade combined with the use of a Teckal company as a subcontractor was innovative and untested. She stressed that this was a new area of law and, although Counsel's Opinion had been taken, she was conscious that, as the proposals were taken forward, circumstances might be identified when it was necessary for further legal advice to be sought. In the circumstances, she suggested that recommendation 13.1 should be made subject to further legal advice being sought, prior to final implementation of the proposals as referred to in paragraph 7.6. She also suggested that the words "or assignment, as considered appropriate," should be added after the word "novation".

County Councillor Arthur Barker sought clarification on whether what was being suggested was that the Executive should agree the principle of this approach, but not allow implementation until any necessary legal advice had been obtained.

County Councillor Chris Metcalfe said he had no difficulty with the suggested addition to the recommendations. He acknowledged that the proposals entered new territory and officers were not clear at this stage what issues might arise. He thanked Ian Fielding for the report, which, he said, gave the County Council greater options for the delivery of waste services in the future and said, in his view, the risks associated with the proposal were low and manageable.

County Councillor Arthur Barker noted the concerns about possible challenge, but asked whether such challenge would not only arise after implementation. In response, Carole Dunn, Assistant Chief Executive (Legal and Democratic Services), explained further that as officers worked up the proposal, she would wish to have authority to seek legal advice, prior to the implementation, if that seemed necessary. County Councillor Chris Metcalfe supported that proposal.

#### **Resolved –**

- (a) The principle of awarding relevant contracts for future waste services to Yorwaste without competitive procurement, where the conditions for the Teckal exemption are satisfied, is agreed, subject to further legal advice being sought prior to formal implementation of the proposals as referred to in paragraph 7.6 of the report.
- (b) Authority is delegated to the Corporate Director (BES) to determine which future waste service contracts are to be awarded to Yorwaste under resolution 129(a).
- (c) That Yorwaste be advised of the Council's intention to award contracts for relevant future waste services to the company without competitive tender and Yorwaste be requested to ensure all future contracts for provision of waste services to third parties entered into by Yorwaste are capable of novation or assignment, as appropriate, to the County Council or City of York Council as advised.
- (d) That the County Council receive through novation from Yorwaste, as soon as is practicable, all relevant and/or necessary contracts for the provision of waste services to third parties, such that, when taken with those contracts novated to City of York

Council (if any) the economic dependence condition applying to the Teckal exemption to competitive procurement can be satisfied

- (e) That, where the conditions of the Teckal exemption are satisfied, the Corporate Director (BES) is authorised to enter into appropriate agreements with third parties for the provision of waste services (where the Council is the service provider and Yorwaste deliver those services to third parties as subcontractor).
- (f) That the Council enter into such other appropriate contracts with Yorwaste to ensure as far as is reasonably possible that all risks, liabilities and obligations of contracts novated to the Council under 129(d) above, or procured on behalf of the Council under 129(e) above are passed down to Yorwaste as subcontractor.

### **130. Approval to Publish Proposals to Create 11-19 School for the Whitby Area**

Considered -

Report of the Corporate Director – Children and Young People’s Services to report on the outcome of public consultation on the reorganisation of Caedmon School and Whitby Community College, to seek approval for the publication of proposals and statutory notices, and to ask the Executive to schedule taking a final decision on the proposal at its meeting on 27 May 2014.

County Councillor Arthur Barker introduced the report which proposed merging two schools in Whitby to create a single secondary school, serving young people aged 11-19. The existing premises, on two separate, but close, sites would be retained. The initial intention had been to merge the three secondary schools in the area, but that had not proved possible, because Eskdale School had decided to seek academy status.

Pete Dwyer, Corporate Director - Children and Young People’s Service, said that the original ambition had been to achieve much more integrated provision in the Whitby area, but the current proposal went some way to achieving that. The proposed change would remove one transition in school life arising from the existence of a middle school structure in Whitby, which officers believed would be beneficial. The proposals had been subject of considerable debate locally, both at schools in the area and at Whitby Town Council and officers continued to aspire to see close working relationships between schools in the area.

County Councillor Gareth Dadd said he was fully supportive of the principle of secondary schools for ages 11-19, but asked what would happen if the Secretary of State refused the application for academy status which had been lodged by Eskdale School and asked what would be the impact on the proposal now before the Executive. In response, Pete Dwyer, Corporate Director - Children and Young People’s Service, said that a response to the academy application was anticipated within the next week or two. The Secretary of State could agree to Eskdale School becoming an academy with an age range of 11 to 16, which the school had applied for; or an academy with an age range of 11 to 14. If the Eskdale School application were refused, it could continue as a freestanding school with an age range of 11 to 16.

**Resolved -**

That proposals and statutory notices be published on 31st March 2014 to expand and change the age range for Whitby Community College and cease to maintain Caedmon School.

That a final decision on these proposals be scheduled for the meeting of the Executive on 27 May 2014.

**131. Appointments to Committees and Other Bodies**

Considered –

A report of the Assistant Chief Executive (Legal and Democratic Services) to enable any appointments to outside bodies, which are to be made by the Executive under the County Council's Constitution, to be considered.

**Resolved –**

No appointments were made.

**132. Forward Work Programme**

The Forward Plan for period 1 March 2014 to 31 March 2015 was presented.

**Resolved –**

The forward work programme is noted.

The meeting concluded at 11.46 am.

SJK/JOD/JR