

# SOUTH WEST WALES CORPORATE JOINT COMMITTEE

13<sup>TH</sup> JANUARY 2022

## REPORT OF THE MONITORING OFFICER

**Report Title: Adoption of Constitution and Procedural Rules for the South West Wales Corporate Joint Committee**

<b>Purpose of Report</b>	To formerly constitute the South West Wales Corporate Joint Committee
<b>Recommendation</b>	<p>It is recommended that:</p> <p>Members approve the allocation of operational responsibilities of the South West Wales Corporate Joint Committee as set out in paragraph 7 and authorise the entering into of agreements between the South West Wales Corporate Joint Committee and the Constituent Councils identified to provide these services;</p> <p>Members approve the creation of the sub-committees identified at paragraph 14 of this report and the proposed representatives appointed to the sub-committee set out at paragraph 15;</p> <p>Members approve the establishment of Governance and Audit Sub-Committee Committee for the South West Wales Corporate Joint Committee as set out in paragraphs 18-22 of this report;</p> <p>Members approve the designation of the Neath Port Talbot County Borough Council Standards Committee as the Standards Committee of the South West Wales Corporate Joint Committee;</p> <p>Members approve the establishment of an Overview and Scrutiny Sub-Committee Committee for the South West Wales</p>

	<p>Corporate Joint Committee as set out in paragraphs 27-31 of this report;</p> <p>Members approve the Constitution of the South West Wales Corporate Joint Committee set out in Appendix 1;</p> <p>Members approve the Rules of Procedure for South West Wales Corporate Joint Committee meetings set out at Appendix 2;</p> <p>Members approve the Access to Information Procedure Rules for South West Wales Corporate Joint Committee meetings set out at Appendix 3;</p> <p>Members approve the Members Code of Conduct for South West Wales Corporate Joint Committee meetings set out at Appendix 4; and</p> <p>Delegated authority be granted to the Chief Executive, in consultation with the Chair of the South West Wales Corporate Joint Committee to agree any documents necessary to implement the requirements of this report and the recommendations set out above.</p>
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**Background:**

1. The Local Government and Elections (Wales) Act 2021 (“the LGE Act”) created the framework for a consistent mechanism for regional collaboration between local government, namely Corporate Joint Committees (CJCs). The LGE Act provides for the establishment of CJCs through Regulations (CJC Establishment Regulations).
2. The CJC will exercise functions relating to strategic development planning and regional transport planning. They will also be able to do things to promote the economic well-being of their areas. In contrast to other joint committee arrangements, CJCs are separate corporate bodies which can employ staff, hold assets and budgets, and undertake functions.
3. The South West Wales CJC will comprise Carmarthenshire County Council, the City and County of Swansea Council, Pembrokeshire County Council and Neath Port Talbot County Borough Council (“the Constituent Councils”). In respect of some

functions, both Pembrokeshire National Park and Brecon Beacons National Park will also be members (as set out below).

### Remit of the CJC

4. The CJC has prescribed functions related to the preparation of the Regional Transport Plan, Strategic Development Plan and the exercise of Economic Wellbeing powers. These are set out specifically as follows:
  - (a) Economic well-being (section 76 of the Local Government and Elections (Wales) Act 2021)
  - (b) Transport policies (section 108(1)(a) and (2A)(a) of Part 2 of the Transport Act 2000)
  - (c) Strategic development plan (Part 6 of the Planning and Compulsory Purchase Act 2004)
5. 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

6. 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 regulation 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.
7. In light of the CJC's duty to appoint a number of statutory officers and to perform certain functions set out in regulations, the following allocation of roles is proposed:

<b>Function of the CJC</b>	<b>Constituent Authority</b>
Chief Executive	Rotating Annually between Neath Port Talbot, Pembrokeshire, Carmarthenshire and Swansea. The first being Neath Port Talbot
S151 (Chief Finance Officer)	Carmarthenshire
Monitoring Officer	Neath Port Talbot

8. An agreement will be entered into between the CJC and the authorities for the Constituent Council staff to be made available to the CJC and will be acting as if CJC staff when carrying out functions for the CJC. The members of staff that are affected will be consulted to ensure to seek their agreement to these additional obligations.
9. The support services provided will be on an ad-hoc basis as and when support is required, and will be carried out by staff within their normal contracted hours with their Constituent Councils, and Chief Executives of respective authorities will keep such matters under review to address workload pressures.

### The Governance of the CJC

10. In order to meet its legislative obligations identified above, the CJC will have a decision making process. These are prescribed in the legislation.
11. The members of the CJC are:
  - (a) the executive leaders of
    - a. Carmarthenshire County Council
    - b. Neath Port Talbot County Borough Council
    - c. Pembrokeshire County Council
    - d. The City and County of Swansea
  - (b) A member of the Brecon Beacons National Park Authority , and
  - (c) A member of the Pembrokeshire Coast National Park Authority
12. The CJC members are entitled to vote in relation to any matter to be decided by the CJC, except that the Brecon Beacons National Park and Pembrokeshire Coast National Park Authority (together the “NPAs”) members may only vote where the matter to be decided is about strategic planning functions (and associated issues), unless the Constituent 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.
13. Where a leader 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.
14. 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 Leaders of the Constituent Councils (or their nominated deputies) and shared between the four authorities. It is proposed that the following sub-committees be established,

<b>Sub Committee</b>	<b>Lead Chief Executive</b>	<b>Political Lead</b>
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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

15. It is proposed that the additional representatives to each Sub Committee be comprised of the relevant Cabinet members of the four Constituent Councils (and the Chairpersons of the relevant National Parks authorities in respect of Strategic Development Planning).
16. It is proposed that the Sub-Committee is then chaired by the Leader from the Constituent Council identified and supported by a chief executive from the authorities mentioned above.
17. 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.

#### Governance and Audit Functions

18. The CJC is required to establish a sub-committee to be known as the Governance and Audit Sub-Committee.
19. The terms of reference of the sub-committee are stated in the CJC Establishment Regulations as:
  - (a) review and scrutinise the CJC's financial affairs;
  - (b) make reports and recommendations in relation to the CJC's financial affairs;
  - (c) review and assess the risk management, internal control and corporate governance arrangements of the CJC;
  - (d) make reports and recommendations to the CJC on the adequacy and effectiveness of those arrangements;
  - (e) oversee the CJC's internal and external audit arrangements;
  - (f) review any financial statements prepared by the CJC;
  - (g) exercise such other functions as the CJC may specify.
20. The CJC Establishment Regulations state that membership of the Governance and Audit Sub-Committee is at least one lay member and at least 2/3rds membership from the Constituent Councils. However this 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.
21. The chair of the Governance and Audit Sub-Committee must be a lay member.

22. Accordingly, it is proposed that a Governance and Audit Sub-Committee is established by the CJC comprising of Lay Member(s) to be drawn from Constituent Councils Governance and Audit Committees (or externally advertised if this is not possible) and members from each Constituent Council. This will ensure that the Governance and Audit Committee complies with proposed changes to the Local Government (Wales) Measure 2011 to have at least one third lay members. The appointment(s) will be made by the CJC. It should be noted that lay members will be remunerated in line with standard lay member payments set by the Independent Remuneration Panel for Wales.
23. Future reports will be brought back to the CJC to appoint representatives to this Governance and Audit Sub Committee.

### Standards / Ethical Framework

24. It will be important that members and co-opted members within a CJC are subject to the same standards of conduct as members of Constituent Councils. On application of the ethical framework a CJC will be able to adopt its own code of conduct for members. Until this point its members (including co-opted participants from Constituent Councils) will be subject to the relevant code of conduct of their local authorities. During this time members and co-opted participants from local authorities will be required to register any personal interests they have in the business of the CJC in their relevant principal council's register of interest by providing written notification to their council's Monitoring Officer.
25. 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.
26. It is proposed that the Standards Committee of the authority that provides the Monitoring Officer for the CJC (in the first instance Neath Port Talbot County Borough Council) be the designated Standards Committee for the CJC. Members are asked to note that discussions are taking place with Welsh Government on this issue in light of some recent draft guidance and in the event of any change to this; this will be reported back to members.

### Scrutiny

27. Working with its Constituent Councils the South West Wales Corporate Joint Committee ("CJC") will be required to put in place appropriate overview and scrutiny arrangements. 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.
28. In considering the most effective and efficient approach to scrutiny, Welsh Government require Constituent Councils and CJCs to give thought to the benefits of a joint overview and scrutiny committee made up of the constituent councils. The clear aim and ambition however must be to create, facilitate and encourage a clear democratic link back to the constituent councils.

29. Accordingly, it is proposed that a CJC Overview and Scrutiny Sub-Committee comprising three elected members from each constituent council be established to fulfil the Overview and Scrutiny Functions associated with the CJC. The functions of the Overview and Scrutiny Sub-Committee (to be enshrined in the CJC Constitution) are:
- (a) To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the CJC;
  - (b) To make reports or recommendations to CJC respect to the discharge of any functions which are the responsibility of the CJC;
  - (c) To make reports or recommendations to the CJC on matters which affect the CJC (insofar as the CJC is not, or CJC is not, under a duty to do those things by virtue of Section 22A of the Local Government Act 2000;
30. CJC members and staff (including those working under the terms of a secondment or service level agreement) 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.
31. It will be important that there is no overlap in scrutiny but ultimately members of constituent authorities will still be able to scrutinise the impact of the CJC on their locality. In essence, although not directly scrutinising the decisions of the CJC, the constituent councils will be looking at the impact of the CJC on their locality and how the decisions of the CJC are impacting the constituent council. Recent Welsh Government guidance failed to refer to the role of constituent council overview and scrutiny arrangements and representations have been made that guidance should be clearer in terms of expectations of both joint scrutiny as well as Constituent Councils' member scrutiny, it being considered that the establishment of joint scrutiny arrangements should be addressed from the outset when governance issues are addressed to avoid potential drift. This would reflect the importance attached to Overview and Scrutiny rather than it appearing as a governance add-on.
32. Future reports will be brought back to the CJC to appoint representatives to this Overview and Scrutiny Sub-Committee

### Constitution

33. The CJC is required to meet by the end of January 2022 in order to establish its budget for the 2022/2023 financial year.
34. 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.
35. The purpose of the Constitution is to:

- (a) enable the CJC to provide clear leadership to the community in partnership with citizens, businesses and other organisations, including its Constituent Councils and public bodies;
  - (b) support the active involvement of citizens in the process of CJC decision-making;
  - (c) provide a framework for good governance;
  - (d) enable decisions to be taken efficiently and effectively;
  - (e) create a powerful and effective means of holding decision-makers to public account;
  - (f) ensure that no one will review or scrutinise a decision in which they were directly involved;
  - (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
  - (h) provide a means of improving the delivery of service to the community.
36. Members will note that the Constitution is similar in nature to what Constituent Councils operated under as the CJC is required to follow similar processes.
37. Attached at **Appendix 1** is the proposed constitution of the CJC for members to consider and adopt and is based on the elements identified in this report.

#### Ancillary Documents

38. The following documents will also require approval by members of the CJC:
- (a) **Appendix 2** - Rules of Procedure for CJC Meetings – These rules will ensure that appropriate rules are in place for meetings of the CJC and are based on models used by Constituent Councils
  - (b) **Appendix 3** - Access to Information Procedure Rules – These rules ensure the adoption of rules in respect of the publication of CJC meetings and provide the information that the public shall be entitled to gain access to. Again, these are based on models used by Constituent Councils and derive from legislative requirements.
  - (c) **Appendix 4** - Members Code of Conduct – It will be a requirement of the CJC to have a code of conduct for its elected members and any co-opted members and accordingly the nationally recognised model code of conduct should be adopted as the CJC Code of Conduct for Members

#### **Financial Impacts:**

39. The financial impacts of adopting this Constitution and associated documents will be incorporated into the budget for 2022/2023 and future reports to the CJC.

### **Integrated Impact Assessment:**

40. The CJC is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not.
  - Deliver better outcomes for those people who experience socio-economic disadvantage
  - Consider opportunities for people to use the Welsh language
  - Treat the Welsh language no less favourably than English.
  - Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.
41. The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.
42. There is no requirement for an Integrated Impact Assessment for this report as the setting up of the CJC is underpinned by legislation and that this report is to establish governance arrangements in accordance with legislation. This will be kept under review with any future reports considering whether impacts require consideration.

### **Workforce Impacts:**

43. There are no workforce impacts associated with this report.

### **Legal Impacts:**

44. 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 the establishment of CJsCs. In particular the South West Wales Corporate Joint Committee Regulations came into force on 1<sup>st</sup> April 2021 and set out an initial framework 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. The Welsh Government is also currently consulting on draft statutory guidance. A third stage of Regulations will put in place further legislation for the operation of the CJsCs and its functions, which

Welsh Government are currently being consulted on. A fourth stage will put in place any remaining provisions that a CJC might need.

**Risk Management Impacts:**

45. Failure to constitute the CJC means the CJC will be unable to take any decisions, including setting a budget for the 2022/2023 financial year and accordingly would be in breach of the legal requirements imposed under the Local Government and Elections (Wales) Act 2021 (exposing each constituent council and national park authority to challenge) along with the reputational risks that such non compliance will bring.

**Consultation:**

46. There is no requirement for consultation in respect of this report.

**Reasons for Proposed Decision:**

47. To ensure appropriate governance arrangements are in place for the CJC to make decisions and compliance is had to the legislative requirements that are applicable to the CJC.

**Implementation of Decision:**

48. This decision is proposed for immediate implementation

**Appendices:**

49. Appendix 1 - Draft Constitution for the South West Wales CJC  
Appendix 2 - CJC Rules of Procedure  
Appendix 3 - Access to Information Procedure Rules  
Appendix 4 - Members Code of Conduct

**List of Background Papers:**

50. None