



## Report of the Leader

Cabinet – 16 December 2021

### South West Wales Corporate Joint Committees Update

<b>Purpose:</b>	To update members on the implementation of the South West Wales Corporate Joint Committee pursuant to the Local Government and Elections (Wales) Act 2021 and to seek approval from members where applicable for the City and County of Swansea Council's ("the Council") involvement.
<b>Policy Framework:</b>	The South West Wales Corporate Joint Committee Regulations 2021.
<b>Consultation:</b>	Legal, Finance & Access to Services
<b>Recommendation(s):</b>	It is recommended that Cabinet:  1) Note the current work streams associated with the South West Wales Corporate Joint Committee and the work currently being undertaken by officers to facilitate such work;  2) Note the allocation of operational responsibilities and the proposals set out in paragraph 3.2 of this report;  3) Note how it is proposed that the South West Wales Corporate Joint Committee and the various subcommittees are proposed to be established;  4) Note the proposals for the elected members so referenced at paragraphs 4.4 and 4.5 of this report to sit on the said Corporate Joint Committee and sub-committees.  5) Delegates authority to the Chief Executive in consultation with the Leader to agree any documents necessary to implement the requirements of this report.
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## 1. Background

- 1.1 The Local Government and Elections (Wales) Act 2021 (“the LGE Act”) created the framework for a consistent mechanism for regional collaboration between local government, namely Corporate Joint Committees (CJsCs). The LGE Act provides for the establishment of CJsCs through Regulations (CJC Establishment Regulations).
- 1.2 The CJC will exercise functions relating to strategic development planning and regional transport planning. They will also be able to do things to promote the economic well-being of their areas. In contrast to other joint committee arrangements, CJsCs are separate corporate bodies which can employ staff, hold assets and budgets, and undertake functions. The South West Wales CJC will comprise Carmarthenshire County Council, the City and County of Swansea Council, Pembrokeshire County Council and Neath Port Talbot County Borough Council (“the Constituent Councils”). In respect of some functions, both Pembrokeshire National Park and Brecon Beacons National Park will also be members (as set out below).
- 1.3 On the 20<sup>th</sup> May 2021, a report was presented to Cabinet providing an update to members on the implementation of CJsCs, where it was agreed that:
  - (a) *delegated authority be granted to the Chief Executive (in consultation with the Leader) to agree an application for grant funding to be made to Welsh Government for funding to establish the South West Wales CJC and to accept any grant offer that maybe made by Welsh Government (whether made to this Council or to a participating authority in the South West Wales CJC);*
  - (b) *delegated authority be granted to the Chief Executive to enter into dialogue with authorities who will comprise the South West Wales CJC to develop proposals for establishing the South West Wales CJC; and*
  - (c) *a report be brought back to members once dialogue has been completed for the South West Wales CJC*
- 1.4 Since the Cabinet meeting officers have been liaising with our neighbouring authorities and have convened a group comprising Chief Executives, Directors of Environment, Finance Directors (S151 Officers) and Monitoring Officers that meets on a fortnightly basis to progress these discussions. Each of these groups have also established working groups in order to progress various matters.
- 1.5 As a result of these discussions, officers are now in a position to present a report to members to highlight ways in which the CJC may be constituted in order to meet legislative requirements. Members will note that the CJC has already been established by legislation. The purpose of this report is to set out the current proposed arrangements.

## **2. Remit of the CJC**

- 2.1 The CJC has prescribed functions related to the preparation of the Regional Transport Plan, Strategic Development Plan and the exercise of Economic Wellbeing powers. These are set out specifically as follows:
- (a) Economic well-being (section 76 of the Local Government and Elections (Wales) Act 2021)
  - (b) Transport policies (section 108(1)(a) and (2A)(a) of Part 2 of the Transport Act 2000)
  - (c) Strategic development plan (Part 6 of the Planning and Compulsory Purchase Act 2004)
- 2.2 It should be noted that the underlying policy intent in the development of the legislation which underpins the CJC is that a CJC should be treated as a member of the 'local government family' and, where appropriate, should largely be subject to the same powers and duties as local authorities in the way that they operate. Work continues to co-develop the legislative framework including through the recent consultation on the draft Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2021. CJCs, as public bodies undertaking public functions, are subject to the necessary public body duties that already exist in legislation. This includes the Sustainable Development and Well-being Duty under the Well-being of Future Generations (Wales) Act 2015 ("the WFG Act") and the duty to prepare and publish a strategy for contributing to the eradication of child poverty in Wales under the Children and Families (Wales) Measure 2010 ("the 2010 Measure").

## **3. CJC Operational Responsibilities**

- 3.1 CJCs will also be required to appoint a number of statutory "executive officers" similar to the roles within principal councils (e.g. Chief Executive, Chief Finance Officer and Monitoring Officer). The intention is for CJCs to be able to directly employ, commission services or have relevant staff loaned from a constituent council to fulfil these roles as the CJC may determine. It is also intended that all executive roles within a CJC will be afforded the same statutory protection and indemnity as statutory officers within principal councils. The provisions in law relating to staffing which apply to principal councils will also apply to CJCs. These include TUPE and staff transfers and Trade Union relations. The CJC Establishment regulations require the CJC to have standing orders relating to employment (e.g. procedures to be determined by the CJC relating to the appointment/dismissal of officers and disciplinary action). Staff employed by the CJC are to be appointed on the same or similar terms and conditions (including remuneration) as officers appointed to one of the constituent councils undertaking substantially similar or the same responsibilities.

- 3.2 In light of the CJC's duty to appoint a number of statutory officers and to perform certain functions set out in regulations, as advised by Chief Executives, Leaders are minded to apportion responsibilities initially on the basis set out below:

<b>Function of the CJC</b>	<b>Constituent Authority</b>
Chief Executive	TBC
S151 (Chief Finance Officer)	Carmarthenshire
Monitoring Officer	Neath Port Talbot
Democratic Services function	Neath Port Talbot
Scrutiny Services function	Neath Port Talbot
Governance and Audit function	Pembrokeshire
Human Resources function	Neath Port Talbot
ICT and Data Protection function	Neath Port Talbot
Communications function	Swansea

- 3.3 An agreement will be entered into between the CJC and the authorities for the Constituent Council staff to be made available to the CJC and they will be acting as if CJC staff when carrying out functions for the CJC. The members of staff that are affected will be consulted to seek their agreement to the additional obligations.
- 3.4 Where a conflict of interest arises from any matter being dealt with by the CJC and the Council, the Monitoring Officer will be required to advise the CJC with the Deputy Monitoring Officer advising the Council.
- 3.5 The staff made available to the CJC will be provided at cost, as more particularly described in the Financial Impacts below.
- 3.6 The support services provided will be on an ad-hoc basis as and when support is required, and will be carried out by staff within their normal contracted hours, and Chief Executives of respective authorities will keep such matters under review to address workload pressures. There will need to be consideration as to whether additional remuneration is appropriate. In some instances there will be a need to increase capacity to cater for the additional workload.
- 3.7 The decision regarding appointment of the above staff to the positions within the CJC will be for the CJC to make. Members are asked therefore to note the specific roles for officers. Separate reports will be brought to members in due course to consider any officer indemnities that will be required in this regard.

#### **4. The Governance of the CJC**

- 4.1 In order to meet its legislative obligations identified above, the CJC will have decision making processes. These are prescribed in the legislation.

- 4.2 The members of the CJC are:
- (a) the executive leaders of
    - a. The City and County of Swansea
    - b. Carmarthenshire County Council
    - c. Neath Port Talbot County Borough Council
    - d. Pembrokeshire County Council
  - (b) A member of the Brecon Beacons National Park Authority , and
  - (c) A member of the Pembrokeshire Coast National Park Authority
- 4.3 The CJC members are entitled to vote in relation to any matter to be decided by the CJC, except that the Brecon Beacons National Park and Pembrokeshire Coast National Park Authority (together the “NPAs”) members may only vote where the matter to be decided is about strategic planning functions, unless the council members of the CJC choose, with the agreement of both the NPAs, to extend the NPA membership of the CJC to include other functions. At this stage, Leaders do not propose that voting rights be extended to the NPA’s in respect of other areas.
- 4.4 In order to implement the legislative requirements, it will be proposed that the CJC will have four sub committees, with the chair of each sub-committee being drawn from the Constituent Councils and shared between the four authorities. It is currently proposed that the following sub-committees be established, although the decisions as to establishing a sub-committee and membership is for the CJC itself to take:

<b>Sub Committee</b>	<b>Lead Chief Executive</b>	<b>Political Lead</b>
Regional Transport Planning	Swansea	Neath Port Talbot
Economic Well Being – regional economic development	Carmarthenshire	Swansea
Strategic Development Planning	Pembrokeshire	Carmarthen
Economic Well Being- regional energy strategy	Neath Port Talbot	Pembrokeshire

- 4.5 It is proposed that the representatives appointed to each Sub Committee shall be comprised of the Cabinet members of the four Constituent Councils in whose portfolio the work sits. The Sub-Committee then being chaired by the Leader and supported by a chief executive from the authorities mentioned above.
- 4.6 It is also proposed that a Programme Board be established (a decision ultimately for the CJC), made up of officers to support the Chief Executive and members of the CJC. This Programme Board will be the means by which collaboration across the Constituent authorities will take place, informing and supporting the Chief Executive and the CJC and implementing the resultant decisions. It will be chaired by the Chief Executive and will as a minimum comprise Regional Directors of

Environment and Regeneration and shall have responsibility for the strategic coordination and direction, authorisation and approval of programmes, projects and initiatives, high level budget management and progress review. Various sub groups of officers will then be established to deliver the operational requirements, with groups set up in respect of Transport, Planning/land use, Economic Wellbeing and Energy.

- 4.7 It should be noted that no member of a CJC shall be entitled to any additional remuneration as a result of membership of the CJC but any expenses incurred in attendance or participation shall be met by Constituent Councils or other authorities of which they are a member.

## **5. Co-Option**

- 5.1 The CJC Establishment Regulations provide for the appointment by CJC members of other persons as members of a sub-committee of the CJC and to participate in other activities of the CJC. The reasons as to why a CJC may co-opt a particular participant are broad and include considerations such as to strengthen the breadth of experience and skills available to the CJC, to enable local input or to provide for local representation and/or to provide specialist expertise on specific issues.
- 5.2 Guidance from Welsh Government states that co-optees may be drawn from a variety of different backgrounds and sectors based on the relevant skills and experience required, for example Further and Higher Education Institutions, Third sector representatives, Business or Sector specific organisations or private individuals with expertise that may be useful to the CJC, for example to give evidence or provide advice. It is expected that CJCs would work under the same social partnership approach that exists between trade unions and principal councils. CJCs should consider how they involve trade unions in their work and in the decisions they make. This involvement may be through formal co-option of trade unions or co-option of a trade union representative on to the CJC and / or one or more of its sub-committees (if it elects to have sub-committees) or through less formal arrangements.
- 5.3 Early discussions have already taken place within the constituent councils with regard to the involvement of other potential co-opted members within the CJC, including representatives from the Health Boards, Higher Education colleagues and representatives of the private sector. It is considered desirable to reflect the principles underpinning what is working well within the City Deal into the CJC arrangements. For members to be aware, a co-opted member is someone who has been appointed to the CJC or its sub-committee and may or may not have voting rights. However, there is also the possibility for advisers, which have no formal status but are merely there to provide advice to the members of the CJC. For example, Health Board Partners will be co-optees with an advisory role.

- 5.4 The Joint Working Agreement for the Swansea Bay City Deal required the establishment of an Economic Strategy Board (ESB), membership of which had to be agreed by both the UK and Welsh Governments. The Terms of Reference for the ESB state that ‘members shall be appointed through an open recruitment and nomination process’. It is considered that the complexity involved in integrating the City Deal and Corporate Joint Committee requirements immediately represents unacceptable risks that the City Deal Programme would be disrupted – just at a point where most of the workstreams have received governmental approval and are moving into delivery. The City Deal and CJC governance structures are very different and it is considered that alignment is an appropriate approach in the first instance. In terms of the arrangements for private sector input to the CJC, it is proposed to invite those participating in the City Deal ESB to form the core of the private sector advisory board for the CJC. However, the membership will need to be expanded to ensure that it is reflective of the considerably broader scope of work associated with the CJC. It is not thought appropriate to involve the private sector advisory board in the development of the strategic development plan because of conflict of interest considerations. The intention is that this board will support the CJC in an advisory capacity only, to support the growth aspirations of the region and to ensure we remain competitive and have access to all available sources of funding.
- 5.5 Private sector representatives would not sit within the sub committees established but will instead advise the Programme Board. As stated above, private sector representatives may either be co-opted to the CJC or alternatively to act as independent advisors to the CJC. Previous discussions have concluded that private sector involvement should be in an advisory capacity. Whilst the officer groups will remain distinct from the private sector representatives, there remains a need to ensure that private sector representatives cover all topic areas covered by the CJC.

## **6. Governance and Audit Functions**

- 6.1 The CJC is required to establish a sub-committee to be known as the Governance and Audit Sub-Committee.
- 6.2 The terms of reference of the sub-committee are stated in the CJC Establishment Regulations as:
- (a) review and scrutinise the CJC’s financial affairs;
  - (b) make reports and recommendations in relation to the CJC’s financial affairs;
  - (c) review and assess the risk management, internal control and corporate governance arrangements of the CJC;
  - (d) make reports and recommendations to the CJC on the adequacy and effectiveness of those arrangements;
  - (e) oversee the CJC’s internal and external audit arrangements;
  - (f) review any financial statements prepared by the CJC;
  - (g) exercise such other functions as the CJC may specify.

- 6.3 The CJC Establishment Regulations state that membership of the Governance and Audit Sub-Committee is at least one lay member and at least 2/3rds membership from the Constituent Councils. However this will be subject to change under the LGE Act next year. The Governance and Audit Sub-Committee may not exercise its functions if the membership of the sub-committee contravenes the membership as set out above and therefore the lay member(s) will need to be in place in order to meet as a sub-committee. The draft Guidance provides that it is anticipated that the sub-committee will be required to meet once in every calendar year as a minimum.
- 6.4 The chair of the governance and audit sub-committee must be a lay member.
- 6.5 Accordingly, it is proposed that a Governance and Audit Sub-Committee is established by the CJC comprising of Lay Member(s) to be drawn from constituent Councils Governance and Audit Committees (or externally advertised if this is not possible) and members from each Constituent Council. This will ensure that the Governance and Audit Committee complies with proposed changes to the Local Government (Wales) Measure 2011 to have at least one third lay members. The appointment(s) will be made by the CJC.
- 6.6 A report will be presented to Full Council seeking authority to nominate the Swansea Council Representative(s) to the Governance and Audit Sub-Committee in due course.

## **7. Standards/Ethical Framework**

- 7.1 It will be important that members and co-opted members within a CJC are subject to the same standards of conduct as members of constituent councils. On application of the ethical framework a CJC will be able to adopt its own code of conduct for members. Until this point its members (including co-opted participants from constituent councils) will be subject to the relevant code of conduct of their local authorities. During this time members and co-opted participants from local authorities will be required to register any personal interests they have in the business of the CJC in their relevant principal council's register of interests by providing written notification to their council's Monitoring Officer.
- 7.2 Work is ongoing to finalise the arrangements in terms of constituting a Standards regime for the CJC.

## **8. Scrutiny**

- 8.1 Working with its Constituent Councils the CJC will be required to put in place appropriate overview and scrutiny arrangements. Draft Welsh Government Guidance states that it is expected that the scrutiny arrangements will be proportionate to the scale of the functions the CJC



undertakes.

- 8.2 Scrutiny will be an important part of the democratic accountability of the CJC. It will be important for CJCs to consult on and agree the arrangements with their constituent councils. Welsh Government are currently consulting on requiring a CJC to make arrangements for one or more of its constituent councils to scrutinize the work of the CJC as part of the consultation on the CJC (General)(Wales) Regulations 2022.
- 8.3 In considering the most effective and efficient approach to scrutiny, Constituent Councils and CJCs should give thought to the benefits of a joint overview and scrutiny committee made up of the constituent councils. The clear aim and ambition however must be to create, facilitate and encourage a clear democratic link back to the constituent councils.
- 8.4 CJC members and staff will have a duty to provide information to the scrutiny committee; attend committee meetings if requested to do so; and consider or respond to any report or recommendations made by a committee within the agreed arrangements and which relate to the CJC.
- 8.5 Accordingly it is proposed that a CJC Scrutiny Committee comprising three elected members from each Constituent Council be established to fulfil the Overview and Scrutiny Functions associated with CJCs. A future report will be taken to Full Council to nominate the Swansea elected members to the CJC Overview and Scrutiny Committee.
- 8.6 It will be important that there is no overlap in scrutiny but ultimately members of Swansea Council Scrutiny will still be able to scrutinise the impact of the CJC on the Swansea locality.

## **9. Constitution**

- 9.1 The CJC is required to meet by the end of January 2022 in order to establish its budget for the 2022/2023 financial year.
- 9.2 At this first meeting, the Constitution for the CJC will require approval, which in essence sets out the overarching structure of the CJC and its various sub-committees so that key decisions can be made.
- 9.3 The purpose of the Constitution is to:
  - (a) enable the CJC to provide clear leadership to the community in partnership with citizens, businesses and other organisations, including its constituent councils and public bodies;
  - (b) support the active involvement of citizens in the process of CJC decision-making;
  - (c) provide a framework for good governance;

- (d) enable decisions to be taken efficiently and effectively;
- (e) create a powerful and effective means of holding decision-makers to public account;
- (f) ensure that no one will review or scrutinise a decision in which they were directly involved;
- (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (h) provide a means of improving the delivery of service to the community.

9.4 A draft constitution for the CJC is currently being worked on by legal officers.

## 10. Integrated Assessment Implications

10.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- **Eliminate** unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage
- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

10.1.1 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

10.1.2 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

10.1.3 An IIA Screening Form has been completed with the agreed outcome that a full IIA report was not required as the setting up of the CJC is underpinned by legislation and that this report is to establish governance arrangements in accordance with legislation.

## **11. Financial Implications**

11.1 Regulations do not prescribe any formula basis for funding of CJCs. It will be for each CJC to decide how the budget requirement will be met by the constituent principal councils (and the National Park Authority in the case of the strategic planning functions). In the absence of unanimous agreement on the amount payable, the regulations provide for the amounts payable by the Constituent Councils and National Park member(s) to be directed by Welsh Ministers.

11.2 CJCs will be the accountable body for the funding provided by constituent councils and/or directly received from any other funding streams. CJCs will also be able to pay towards expenditure incurred or to be incurred in relation to carrying out their functions as they may determine, and to charge fees relating their specified functions. The Establishment Regulations also enable CJCs to provide assistance by way of grant or contributions to support functions exercisable by them. The funding from constituent principal councils will be held and managed by CJCs and it is expected that they will be required to manage the funds under the same financial management arrangements as local government bodies in Wales.

11.3 The CJC has an unlimited levy power meaning the financial contributions from respective Councils must be set by 14<sup>th</sup> February 2022. However, practically this contribution should be set no later than 31<sup>st</sup> January 2022, with an indicative figure split being considered by the end of December 2021.

11.4 Future costs including the formal levy from the CJC will be built into the budget setting round for 2022-2023.

## **12. Legal Implications**

12.1 Part 5 of the LGE Act provides for the establishment, through regulations, of CJCs and compliance will be had with this and other legislative obligations in the establishment of CJCs. In particular the South West Wales Corporate Joint Committee Regulations came into force on 1<sup>st</sup> April 2021 and set out an initial framework, to include for example, that the CJC should be established and the timeframes for the discharging of specific functions. However, a series of further Regulations are being drafted and consulted on by Welsh Government. The Welsh Government has concluded its consultation on the Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021 which are now in force. The Welsh Government is also currently consulting on draft statutory guidance. A third

stage of Regulations will put in place further legislation for the operation of the CJs and its functions, which Welsh Government are currently consulting on. A fourth stage will put in place any remaining provisions which a CJ might need.

**Background Papers:**

Cabinet Report – 20 May 2021 -

<https://democracy.swansea.gov.uk/documents/s72815/13%20Joint%20working%20report.pdf?LLL=0>

**Appendices:**

None