

Meeting of:	<b>Cabinet</b>
Date of Meeting:	<b>Monday, 21 December 2020</b>
Relevant Scrutiny Committee:	Environment and Regeneration
Report Title:	Response to the Welsh Government Consultation on The Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021
Purpose of Report:	To seek Cabinet endorsement of the Council's response to the Welsh Government Consultation on The Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021 at Appendix A.
Report Owner:	Cabinet Member for Legal, Regulatory and Planning Services
Responsible Officer:	Rob Thomas, Managing Director
Elected Member and Officer Consultation:	Individual ward members have not been consulted as the report relates to the whole Vale. Finance Support Manager – Accountancy Senior Lawyer
Policy Framework:	This report is a matter for endorsement by Cabinet.
<p>Executive Summary:</p> <ul style="list-style-type: none"> <li>The Welsh Government consultation is seeking views on the policy approach for the subordinate legislation required to establish the procedure for Strategic Development Plans (“SDPs”) to be prepared across Wales by Corporate Joint Committees (“CJCs”) and associated matters. The Regulations will be called the Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021. The proposals replace the previous framework for preparing an SDP with a Strategic Planning Panel that has been the subject of a previous report and endorsement by the Council on 29th July 2019 (minute number 215 refers) which would become defunct.</li> <li>The consultation document can be found by following the link: <a href="https://gov.wales/establishing-town-and-country-planning-strategic-development-plan-wales-regulations-2021">https://gov.wales/establishing-town-and-country-planning-strategic-development-plan-wales-regulations-2021</a>. The consultation includes a set of specific questions to be submitted on or before 4th January 2021. The draft response on behalf of the Vale of Glamorgan Council is attached at Appendix A.</li> <li>The key issues raised in the response are: the implications for resources of preparing a SDP in addition to the Local Development Plan (LDP); the governance arrangements for SDPs, CJCs and consultation with individual Local Authorities; concerns over the WG's expectation that the SDP can be prepared in the same manner and timeframe as the LDP; and the missed opportunity to</li> </ul>	

gain certainty and remove risk as the SDP is prepared (i.e. endorsement of a 2-stage Examination).

## **Recommendations**

- 1.** That Cabinet consider and endorse the Council's response to the Welsh Government Consultation on The Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021 at Appendix A.
- 2.** That the report and appended consultation response be referred to Scrutiny Committees (Corporate Performance and Resources & Environment and Regeneration) for consideration with any additional recommendations reported to Cabinet for further consideration in advance of submission to Welsh Government as an addendum, if necessary and appropriate.
- 3.** That the urgency procedure set out in section 14:14 of the Council's Constitution be exercised in respect of Recommendation 1.

## **Reasons for Recommendations**

- 1.** For Cabinet to consider and endorse the content of this report and put forward the consultation response to the Welsh Government by the deadline of 4th January 2021.
- 2.** To enable the matter to be considered by Scrutiny Committees (Corporate Performance and Resources and Environment and Regeneration)
- 3.** To allow the response to be issued by 4 January 2021.

## **1. Background**

- 1.1** The Planning (Wales) Act 2015 set out the process for establishing and preparing a Strategic Development Plan (SDP). An SDP is a regional level Development Plan that sits above a Local Development Plan and below the Welsh Government's National Development Framework and provides a strategic framework for LDPs to be prepared underneath. A statutory SDP provides certainty to developers, investors and our communities that key strategic decisions around housing, transport, employment and infrastructure provision are being taken at an appropriate regional level, whilst still allowing key decisions on planning proposals to be taken locally through Local Development Plan allocations and policies and thereafter in development management decisions.
- 1.2** Welsh Government had previously invited all Local Planning Authorities to submit proposals for SDPs, stating that SDPs are necessary to provide a robust framework for the delivery of the land use implications of existing City Deal proposals and to allow larger than local issues such as housing, employment and infrastructure which cut across LPA boundaries to be considered in an integrated and comprehensive way.
- 1.3** In 2018, on the basis that the way forward would be subject to decision by each authority, work commenced by the ten authorities comprising the Cardiff Capital Region ('CCR') to look at the potential for a Strategic Development Plan (SDP) for

the 10 Local Authorities in the region. The region reached some key areas of agreement (i.e. preferred boundary area, governance, scope and resources) to enable the project to proceed, which culminated in a report to Cabinet and then Full Council in July 2019 where it was resolved to progress with the rest of the Cardiff Capital Region to prepare an SDP for South East Wales. Following this, the Minister announced plans to review regional governance arrangements relating to SDPs and proposed the new Corporate Joint Committee (CJC) arrangements that are subject to a separate report. Therefore, work on the SDP has stalled in the interim period pending these changes.

- 1.4** The Minister for Housing and Local Government has confirmed the Welsh Government's intention to establish the first CJs as soon as possible. These CJs will exercise functions relating to the preparation of an SDP, to the development of Regional Transport plans and in addition, will include a power to promote or improve the economic well-being of its area. A consultation on the draft regulations establishing the CJs is being undertaken in parallel with the SDP consultation and is subject to a separate report.
- 1.5** The current consultation on SDPs is seeking views on Welsh Government's policy intent for the subordinate legislation required to establish the procedure for SDPs to be prepared across Wales by CJs. The Regulations will be called the Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021 ("the SDP Regulations").
- 1.6** It is the Welsh Government's intention to prepare specific SDP guidance to assist the CJC relevant to the scale of an SDP and the regulations when they come into force. That guidance will be the subject of public consultation and engagement with CJs / LPAs and key stakeholders before it is formally published.
- 1.7** It is indicated that CJs must meet for the first time by the end of September 2021. The draft regulations are however less clear about expectations for when implementation of functions such as planning should commence, and in this regard the consultation notes that some transition period will be required before the formal establishment of the CJC.
- 1.8** In areas with an adopted SDP, an LDP will still need to be prepared. LDPs prepared under an adopted SDP (known as LDP 'Lites') will be more focussed in nature, dealing with local issues and policies, and will identify site specific allocations, prepared in general conformity with the adopted SDP.

## **2. Key Issues for Consideration**

- 2.1** The benefits of preparing an SDP for the region were previously explored and agreed in July 2019 when the Council agreed with others in the Cardiff Capital region that work should commence on an SDP. Therefore, we are generally

supportive of the principle of preparing an SDP, however, there are a number of issues and areas of concern highlighted in the Council's response at Appendix A.

- 2.2** It is proposed that the SDP Regulations should largely mirror (with some exceptions) the key stages and plan preparation requirements of the LDP Regulations. However, it is clear that in advocating that approach WG appear to have under-estimated the complexity associated with undertaking development planning at that scale.
- 2.3** The consultation proposals state: "Four years is considered a reasonable time to prepare a robust evidence base and allow opportunities for public engagement to test and seek views on the issues and options, spatial strategy, proposed allocations and supporting evidence in a robust and transparent manner, including alignment and integration with SA and Welsh language requirements. The response at Appendix A considers this to be a naïve assumption that does not reflect the reality of 15 years of preparing LDPs in Wales.
- 2.4** It is proposed to retain a two stage approach as set out in the current LDP regulations. There will be a preferred strategy and a deposit plan before the SDP is submitted for public examination. This is supported, however, the response at Appendix A advocates an Examination Stage for the SDP Strategy to provide certainty and avoid abortive work.
- 2.5** In terms of governance, the consultation is relatively quiet and instead relies on the CJC proposals as they will be the body responsible for the SDP. In this regard, the consultation appears to underestimate the amount of time that will be needed to establish working relationships between the SDP team and not only the CJC but their respective Local Authorities in order to have successful collaboration built on consensus. This will take time and emphasises the concerns raised about some of the assumptions made that the SDP is much like an LDP just 'scaled up'.
- 2.6** Statutory decision-making powers over the SDP will be vested in the CJs and as a consequence the Leaders who make up the CJC (and potentially any other members who may be co-opted). Leaders will, as a result need to ensure their Councils have considered and endorsed any proposed regional plans prior to agreeing them at a CJC, as is the case currently with growth and city deals. Although the Bill will strengthen Leaders' powers and transfer these decision-making powers from constituent Councils, it will be important that constituent Councils have the opportunity to consider the implications of and content of any regional plans and initiatives that are generated from and agreed by the CJC.
- 2.7** Finally, the response sets out that the SDP for the Cardiff Capital Region, will not be adopted before most if not all LDP (version 2) have been prepared and adopted across the region. This is a huge missed opportunity given the region's willingness to start an SDP 18 months ago. Nevertheless, when it is commenced it is vital that it is undertaken at a strategic / regional level and is not simply a

‘stitching together’ of existing LDPs. To undertake the preparation and implementation of an SDP effectively, it must be given sufficient time and resource to secure consensus at a regional level to guide development in the region for the decades to follow.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1** Integration – the preparation of the SDP will bring together all land use planning issues relevant at a strategic level across the Cardiff Capital Region, involving our partners, residents, visitors, employers and service providers in the formulation of the Plan.
- 3.2** Collaboration- the SDP will be a key collaboration project for the region enabling the 11 Local Planning Authorities to work together to form a Plan for the region.
- 3.3** Involvement – preparation of the SDP will provide numerous opportunities to engage with our stakeholders, residents and customers, including the business community and ensuring that we are listening to a wide range of views to inform the plan and decision making process.
- 3.4** Prevention – the SDP provides an opportunity to understand the root causes of issues and preventing them by being proactive in our thinking and understanding the need to tackle problems at source for example by undertaking needs assessments to inform our priorities.
- 3.5** Long-term – the SDP will be all about planning for the future and taking a strategic approach to ensure the Cardiff Capital Region is sustainable and that we understand the future need and demand for sustainable development in the region and how that is best met.
- 3.6** The SDP will provide a strategic land use document for the whole Cardiff Capital Region, setting out how and where sustainable development will be delivered. It is a cross-cutting plan that considers issues around housing, employment, transport, infrastructure, community facilities, education facilities, leisure and tourism, heritage and environmental assets. Therefore it will set a framework to deliver against all of the Council’s well-being objectives.

### **4. Resources and Legal Considerations**

#### **Financial**

- 4.1** The overall cost of the SDP based on a 5 year delivery programme was estimated to be £3.14m and was assumed to be shared on a proportional basis by the constituent Councils. This is now a matter for the CJC to agree in due course.

## **Employment**

- 4.2** The SDP project requires the establishment of an SDP Team to deliver it. In addition individual Local Planning Authorities may provide staff resources on secondment or project specific work, as required throughout the 5 year programme albeit this would be on a voluntary basis, the costs of which would be covered by the CJC.

## **Legal (Including Equalities)**

- 4.3** The Local Development Plan (“LDP”) preparation and adoption is governed by provisions in Part 6 of the Planning and Compulsory Purchase Act 2004 (“the PCPA”). The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, as amended (“the LDP Regulations”), made under that Part, set out the procedure for the preparation of local development plans (“LDPs”) by local planning authorities (“LPAs”).
- 4.4** The Planning (Wales) Act 2015 (“PWA”) gained Royal Assent on 6th July 2015. Amongst other things, it amends Part 6 of the PCPA for the purpose of introducing SDPs, to be prepared by governance bodies called Strategic Planning Panels (“SPPs”) on the basis of either a voluntary approach by two or more LPAs or a Ministerial direction. It also makes additional provision so that LDPs must be in general conformity with the National Development Framework for Wales (“the NDF”) and any SDP prepared in relation to the geographical area in question, while the SDP itself must similarly be in conformity with the NDF.
- 4.5** The Local Government Elections Bill (“LGEB”) was introduced into the Senedd in November 2019. It introduces CJs as the Welsh Ministers’ preferred means of preparing an SDP, in place of SPPs. Accordingly, the Welsh Ministers intend to introduce amendments to the LGEB which will in turn amend Part 6 of the PCPA, so that the provisions relevant to SDPs are replicated in all material respects, albeit in a new context where the CJC is the sole body responsible for their preparation.

The LGEB confers a power on the Welsh Ministers to establish CJs via regulations. The Minister for Housing and Local Government has confirmed the Welsh Government’s intention to establish the first CJs as soon as possible. These CJs will exercise functions relating to the preparation of an SDP, to the development of Regional Transport plans and in addition, will include a power to promote or improve the economic well-being of its area.

## **5. Background Papers**

Welsh Government Consultation Document: The Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021

<https://gov.wales/establishing-town-and-country-planning-strategic-development-plan-wales-regulations-2021>

Development Plans Manual (Edition 3) March 2020:

<https://gov.wales/sites/default/files/publications/202003/development-plans-manual-edition-3-march-2020.pdf>

Town and Country Planning (Local Development Plan) (Wales) Regulations 2005:

<https://www.legislation.gov.uk/wsi/2005/2839/contents/made>

Town and Country Planning (Local Development Plan) (Wales) (Amendment) Regulations 2015:

<https://www.legislation.gov.uk/wsi/2005/2839/contents/made>

Consultation on Regulations to establish Corporate Joint Committees (CJC)

<https://gov.wales/consultations>



**Q1 Do you agree the SDP Regulations should broadly mirror the key stages and plan preparation requirements set out in the LDP Regulations, subject to the exceptions referred to? If not, please explain why**

Council's Response:

The principle of mirroring the key stages of LDP preparation for the SDP is logical. However a number of assumptions made about the efficiency of the LDP process are naïve and do not reflect the reality of 15 years of preparing LDPs in Wales. The proposals underplay the additional complexity that working collaboratively across a region will introduce.

Time - Four years will not be sufficient time to prepare an SDP in line with all of the proposed key stages in the process, including evidence gathering, community and stakeholder engagement, formal public consultations, and examination.

Local Authority Engagement and Collaboration – CJsCs will provide the framework for Council Leaders and relevant Cabinet Members to engage in the process, but there needs to be provision for engagement with elected members across the Council. It takes time to build trust and relationships between Officers and Members to enable effective collaborative working and this cannot be underestimated. In South East Wales there will be up to 11 Local Planning Authorities needing to work together to build this trust to make difficult but very important strategic decisions on a 'regional' footing. This cannot and should not be rushed. SDPs will only be successful if it is prepared on a foundation of consensus and cooperation. Leaders will, as a result need to ensure their Councils have considered and endorsed any proposed regional plans prior to agreeing them at a CJC, as is the case currently with growth and city deals. Although the CJsCs will strengthen Leaders' powers and transfer these decision-making powers from constituent Councils, it will be important that constituent Councils have the opportunity to consider the implications of and content of any regional plans and initiatives that are generated from and agreed by the CJC.

Stakeholder Engagement – land use planning can be a technical and complex process that is already difficult to capture the imagination of stakeholders. With SDPs the wider public will need to understand what an SDP is, how it relates to them and their local communities, and the relationship between SDPs and LDPs. In the context of the Well Being of Future Generations Act and the importance of community engagement enshrined in Placemaking, this part of the process needs time and resource.

Furthermore, this is a missed opportunity if consideration is not given to a new two-stage approach to Examination for SDPs so that the SDP Strategy can be found to be 'sound' through an 'Examination in Public' before the detailed plans, policies and proposals follow. Given the scale of an SDP this would seem to be a sensible way to avoid the risk of the Strategy being found 'unsound' at the end of the process with years of abortive work having been wasted. It has the additional benefit of providing some degree of certainty to developers investing in major strategic developments in the region

and for communities affected by them. It would also assist Local Planning Authorities to prepare LDP Lites swiftly where they are in accord with the SDP Strategy. There was merit in the previous UDP system where plans 'gained weight' as they advanced through the stages of preparation and this could be achieved through a more formal Examination process for SDPs that need not lengthen the process but could save significant wasted time.

**Q2 Do you agree with the proposed approach to the Community Involvement Scheme (CIS) and Delivery Agreement (DA)? If not, please explain why**

Council's Response:

The ability to engage on an SDP in the same way as an LDP is not simply a difference of scale. That assumption seriously underplays the resource, logistics, governance and access challenges that engagement across a region as large as South East Wales presents. The difference in scale is significant and is therefore key to delivering a successful SDP and should not be underestimated not least, for example, in securing public and political commitment from the 11 Local Planning Authorities in this region.

It is suggested that key documents will still need to be available in hard copies at 'principle offices and key locations' specified by the CJC in the CIS. The current pandemic has meant this provision is unworkable in some emergency situations and the regulations should allow flexibility for alternative arrangements in exceptional circumstances to ensure a Plan is not found unsound despite all reasonable endeavors having been made to make information available to those who want it.

**Q3 Do you agree with the list of general and specific consultation bodies listed in Annex 1? If not, who else do you think should be considered for inclusion and why?**

Council's Response:

This is a short, generic list when compared to that contained in most LDP Delivery Agreements. However, it should be up to CJsCs to consider who best to consult and engage with in their area. Some omissions noted include:

- PINs
- Cross border i.e. English authorities
- Town Councils (reference is made to Community Councils only)
- Telecommunications Infrastructure Providers
- Emergency Services
- Those with licenses granted under the Gas Act 1986
- Business Interests Groups/Chamber of Commerce

- Access Groups
- Transport Operators (other than just trains)
- Local/regional Environmental Groups
- MPs/AMs/ Local Councillors
- Professional Bodies
- Higher Education / Further Education

**Q4 Do you agree with the two stage preparation and consultation approach proposed at Preferred Strategy and Deposit? If not, please explain why and what alternative approach you would suggest?**

Council's Response:

The assumption that four years is considered a reasonable time to: *“prepare a robust evidence base and allow opportunities for public engagement to test and seek views on the issues and options, spatial strategy, proposed allocations and supporting evidence in a robust and transparent manner, including alignment and integration with SA and Welsh language requirements”* is naïve assumption that does not reflect the reality of 15 years of preparing LDPs in Wales. The evidence gathering and consensus building at a political level across the region will take far longer when 11 Local Authorities' respective Members are involved in comparison to 1 Local Planning Authority as has been the case with LDPs – sufficient time needs to be allotted at the very start of the process if any successful collaboration is to be realised. Similarly, the sheer number of consultee and public responses to proposals could be vast and the SDP team will need sufficient time to fully appraise and respond to these – there could be 11 times the number when compared to individual LDPs. By way of context, in the Vale of Glamorgan we received thousands of representations to our Deposit LDP, which is by no means abnormal.

The two-step process used for LDPs as a basis for consultation is supported and appears to work well at present. There is no obvious reason it would not work for SDPs.

As set out above an early test of the soundness of the Plan's strategy could be beneficial as a matter, such as regional housing apportionment, will be a major aspect of the SDP. An early examination before the plan progresses too far, assuming that its content at deposit is as broad as the scope of LDPs presently could be productive and save time later in the SDP process. It would also provide more certainty to all in the process, which is necessary for major strategic development proposals that have long lead-in times.

**Q5 Do you agree with the particular elements of the procedures and requirements proposed for SDP preparation including proposals from pre-deposit to Deposit stage? If not, please explain why**

Council's Response:

The concerns raised earlier relating to the significance of the difference in scale between an LDP and SDP are relevant, particularly the ability of a CJC to ensure “effective public involvement” across such a large and diverse region as South East Wales. Equally, the call for strategic locations and sites will be difficult to manage as well as the subsequent level of assessment including background studies and evidence gathering, required to demonstrate the viability and deliverability of such strategic sites, sufficient for the SDP to be found sound. The Council would reiterate the concerns raised regarding the assumed 4 year timeframe for the preparation of an SDP is wholly unrealistic.

In terms of the relationship between an emerging SDP and LDPs, the assumption that has to be made by LPAs is that they will have to await the preparation and adoption of an SDP to set the context for the preparation of LDPs or ‘lites’, particularly as an SDP will carry no weight until examined and adopted. This could lead to local ‘policy gaps’ and lead to pressure for speculative un-planned development. Further guidance will be needed on this relationship and consideration should be given to enabling LDP lites to start before an SDP is adopted, if necessary ‘at risk’.

It is also not clear how the other functions of the CJC – Transport and Economy – will relate to the preparation of an SDP in terms of, for example, aligning the preparation of a Regional Transport Infrastructure Plan to identify the infrastructure needed to support the strategic growth being proposed in the SDP.

**Q6 Do you agree with the proposed approach for submission, examination and adoption of an SDP? If not, please explain why**

Council’s Response:

Yes – except that consideration should be given to a two-stage Examination process as advocated above. Consideration would need to be given to public engagement in the Examination process and potential to move venues across the region as appropriate.

**Q7 Do you agree with the proposed approach to monitoring, review and revision of an SDP? If not, please explain why**

Council’s Response:

Monitoring, review and revision will be as important for SDPs as they are for LDPs, albeit the process may be more complex due to the scale of the matter. The consultation does not indicate if there will be any mandatory monitoring measures and if so what these might be.

The Council does not consider a mandatory 4 year review to be appropriate for SDPs that should have a longer time period for implementation than LDPs and contain strategic projects that will take many years to come to fruition. Review should be prompted by the Annual Monitoring Report if the Plan is demonstrably not working. If a

mandatory review period is specified it should be 6 years rather than 4 to take account of the strategic nature of the plan.

**Q8 Do you agree with the proposed approach for SDP withdrawal? If not, please explain why**

Council's Response:

The main concern relates to the uncertainty of the relationship between an emerging SDP and the position with emerging LDPs or 'lites' within the CJC and the consequences for those plans if an emerging SDP were withdrawn prior to submission? Much clearer guidance is needed on this and the relationship of SDPs to LDPs, including what the 'planning reasons' for withdrawal might include or exclude.

**Q9 We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please report them**

Council's Response:

Notwithstanding the fact that the Council is supportive of the principle of establishing SDPs in Wales, the consultation document generates areas of concern as set out above. Fundamentally the concerns are:

- The time allowed to prepare a successful SDP – 4 years is wholly unrealistic in the context of the LDPs that have preceded it and having regard to the additional complexities of working at a regional scale of 11 LPAs.
- Resources – the Cardiff Capital Region previously made good progress towards starting an SDP and the work that informed that decision considered the most appropriate way to progress would be to establish a bespoke regional SDP team to carry out the work, without impeding individual LPAs to continue to prepare LDPs as required. This team does not exist at present, and will take time and financial resource to establish – at a time when such resources are scarce. WG has made it clear that stopping LDPs to free up resources for the SDP is not an option, therefore WG need to provide additional resource to deliver this agenda.
- Governance – CJsCs will take time to establish, but even more so the relationships between Members and Officers of the new SDP team who will need to build trust across the political landscape of South East Wales to build a foundation of consensus to ensure the SDP project does not fail.
- Effective engagement – LPAs, CJsCs and stakeholders are likely to find it challenging working together at such a strategic level – this takes time and resource to get right and cannot be rushed. The assumptions that the SDP will

be much like the LDP but at a different scale is naïve and over-simplifies the complexity of land use planning at all levels.

Inevitably, due to the timing of the likely start of an SDP for the Cardiff Capital Region, it will not be adopted before most if not all LDP (version 2) have been prepared and adopted across the region. This is a huge missed opportunity given the region's willingness to start an SDP 18 months ago. Nevertheless, when it is commenced it is vital that it is undertaken at a strategic / regional level and is not simply a 'stitching together' of existing LDPs. To undertake that task effectively, it must be given sufficient time and resource to secure consensus at a regional level to guide development in the region for the decades to follow.