



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

27TH JANUARY 2022

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

REPORT OF THE CHIEF EXECUTIVE IN DISCUSSION WITH THE LEADER AND DEPUTY LEADER OF THE COUNCIL

1. PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to update Members on the introduction of Corporate Joint Committees (CJCs) as provided for in the Local Government and Elections (Wales) Act 2021.

2. RECOMMENDATIONS

It is recommended that Members:

- 2.1 Note that the information provided to Cabinet on 18th October 2021 in respect of the creation and development of the South East Wales Corporate Joint Committee has been updated. In particular the decision of the Cardiff Capital Region Cabinet to introduce an interim governance and delivery model for implementation of the SE Wales Corporate Joint Committee (CJC) until such time as a number of taxation status issues and risks associated with the Regulations are resolved;
- 2.2 Note the requirement for the CJC to set and approve a budget on or before 31st January 2022;
- 2.3 Note 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 28th February 2022 to 30th June 2022, to align to the other three CJCs in Wales;
- 2.4 Note the Minister for Finance and Local Governments' letter of 20th December 2021 consulting the Council on amending the commencement date of the South East Wales Corporate Joint Committee to 30th June 2022 and the response of the Council's Chief Executive, in consultation with the Leader of the Council, confirming the Council's support to the amendment. The consultation ended on 21st January 2022; and

- 2.5 Note the work ongoing by CCR and its constituent Councils to work with WG, UKG, Audit Wales and advisors as appropriate, to help inform resolution of the remaining issues wherever possible.

3. REASONS FOR RECOMMENDATIONS

- 3.1 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 that they will 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.
- 3.2 WG have published the regulations to establish the South East Wales CJC and set out, at a macro level, how the CJC would operate. However, there are primarily taxation status issues that need to be resolved before the CJC can fully operate as intended. Until such time as these issues can be resolved, an "interim" arrangement will be created with the CJC doing the "bare minimum" until such time as the taxation issues are resolved.

4. BACKGROUND

- 4.1 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 - CJCs. 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 and as ways are found to help Wales recover.
- 4.2 Welsh Government (WG) maintain that the model of CJCs 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.
- 4.3 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.

- 4.4 WG believe that by establishing CJC's 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. PROGRESS TO DATE TO CREATE THE SE WALES CJC & MATTERS TO BE CONSIDERED AND ADDRESSED

- 5.1 As reported to Cabinet on 18th October 2021, the CCR Cabinet on 20th September 2021 agreed to transition 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 Joint Working Arrangement to the CJC such that the CJC adopts the existing decision-making and oversight role of the Joint Committee. They also agreed to undertake an exercise 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.
- 5.2 The Cardiff Capital Region Joint Committee Cabinet considered that this was the best way forward 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;
 - Ring 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.
- 5.3 Officers of the CCR and the Accountable Body have been putting in place all the legal, accounting and practical steps to ensure the new CJC can be created on 28th February 2022. However, it has become clear that the specific risks and issues originally highlighted by CCR with WG will not be resolved sufficiently to support the transfer of the CCR City Deal into the CJC 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, has

not been considered by WG in setting the Regulations. As a result we require the approval of Her Majesty's Revenue & Customs (HMRC) and Her Majesty's Treasury (HMT) to approve the correct taxation status. This approval clearly sits outside the sphere of direct influence and control of WG.

- 5.4 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 to address this, with CCR supporting WG's business case application to HMRC for the relevant dispensations.
- 5.5 Therefore, there remain a number of substantially unresolved matters, that need to be resolved prior to the transfer of the CCR functions to the CJC. It is worth noting that 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.
- 5.6 The impacts of all these issues will require the support of UK Government regarding the timing and transfer of the existing CCR City Deal 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'.
- 5.7 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 the implementation of a pragmatic and proportionate provisional approach is supported. Legal advice has been taken on the risks and challenges posed to CCR of 'doing nothing' and the advice is clear in that CCR's constituent Councils must be minimally compliant at this stage.
- 5.8 Therefore, the CCR Cabinet agreed at its meeting on 13th December 2021 to undertake a 'bare minimum' implementation of the CJC legislation, and will continue to maintain 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.
- 5.9 WG has also notified the CCR Cabinet that the date of commencement of immediate South East Wales CJC duties in respect of the 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. The CCR Cabinet at the meeting on 13th December 2021

accepted this offer in order to better align with the proposed bare minimum approach and be consistent with the other three CJs across Wales.

- 5.10 On 20th December 2021 the Council received notification that the Minister for Finance and Local Government was commencing a consultation on amending the commencement date of the functions of the South East Wales Corporate Joint Committee, from 28th February 2022 to 30th June 2022. The revised regulations were received on 13th January 2022 and the consultation closed on 21st January 2022. Due to the short timescales provided for consultation responses, and the fact the proposed amendment to the regulations deals with a single issue relating purely to their commencement, the Chief Executive, in consultation with the Leader of the Council, responded to the consultation confirming the Council supported the proposed change to the commencement date for the reasons outlined in this report.

What will be the “bare minimum” approach?

- 5.11 The ‘bare minimum’ model proposed in this report provides 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. We will be required to put 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.
- 5.12 On the basis of external advice and technical support, the proposed ‘bare minimum’ model will enable CCR to demonstrate it has commenced transition to the CJC and ensure it is complying 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;
 - 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.
- 5.13 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.
- 5.14 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 potentially transfer the CCR City Deal functions. 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".
- 5.15 Therefore, whilst a provisional budget can be set, and actions taken to set-up 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 the transfer of functions 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.
- 5.16 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.
- 5.17 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 5.9 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.
- 5.18 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.

- 5.19 It should also be noted that in setting this process in plan, the clear milestone is the 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.
- 5.20 Whilst work led by WG on behalf of all regions/ constituent CJs 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.
- 5.21 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 Rhondda Cynon Taf Council, where we 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.

6. EQUALITY AND DIVERSITY IMPLICATIONS

- 6.1 There are no equality or diversity implications aligned directly to this report. CJs will be subject to the Equality Act 2010 and Welsh Language Standards.

7. FINANCIAL IMPLICATIONS

- 7.1 There are no financial implications aligned specifically to this report at present.

8. LEGAL IMPLICATIONS & LEGISLATION CONSIDERED

- 8.1 The relevant legislation linked to the introduction of CJs and how they would operate is set out in the body of the report.

9. LINKS TO THE COUNCILS CORPORATE PLAN / OTHER CORPORATE PRIORITIES

- 9.1 WG say in developing the CJC mechanism for local government regional collaboration there is a particular emphasis on applying the sustainable development principle. In particular, building resilience for the long-term and ensuring the proposals are grounded in collaboration and integration of objectives with local government. The proposals for regionalisation of some local authority functions reflect the ways of working as they are intended to enable local authorities to plan for the longer term and require collaboration and joint working between local authorities. The proposals also support further integration of services and pooling of often limited resources and expertise, providing a greater level of capacity and capability overall and providing space for strategic thinking and planning that has been largely squeezed out in individual local authorities.
- 9.2 In addition to ensuring the sustainable development principle and five ways of working underpin its approach and they have also considered how a regional approach can maximise our contribution to the well-being goals. In doing so they say CJsCs put in place a new framework to enable local government to make their contribution to the goals more effectively. This means the direct contribution of CJsCs to achieving the goals is limited, but the indirect contribution will be much more significant.

10. CONCLUSION

- 10.1 The Cardiff Capital Region Joint Committee Cabinet has considered the best approach to transferring its City Deal responsibilities into the new CJC to:
- Ensure 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.
- 10.2 To deliver on the South East Wales CJC Regulations and the required delivery dates, there are issues that have arisen that require the 10 councils to delay the full implementation of the CJC and initially introduce a "bare minimum" approach until such time as these issues are resolved by UK and Welsh Government. This is a pragmatic and sensible approach.

Other Information:-

Relevant Scrutiny Committee – Overview & Scrutiny Committee

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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CORPORATE JOINT COMMITTEES AND THE CHANGES TO THE CARDIFF
CAPITAL REGION JOINT COMMITTEE**

**JOINT REPORT OF THE CHIEF EXECUTIVE IN DISCUSSION WITH THE
LEADER AND DEPUTY LEADER OF THE COUNCIL**

Background Papers

Freestanding Report.