

## Appendix 1

### Report Headings

#### Decision Sought

- (1) Agree to enter into a Partnering and Funding Agreement (Appendix 2) whereby the role of Accountable body, responsibility for the delivery of the North Wales Growth Deal and funding arrangements for the Growth Deal are transferred to the North Wales Corporate Joint Committee on or before the 31<sup>st</sup> of March 2025.**
- (2) Agree to novate and assign as required the delivery of the North Wales Growth Deal and rights and obligations in all incoming funding agreement held by Cyngor Gwynedd as Accountable Body on behalf of the North Wales Economic Ambition Board (“NWEAB”) transfer to the North Wales Corporate Joint Committee (“NWCJC”);**
- (3) Agree to transfer and novate and or assign all interests in the portfolio of projects funded by the North Wales Growth Deal together with any ancillary agreements, charges and leases from Cyngor Gwynedd as Accountable Body on behalf of NWEAB to the NWCJC.**
- (4) Agree to the transfer and /or assignment of all financial balances , monies due and assets as held on behalf of the North Economic Ambition Board by Cyngor Gwynedd to the North Wales Corporate Joint Committee .**
- (5) Delegate authority to the Chief Executive, in consultation with the Monitoring Officer and Section 151 Officer, to agree and execute the final form agreements, deeds and all other legal documents necessary to implement the transfers referred to at paragraphs (1) (2 )and (3) above.**
- (6) On completion of the Partnering and Funding Agreement agree to the termination of the GA2 agreement and the winding up of the North Wales Economic Ambition Board Joint Committee**
- (7) Agree to the transfer of accountability to the CJC and that the CJC accept responsibility for decision making for the implementation of the North Wales Growth Deal subject to novation of the Growth Deal and approval of additional Standing Orders incorporating the key terms of the Joint Working Agreement (“GA2”) between the 6 Constituent Councils and 4 Education parties;**

## Reasons for the Decision

1. Following the in-principle decisions of the executives of Conwy County Borough Council, Denbighshire County Council, Flintshire County Borough Council, Cyngor Gwynedd, Isle of Anglesey County Council, Wrexham County Borough Council (the “Constituent Councils”); to transfer the implementation of the North Wales Growth Deal to the NWCJC the report makes recommendations for decisions to implement and facilitate the proposed transfer on or before 31 March 2025.

## Background

2. On the 17<sup>th</sup> of December 2020, the Constituent Councils together with Bangor and Wrexham Universities, Coleg Cambria and Grŵp Llandrillo Menai entered into a ~~Joint Working Agreement (“GA2”) which established a Joint Committee~~ responsible for overseeing and coordinating the discharge of the Councils’ obligations in relation to the North Wales Growth Deal and delivering the North Wales Growth Vision. As part of those arrangements, Cyngor Gwynedd was appointed to act as Host Authority for the partnership and is the Accountable Body.
3. Regulations made under the Local Government and Elections (Wales) Act 2021 established four Corporate Joint Committees - North Wales CJC, South West Wales CJC, South East Wales CJC and Mid Wales CJC - with the aim of strengthening regional collaboration between authorities. The CJs are public bodies - with broadly similar powers and duties to local authorities - and were given the statutory functions of developing regional transport policies, preparing a Strategic Development Plan, and doing anything the CJC considers likely to promote or improve the economic wellbeing of its area. Membership of the CJs consist of the Executive Leaders of the Councils within the specific region, together with in the case of North Wales the Chairman of Eryri National Park Authority. The North Wales Corporate Joint Committee was formally established in April 2021 and its functions were brought into force in June 2022.
4. The NWCJC is a corporate body in its own right, able to directly employ staff, hold assets and manage funding, without the requirement to act via an Accountable Body. The Constituent Councils resolved in their in-principle decisions in 21/22 to transfer the growth Deal to the CJC - **The report is attached at Appendix 1** and provides the background to that decision. The overall strategic impetus to transfer stemmed from the correlation in membership between the NWEAB and the membership of the CJC, the wish to avoid a multiplicity of regional bodies with similar functions, and the various legal and operational advantages and efficiencies of the CJC being its own corporate entity.

5. The original decision was an in-principle decision as the legislation relating to CJC was continuing to develop and indeed the final set of initial Regulations came into force on 1 April 2023. These Regulations being of direct relevance and implication for the proposed transfer particularly around taxation and staffing. It is recognized that some anticipated statutory provisions were not provided for. However, it is considered that the proposed transfer arrangements will provide a governance framework which will meet and address the matters raised albeit by a different pathway.
6. Operating status has now been achieved, meaning that NWCJC can function as a corporate entity, has the ability to employ people, and has in place the necessary governance arrangements. This provides the primary framework of governance which will be enable the CJC to function as a public authority across all its functions.
7. In order to achieve fully functioning status and transition of the North Wales Growth Deal to the NW CJC a series of decisions are required:
  - (a) Consent to transfer the North Wales Growth Deal funding letters and other funding agreements currently in the name of Cyngor Gwynedd (acting in its capacity of Accountable Body) and accountable body role, to the North Wales CJC;
  - (b) Consent to transfer all financial responsibilities from Cyngor Gwynedd (acting in its capacity of Accountable Body) to the NWCJC. This will include the Balance Sheet (all assets and liabilities) as well as the portfolio of Growth Deal projects and other projects.
  - (c) Noting the proposed new governance structure of the NWCJC,
  - (d) Agreement of transitional arrangements to support the proposed transfer
  - (e) Appropriate officer delegations to carry the above into effect; and
  - (f) Forward planning the next steps.

### **Transfer of Funding Agreements**

10. In order to transfer the North Wales Growth Deal Funding Agreement from Cyngor Gwynedd (acting as Accountable Body for NWEAB) to the North Wales CJC, it will be necessary for Welsh Government, the Constituent Councils and the NWCJC to enter into a novation agreement. The novation agreement itself is a simple document, which has the effect of substituting Cyngor Gwynedd (the outgoing party) with the NWCJC (the incoming party) in the agreement with Welsh Government (the remaining party), as shown in **Figure 2** below.

11. The Welsh Minister for Economy has confirmed Welsh Government's consent in principle to the novation, and the Secretary of State for Wales has confirmed that UK Government fully supports the transition.
12. A draft novation agreement has been prepared with an effective date of 31 March 2025. If agreed, the effect of the novation will be that, as of 00:01 hours on 31 March 2025, all of the Accountable Body's (Cyngor Gwynedd) rights and obligations under the North Wales Growth Deal Funding Agreement (whether arising before, on or after the novation date) will transfer to the NW CJC, who will deliver the North Wales Growth Deal as part of its functions, and the Constituent Councils will be released from their liabilities under the Growth Agreement (GA2). Welsh Government and NWCJC will agree to be bound by the terms of the original Growth Deal Funding Agreement as if the CJC were an original party to the agreement in place of the Accountable Body.

#### **Funding Commitments in GA2 and Funds held by Cyngor Gwynedd as Accountable Body on behalf of the NWEAB**

13. GA2 provides a revenue framework which supports the work of the NWEAB and the Portfolio Office. On 31 March 2024, the Joint Committee had a cash balance of £58.9m of which mainly included the North Wales Growth Deal grant of £53m (grants received in advance) and £5.2m of usable reserves.

The statement of accounts for 2023/24 can be seen on the following link, and the balance sheet can be seen on page 10:-

<https://www.gwynedd.llyw.cymru/en/Council/Documents---Council/Performance-and-spending/Statement-of-accounts-2023-24/NWEAB-Statement-of-Accounts-2023-24-subject-to-audit.pdf>

The usable reserves (Note 10) include the earmarked reserve to support future years' budgets and staffing structure (£0.28m), projects reserve to support the delivery of Regional Economic Framework priorities (£0.15m) and the interest reserve to fund the cost of borrowing in future years (£4.73m).

A full set of accounts will be produced for the pre-transfer period April 2024 to October 2024, with the balances on 31 October 2024 transferred to the CJC.

14. This arrangement is a key cornerstone in delivery of the Growth Deal and is a contractual commitment by the 10 signatories to GA2. The Partnering Agreement is therefore designed to maintain this funding arrangement on the same terms as GA2. This will enable the Growth Deal delivery to continue and is seen as a key funding commitment which allows the CJC to assume responsibility for the Growth Deal delivery. However, allied to this are the following reciprocal commitments in the Partnering Agreements:

- (a) The funding will be provided on the same terms as provided for in GA2.
- (b) The funding will be applied and accounted for as a separate cost centre towards the delivery of the Growth Deal only.
- (c) Provision of the funding will be linked to a commitment by the CJC to delivery of the Growth Deal in accordance with agreed outputs and performance commitments to the partners.

#### **Project Portfolio Transfer**

- 15. Consent is sought to transfer the entire portfolio of funded projects to the North Wales CJC. The legal documents have been subject to external review and no barriers have been identified. There are a limited number of funding agreements in existence at this time and all have provision allowing for novation across to the CJC should that be approved. The current agreements are set out in the schedule to the Partnering Agreement. Contract management would then be the responsibility of NWCJC.
  
- 16. Specialist external advice has also been sought on the potential tax implications of each of the proposed transfers, and again no areas for concern have been identified.

#### **Other Operational Agreements**

- 17. These include, for example, the lease of office premises, equipment hire, and agreements with Constituent Councils to provide support services such as IT, HR, and transactional services. It is proposed that decisions on operational matters that fall within existing approved budgets be delegated to the NW CJC Chief Executive in consultation, where appropriate, with the S151 Officer and/or Monitoring Officer.

#### **Staff**

- 18. The TUPE (Transfer of Undertakings (Protection of Employment) Regulations) apply to the NWCJC's role as an employer. The regulations exist to protect employees' contracts of employment and contractual terms and conditions in the event that there is a change of employer. In accordance with the requirements of the Regulations, the staff currently working for Ambition North Wales will be transferring from the employment of Cyngor Gwynedd, as the current employing authority, to the NWCJC. A consultation process has been undertaken with Ambition North Wales' staff members, as a collective and also on an individual basis, to keep all concerned abreast of developments. Preparatory work has been undertaken to ensure that all contractual elements of employment will be transferred to the NWCJC when the final transfer date is confirmed. From that agreed transfer date onwards, the staff members currently working for Ambition North Wales will therefore be employed by NWCJC. The transfer of the staff of the Portfolio Office to the North Wales Corporate Joint Committee will occur on the transfer date as a legal consequence.

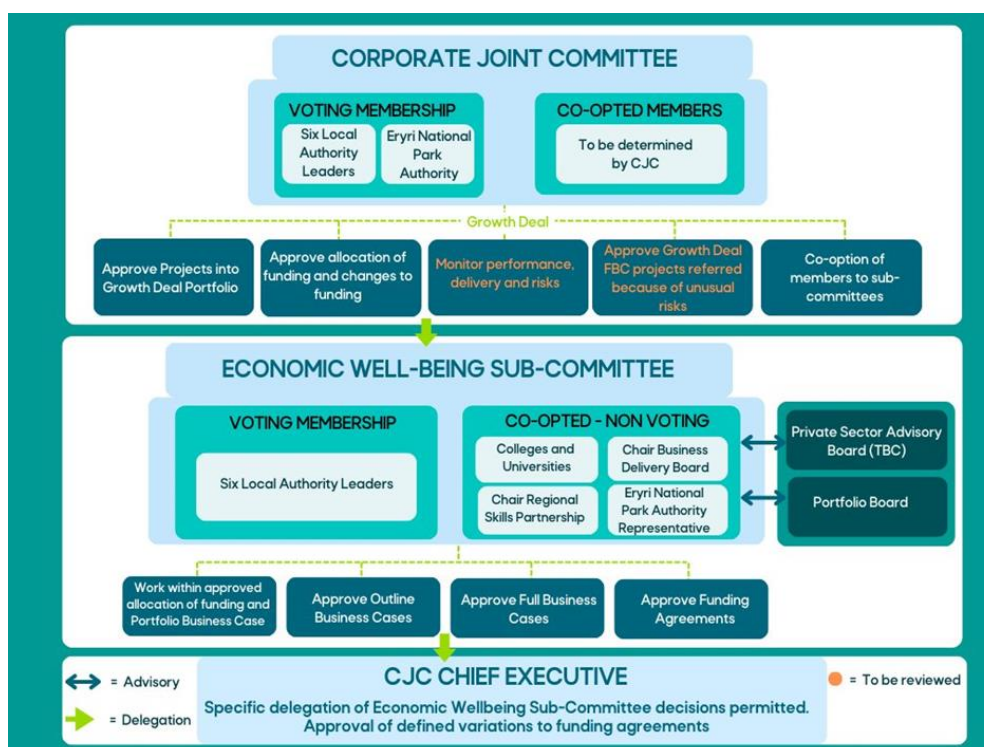
## North Wales CJC Constitution, Policies and Procedures

19. Integral to the decision to transfer responsibility for the delivery of the North Wales Growth Deal to the NWCJC is the requirement that it has in place robust governance and operational arrangements.
20. The NWCJC has in place a Constitution which allows it to function as a public authority. These include but are not limited to sections that provide for Committee and Sub-Committees, Terms of Reference, the Scheme of Delegation to Officers, Financial Procedure Rules, and Contract Procedure Rules. The Constitution continues to be developed and will be maintained under constant review.

## Proposed Governance and Partnership Structure

21. To date, North Wales Growth Deal has operated as a contractual Joint Committee and been bound by the terms of the GA2 with Cyngor Gwynedd acting as the Accountable Body and, therefore, legal entity for all employment, contractual undertakings, and other statutory and regulatory responsibilities. With the transfer to the NWCJC it will take over the Accountable Body role and all the governance for the Growth Deal, with the delivery model established through the statutory arrangements of the CJC. The CJC intends to create a specific Sub-Committee to support the Growth Deal and its wider Economic Wellbeing Function. The membership will be made up of the Constituent Council Members and will be supported by co-option of the University and College Partners.

## Governance Structure Post Transfer



22. Added to this, the CJC Regulations (General) (Wales) 2022, require that a range of new statutory and non-statutory sub-committees are established under the CJs. These requirements include a statutory Governance & Audit sub-committee, and a statutory Standards Committee. In addition, there is a requirement for the new statutory duties in relation to strategic planning and regional transport planning to be supported by sub-committees.
23. In taking forward the agenda for the NWCJC, it is proposed that a ‘lift and shift’ approach is taken – which would mean the NWEAB Growth Deal functions are assumed by the NWCJC. Care must now be taken to ensure that the CJC’s new governance and partnership structure appropriately accommodates the key requirements of North Wales Growth Deal contracts and assurance provisions – as well as those required by the CJC Regulations – but do so in a more efficient, consolidated and streamlined manner. Simply integrating the two structures, without further consideration as to what a fit for future governance and partnerships framework should look like, would simply add to an already challenging and likely, overly onerous and ineffectual future picture.
24. Working with the existing complement of key partnerships and advisory boards, a proposed revised governance and partnership structure has been adopted (set out in Table 1 above) which would replace the existing structure (set out in ). This places a clear emphasis on observing the policy position of lift and shift, but ensuring this is taken as an opportunity to develop a system which discharges key legal and contractual duties – but does so in a way which achieves two important objectives:
  - (a) Appropriate and inclusive governance of the Growth Deal Project
  - (b) Providing an effective and efficient structure to continue the delivery of the Growth Deal in accordance with the expectations of the Partners.

### **Scrutiny**

25. Although this report relates to the transfer of the Growth Deal across to the CJC there is a wider context in relation to the scrutiny of this regional body across all of its functions. In parallel with this report a proposed scrutiny structure is being put forward in relation to all the CJC’s functions. At the core of these arrangements are the statutory provisions which place the responsibility for overview and scrutiny of the CJC with the Constituent councils.

26. The Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2022 impose a duty on the CJC to co-operate with a “relevant” Scrutiny Committee and respond to any reports or recommendations prepared by the Scrutiny Committee. A “Relevant Scrutiny Committee” may be a Committee of the Constituent Authorities, or a Joint Scrutiny Committee appointed by those authorities. This means that where a scrutiny committee exercises its powers to make a report to the authority or its executive “on matters which affect the authority's area or the inhabitants of that area “and that relates to the functions of the CJC, certain requirements stem from this. The CJC must co-operate with the Relevant Scrutiny Committee and provide assistance to the scrutiny function.
27. With the standing down of the North Wales Economic Ambition Board Joint Committee there will be a model for continued scrutiny of the CJC. However, because of the different legal and governance context that model will be based on the statutory requirements which relate to the CJC. A proposal around joint scrutiny is currently being presented to each Constituent Council.

**Integrated Impact Assessment:**

28. 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
29. 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.’



30. There is no requirement for an Integrated Impact Assessment for this report as the transfer of functionality from the Economic Ambition Board, assignment and novation of legal entities and rights to the CJC is a contractual and constitutional matter. This report sets out the governance arrangements in order for the Growth Deal and all matters to facilitate that to be transferred to the CJC.

### **Financial Implications**

The financial implications of the transfer process have been set out in the body of the report

### **Legal Implications**

The transfer of the responsibility for the Growth Deal to the CJC requires a successor agreement to the original Governance Agreement 2 (“GA2”). The proposed form of the Delivery and Funding Agreement is at Appendix 1.

1. The Joint Committee arrangements are no longer required It is no longer based on delegation. The agreement is based on a novation/ assignment of delivery of the Growth to the CJC .
2. Concurrent and separate Novation agreement will be concluded with Welsh Government, Gwynedd and the CJC as part of the transfer process.
3. There is no need for a host authority and Gwynedd drops away from the accountable body role to be replaced by the CJC.
4. The mutual commitments are based on the agreement and not on delegation and reserved matters. However, in return for the funding the parties will retain a an overarching role in the shape of the Growth Deal in return for the funding.
5. The CJC will be responsible for its own staff and other structures. It’s commitment will be delivery of the Growth Deal and it will need utilise the resources it is given to deliver.
6. Growth Deal finance is ring fenced from the CJC’s other functions and the levy. This also means that the CJC ‘s commitment to deliver will reflect the resource it is given or can access.
7. The funding model is retained. However, as the CJC is a separate entity and has to set it’s own balanced budget by law this is contractual and not based on limits of delegation.
8. Withdrawal etc have similar provisions but because of the hard financial implications for the CJC it is protected by contractual entitlements.”

### **Conclusion**

31. The transfer of delivery of the North Wales Growth Deal to the Corporate Joint Committee has been seen as an opportunity to build on the advent of the Corporate Joint Committee. As a corporate body in its own right but with the Councils at the

core of it's decision making it provides an opportunity to use the CJC to continue and develop the work of delivering the Growth Deal.

32. The consent of each Authority is required in order that the necessary legal agreements can be executed, and governance arrangements adopted to effect transfer as set out in the decision paragraphs (1) - (7).