



## **COUNCIL – 26<sup>TH</sup> JANUARY 2022**

**SUBJECT: UPDATE ON WELSH GOVERNMENT REGULATIONS TO ESTABLISH CORPORATE JOINT COMMITTEES AND RESULTANT CHANGES TO THE CARDIFF CAPITAL REGION JOINT COMMITTEE**

**REPORT BY: CHIEF EXECUTIVE**

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### **1. PURPOSE OF REPORT**

- 1.1 To set out an interim governance and delivery model sufficient to implement the statutory requirements for establishment of the South East Wales Corporate Joint Committee (CJC). To set out the 'twin-track' approach to operating the Cardiff Capital Region (CCR) City Deal alongside the initial 'bare minimum' phase of CJC mobilisation ahead of the SE Wales CJC setting its first statutory budget on 31<sup>st</sup> January 2022.
- 1.2 To appraise Council of the next phases of progress in line with resolving the current barriers to full implementation of an integrated 'lift and shift' approach which seeks to eventually, bring together the CCR City Deal and the CJC into one coherent model of regional economic governance.

### **2. SUMMARY**

- 2.1 The report provides an update to Council on Welsh Government Regulations to establish Corporate Joint Committees and sets out the interim governance and delivery model to implement the statutory requirements for CJC's as set out by Welsh Government.
- 2.2 The report sets out the next phases of progress via the implementation of a "lift and shift" approach which seeks to eventually bring together the CCR City Deal and CJC into one coherent model of regional economic governance.
- 2.3 The detail within the report is in a common format which is being presented to all 10 CCR member Councils through January 2022 with the aim of agreeing the common set of recommendations.

### **3. RECOMMENDATIONS**

It is recommended that Council:

- 3.1 Notes the interim governance and delivery model for implementation of the SE Wales Corporate Joint Committee and the 'twin track' arrangements proposed across operation of CCR City Deal, alongside initial enactment of a 'bare minimum' CJC – and until such time the proposed 'lift and shift' approach can occur.
- 3.2 Notes the requirement for the CJC to set and approve a budget on or before 31 January 2022 and the steps set out in the report to enable this.
- 3.3 Notes the risks and issues set out in the report which require ongoing monitoring, mitigation and management.
- 3.4 Notes the request made by CCR of WG to amend the CJC regulations to change the date on which immediate duties commence under the Regulations from 28 February 2022 to 30 June 2022.
- 3.5 Notes the draft Standing Orders at Appendix 1 which set out the initial requirements and operating model for the CJC as well as initial business for the inaugural meeting on 31 January 2022.
- 3.6 Notes the work ongoing by CCR and its constituent Councils to work with WG, Audit Wales and advisors as appropriate, to help inform resolution of the remaining issues wherever possible.
- 3.7 Supports the Leader of the Council in her duty to consider and set the first budget of the SE Wales CJC on 31 January 2022 in order to ensure the Council is complying with the legislation as required.

### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 The formation of CJC's as provided for in the Local Government and Elections (Wales) Act and will, over time, alter the landscape and governance of some strategic economic well-being, strategic planning and transportation functions currently undertaken by the constituent councils making up the CJC across the South East Wales Region or Welsh Government or another Welsh Government sponsored public body. WG hope they act as the catalyst to the development and implementation of collaborative arrangements across local government, where regional planning and delivery makes sense, using them as a means of maximising outcomes for the people of Wales by maintaining local democratic accountability, reducing complexity and making the best use of resources.
- 4.2 WG has published the regulations to establish the South East Wales CJC and set out, at a macro level, how the CJC would operate. Further detail and discussion will continue between the Welsh Government and 22 Welsh councils to set out clearly, the scope of the functions the CJC's will be responsible for.
- 4.3 In South East Wales, the Cardiff Capital Region Joint Cabinet has sought to be proactive and has agreed to transfer the functions under the City Deal agreement, previously approved by UK Government, Welsh Government and the ten councils in March 2016, to the South East Wales Corporate Joint Committee.

## **5. THE REPORT**

- 5.1 The Welsh Government's SEW Corporate Joint Committee Regulations 2021 establish a Corporate Joint Committee (CJC) for the ten Councils that constitute the Cardiff Capital Region. The legislation came into effect on 1 April 2021 and the first statutory duty of the CJC for SE Wales is to set its budget on or before 31 January 2022. A set of immediate 'commencement duties' requiring the CJC to begin work on preparation of a Strategic Development Plan, a Regional Transport Plan and enactment of economic wellbeing powers were due to be adopted by the SE Wales CJC on 28<sup>th</sup> February 2022.
- 5.2 A significant body of work has been undertaken by CCR and its constituent councils in preparation for enactment of a corporate entity CJC, given this objective has been a matter of long-term collective endeavour. The direction set through successive business plans, has set the course for evolution from a single funding programme – City Deal – to the multiple funding functions and accountabilities of a wider City Region via a CJC. Work to date has scoped the vision, functions and mission to decipher the 'best fit' opportunities; assess the current Joint Cabinet Committee model to appraise benefits, limitations and opportunities; assess options for a new delivery structure via a CJC; and determine optimal processes for implementation.
- 5.3 On inception of CCRCD in March 2016, the mission was to make CCR more investable, competitive and resilient – promoting inclusive growth and the aim of 'no place gets left behind'. It recognised the 'think local, act regional' mandate and the principle, that through working together everyone achieves more. This is particularly pertinent in the case of market facing functions such as the economy, housing, land-use and transport where markets don't respect administrative boundaries and where supply chains, connectivity, clusters and innovation diffusion 'spill over' and straddle geographies.
- 5.4 In this way, the establishment and underpinning ambition of the CCR City Deal has already accomplished shared purpose across all 10 Councils and much of the heavy lifting to translate this into projects and programmes has been done. Trust, strong relationships, and a commitment to place-based priorities has reinforced the profile, partnerships and reputation. The operation of the Investment and Intervention Framework Fund provides an incentive for continued co-operation and collaboration.
- 5.5 Following successful passage through Gateway Review #1, Regional Cabinet has scaled up ambitions through a new 5-year strategic business plan and an Investment Prospectus that sets out asks and offers in the order of £4.2BN investment to deliver 33,500 high skill jobs, £3.75BN leverage and £2.5BN GVA. This is significant because in a new world of Levelling-up, Connecting the Union, the UK as a Science Superpower and a new Programme for Welsh Government – investment will be secured competitively. It follows that CCR must be able to compete to win resources; develop new financial flexibilities and develop propositions to work with Welsh and UK Governments to address challenges of Covid, Climate and low growth-productivity.

### **Core Principles of Regional Economic Governance in the CCR**

- 5.6. Whilst CCRCD has achieved much to date, there are also constraints. CCR City Deal is supported by an Accountable Body delivery structure and as effective as this has been, relies upon complex back-to-back arrangements with constituent Councils and does not afford the benefits of being able to act direct; to have its own balance sheet;

to acquire and hold assets and importantly, to borrow. CCR has thus outgrown its initial structure and operating model and needs to evolve to properly capitalise on investment and opportunities for the region.

5.7 Notwithstanding support for evolution, the CCR City Deal Joint Working Agreement (JWA) – its core values, principles and ways of working – must be maintained. Experience shows that regional collaboration works best when Councils retain absolute control over CCR decision-making, and it follows that any future CJC should follow the principles behind the current JWA. Efficiency of structures streamlined governance and having a future-proofed approach which is capable of providing CCR with optimum flexibility to partake in additional investment programmes beyond the City Deal are therefore key objectives for the CJC. The hard work has already been undertaken since the CJC is not the vision or strategy – it is simply the vehicle or mechanism for optimal delivery of CCR’s vision and strategy. Core principles are thus intended to:

- Retain the principles and ways of working set out in the JWA, emphasising concurrence with local arrangements, building additionality over time and on a case-by-case basis and as required by the CJC
- Establish a strong system of multi-tier governance and distributed leadership, with the CJC setting its own compelling vision and aims and objectives
- Recognise that devolution has many faces and the need to work with both Welsh and UK Governments & ensure CCR has access to all available investments & opportunities
- Reinforce a positive-sum game. The uniqueness of the model of LA democratic legitimacy and localism sits at the heart of CJC which will be controlled and led by LAs.
- Pose no threat to LA services with the assumption that functions, services and resourcing are pulled from the centre not local authorities. No local power, functions, services or resources will be lost or displaced – unless a case is made and supported by LAs (such as Regional Bus) - and LAs will also deal directly with UK Government and Welsh Government and continue to deliver large-scale projects including those of regional, national and international significance and supported by both governments. This will emphasise absolute concurrence and compatibility with local arrangements.
- The CJC is capable of adopting Welsh Government’s policy position and ambitions for a system of regional economic governance – and is equally able to respond in the face of the growing presence of UK Government in Wales. CCR is able to act as a neutral space in the middle, working positively with both bodies to ensure the region is positioned optimally to see challenges and opportunities through the prism of ‘place’ and adopt a sense of enlightened self-interest. With regional investment and ‘localism’ central to developing policy, CCR must deliver for the region, Wales & UK.

## **Making Progress**

5.8 With the above principles in mind, at its meeting of the 20 September 2021, Regional Cabinet approved a report that established the ‘Lift and Shift’ principle (Appendix 2). This meant moving across the CCR City Deal Funding Agreement into the CJC, as the preferred model for CCR’s transition to one integrated model of regional public investment. The report further set out a comprehensive Transition Plan to oversee the process of evolution and a critical path for achieving key milestone dates.

- 5.9 The report described a number of live risks and issues, relating to a series of unresolved matters concerning the implications of CJsCs' financial status for taxation purposes and borrowing and their impacts. It was stated that work would continue to be undertaken with CCR's advisory team and WG to resolve the issues sufficiently in allowing for Lift and Shift model to be implemented in early 2022. A letter was also provided from the WG Minister for Finance and Local Government to reiterate this intent and the report sought to commit to a 'no worse off' principle, on this basis as at the point of transition.
- 5.10 In the intervening period, it has become clear that the risks and issues highlighted will not be resolved sufficiently to support 'lift and shift' of the CCR City Deal into the CJC – and by the date of CJC budget setting on 31 January 2022. This is mainly because the issues that require resolution, namely s.33 (VAT) status, need the approval of bodies such as HMRC and HM Treasury (HMT) and these clearly sit outside the sphere of direct influence and control of WG. In addition, further issues have arisen in respect of Corporation Tax. This is a complex matter not addressed so far in the Regulations; and could have significant implications to the CCR operating model unless similarly addressed through an application to HMT for relevant dispensations. Work is underway on addressing this, with CCR supporting WG's business case application to HMRC for the relevant dispensations.
- 5.11 In other words, there remain a number of substantially unresolved matters, that unless addressed and resolved prior to full 'lift and shift' implementation and are understood and mitigated against ahead of 'bare minimum' implementation – could have a significant impact. On the latter point, even basic activities under a 'bare minimum' CJC may still incur a level of irrecoverable VAT and as such an initial scaled back approach which reduces such a potential risk is proposed.
- 5.12 The impacts of all these issues are not standalone and consideration will need to be given to the matter of seeking UKG support regarding the timing and transfer of the existing CCRCD Funding Agreement to the CJC. In addition, it must be understood that these are complex and inter-connected issues and there are no 100% guarantees of success. Wider financial status issues are bound up within making the case for s33 status and in essence, the need to demonstrate the intent and effect of the CJC legislation, which is for them to be 'creatures of LAs' and 'part of the LG family'.
- 5.13 CCR has made representations to WG on these issues, including seeking a re-setting of the statutory budget timeframe. WG has advised that this is not possible due to timescales and the need to carry out statutory consultation on any proposed changes. However, the issues raised are recognised and understood and implementation on the basis of a pragmatic and proportionate provisional approach is supported. Additionally, legal advice has been taken on the risks and challenges posed to CCR of 'doing nothing' and it is clear that CCR's constituent Councils must be minimally compliant at this stage.
- 5.14 The 'bare bones' implementation of the CJC legislation will therefore need to be 'twin-tracked' with continuation of the current Joint Committee/Accountable Body-led model for delivering the CCR City Deal for the time being. This dual approach is unavoidable and will provide business continuity for City Deal delivery.
- 5.15 WG has also set out that the date of commencement of immediate duties around preparation of the Regional Transport Plan, Strategic Development Plan and economic wellbeing powers, can be changed from the original date set for SE Wales of 28 February 2022 to 30 June 2022 – thus, falling in line with other CJC regions.

This report recommends that this later date is accepted in order to better align with the proposed bare minimum approach.

- 5.16 Further background information pertinent to this is set out in the Report to Regional Cabinet of 13 December 2021 (appendix 3).

### **Next Stages**

- 5.17 Whilst the above issues are complex and require the re-doubling of efforts across WG with support from CCR and its technical and legal advisory team and its constituent LAs, it is recognised that where progress can be made, then it should be made.
- 5.18 The 'bare minimum' model proposed in this report, thus offers a pragmatic way of enabling the ten member Councils of CCR, to begin implementing the CJC requirements and adopting statutory duties – whilst at the same time – supporting WG to progress the resolution of issues, which are preventing a transition to Lift and Shift at this time.
- 5.19 This means putting in place a series of steps that will define the critical path between now and 31 January 2022 (the date by which the CJC must approve its budget), in order to ensure compliance with the legislation, but in ways which protects CCR's ten constituent Councils' short and long-term position and wherever possible, safeguards against any detriment.
- 5.20 On the basis of external advice and technical support, the proposed 'bare minimum' model will enable CCR to demonstrate it has commenced transition, ensuring compliance with the legislation and regulations. It is essentially creating the outline of the CJC as an absolute statutory minimum and as an interim holding position only. It will include:
- Setting minimal nominal budgets and the amounts payable by each constituent local authority for the operation of the CJC no later than 31 January 2022;
  - Agreeing with the Auditor General for Wales the CJC audit scope and fee, which is proportionate and reflects the CJC's bare minimum operations;
  - Adopting model Standing Orders and any basic supplements – i.e. scheme of delegations (draft attached at Appendix 1);
  - Arrangements to place any staff at disposal of CJC – again this will be on the basis of proportionality;
  - Establish statutory sub-committees e.g. Audit and Governance Committee etc.;
  - Appoint Chair/ Vice Chair/s – which can mirror existing CCR arrangements; and,
  - Establish practical arrangements in respect of the CJC's basic infrastructure as a separate legal entity – accounting & reporting requirements, bank account, VAT registration, minimum insurances, proportionate records scheme etc.
- 5.21 The bare minimum model will operate on the expectation that the absolute minimal operational activity required will be undertaken. Therefore, any extraneous activity such as production of a business plan; meetings of the CJC beyond initial budget setting/ 'establishment'; meetings of the Audit and Governance Committee; and staffing arrangements beyond those linked to the above – is unlikely to take place.

- 5.22 In order to provide a level of certainty to all CJC stakeholders and constituent councils, the bare minimum model, will be predicated on being in place until the 31 March 2023. However, should the issues be resolved sooner, there is provision for the budget requirement to be re-visited in-year and as 'lift and shift' becomes do-able and is supported through the relevant financial status issues being resolved. This means that for the initial operating period - a nominal budget is set – with the clear expectation of minimal expenditure against it. This is an important principle. If even low-level expenditure can be justified, the advice is there is a strong case to avoid incurring such expenditure if it can be demonstrated that it would “prejudice the CJC’s position or suffer any detriment”.
- 5.23 Therefore, whilst a provisional budget can be set, and actions taken to set-up and ‘ready’ the CJC – it does not follow that enactment beyond this is necessary – at least until such time the CJC is ready to be operable and lift and shift can occur. The timeframe outlined above will be kept under constant review throughout the year as the outstanding matters are progressed and future reports will be brought back to Cabinet/ Council as required.
- 5.24 The CJC will be required to comply with all necessary regulations and legal requirements. The principle of ‘proportionality’ will be adopted in assessing bare minimum compliance, along with the requirement to minimise any adverse budgetary impacts. It should be noted that the two duties to begin preparation of both a Regional Transport Plan and Strategic Development Plan will commence in 2022/23. As per paragraph 17 above, it is now proposed this date is re-set as 30 June 2022 and this has been communicated with Welsh Government. Whilst there are no immediate actions required in relation to the commencement duties, some progress will need to be demonstrated from July 2022 and plans for such will be presented to the CJC during the year.
- 5.25 This pragmatic, proportionate and reasonable approach will require key stakeholders to adopt a shared endeavour approach. As a result, consultation and engagement is ongoing with Audit Wales and Welsh Government.
- 5.26 It is envisaged that once a timescale is known to enable the recommencement of ‘lift and shift’, the original Transition Plan and arrangement set out in the report of 20 September 2021 can be re-activated.
- 5.27 It should also be noted that in setting this process in plan, the clear milestone to work towards is budget setting for the CJC on or before 31 January 2022. Approval of the budget requires unanimous support of CJC constituent councils. Brecon Beacons National Park Authority will feature as part of this in relation to the estimated budget for preparing an SDP and as such, ongoing communication and engagement is taking place.
- 5.28 Whilst work led by WG on behalf of all regions/ constituent CJCs in Wales, is underway with HMRC and HM Treasury on the outstanding issues named in this report, there are further updates to note. The SE Wales CJC is not a ‘levying body’ with an expectation that ‘Connected Body’ status can be secured to enable access to the LG Pension Scheme. In relation to access to Public Works Loan Board borrowing, at the relevant future point, WG has had initial positive discussions with HMT that suggest borrowing capability through this medium, can be considered and potentially, developed.

- 5.29 Work continues to be put in place regarding arrangements for interim accounting systems, processes and relevant systems infrastructure for the CJC. This is being carried out in partnership with RCT Council, which will be providing basic 'transactional services' for the initial period of 'bare minimum' CJC operation. CCR City Deal will continue to be supported by the 'Lead Council/ Accountable Body' mechanism. This reflects the arrangements underpinning the twin-tracking approach which will be needed, at least initially and until the remaining issues are resolved.

## **Risks and Issues**

- 5.30 There are several risks related to the proposed approach. However, if the bare minimum model principles set out above are adopted and risks continually mitigated against by the detailed technical work that is ongoing and continued liaison with WG and Audit Wales, it is suggested that these can be kept in check, monitored and managed. This means that Value for Money issues can be responded to in as much, that the CJC keeps expenditure to the bare minimum during this interim period and on the basis of no significant detriment to its short or long-term operating model.
- 5.31 Other risks concern the resources now needed to implement 'bare minimum' with the aim being to meet these nominal costs from existing resources, albeit there will be some effect given efforts that will need to now be fully channelled to getting work done in an ever-decreasing timeframe. Timeframes present a further risk in that at this time, there is no clear point at which lift and shift occurring can be accurately estimated – however, this could be clarified via WG shortly. Arguably, the bigger issue is guaranteeing successful outcomes – although it is anticipated a strong case will be made to both HMRC and HMT and it remains the strong intent, and wider effect, of the WG legislation for CJs to be part of the LG landscape and treated as if a Local Authority.
- 5.32 It should also be noted that the identification of risks to date, has arisen through work 'on the job'. Further risks that only become apparent through the process of application and implementation cannot be ruled out.
- 5.33 Potential risks around potential for double taxation at the point of lift and shift are unpreventable, with work needed ongoing to develop the conversations, flexibilities where they exist and pragmatism to deal with such eventualities. The possibility of fragmented legacy accounts also requires analysis and conclusions to be presented at the relevant time.

## **6. ASSUMPTIONS**

- 6.1 All assumptions have been incorporated into the body of the report.

## **7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 An integrated Impact Assessment has not been undertaken, however, in developing the plan for the CJC and considering its endorsement, regard should be had to:
- The Welsh Language (Wales) Measure 2011 and the Welsh Language Standards;
  - Public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2)

advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are a. Age; b. Gender reassignment; c. Sex; d. Race – including ethnic or national origin, colour or nationality; e. Disability; f. Pregnancy and maternity; g. Marriage and civil partnership; h. Sexual orientation; i. Religion or belief – including lack of belief, and.

- The Well Being of Future Generations (Wales) Act 2015. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') is about improving the social, economic, environmental and cultural well-being of Wales. The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language and is globally responsible. In discharging their respective duties under the Act, each public body listed in the Act (which includes the Councils comprising the CCRCD) must set and published wellbeing objectives. These objectives will show how each public body will work to achieve the vision for Wales set out in the national wellbeing goals. When exercising its functions, the Regional Cabinet should consider how the proposed decision will contribute towards meeting the wellbeing objectives set by each Council and in so doing achieve the national wellbeing goals. The wellbeing duty also requires the Councils to act in accordance with a 'sustainable development principle'. This principle requires the Councils to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Regional Cabinet must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, Regional Cabinet must:
  - look to the long term.
  - focus on prevention by understanding the root causes of problems.
  - deliver an integrated approach to achieving the 7 national well-being goals.
  - work in collaboration with others to find shared sustainable solutions.
  - involve people from all sections of the community in the decisions which affect them.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 CJC's will ultimately be funded by their constituent councils. The interim position in relation to the setting of the first CJC nominal budget by 31<sup>ST</sup> January 2022, standing orders and audit arrangements are set out in paragraphs 5.20, 5.22 and 5.23 above.
- 8.2 It is worth noting that the criteria arrangements will be incorporated into the current financial contributions made by the constituent councils.

## **9. PERSONNEL IMPLICATIONS**

- 9.1 The CJC will ultimately have the flexibility to agree the staffing and resourcing required and to determine the approach it takes to such matters.
- 9.2 As set out in paragraph 5.20 above the current position in the creation of the outline of the CJC as an absolute statutory minimum and as an interim holding position it will include making arrangements to place any staff at the disposal of the CJC on the basis of proportionality.

## **10. CONSULTATIONS**

- 10.1 The subject matter contained within this report was the subject of an all members seminar held on 27<sup>th</sup> September 2021.
- 10.2 Any responses from the consultees listed below have been included within the report.

## **11. STATUTORY POWER**

- 11.1 Local Government and Elections (Wales) Act 2021.

Author: Christina Harray, Chief Executive

Consultees: Councillor Philippa Marsden (Leader of Council)  
Councillor James Pritchard (Deputy Leader and Cabinet Member for Infrastructure and Property)  
Councillor Eluned Stenner (Cabinet Member Performance, Economy and Enterprise)  
Councillor A. Whitcombe (Cabinet Member Sustainability, Planning and Fleet)  
Dave Street (Corporate Director Social Services & Housing)  
Mark S Williams (Corporate Director Economy and Environment)  
Robert Tranter (Head of Legal Services and Section 151 Officer)  
Steve Harris (Head of Financial Services & S151 Officer)  
Lynne Donovan (Head of People Services)  
Dave Street (Corporate Director Social Services and Housing)  
Richard Edmunds (Corporate Director Education and Corporate Services)  
Marcus Lloyd, Head of Infrastructure  
Rhian Kyte, Head of Regeneration and Planning

## **Appendices**

- Appendix 1 Draft CJC Standing Orders
- Appendix 2 Report to Regional Cabinet – Establishment of CJC Preferred Governance and Delivery Option & Transition Model – 20 September 2021
- Appendix 3 Report to Regional Cabinet – Reframing Approach to SE Wales CJC – 13 December 2021