

Report of the Chief Executive

Subject: South West Wales Corporate Joint Committee

Purpose of the Report

To advise 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 involvement of the Pembrokeshire Coast National Park Authority.

Background

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 (CJCs). The LGE Act provides for the establishment of CJCs through Regulations (CJC Establishment Regulations).

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, CJCs 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, Pembrokeshire County Council and Neath Port Talbot County Borough (“the Constituent Councils”). In respect of some functions, both Pembrokeshire National Park Authority and Brecon Beacons National Park Authority will also be members (as set out below).

Over recent months officers of this Authority have attended meetings with the Chief Executives, Directors of Environment, Finance Directors (S151 Officers) and Monitoring Officers of the other members of the CJCs. Each of these groups has also established working groups in order to progress various matters. The Chair and the Chief Executive have also attended a meeting with Leaders and Chief Executives of the other member Councils and Authorities involved.

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 local arrangements and to note and approve (where applicable) the involvement of the NPA in such arrangements as applicable.

Remit of the CJC

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), and**
- (c) **Strategic development plan (Part 6 of the Planning and Compulsory Purchase Act 2004)**

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”).

CJC Operational Responsibilities

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.

In light of the CJC’s duty to appoint a number of statutory officers and to perform certain functions set out in Regulations, it is expected that the responsibilities will be apportioned to constituent council staff, although this has yet to be decided formally and will be subject to consultation with those involved to ensure to seek their agreement to these additional obligations.

The Governance of the CJC

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

The members of the CJC are:

- (a) The executive leaders of:
 - (i) The City and County of Swansea
 - (ii) Carmarthenshire County Council
 - (iii) Neath Port Talbot County Borough Council
 - (iv) Pembrokeshire County Council
- (b) A Member of the Brecon Beacons National Park Authority, and
- (c) A Member of the Pembrokeshire Coast National Park Authority.

It is proposed that the Authority will be represented on the CJC by the Chair of the Authority.

The current draft constitution of the CJC states that members are entitled to vote in relation to any matter to be decided by the CJC, except that the Brecon Beacons National Park Authority 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. Along with representatives of the Brecon Beacons NPA we are challenging this issue as we consider that we should be a full member of the CJC, able to vote on governance issues and financial issues along with the planning related work. We expect to discuss this with other members of the CJC at a meeting later in December.

Where a Leader/Chair is, for any period, unable to discharge their functions, a Constituent Council must appoint another member of its executive/cabinet to discharge those functions on behalf of the Constituent Council member for that period. It is proposed that, in such an eventuality, the Deputy Chair of the Authority will take the Chair’s place.

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:

Sub Committee	Lead Chief Executive	Political Lead
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

For constituent authorities it is proposed that the representatives on each Sub Committee 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.

Therefore we would expect the National Park Authority to be represented by the Deputy Chair of the Authority on the Strategic Planning Committee.

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 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. Again, we would expect the National Park Authority to be represented by the Director of Planning and Park Direction on this group.

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 National Park Authorities to which they are a Member.

Co-option

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 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.

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.

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 of the three or potentially four topic areas covered by the CJC.

Governance and Audit Functions

The CJC is required to establish a Sub Committee to be known as the Governance and Audit Sub-Committee.

The terms of reference of the Sub Committee are stated in the CJC Establishment Regulations as to:

- (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.

The CJC Establishment Regulations state that membership of the Governance and Audit Sub Committee includes at least one lay member (who must be elected Chair) and at least two-thirds membership from the constituent councils. However this may be subject to change under the LGE Act. 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. At the present time no decision has been made regarding the involvement of the two NPAs on this Sub Committee, however it is proposed that we make the case for NPAs to be represented on it. If the Authority is successful in securing a place on the Governance and Audit Sub Committee a paper will be presented to a future Authority meeting to agree which Member will represent the Authority.

Standards

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 the 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/NPA's register of interest by providing written notification to their respective Monitoring Officer.

It would be proposed that rather than establish a separate Standards Committee to oversee functions of the CJC, one constituent council's Standards Committee assumes the responsibility of overseeing standards for the CJC. Although this issue has yet to be formally agreed, it has been mooted that both the Monitoring Officer function and the Standards Committee should rest with Neath Port Talbot County Borough Council.

Scrutiny

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.

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 its constituent councils.

In considering the most effective and efficient approach to scrutiny, consideration is being given to the benefits of a joint overview and scrutiny committee made up of the constituent councils. The involvement of the two NPAs has yet to be decided upon, however, we are making the case that NPAs should be represented on a relevant Scrutiny Committee. The clear aim and ambition, however, must be to create, facilitate and encourage a clear democratic link back to the constituent councils and NPAs if appropriate.

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.

Accordingly it is being 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 presented to the National Park Authority to agree the Member to represent the Authority on the CJC Overview and Scrutiny Committee, if an NPA representative is agreed.

Constitution

The CJC is required to meet by the end of January 2022 in order to establish its budget for the 2022/2023 financial year.

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.

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, National Park Authorities 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.

Officers are currently discussing a draft Constitution with their counterparts in the other Authorities which, it is hoped, will be agreed by the CJC in late December.

Financial Impacts

Regulations do not prescribe any formula basis for funding of CJsCs. It will be for each CJC to decide how the budget requirement will be met by the constituent councils and the National Park Authorities in the case of the strategic planning functions and other relevant 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 Authorities to be directed by Welsh Ministers.

CJsCs will be the accountable body for the funding provided and/or directly received from any other funding streams. CJsCs will also be able to pay towards expenditure incurred or to be incurred in relation to carrying out its functions as it may determine, and to charge fees relating their specified functions. The Establishment Regulations also enable CJsCs to provide assistance by way of grant or contributions to support functions exercisable by them. The funding from constituent councils and National Park Authorities will be held and managed by CJsCs 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.

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

Legal Impacts

Part 5 of the LGE Act provides for the establishment, through Regulations, of CJsCs and compliance will be had with this and other legislative obligations in their establishment. In particular, the South West Wales Corporate Joint Committee Regulations came into force on 1st April 2021 and set out an initial framework – 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. It is also currently consulting on draft statutory guidance. A third stage of Regulations will put in place further legislation for the operation of the CJsCs and its functions, which Welsh Government will consult on later in the Autumn 2021. A fourth stage will put in place any remaining provisions which a CJC might need.

Risk Management Impacts

There are no risk management issues associated with this report.

RECOMMENDATIONS:

To ensure compliance with the requirements of the LGE Act and ensure the needs of the Pembrokeshire Coast NPA are reflected in the development of these CJsCs it is recommended that:

- (a) Members 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;**
- (b) Members note how it is proposed that the South West Wales Corporate Joint Committee and the various Sub Committees are proposed to be established;**
- (c) Members agree that the Chair will represent the Authority on the Corporate Joint Committee. If the Chair is not available then the Deputy Chair will represent the Authority;**
- (d) Members agree that the Deputy Chair will represent the Authority on the Strategic Planning Committee;**
- (e) Members delegate responsibility for agreeing the governance and financial arrangements for the CJC to the Chair and Chief Executive;**
- (f) Members endorse the view that the Authority is a full member of the CJC, able to vote on issues such as governance, finance as well as planning and be represented on the relevant Sub Committees.**

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