

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

CABINET

17 April 2019

Report of the Chief Executive

SWANSEA BAY CITY DEAL

Matter for Decision

Wards Affected: All

SECTION A

Purpose of Report

1. Further advice following the 15 March 2019 publication of two reviews¹ (and other reports). These follow widely publicised issues at Swansea University connected to one City Deal project.
2. This report covers the governance, partnership, financial and other issues (Section B) and recommends a way forward in terms of the projects upon which this Council leads (Section C).

Background

3. Developments on the City Deal have been reported to Members at regular intervals over the past eighteen months or so (those reports are listed as background documents below).
4. On 27 November 2018, Swansea University (a key partner) suspended the Vice Chancellor and three others – a fifth suspension followed earlier this year – amidst allegations linked to one City Deal project, the Wellness/Delta Lakes Village in Llanelli. Subsequently, these matters were referred by the University to the Police.
5. On 6 December 2018, the UK and Welsh Governments announced a “rapid review” of the City Deal. The report is at Appendix 1. The Joint Committee also conducted an internal review. That report is at

¹ Circulated to all Members on the day of publication.

Appendix 2. In addition, Carmarthenshire County Council conducted a review of the Wellness Village procurement process and the Wales Audit Office also reviewed these matters. The report/correspondence can be accessed via the link listed in the background documents.

6. The Leader of Council reported developments to Council on 19 December 2018 (his statement is also listed as a background document). He undertook to report further once the reports/reviews listed were available. This report discharges that undertaking.
7. The two reviews were discussed at the City Deal Joint Committee meeting on 28 March 2019. In summary, an Action/Implementation Plan² covering both was commissioned from the Programme Board (Chief Executives) to be submitted to the Joint Committee for consideration as soon as is practicably possible. We are tabling proposals for consideration in this regard.
8. In addition, the Joint Committee was given a summary of the proposals in this report as they relate to the projects (Section C) below, all subject to Member decisions here. These issues were also covered in a separate meeting with Swansea University the day before the Joint Committee.

SECTION B

9. The two reviews' findings display consistency or commonality. The main themes are summarised below; but Members are urged to digest both reports to gauge the full context.

The Government Review

10. The summary of key findings is at pages (i) and (ii) of Appendix 1 and the detail is at pages 5-14.
11. In terms of key themes, the report finds that:
 - Progress has been “*unduly slow*” compared to other City Deals;

² Not to be confused with the City Deal Implementation Plan referenced in the final bullet point of paragraph 14 below and elsewhere.

- The presentation of business cases appears to have “*presented all concerned with difficulties*”, particularly when urgent approvals were needed to release funds quickly;
- The requirements of the (HM Treasury) Five Case business model have been “*less well understood*” at regional/sub-region level and there has been insufficient “*clarity and transparency*” regarding the approvals procedures to be followed;
- Comments from Government often took a long time to issue and were not coordinated, causing “*frustration and distrust*”. Moreover, the format of meetings held did not aid progress with incomplete business cases approved by the Joint Committee and Councils;
- There has been a lack of challenge, which is described as “*a window to the source of the real problem*” viz. the nature of the Regional Office as a Secretariat, not a Programme Management Office providing support, assurance and independent advice;
- The Joint Committee was not given adequate time or independent expert advice and did not provide the challenge required; and
- In terms of confidence, the final sentence of the report says that “*The balance of projects would be Red*” i.e. negative.

12. We recognise the picture painted by this report and accept it - even if we have one or two differences of emphasis with the Government Review (see below).

The Joint Committee Internal Review

13. The summary of key findings is at pages 4 and 5 of Appendix 2 and conclusions/improvement suggestions at pages 6 and 7.

14. In terms of key themes, the report finds that:

- Events at Swansea University and the Wellness Village are “*eroding trust*”;
- Too many functions are concentrated in Carmarthenshire County Council (the Regional Office); the process between them and Government is “*not operating as intended*” nor are the

governance/risk management arrangements including in areas such as declarations of interest; and

- There is a “*lack of certainty over funding*” – both in terms of the quantum and how it will be secured (particularly as the City Deal Implementation Plan is not yet signed off by Government³).

15. We also recognise the picture painted by this report and accept it. Separately, on 2 April 2019, the Welsh Affairs Select Committee also announced an inquiry into the effectiveness of Growth and City Deals in Wales⁴.

Analysis

16. On both reviews the issues are fundamentally about the projects and governance, which are dealt with by recommendations 2 and 4 (below) respectively. In our view – and to an extent at least – there is a cross-over between the two insofar as the cumbersome nature of the Joint Working Agreement (JWA) and the lack of progress on the projects are linked. More generally, there are always differing views and perspectives in these situations; but for us, the key points include the following.
17. We must accept that the standard of business cases has been inadequate (as identified by both reviews) and, here, we have struggled with them in terms of capacity and complexity. So, at one level, it is understandable that Government has queried aspects of the documentation submitted. On the other hand, the Government responses have undoubtedly been slow and superficial and discussions do not always involve all of the people necessary. For example, we submitted an outline business case on “Homes” – see Section C below - in August 2018; but we are no closer today to an approval or identifying a clear way ahead. In other words, there is no coherent mechanism for advancing the business cases between Government and the region.
18. This leads to one of two areas – the other is at paragraph 21 below - where we somewhat part company with the Government

³ If interpreted literally, this effectively prevents funding being released until resolved – see paragraph (G) of the Preamble to the Joint Working Agreement which stipulates approval as a condition.

⁴ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/welsh-affairs-committee/inquiries/parliament-2017/copy-this-page-inquiry-name-17-19/>

review. Given the amount of process/bureaucracy involved is widely accepted to be excessive, there is, in our view, a case for abandoning it completely rather than attempting to refine it – as set out in recommendations 1 and 3 of the Government Review in particular. The problems are clearly identified in sections 3.7-3.11 of the internal review.

19. We argue that the current system could be replaced with an agreed funding profile for each project within the £16.1m per annum envelope already agreed. It seems incongruous that local authorities have the financial accountability (under the current system) and yet are required to go through a process which clearly isn't working. Councils are accountable for their decision making regardless. Perhaps we have been seduced by our own numbers? At one level, the City Deal is presented as a £1.3 billion enterprise; but at another it is, relatively, a very modest £16.1m per annum divided between four Councils set against our capital programmes. We do projects of that size all of the time without this process, so why should the City Deal be any different?
20. Failing that, both reviews point to a revision of the JWA and recommend the appointment of a City Deal Director or equivalent⁵. In principle, we agree but do not wish to spend significantly again on external legal advice to revisit the JWA or the wider governance regime; take another year or longer doing it or add significantly to the cost (and our contribution towards that cost) of the City Deal apparatus itself. This points to keeping changes to an absolute minimum; but the two governments will need to agree them. Our starting point is that the Joint Committee will need to take decisions within the existing envelope of resources. This was also made clear at the Joint Committee meeting on 28 March.
21. Moreover, for the projects where this Council leads Swansea University are a key partner on most; but recent events hardly instil confidence in their governance system and there is no prospect of officers immediately recommending that Members commit Council borrowing to these projects. At the time of writing, the disciplinary and related processes following the suspensions remain outstanding with no known definitive timetable for how and when the University intend to draw conclusions. Moreover, any

⁵ Recommendations 5 and 4.2 respectively.

Police investigation could take months, possibly years. These risks are identified in section 3.1 of the internal review; but the Government review rather skates over them in our opinion. All in all, our priorities must be reassessed and re-prioritised if the City Deal is to proceed.

22. There are also other considerations. For example, given our geographical position it is arguable that we should not be “straightjacketed” in a South West Wales region only. A number of commercial and industrial interests are taking a close interest in the County Borough; but this as much to do with our proximity to Cardiff and the M4 corridor as anything else. In economic terms, therefore, administrative boundaries/regions are less relevant – and the internal review questions the regional impact of the City Deal (although the Government review is more positive).
23. Moreover, we have limited - and reducing - resources and several large projects/programmes nearing delivery stage - but outside of the City Deal (a process not proving to be good value for money either). These considerations are reflected at recommendation 3 below as the internal review correctly identifies that the funding is uncertain and it is effectively in competition for scarce Council resources with other important programmes, notably Band B of 21st Century Schools which will commence later this year.

SECTION C

The consequences for the projects

24. Following on from the above, we have taken a critical and objective look at the prospects for delivery of the current projects - and whether they will deliver the original projections of a £1.8 billion boost to the regional economy and the creation of 9,000 jobs.
25. Effectively this is what the Government review is encouraging us to do anyway when it says that the City Deal “*should be managed as a Portfolio not as a set of predetermined and immutable projects.*” and “*In this scenario we would expect some individual programmes and projects to fall away as other more worthy programmes were identified and prioritised*”⁶. However, as things stand, there is a process (one that has proved excessively

⁶ Recommendation 6 and Paragraph 3.4.5 respectively.

prescriptive in our opinion) for doing so as prescribed by the JWA⁷. To an extent at least these provisions are linked to the non-existent Implementation Plan; but, in the final analysis, a project does not go anywhere unless it has the full support of the lead local authority. Nonetheless we very much agree with the review as our conclusions on the existing projects are mixed:

- The **Homes for Power Stations (a regional project)** is already progressing locally. It demonstrates a concept where buildings can generate, store and release their own energy, reducing fuel poverty and impacting positively on health and wellbeing. The Neath development will provide 16 new homes (a mixture of 1-3 bedroom homes/apartments) at the former Hafod care home site in partnership with the Pobl Group. There are also other potential funding models (public and private - outside of the City Deal) which could be included in the programme and it is an important component part of our housing strategy underpinning the targets in our Local Development Plan (LDP), which is subject to review next year. We therefore propose to continue dialogue on this project if the two governments wish to engage.
- The **Steel Science** project is designed to create a new National Steel Innovation Centre providing an open access facility for the steel industry and its supply chain, helping forge links between industry and academia. We see value in this project for obvious reasons; but in addition to the issues with the University, we have only been able so far to secure an offer in principle of the transfer of the land at market value on Fabian Way from Welsh Government to make the project happen after more than a year of trying. We therefore propose to explore alternative sites/models for the delivery of this project and have started to consider options in consultation with Tata.
- The **Factory of the Future** project based at Swansea University, aims to support the region's manufacturing base with a network of innovation centres for small and medium business. However, we see little prospect (for the reasons outlined in Section B above) of a business case being signed off; we are increasingly sceptical of the outcomes projected in terms of contributing to job creation and increased local/regional GVA. Moreover, the same considerations apply as noted above on Steel Science (including the land

⁷ Clause 12.6 and Schedule 10.

transfer). We therefore propose to defer further work on this project.

- On the **Centre for Next Generation Services (CENGS)**, we have secured £3m for the building via a WEFO grant and subject to securing match funding from the City Deal, work could start on site later this year at Baglan. However, we doubt whether the original vision can now be delivered in terms of a subscription-based open access model aiming to bridge, through data analytics, the gap between research and the commercialisation of products and services for the next generation of communication services. Essentially, the Canadian model we were seeking to replicate requires *de facto* control to be with the private sector. But the public sector orientated framework adopted does not really allow it and we do not believe that Government would sanction an alternative. Thus the objective is to deliver this project in part only.

26. We therefore propose a remodelling of the package on the basis of a new five case business model entitled **the Industrial and Innovation Strategic Plan**. This would be underpinned by the Port Talbot Waterfront Enterprise Zone (EZ) Strategic Plan 2018–21 and is aligned to a number of policy drivers such as the Wellbeing of Future Generations (Wales) Act 2015; the Welsh Government’s Economic Action Plan; the Innovation Strategy for Wales and Energy Wales strategy. It would also potentially incorporate the Steel Science and part of CENGS projects described above.

27. The proposed delivery phase will be divided into two initial tranches (although flexibility between the two may prove necessary):

Tranche 1

- The Swansea Bay Technology Centre/Production Units;
- The Flexis Energy project – Smart Port Talbot/Air Quality;
- Harbourside employment site remediation;
- Infrastructure master plan; and
- Steel Science.

Tranche 2

- Hydrogen developments;

- R&D Innovation and Growth facility; and
- An Infrastructure and Property Fund.

28. It is proposed to submit the business case to Cabinet for approval shortly – and then to the Joint Committee. Another advantage is that it will be familiar to Welsh Government. The EZ already involves the active participation of their officials; it has been the subject of dialogue between the Minister and the EZ Chair and correspondence between the Minister and the Leader of Council – with the former keen to see synergies between the City Deal and the EZ. Thus it appears that we should all be on the same page.
29. Moreover, we also have a second business case in mind which would be an extension of the work already undertaken by the Welsh Government on the Valleys, allied to the Council’s Task & Finish Group and the Cabinet’s response⁸. We have consistently argued that a successful City Deal must demonstrably benefit the Valleys and rural areas. A theme Members have identified previously and discussed recently with the Deputy Minister with lead responsibility for the Valleys Programme (Lee Waters AM).

Conclusions

30. Recriminations are pointless; but lessons must be learnt. We want the City Deal to deliver; but for all the reasons identified above we do not believe it will without a radical overhaul – of the projects in particular. As noted above, the final sentence of the Government review categorises most projects as “Red”. That has to change rapidly. It is up to us to assemble the business case (under the existing arrangements); but it is then up to Government and the region to respond in a timely fashion. To facilitate that we need a different, clearer, way of working including a Single Point of Contact within Government on a project(s).
31. But if this cannot be done, we must face facts. The City Region was originally launched in 2013; preparatory work on the City Deal itself began in 2015 and the Deal was signed in March 2017. Despite this huge investment of time and resources, not a penny has been spent on the projects so far and this cannot continue

⁸ See Cabinet Decisions: 17 December 2018.

indefinitely as there is now some £32 million of funding available as we enter (notionally) Year 2 of the Deal.

32. As a Council, if we cannot see a return in the short term (say, a further six months) and in the form of business case approvals then exiting these arrangements may be the only logical course of action. For the avoidance of doubt, “approvals” means precisely that. It does not mean “in principle”; subject to “further review” or other caveats or conditionality which in reality would represent many more months of inconclusive dialogue. In these circumstances, what would be gained by continuing? Also, in this context, it will be instructive to see whether or not the Government funding is actually released for the two projects in first tranche where support was reaffirmed at the Joint Committee meeting last month - Yr Egin and Swansea Waterfront – particularly as the former is now complete, the building open and largely occupied.

SECTION D

Legal Implications

33. On the 29 August 2018, the JWA was formally entered into with the intention of the four Councils working together to discharge their obligations to one another plus the UK and Welsh Governments, who had oversight and official sign off even if they are not party to the JWA itself.
34. Under the JWA, the Councils agreed that they shall conduct their relationship in accordance with the following principles⁹ and others: Being open and trusting in their dealings with each other; embracing a commitment to transparency; complying with statutory access provisions; paying the utmost respect of the standing and reputation of one another; making all decisions reasonably and in good faith; and procuring that Elected Members and officers act in the best interests of the City Deal.
35. Recent events and both reviews raise concerns whether these principles have been adhered to. As noted above, we are exploring options to re-model our end of the City Deal and deliver; but if that cannot be done, for completeness Members need

⁹ Condition 3.3(b) of the JWA.

advice as to how the Council could withdraw from the JWA and the potential risks and consequences involved.

36. It is important to note here that to withdraw, the Council is not dependant on establishing a breach by any of the Councils. If we decide to withdraw we must provide not less than twelve months written notice terminating at the end of a financial year¹⁰. This is referred to in the JWA as a Joint Committee Withdrawal Notice. The Councils may require any Council which seeks to withdraw from the Swansea Bay City Deal and the JWA to meet specified conditions before the Councils agree to accept the Notice.
37. The “specified conditions” may include (but not be limited to):
- Payment of any amounts due in accordance with the JWA;
 - Payment of any costs that the other Councils identify that they shall incur as a result of the withdrawal; and
 - Any other conditions the Councils conclude appropriate.
38. Whether to accept Notice from one of the Councils is a matter explicitly reserved to the Councils under the JWA¹¹. As part of any withdrawal, the Council will be required to give full and valid reasons as to why withdrawal is taking place; but there is nothing to prevent us doing so should Members conclude that this was the most appropriate course of action. There is a clear basis for doing so in our opinion. The full extent of potential financial liabilities would need to be determined; but in the current circumstances we do not see them as significant.
39. The JWA includes a requirement for disputes to be referred in the first instance to the Heads of Paid Service, then to Mediation and ultimately to Arbitration¹², with costs to be borne equally between the Participating Authorities involved.

Financial Implications

40. Nothing additional at this point; but various issues identified in this report have potential direct or indirect financial implications depending upon decisions taken by Members and/or the Joint

¹⁰ Clause 22 of the JWA.

¹¹ See Schedule 5.

¹² Clause 25.

Committee (for example - see Legal Implications section above). However, at present, the Council is operating within the budgetary allocations previously approved by Members and as noted by the Leader in his statement to Council on 19 December 2018.

Sustainable Development

41. As set out in previous reports (listed as background papers).

Workforce Implications

42. None.

Integrated Impact Assessment

43. Not yet required; but the Council will need to satisfy its duties under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

RECOMMENDATIONS

That Members:

1. **Accept**, and comment upon as they see fit, the reports of the UK/ Welsh Government and the Joint Committee internal reviews plus the analysis of the issues set out in Section B of this report.
2. **Agree** that officers pursue revised/remodelled business case as set out in Section C of this report - that business case to be submitted to Cabinet and the Joint Committee for approval as soon as possible.
3. **Agree** that the Leader of Council be granted delegated authority, in consultation with the Deputy Leader, Cabinet Members for Finance and Regeneration & Sustainable Development and the Leaders of the Opposition groups¹³, to determine the Council's future participation in the City Deal and, if determined appropriate, to serve a notice of withdrawal from the Joint Working Agreement (as identified in paragraphs 35-39 of this report).

¹³ This is accepted as unusual; but it is recommended on the basis of the significance of the City Deal for the County Borough and the Council as a whole.

4. **Delegate** to the Chief Executive and Head of Legal Services, in consultation with the Leader of Council, authority to agree changes to the JWA as they relate to governance and ancillary matters only with the objective of making early progress on project delivery (**Note: for the avoidance of doubt, this proposal would *not* apply to any material change to the Council's legal and financial obligations under the extant JWA, which is reserved for Member decision as required).**
5. **Refer** this report to Council for further discussion as seen fit.

Reasons for proposed decision

To invite Members to provide direction on the conduct of further discussions on the City Deal and determine whether the Council should continue to participate in the absence of short to medium term progress.

Implementation of the decision

Implementation is proposed after the three day call in period.

Appendices

Appendix 1: Report of the UK/Welsh Government review

Appendix 2: Report of the Joint Committee internal review

Background Documents

Cabinet Reports:

- 4 October 2017
- 25 April 2018
- 27 June 2018

Statement by the Leader: Council – 19 December 2018

Link to Carmarthenshire County Council reports:

<http://democracy.carmarthenshire.gov.wales/ieListDocuments.aspx?CId=131&Mid=2183&Ver=4>

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