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**MEMBER BRIEFING NOTE: CARDIFF LOCAL DEVELOPMENT PLAN FULL REVIEW – CONSIDERATION OF PROPOSED AMENDMENTS TABLED AT COUNCIL MEETING OF 28<sup>TH</sup> NOVEMBER 2019**

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**Reason for the Report**

1. To provide Members with an opportunity to note the content of the Cabinet report titled 'Cardiff Local Development Plan Full Review – Consideration of Proposed Amendments Tabled at Council Meeting of 28<sup>th</sup> November 2019'. A copy of the 'Cardiff LDP Draft Review Report – November 2019' is attached to this report as **Appendix 1**.

**Background Information**

2. The Cabinet report provided the following reasons for receiving the report:
  - *To respond to three Amendments that were tabled the day before the meeting of Council on 28th November 2019, seeking additional recommendations to the report on the full review of the Local Development Plan (LDP).*
  - *Council voted to defer consideration of the matters raised so that appropriate Officer advice could be secured prior to further discussion. This advice is now in place to inform considerations.*
3. The following three Amendments were proposed by Conservative Councillors in relation to the report on the full review of the LDP:
  - **Amendment 1:** *Council agrees as part of the full review of the Local Development Plan, Cardiff Council will introduce Green Belt(s) in areas of Cardiff.*
  - **Amendment 2:** *Council agrees that as part of the full review of the Local Development Plan, Cardiff Council will ensure that there is proper public*

*transport easily accessible for residents of all new developments and in place at an early stage.*

- **Amendment 3:** *Council agrees that as part of the full review of the Local Development Plan, Cardiff Council will ensure that the design of new developments will be relevant to the local area and of the highest quality achievable.*

4. The LDP full review process is a statutory requirement that must be undertaken within four years of adoption to ensure that Plans remain up-to-date. Specifically, the review process must determine the revision procedure to be followed - whether to undertake a short-form or full revision (involving the preparation of a Replacement LDP).
5. The Council meeting of 28th November 2019 resolved to approve the draft Review Report and draft Delivery Agreement for the purposes of consultation, and report back on the proposed way forward.
6. It should be noted that the full review process is purely focused upon the appropriate revision procedure to be followed and is not a process aimed at setting policy. Should the decision be taken to proceed with the preparation of a Replacement LDP, the Plan preparation process would be the way in which new policy is considered and ultimately governed through an independent examination process.

### **Consideration of Amendments**

7. Given the technical advice on the full review process set out in paragraphs 4-6, above, the Cabinet report considers it premature and inappropriate to be considering policy matters ahead of a decision being taken on the form of revision to be followed. The document explains that the Plan preparation process is governed by statutory requirements setting out a complex, robust and lengthy process. It explains that setting policy aspirations outside of this process and before the process has commenced would leave the Council open to potential challenge in terms of predetermination issues and not following due process.
8. The Cabinet report also notes that proposed **Amendment 1** relating to the Green Belt would appear to conflict with national policy as set out in Planning Policy Wales

which states in paragraph 3.62 that, “due to their strategic nature Green Belts will have significance beyond a single local authority and they should only be proposed as part of either a Joint LDP, SDP or NDF”.

9. The Cabinet report does, however, acknowledge that the issues raised in all proposed Amendments, namely affording suitable protection to areas of countryside, securing accessible and timely public transport solutions and ensuring the high-quality design of new developments, are clearly important issues which will be considered as part of any future Plan-making process.

### **Reason for the Recommendation**

10. **Legal Implications** - The Planning and legal position is as set out in the report. It is important to note that as set out in paragraph 7 above, policy changes may only be implemented after a detailed process has been followed, which includes consultation and consideration of all relevant considerations. Any attempt to seek to make binding policy decisions in advance of this process, could lead to a legal challenge. The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language. The Council has to consider the Well-being of Future Generations (Wales) Act 2015 and how this strategy may improve the social, economic, environmental and cultural well-being of Wales.
11. **Well Being of Future Generations (Wales) Act 2015** - The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2019-22:

<http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202018-21.pdf>

12. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
13. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term;
  - Focus on prevention by understanding the root causes of problems;
  - Deliver an integrated approach to achieving the 7 national well-being goals;
  - Work in collaboration with others to find shared sustainable solutions;
  - Involve people from all sections of the community in the decisions that affect them.
14. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:
- <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>
15. **Equality Duty** - The Council has to satisfy its public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of 'protected characteristics'. The 'Protected characteristics' are:
- Age;

- Gender reassignment;
- Sex;
- Race – including ethnic or national origin, colour or nationality;
- Disability;
- Pregnancy and maternity;
- Marriage and civil partnership;
- Sexual orientation;
- Religion or belief – including lack of belief.

### **Report Recommendations**

16. The report made the following recommendations which were accepted by Cabinet at the meeting on the 20<sup>th</sup> February:

- 1) *Note that the issues raised at Council on 28 November 2019 in relation to affording suitable protection to areas of countryside; securing accessible and timely public transport solutions; ensuring the high-quality design of new developments will form important considerations as part of any future Local Development Plan-making process.*
- 2) *Accept the Officer advice that it would be inappropriate to make any future policy commitments ahead of the commencement of any future statutory Local Development Plan-making process.*

### **Way Forward**

17. Members are to note the contents of the Member Briefing Note.

### **Legal Implications**

18. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement

imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

### **Financial Implications**

19. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

### **RECOMMENDATION**

The Committee is recommended to:

- i. Note the content of this Member briefing note.

**DAVINA FIORE**

**Director of Governance & Legal Services**

**26 February 2020**