



SPECIAL COUNCIL – 14TH OCTOBER 2021

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

REPORT BY: DIRECTOR OF CARDIFF CAPITAL REGION CITY DEAL

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1. PURPOSE OF REPORT

- 1.1 The purpose of the report is to:
- (i) Update Members on the introduction of Corporate Joint Committees (CJCs) as provided for in the Local Government and Elections (Wales) Act 2021;
 - (ii) Consider the South East Wales Corporate Joint Committee Regulations 2021 that came into force on 1 April 2021, in respect of the establishment and operation of CJCs, with the economic well-being, transportation and strategic planning functions coming into being on 28th February 2022; and
 - (iii) Consider the Cardiff Capital Region Joint Committee Cabinet Report that sets out how the functions of the current Joint Committee will be transferred to the South East Wales Corporate Joint Committee on 1st March 2022.
 - (iv) Note the recommendations of such and the next steps in respect of implementing the CJC and new arrangements that will be reported to Council for further information and where relevant, approval, in the coming months

2. SUMMARY

- 2.1 The report will provide an update on Welsh Government Regulations to establish Corporate Joint Committee and resultant changes to the Cardiff Capital Region Joint Committee.

3. RECOMMENDATIONS

It is recommended that Members:

- 3.1 Note the new regulations that have established the South East Wales CJC and the future development of the following functions across the region from 1 March 2022;

(1) economic well-being, (2) strategic development planning, and (3) developing transport policies;

- 3.2 Note the decision of the Cardiff Capital Region Joint Committee on 20th December 2021 to transfer its existing functions, which are principally in respect of the City Deal agreement as committed to by the ten South East Wales councils in March 2016, to the South East Wales Corporate Joint Committee on 28th February 2022. The transfer of the City Deal from the existing Joint Committee to the new Corporate Joint Committee, enables the smooth transition of the City Deal functions, which include existing regional economic well-being and transportation functions.
- 3.3 Request that additional updates are provided to Cabinet as further detail is provided by Welsh Government into the powers and responsibilities of the South East Wales Corporate Joint Committee and the potential devolution of powers and functions from Welsh Government to the Corporate Joint Committee.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 The formation of CJC's as provided for in the Local Government and Elections (Wales) Act 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 Committee 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 on 28th February 2022, the date when the economic well-being, strategic planning and transportation functions come into being for the new CJC.

5. THE REPORT

- 5.1 The Local Government and Elections Act introduced into the Senedd in November 2019 included (in Part 5) provisions to create via regulations a vehicle for consistent regional collaboration between principal councils - CJC's. WG's aim is to ensure there are consistent, resilient and accountable regional arrangements for the delivery of three important functions (i) strategic land use planning (ii) strategic transport planning and (iii) economic development. This approach is seen as all the more important given the COVID 19 pandemic as ways are found to help Wales recover.
- 5.2 Welsh Government (WG) maintain that the model of CJC's builds on the best that has already been achieved in the development of regional arrangements in different parts

of Wales. In South East Wales, the Cardiff Capital City Joint Committee Cabinet which has led on the City Deal is an excellent example where the councils achieve significantly more than they would individually by collaborating and undertaking economic and well-being and transport functions that no individual council had the capacity or the capability to undertake.

- 5.3 Over the autumn and early winter of 2020, Welsh Government consulted local government and others on the specific functions of a CJC, how it will be governed, its legal status as a corporate body, whether it can employ staff and financial powers. This information was used to develop the South East Wales Corporate Joint Committee regulations, approved on 17th March 2021.
- 5.4 WG believe that by establishing CJCs through regulations it will provide more coherence and less complexity in the approach to regional governance arrangements in exercising the three functions proposed. Their aim is to reduce complexity and duplication of effort and resource. 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.
- 5.5 In the last 4.5 years since its inception, the CCR City Deal has delivered a range of high value programmes and initiatives across the region, totalling some £198M of investments. The investment strategy has been predicated on meeting local basic needs – provision of sustainable transport schemes, roll-out of ULEV infrastructure, closing viability gaps on industrial sites for housing, support for skills and strategic development sites – alongside a range of more targeted market driven investments around the innovation economy and growing vital R&D intensity. Key principles have been developed to leverage investment made, through an investment framework that has prioritised private sector leverage and the high-skill nature of jobs created. To date, projected leverage is in the region of £2.5BN with a target of 6,900 jobs. Outwardly, competitiveness has grown with two Strength in Places awards made within a two year period from UK Research and Innovation spanning the Compound Semiconductor and Creative Industries priority sectors and nearly £100M of new direct investment.
- 5.6 In terms of the forward pipeline, there are c£150M of potential programmes in development, potentially straddling an Innovation Investment Fund, large-scale energy demonstrator and innovation in Fintech, Cyber and the foundational economy.
- 5.7 CCR City Deal is delivering for the region – but it is clear that it cannot stand still. The current operating model has been outgrown and there are specific issues and barriers, with respect to its:
- Inability to act direct or in its own right – doesn't have its own contracting arrangements or structure or balance sheet
 - Inability to borrow
 - Inability to hold or acquire assets

These are critical factors in a world in which competition for investment is growing and where systems of regional economic governance equip places to be more competitive and resilient, through building upon their scale and critical mass. With the new levelling-up agenda, ambitions for Global Britain, the UK as a Science Superpower and a new Welsh Government Programme for Government – the world

is not waiting for the CCR to mobilise and every step must be taken to ensure the region is able to access all investment and opportunities available to it – irrespective of where these sit.

5.8 KEY FEATURES OF THE SE WALES CJC & MATTERS TO BE CONSIDERED AND ADDRESSED

- 5.9 As a reminder for Members, in contrast to other joint committee structures, CJsCs will be separate corporate bodies and legal entities to their constituent councils which will be able to directly employ staff, hold assets and budgets, and be directly responsible for exercising functions. In other words, CJsCs present an opportunity to respond to some of the operating model challenges listed above, whilst retaining and building upon the features and integrity of the current Joint Working Agreement.
- 5.10 A CJC will not be the only vehicle through which local government can collaborate but the intention is to provide local government with a powerful new tool where appropriate.
- 5.11 CJsCs aim to offer a consistent approach to strategic planning and delivery at a scale where it makes sense to do so. WG believe they will help to align the key strategic decisions which underpin the sustainable development and transformation of regions as a whole.

Key principles

- 5.12 Building on the above, Regional Cabinet has clearly set out the 'Rules of Engagement' which will characterise its role in establishing and operating the SE Wales CJC. In the first instance, this is built upon a 'lift and shift' principle and the experience of 4+ years of delivering regional public investment under the provisions of the current Joint Working Agreement. This means a system of concurrence with local arrangements and a positive sum game in which local authority democratic legitimacy is prevalent with 'no threats' to LA services and functions with, prospectively, services and functions being devolved from Welsh Government to the region. All this serves to underpin a CJC which interfaces effectively with local arrangements, is able to embrace WG's ambitions for a system of regional economic governance whilst responding to the growing presence of UK Government in Wales. The South East Wales Corporate Joint Committee Regulations 2021 (the Establishment Regulations) came into force on 1 April 2021 to establish the body corporate known as the South East Wales Corporate Joint Committee and the functions the CJC will undertake once they come into force on 28 February 2022.

5.13 TRANSFER OF THE FUNCTIONS OF THE CARDIFF CAPITAL REGION TO THE SE WALES CCR

GOVERNANCE AND DELIVERY

- 5.14 The South East Wales CJC regulations provide the functions of the CJC that come into force on 28 February 2022. This effectively means that the Cardiff Capital Region Joint Committee must be ready to "go live" and operate via the CJC body by 1 March 2022. In light of the regulations, the CCR has undertaken an exercise with its professional advisors to:
- Assess its current Joint Committee model for the CCR considering its advantages and disadvantages;
 - Assess options available to the CCR for a new operational and delivery structure via the CJC; and

- Determine the optimum operational and delivery structure for implementation by the CCR as part of its transition to the CJC.
- 5.15 At the CCR Cabinet meeting on 20th September 2021, the CCR Cabinet considered the following four options:
- **Option 1 – Do nothing and stay as we are** – This option is therefore a continuation of CCR’s existing operational and delivery model which consists of Cardiff Council assuming the role of Accountable Body, to deliver CCR’s investments/projects on behalf of itself and the other partner councils to fulfil the objectives of the CCR;
 - **Option 2 – Lift & shift – “like for like” model** – This option involves transposing CCR’s existing governance arrangements into the CJC such that the CJC acts as the decision maker and adopts the existing role of the Joint Committee by replicating the CCR Joint working Agreement governance arrangements. However, under this option the Accountable Body would continue to act as the vehicle body for project delivery and not the CJC;
 - **Option 3 – Lift & shift – single corporate entity/CJC** – This option involves transitioning CCR’s existing operational and delivery model into a single corporate body, the CJC. This would mean:
 - Carrying across CCR’s existing governance arrangements under the JWA to the CJC such that the CJC adopts the existing decision-making and oversight role of the Joint Committee; and
 - Analysing existing projects/pipeline projects and, where appropriate (in the case of existing projects), transferring such projects to the CJC to act as the vehicle for project delivery going forwards.
 - **Option 4 – Holding Company Structure** – This option establishes the CJC as the decision-making entity and provides for the CJC to adopt the existing role of the Joint Committee. This would be achieved by overlaying the governance arrangements of the CJC set out under the Regulations with CCR’s existing governance arrangements under the JWA.
- 5.16 The Cardiff Capital Region Joint Committee Cabinet considered a detailed option appraisal and decided that Option 3 was the preferred model as it:
- Ensures that the partner councils retain absolute control over CCR decision making;
 - Allows for a bespoke governance model which can follow the terms of CCR’s Joint Working Agreement;
 - Does not require a partner council to assume the role of accountable body and the additional burden and risks associated with that role;
 - Rings fences delivery risk from the partner councils;
 - Takes advantage of Welsh Government policy and the Regulations by transposing CCR’s existing decision-making and project delivery into the CJC.
 - Provides a framework by which the CJC, as a separate corporate body, can naturally evolve over time on a project by project basis.
- 5.17 The preferred option 3 – ‘lift and shift’ sees the CJC act as decision maker and as a conduit for project delivery (in place of the current arrangement of an Accountable Body). This is identified as an efficient and viable option that moves out of the current Accountable Body-led approach and satisfies the immediate requirement to transition to a CJC (albeit some projects could need to remain with the Accountable Body). This will however mean a wide range of risk profiles will sit under one body – a risk to be mitigated through ongoing evolution of the CJC and to establish subsidiary bodies (such as the CSC Foundry Ltd company) on a project-by-project basis and with the approval of Regional Cabinet

- 5.18 Further information on the decision of the CCR Cabinet is available on the following link Agenda for Regional Cabinet on Monday, 20th September, 2021, 9.30 am - Modern Council (modern.gov.co.uk)
- 5.19 Welsh Government has bestowed the economic wellbeing, strategic planning and regional transport functions upon the CJC at its inception. The Regional Cabinet at the above meeting, resolved to adopt a 'lift and shift' transition from the CCR and will therefore, replicate, as far as is possible, the provisions of the current Joint Working Agreement, within its new Standing Orders. The adoption of Standing Orders by the CJC is a matter for the CJC itself under the legislation. Therefore a decision of constituent councils is not required. The JWA will need to be terminated in due course. This will require written notice of termination by all 10 constituent Councils pursuant to Clause 2.2 of the JWA. It is proposed that termination will take place once the CJC has adopted its Standing Orders.

Decision making

- 5.20 The Establishment Regulations contains key provisions in respect of the CJC, including its membership and how it makes decisions. Under the Regulations the CJC's membership comprises 10 council members, one for each constituent council which constitute the CCR, and a member from the Brecon Beacons National Park Authority who is only permitted to vote on matters relating to the strategic planning function. The Regulations also provide that the member for each Council shall be the executive leader or the elected mayor (depending how the Council operates).
- 5.21 As such, it is the members of the CJC (executive leaders of the constituent councils) which make decisions on behalf of the CJC as a separate corporate body. The Establishment Regulations provide that the members vote in relation to any matter to be decided by the CJC and that each member shall have one vote (save for the Brecon Beacons National Park Authority which can only vote on matters relating to the strategic planning function). The CJC makes decisions by majority, save for certain decisions which require the member's unanimous approval. This is consistent with the manner in which the Cardiff Capital Region Cabinet has operated to date under the Joint Working Agreement and the clear intention is to follow the same governance model under the CJC. The Regulations also provide that determining an alternative voting procedure for the CJC or how the CJC's budget will be funded are decisions requiring unanimous approval.
- 5.22 The CJC is required under the Establishment Regulations to make standing orders for the regulation of its proceedings and business to supplement the constitutional provisions set out in the Regulations. As such, the standing orders which supplement the Regulations are intended to mirror and codify the existing governance provisions under the Cardiff Capital Region Joint Working Agreement. The standing orders will then be approved and adopted by the CJC's members which are the authorised decision-makers of the CJC under which each Council will be represented and each Council will have an equal vote.
- 5.23 To be clear, in the case of the economic wellbeing and transport functions to be transferred to the CJC from the Cardiff Capital Region (CCR) Cabinet, the standing orders and the Regulations themselves will then replace and supersede the existing Cardiff Capital Region Joint Working Agreement (JWA) (and no further JWA or any other form of articles of association will be required). The JWA will, from that point, have served its purpose and will cease to have effect; on the clear understanding that the principles and terms contained within the JWA will have been transposed into the governance model for the CJC via the Establishment Regulations and the standing orders.

- 5.24 Although the CCR JWA will not apply to the CJC, it is in essence a contract between the ten Councils. Therefore in order to bring the contract to an end formally, under the terms agreed by each Council when signing up to the JWA, each Council will be required to provide formal written notice of termination of the JWA. This will require a decision of each Council to instruct an appropriate officer to serve formal written notice in accordance with Clause 2.1.2 of the JWA. This can be done at any point after the inception of the CJC and is purely a formality of contractual administration.
- 5.25 There is therefore **no requirement** for each Council to separately decide upon a matter in respect of the CJC before any decision can be passed and adopted by the CJC. Instead, such authority and power is vested in the CJC's members to make decisions on behalf of the CJC (including approval and adoption of the standing orders).

Proposed Initial Functions

- 5.26 The initial functions for the CCR CJC, as prescribed by the Establishment Regulations, relate to preparation of Regional Transport Plan, Strategic Development Plan and the exercise of Economic Wellbeing powers (already utilised by CCRCD).
- 5.27 Other potential functions are aspirations to be negotiated with Welsh Government as enacted 'transfers of power' over agreed periods of time. These include: City-region tourism and place branding, Inward Investment, future iterations of the Valleys Taskforce and Regional Park, aspects of business support, regional business engagement, Regional Bus and strategic planning and delivery around regional-Energy. There will also be opportunity to further develop the City Deal property/housing funds, and access to UK Government funding to support business innovation and research and development.
- 5.28 There is a shared view amongst chief executives and senior economic development officers within the region that the proposed roles and functions of the CJC offer no threat to the role and responsibilities of local authorities. Councils will continue to remain best placed to undertake local activity around economic development, planning, transport with LAs retaining all existing wellbeing powers and the ability to determine local planning with the CJC empowering and supporting local, regional and national delivery. Where it is requested that functions be devolved to regions from Welsh Government or their sponsored bodies – this is about a decentralisation approach and achieving alignment and concurrency with local arrangements.

Staffing

- 5.29 The South East Wales CJC will have the flexibility to agree the staffing and resourcing required and to determine the approach it takes to such matters. For example a CJC will be able to employ and recruit staff in its own right; make agreements to have staff placed at the CJC's disposal; and undertake secondments (in and out) to enable CJC's to discharge their functions. CJC's must 'appoint' a Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Governance Officer (however, these could be provided by a constituent authority, or seconded etc). In addition to the above, prior to the transfer of the Cardiff Capital Region functions to the CJC, detailed consideration will need to be given to whether and to what extent TUPE applies. Currently staff working for the CCR are employed by constituent authorities as CCR does not have the ability to employ staff directly. Those staff are subject to the terms and conditions, policies and procedures of the constituent authorities. The CJC is its own legal entity, and therefore will have liability for any staff it employs. Further, the Establishment Regulations state that staff employment by constituent authorities and placed at the disposal of the CJC will be treated as a

member of staff of the CJC for the purposes of any enactment relating to the CJC. Therefore, prior to the transfer of CCR functions, and prior to the direct employment of staff by the CJC or the placing of any staff at its disposal, the CJC will need to develop a comprehensive suite of employment policies and procedures that will apply to CJC's employees, as well as template employment contracts for the staff that it employs directly.

- 5.30 In considering the above, the CJC will need to comply with the requirement in the Establishment Regulations that staff employed by the CJC must be appointed on terms and conditions (including terms and conditions as to remuneration) that are 'substantially similar to those of officers within a constituent council undertaking responsibilities which the CJC considers to be reasonably comparable.' Given that there are ten constituent Councils, each with its own different structures, employment terms and conditions, policies and procedures, the CJC will need to consider how best to comply with this obligation, whether it be adopting the most advantageous of these terms and conditions, or adopting a median position.
- 5.31 Further clarity is required from Welsh Government and the LGPS in relation to access of CJC staff to the LGPS, including the relevant fund as Constituent Councils currently overlap between The Cardiff & Vale of Glamorgan Pension Fund, The Greater Gwent (Torfaen) Pension Fund, and the Rhondda Cynon Taf Pension Fund.

Funding

- 5.32 CJCs will be funded by their constituent councils, in proportions that they will be able to determine. As is the case with the constituent councils, a CJC will be required to calculate its budget requirement, taking into account any other funding streams it might receive. The regulations state the CJC members (leaders) must unanimously agree a budget and that 'constituent' councils must pay a proportionate amount. If there is a disagreement on the proportionality of funding, Ministers have powers of direction. In providing further detail, there are essential matters that need to be considered by Welsh Government before the CJCs are able to set a budget, such as the CJC's status in terms of VAT, and other taxation matters, associated pensions arrangements (e.g. a 'Scheduled Body' or an 'Admitted Body') and the financial responsibility for any borrowing, lease, financial guarantee and similar future liabilities and risks.
- 5.33 The first South East Wales CJC Annual Budget will have to be set by 31 January 2022 in accordance with the requirements of the Establishment Regulations. The planned transfer of the CCR Joint Committee on 28th February 2022 into the CJC will hopefully make the setting of the budget and a business plan for the CJC a much simpler task than expected. The approach to setting a business plan and budget for City Deal is already in place as part of the processes of the Regional Cabinet where annual and 5 year rolling budgets and business planning takes place. In respect to the delivery of the City Deal, the existing Joint Working Arrangements sets out each Local Authority's Revenue contributions towards the costs of operating the Regional Cabinet and Core City Deal Office functions. It also sets out maximum permitted increases. This funding should be sufficient for the first phase development of the CJC, and the financial commitments already agreed by the 10 partner authorities should continue as previously agreed.
- 5.34 The Establishment Regulations provide that each CJC is required to put in place appropriate scrutiny arrangements. Such arrangements should be at the discretion of the CJC. The Establishment Regulations also require that a CJC has an Audit and Governance Committee. The Regulations of General Application also include

provision so that any scrutiny committee does not include a member of the CJC (or one of its sub-committees), that it could include members (including non-executive members) of the constituent principal councils, that scrutiny committees will be able to source independent advice from experts and that membership should seek to take account of political balance in the constituent principal councils. Irrespective of any joint scrutiny arrangement, individual council scrutiny committees would be able to seek to scrutinise regional bodies as they do now. A balance will need to be struck however in managing multiple scrutiny demands on senior CJC staff and members across several constituent authorities' scrutiny arrangements.

5.35 NEXT STEPS

5.36 Now that the Joint Committee has determined the optimum operational and delivery structure for the CJC, CCR's Project Team will now work alongside professional advisers to implement the decision and to complete the transition by February 2022. This will be a significant undertaking which will require (amongst other matters):-

- Engagement with Welsh Government to ensure that the detailed regulations to be put in place to supplement the Regulations align with the Joint Committee's chosen structure and to mitigate current risks and issues;
- Implementation of a full Transition Plan which has been established with five main work streams (legal, finance, HR/TUPE, functions and stakeholders), all necessary to allow the first phase of implementation to be in place by the end of February 2022, with successive phases to be implemented over time;
- Establish Transition Board arrangements, in order to provide swift advice to Regional Cabinet and ensure progress and advancements are made in line with the Transition Plan;
- An analysis of existing projects and contracts that CCR has in place via the Accountable Body or other Partner Councils along with the pipeline of upcoming projects in order to understand whether and how such projects should be transitioned to the CJC. This will involve a due diligence exercise involving legal, financial, tax and accounting workstreams;
- Working with UK Government regarding arrangements to 'transfer' the CCR City Deal across to sit under the auspices of the new CJC;
- The CJC to prepare a 12 month business plan setting out activities to be undertaken by the CJC in the discharge of its functions, calculation of the CJC's budget requirements and how the CJC's budget requirements will be met;
- The CJC to agree the CJC's budget requirements for the forthcoming year at a meeting of Cabinet before 31 January 2022 and how this will be met;
- The CJC to appoint the chairperson and vice-chairperson at its first meeting; and the CJC to establish a Governance and Audit Sub-Committee in accordance with the Regulations.

Over the next few months as greater clarity and understanding of the CJC model becomes available from WG via the detailed Regulations, further reports can be shared to update on the processes to create a functional CJC by 28 February 2022.

6. ASSUMPTIONS

6.1 As this report is by the Cardiff Capital Region City Deal no assumptions have been made.

7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT

7.1 As this report is by the Cardiff Capital Region City Deal an Integrated Impact Assessment is not required.

8. FINANCIAL IMPLICATIONS

8.1 Funding implications are referenced within section 5.32 of this report.

9. PERSONNEL IMPLICATIONS

9.1 Staffing implications are reference within section 5.29 of this report.

10. CONSULTATIONS

10.1 The subject matter contained within this report was the subject of an all members seminar held on 27th September 2021. All consultation responses have been included within the report.

11. STATUTORY POWER

11.1 Local Government and Elections (Wales) Act 2021.

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