



Committee report

Committee	EXECUTIVE
Date	14 JULY 2016
Title	COMBINED AUTHORITY – GOVERNANCE REVIEW
Report to	THE LEADER AND EXECUTIVE MEMBER FOR RESOURCES, ORGANISATIONAL CHANGE AND CHILDREN'S SERVICES

EXECUTIVE SUMMARY

1. To seek approval from the Executive as to the Solent Governance Review and its conclusions. If agreed, to approve in draft the Combined Authority Governance Scheme. This will then be subject to a detailed consultation period with the public and other stakeholders, which will then be reported back to the Executive in the autumn.
2. A similar report and recommendation is being considered by Portsmouth City Council and Southampton City Council.

BACKGROUND

3. Council has previously discussed the issue of devolution at its September 2015 and March 2016 meetings and have agreed:
 - (a) THAT the prospectus for a devolution deal for Hampshire and Isle of Wight as the basis for negotiation with government be supported.
 - (b) THAT the final devolution deal must ensure the financial security of Isle of Wight and availability of public services to its communities be confirmed.
 - (c) THAT at this stage [September 2015] the council is making no commitment beyond continued involvement in the development of a potential deal, be noted.
 - (d) THAT the fullest possible consultation with the Isle of Wight community, including consideration of a referendum on any devolution deal document that the council is considering accepting, be agreed.
4. Last summer the expectation was that the devolution proposals would be based on an Hampshire & Isle of Wight geography. However as the work on these proposals progressed, and the Government insisted that it would be necessary to have a directly elected mayor, it became apparent that it would not be possible to secure an agreement on the governance arrangements that would be needed to have a combined authority covering 15 local authorities, 2 national parks and 2 local enterprise partnerships.

5. HM Treasury then invited representatives from authorities in the Solent area to explore whether it would be possible to agree a devolution deal for the Solent area. The hope was that a deal could be announced at the March Budget. A draft deal was agreed very quickly and this provided significant opportunities for authorities in the Solent area although as part of the deal the authorities had to agree to set up a Combined Authority with a Directly Elected Mayor (DEM). The draft deal included.
 - (a) £900m funding for the area over 30 years (£30m p.a.) to invest in economic growth and housing.
 - (b) Keeping all business rates generated in the area (approximately £400m) in exchange for the current system of government funding for local councils - meaning the area would have better control of its own financial future and piloting the new approach
 - (c) Powers over strategic planning, such as future spatial plans
 - (d) Increase productivity and create more jobs and better jobs by simplifying and strengthening support for business growth, innovation, and global trade and investment
 - (e) Control of the budget for adult education and training in the area, enabling a focus on the skills businesses want people to have, therefore people get jobs and businesses prosper
 - (f) Development of a new programme to help the hardest to help claimants back into work and provide them with support
 - (g) Delivering 52,000 homes in the area by 2026
 - (h) Control of a dedicated transport budget, franchised bus services and the network of local authority roads
 - (i) Innovative and integrated approaches to public service reform, including health
6. The expectation was that the deal would be announced by the Chancellor of the Exchequer at the Budget in March. Initially the deal was agreed by representatives from Hampshire County Council, the three unitary authorities and the five district councils in the Solent area. Unfortunately before the deal was announced Hampshire County Council (HCC) changed its position and stated that they were no longer prepared to sign up to the deal. The Government asked the Solent authorities to work with HCC in the hope that a deal could be agreed with all partners allowing a deal announcement to be made. Despite the best efforts of partner authorities it has not proved possible to persuade HCC to sign up to the deal and the creation of a Solent Combined Authority. Indeed the County Council has now made it very clear that they oppose the creation of a combined authority in either the south or north of Hampshire. Without HCC's agreement to be part of the Solent Combined Authority it is not possible for the Solent district councils to be part of the formation of the Solent Combined Authority. The District Councils outside of the Solent area were also seeking to create a Combined Authority (the Heart of Hampshire Combined Authority) and negotiate a devolution deal. HCC were actively involved in these discussions from the start but still felt unable to support the final proposition.
7. In this situation, encouraged by central government, the three unitary authorities within the Solent area (Portsmouth, Southampton and the Isle of Wight) are looking to create a Solent Mayoral Combined Authority to deliver on the draft devolution deal. The first stage in creating a combined authority is to undertake a Governance Review and approve a Scheme for the combined authority. The Scheme has to be approved by the Council's Executive.

COMBINED AUTHORITIES

8. A combined authority is a legal structure that may be established, via an Order issued by the Secretary of State, at the request of two or more local authorities. The combined authority's executive consists either of one representative of each member authority; or one representative of each member authority plus a directly-elected mayor (hence a 'mayoral combined authority').
9. The legislation on combined authorities can be found in sections 103-113 of the Local Democracy, Economic Development and Construction Act 2009, which has been substantially amended by the Cities and Local Government Devolution Act 2016. The power to set up a combined authority extends to England only (but not to London).
10. There are multiple routes to establishing a combined authority.
11. Under the original procedure from the 2009 Act, a local authority or authorities may carry out a 'governance review', which must publish a 'scheme' recommending the creation of a combined authority. Publication of the scheme requires the consent of the local authority areas included in the scheme. The Secretary of State may then agree to create a combined authority by Order under the 2009 Act.
12. Alternatively, via the 2016 Act, the Secretary of State may decide to establish a combined authority, if the councils in the relevant area consent. The Secretary of State must hold a public consultation, unless one has already been carried out locally and a 'scheme' has been published. The Secretary of State must be satisfied that the establishment of a combined authority is likely to "improve the exercise of statutory functions" in the area in question.
13. An existing combined authority may be changed into a mayoral combined authority via a further Order from the Secretary of State. All the member authorities must consent to this. However, the 2016 Act provides that any authorities that do not consent must be removed from the combined authority when the elected mayor is established

FUNCTIONS

14. The 2009 Act originally provided that a combined authority could only undertake functions related to economic development, regeneration, or transport, or other functions that its member authorities agreed to transfer upwards to it. The 2016 Act removes these limitations, and permits the Secretary of State to transfer statutory functions or the functions of public bodies to combined authorities. This is to be done via an Order for each individual combined authority. The powers of the Secretary of State in this regard are wide, though the 2016 Act includes a number of qualifications with regard to the transfer of health service functions.
15. As well as statutory functions, the devolution deals agreed so far provide for the transfer of a number of Government-funded programmes to combined authorities. Where such programmes are not statutory, they will not be covered by the combined authority's Order, and can be transferred as soon as the Government and the relevant combined authority can agree on terms. In Greater Manchester, which was the first area to agree a devolution deal, many programmes have already been transferred.

MAYORAL COMBINED AUTHORITIES

16. The 2016 Act permits a combined authority to establish a directly-elected mayor. This can be done by either a new or an already existing combined authority.
17. Of the five existing combined authorities, four (Greater Manchester, Sheffield, North-East and Liverpool) have agreed to establish a directly-elected Mayor as part of their deal. The new combined authorities proposed for Tees Valley and West Midlands will also do so, making a total of six mayoral combined authorities. The draft 'North Midlands' deal also includes provision for an elected mayor. The Mayors will be elected using the Supplementary Vote system, used for local authority Mayors and the Mayor of London. The Government currently anticipates all seven mayoralities holding their first elections in 2017.
18. The Mayor will chair, and be a member of, the combined authority. The mayor will be able to allocate 'Cabinet' portfolios to each of the combined authority members. The 'Cabinet' will be the existing executive board of the combined authority, made up of representatives from the member local authorities. They may receive expenses but may not be paid. The Mayor will have no control over who these representatives are; thus an incoming Mayor would only be able to reshuffle a 'cabinet', not change its personnel without their consent.
19. The Mayor must appoint a deputy mayor, who must act if the Mayor becomes incapacitated. Where a Mayor is also a Police and Crime Commissioner they may appoint a 'deputy PCC mayor', separate from the deputy mayor. This person will be able to take on most of the mayor's PCC functions. So far, only Greater Manchester (plus the draft 'North Midlands' agreement) has agreed to the elected mayor becoming the PCC. This will not be possible for the Solent CA given its geography.
20. The Order setting up the combined authority may confer functions solely on the Mayor or on the combined authority. Subject to any limitations in the Order, the Mayor may delegate functions to Cabinet members, committees, or officers of the combined authorities. Regulations may also be made permitting agreements with other authorities to exercise functions jointly, under section 101 of the Local Government Act 1972.
21. Each devolution deal provides some outline details of scenarios when the combined authority membership may overrule the Mayor. For instance, in each deal, the combined authority membership may reject the Mayor's budget on a two-thirds majority. In some deals, the Mayor's 'strategies' may also be amended on a two-thirds majority. These provisions can be anticipated in the Orders setting up the mayoral combined authorities.

FINANCIAL POWERS

22. Mayoral combined authorities will have a number of powers to raise small quantities of additional funding:
 - (a) Elected mayors will be able to raise a precept on constituent authorities' council tax bills, providing that the Order establishing them allows them to do so.

- (b) Combined authorities (with or without Mayors) may raise a levy on their members, for any of their functions. This constitutes a shift of funding between tiers rather than a means to introduce 'new money' into the system
- (c) A number of devolution deals include permitting local retention of 100% of business rate growth above an 'agreed baseline'
- (d) Elected Mayors will have the power to raise an additional 2p in the pound on business rates, subject to the agreement of the Local Enterprise Partnership.
- (e) Combined authorities will have the power to borrow money under the local government prudential borrowing regime, though the authority's Order must specify for what purposes the money may be borrowed
- (f) Many of the devolution deals provide combined authorities with an investment fund (£30 million per annum in most cases).

23. The powers and functions that are to be transferred to combined authorities are likely to come with existing funding streams, but this is not a statutory requirement. Future levels of funding for these activities will be dependent on Government decision-making.

OVERVIEW AND SCRUTINY

- 24. The 2016 Act requires each combined authority to set up at least one overview and scrutiny committee. The committee must publish a plan indicating how it will exercise its powers, and it will have the power to suspend decisions of the combined authority whilst it reviews them. It will be able to require members and officers of the authority to attend and answer questions. A majority of members of an overview and scrutiny committee must come from member authorities. Its members cannot hold executive positions in those authorities. The chair of the committee must come from a different political party from the combined authority Mayor (or the combined authority's majority party, if there is no Mayor).
- 25. The 2009 Act did not require combined authorities to establish overview and scrutiny committees. Of the existing combined authorities Sheffield, West Yorkshire, Liverpool and the North-East are required to do so by their Order, but there is no such requirement in Greater Manchester's Order. The GMCA has established a 'scrutiny pool', made up of three backbench members from each of the constituent local authorities.
- 26. There is no requirement in either Act for the overview and scrutiny committee to reflect political proportionality across the combined authority area – though combined authorities have done this so far. Brandon Lewis, then Minister for Local Government, stated during the debate on the 2014 Orders that "Good governance practice will mean that such committees will be politically balanced, enabling appropriate representation of councils' minority parties".

THE GOVERNANCE REVIEW

- 27. The first stage in the process of creating a new Combined Authority is for the relevant authorities to carry out a Governance Review. The purpose of the review is to determine whether the existing governance arrangements for economic development, regeneration and transport in the area are effective, or whether the area would benefit from changes, including the establishment of a new Combined Authority. In

undertaking such a review, councils look at economic development and regeneration landscape in the round, including the activities of other arrangements. However, the review is required to focus on the governance arrangements for local authority functions that might be addressed in the formation of a new sub-regional body and not the functions and performance of those other bodies.

28. The relevant legislation require that the authorities, in undertaking such a review must address the issue of the effectiveness and efficiency of arrangements to promote economic development and regeneration in particular within the area to be covered by the review and, therefore, to be covered by the Combined Authority. This is because a review has to be carried out before the governance scheme (covered later in this report) can be considered, and the review will need to have shown before a governance review can be considered, that the creation of (in this case a Combined Authority) would be likely to improve:
 - (a) The exercise of statutory functions relating to economic development, regeneration and transport in the area;
 - (b) The effectiveness and efficiency of transport in the area; and
 - (c) The economic conditions in the area.
29. The outcome of a governance review should, therefore, be:
 - (a) An assessment of the effectiveness and efficiency of existing governance arrangements for economic development, regeneration and transport across the area;
 - (b) An analysis of the options available for making changes to these governance arrangements, such as leaving governance unchanged, strengthening or restructuring existing governance arrangements, establishing an Economic Prosperity Board and establishing a Combined Authority; and
 - (c) A view as to which option is likely to be most beneficial.
30. Stakeholders are considered to be an important source of evidence of how well the existing arrangements in the area are functioning and whether there is scope for improvements to be made. As part of the governance review, local authorities are required to identify who their relevant stakeholders are and consult with them. This includes representatives of the business community, service providers and other delivery partners, relevant regulatory bodies and relevant public bodies, including Government advisors on the natural and built environment and rural champions. Consultation with stakeholders is part of the governance review process and the consultation exercise is addressed later in this report (under the heading Consultation).
31. A copy of the Governance Review document as sent out to stakeholders is appended at Appendix 1.
32. A list of the stakeholders to whom the document was sent, is set out in Appendix 2.

OUTCOME OF THE GOVERNANCE REVIEW

33. The feedback from the stakeholders will be reported at the meeting on the 14 July.

GOVERNANCE SCHEME

34. The second stage in the process of creating a new Combined Authority is the preparation and publication of a Governance Scheme for the new body. The scheme will be the basis for the creation of the new body and will contain information on the area it will cover, its membership, voting and any executive arrangements, its function and the way in which it will be funded. These details will be included in the statutory order that is needed to create the new body.
35. The draft Governance Scheme (set out in Appendix 3) contains the following key elements:
- (a) A directly elected Mayor with a term of office of 4 years
 - (b) A cabinet of [1/2] members from each local authority
 - (c) An overview and scrutiny function
 - (d) Voting to be by simple majority save on certain key matters where the Mayor will require 2/3 majority to support his / her policies
 - (e) Arrangements for an interim Mayor for the period between the establishment of the CA and the first Mayoral elections with suitable constraints upon his/her exercise of Mayoral powers during the interim period
 - (f) Non constituent membership from the Solent LEP, Fareham BC, East Hants BC, Eastleigh BC, Gosport BC and Havant BC
36. Subject to the approval by the Executive, the draft Governance Scheme will now be subject to a period of public consultation.

NEXT STEPS

37. Subject to the approval by the Executive of the Governance Review, and the adoption of the Governance Scheme there will now be a further period of wider consultation for 6 weeks. The outcome of this will be reported back to the Executive in the autumn for a decision as to whether to proceed with the proposed devolution. Following this and the Secretary of State being satisfied that the public consultation fulfils the necessary criteria under the legislation, the Government will draft the orders creating the Combined Authority.
38. The Orders will then be passed through to each of the councils who will need to formally agree them, and this approval will need to be made by the Full Council.
39. Orders (regulations) are then laid in Parliament as secondary legislation. Timing of how long these orders take to pass is, of course, dependent upon their content, Parliamentary timetable and other factors.

CONSULTATION

40. The initial consultation with the key stakeholders has already commenced and a list of these is set out at appendix 2. The outcome of this consultation will be reported to the Executive on 14 July.

STRATEGIC CONTEXT

41. In its document, "A country that lives within its means: Spending Review 2015", published in July 2015 the government has identified its intention to, "look at transforming the approach to local government financing and further decentralising power, in order to maximise efficiency, local economic growth and the integration of public services".
42. The council has a priority, expressed in the corporate plan 2015 to 2017, of, "ensuring that all resources available to the Island are used in the most effective way in achieving the Island's priorities". One of the actions contained in this priority is to work with partners with a view to achieving, "better outcomes for the Island's community and which can mitigate the potentially damaging impacts of the significant challenges that the council faces. Within its corporate (2015-17) plan objective to, 'support growth in the economy, making the island a better place and keeping it safe', the council has an approved action to, "Actively engage in discussions about the creation of a new combined authority for economic development and integrated transport to ensure the Island's best interests are represented in any models which may emerge in response to the devolution agenda". This paper brings together the current position in respects of these discussions.
43. Full Council has debated the issue of devolution at its meetings on 2 September 2015 and 16 March 2016 and have agreed:
 - (a) THAT the prospectus for a devolution deal for Hampshire and Isle of Wight as the basis for negotiation with government be supported.
 - (b) THAT the final devolution deal must ensure the financial security of Isle of Wight and availability of public services to its communities be confirmed.
 - (c) THAT at this stage [September 2015] the council is making no commitment beyond continued involvement in the development of a potential deal, be noted.
 - (d) THAT the fullest possible consultation with the Isle of Wight community, including consideration of a referendum on any devolution deal document that the council is considering accepting, be agreed.
44. The decision at this stage is NOT around any proposed devolution bid but is seeking authority to carry out the required consultation on a governance review and a potential governance scheme. These are essential pre-requisites before any formal deal is put forward by the Government. As they are for consultation that are in accordance with the expressed wish of Full Council in ensuring that there is full consultation on the process.
45. Members will also be aware that the one strong message following the Secretary of State's visit to the Island on the 14 June was that in his view a devolution deal for the Island was a significant component of a possible solution to the funding issues on the Island.

FINANCIAL / BUDGET IMPLICATIONS

46. At this stage there is little direct financial implication to the Council as this is about agreeing the consultation on the governance review and proposed governance scheme.

47. The actual consultation (pending the Executive's decision on 14 July) is expected to cost less than £10,000 and will be met from within existing economic development budgets.
48. The potential financial powers for a combined authority are detailed at paras 21 and 22 above.

LEGAL IMPLICATIONS

49. The legislation on combined authorities can be found in sections 103-113 of the Local Democracy, Economic Development and Construction Act 2009, which has been substantially amended by the Cities and Local Government Devolution Act 2016. The power to set up a combined authority extends to England only (but not to London).

EQUALITY AND DIVERSITY

50. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
51. At this stage the decision is seeking to agree to the consultation in the Governance Review and the Governance Scheme and as any proposed combined authority will not directly provide services to the community (as it will be a strategic body) there will be no direct impact on those with protected characteristics. Should there be a change in any actual service delivery as a consequence of the establishment of a combined authority an Equality Impact Assessment will be undertaken at that time.
52. However by establishing a formal strategic body that aims to better co-ordinate the provision of things like housing and transport across the agreed area of the final devolution solution this will make it easier for ensuring that the concerns and issues of those with protected characteristics are taken into account when determining strategies and approaches.

OPTIONS

53. Are:
- (a) To not undertake this process (and hence not propose a Combined Authority)
 - (b) Note the report;
 - (c) Endorse the findings of the Solent Governance Review and its conclusion that a Mayoral Combined Authority is in the best interests of the Isle of Wight;
 - (d) To approve, in draft, the Solent Combined Authority Governance Scheme for consultation;

- (e) To delegate to the Chief Executive any actions necessary to fulfil the resolutions in this report.

RISK MANAGEMENT

54. The main risk is that unless the proposed governance review is undertaken over the summer then this will delay the implementation of any possible devolution deal by up to a year. As the basis of which the Council has approached a devolution deal is to ensure the Council's financial stability we need to put ourselves in the best possible position to be able to implement any deal as soon as is possible (subject to the devolution deal achieving that objective).

EVALUATION

55. This report has been brought forward within this timeframe following discussions between the Leaders of Southampton, Portsmouth and IOW Councils to enable a decision to be made on the Governance Review and draft Governance Scheme and to enable the subsequent commencement of formal consultation with the public over the draft Governance Scheme.
56. There are significant benefits for the Island and the wider Solent area in being part of a CA with Southampton and Portsmouth. To create this Combined Authority we need to undertake a governance review and approve a Governance scheme. The recommendation enables the Council to fulfil this requirement. We will then need to consult extensively on the scheme, in conjunction with the other participating councils, and report back to Executive with the results of this consultation.
57. The June meeting with the Secretary of State for Communities and Local Government confirmed that government will not provide any funding relief to help the council address its challenging financial position. The Secretary of State was particularly keen to point to the opportunities offered by, devolution in particular, the local growth fund and increased collaboration between local authorities. The creation of the combined authority is a necessary vehicle to securing a devolution deal when it is confirmed by government. The recommendations in this paper allows the three councils to 'get ahead' of the work necessary to establish a combined authority and be able to exploit and receive the benefits of the devolution deal at the earliest possible opportunity. This will almost certainly be before the impact of the fair funding formula review is completed although this could only ever be part of the solution for the council and it will still need to increase its tax base to become more sustainable.

RECOMMENDATION

58. Note the report;
59. Endorse the findings of the Solent Governance Review and its conclusion that a Mayoral Combined Authority is in the best interests of the Isle of Wight;
60. To approve, in draft, the Solent Combined Authority Governance Scheme for consultation;
61. To delegate to the Chief Executive any actions necessary to fulfil the resolutions in this report.

APPENDICES ATTACHED

62. [Appendix 1](#) - Copy of the Governance Review document as sent out to stakeholders
63. [Appendix 2](#) - List of the stakeholders to whom the document was sent
64. [Appendix 3](#) - Draft Governance Scheme

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