

# Cabinet

29<sup>th</sup> June 2016



**Report Title:** *Combined Authority and Devolution Proposals*

**Ward:** *City Wide*

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## **Purpose of the report:**

To note the strategic governance review conducted into the joint working arrangements between authorities of the West of England.

To consider whether the test for establishing a combined authority is met and to take the necessary steps to agree and submit to the Secretary of State a scheme for the establishment of a Mayoral Combined Authority for the area of Bath and North East Somerset Council, Bristol City Council and South Gloucestershire Council.

## **Recommendation for the Mayor's approval:**

The Cabinet is asked, subject to the views of the following meeting of Council to:

- 1 To agree to proceed with the devolution deal as set out in the governance scheme;
- 2 Note the West of England Devolution Agreement (Appendix 1);
- 3 Consider the Governance Review for the West of England 2016 (Appendix 2) conducted under s.108 of the 2009 Act and agree the conclusion that the establishment of a Mayoral Combined Authority for the area of Bath and North East Somerset Council, Bristol City Council and South Gloucestershire Council, would be likely to improve the exercise of statutory functions in relation to the area and secure the offer within the devolution agreement;



- 4 Consider the proposed Governance Scheme for a Mayoral Combined Authority (Appendix 3) and agree to publish the Scheme for public consultation under s.109 of the 2009 Act (as amended);
- 5 Authorise the City Director to subsequently submit to the Secretary of State;
  - a) the Governance Scheme;
  - b) the consultation responses received (or an appropriate summary); and
  - c) any further consultation response that the Council itself may wish to make to the Secretary of State for the Department of Communities and Local Government;
6. Authorise the City Director to make any minor amendments or corrections to the governance scheme to enable publication of the scheme for public consultation.
7. Delegate the decision whether or not to grant consent to the making of any resulting Order establishing the Combined Authority to the Mayor.

### **Statutory Considerations:**

1. As set out in the text of The Report below, the Council is required to follow the process set out in the Local Democracy, Economic Development and Construction Act 2009 as amended by the Cities and Devolution Act 2016. The 2016 Act places a duty on the Secretary of State to make regulations with further provisions relating to Overview and Scrutiny, and Audit Committees. It is likely that the Combined Authorities (Overview and Scrutiny Access to Information and Audit Committee) Order 2016 will be in force, which will set out the requirements. The proposed details for Overview and Scrutiny and Audit are outlined in the Proposed Governance Scheme.
2. The Council has assessed its obligations in relation to the public sector equalities duty under section 149 of the Equality Act 2010 (PSED) and has concluded that the immediate decision primarily relates to the potential establishment of a different form of governance rather than decisions that could be deemed to impact on the rights of groups or individuals with a protected characteristic or others protected under the PSED. The scheme for the establishment of the mayoral combined authority will ensure that it is subject to the PSED.

### **The proposal:**

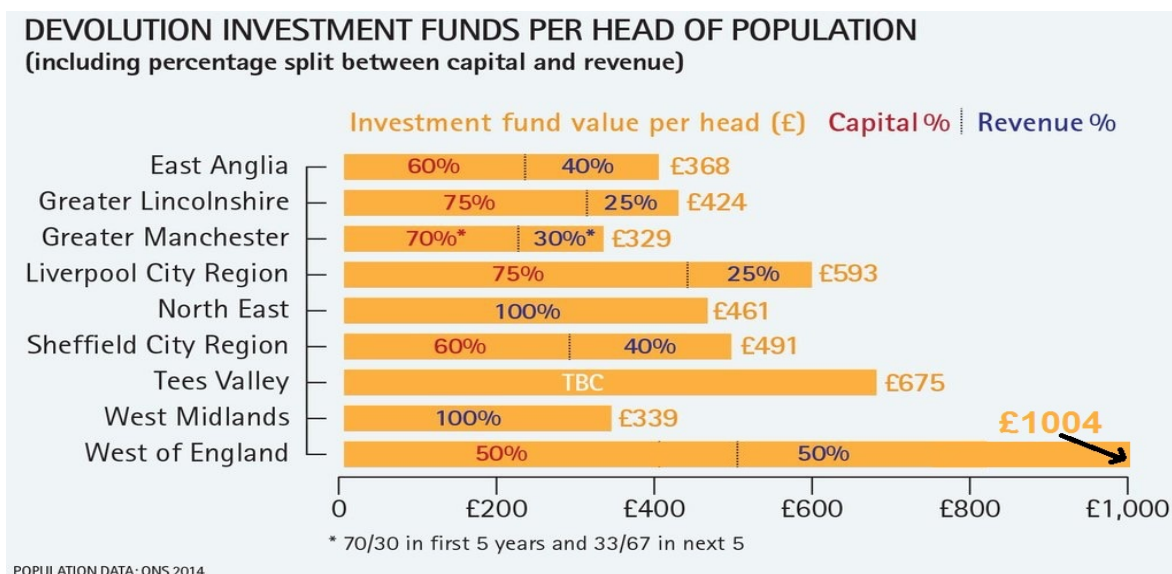
3. The four councils for the West of England area signed a devolution deal with government and this was formally announced by the chancellor in the budget on 16 March 2016. The Deal Agreement is attached as Appendix 1 to this report. At its Council meeting of 8th June 2016 North Somerset Council decided not to proceed with the deal but the three remaining councils wish to proceed with the Order making process. The benefits of the deal are set out in the Deal Agreement; in essence the benefits are that the Mayoral Combined Authority (MCA) will receive devolved powers and additional funding from government which will benefit the three council's areas.
4. At the Council meeting on 15<sup>th</sup> September 2015 members were provided with a "Devolution Update" which covered the West of England's deal submission to government seeking devolved powers and additional funding. On 3<sup>rd</sup> November 2015, as part of the process, the Cabinet agreed to a governance review being undertaken in accordance with the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act"). Members were also subsequently provided with briefings on the devolution deal during 2016. In order to progress with the deal, the council is now required to follow the process set out in the 2009 Act, as amended by the Cities and

Devolution Act 2016. Following the process will ultimately allow the Secretary of State (SoS) to make an order to establish a MCA. In making an Order, the SoS must consider that the Order is likely to improve the exercise of statutory functions in the area of the proposed combined authority and must have regard to the need to reflect the identities and interests of the local communities and to secure effective and convenient local government. If Council resolves to endorse the Devolution Scheme, it will then be subject to public consultation. This consultation must comply with the relevant statutory requirements set out in section 110 of the 2009 Act.

5. The Governance Review has been undertaken and council is now required to decide whether it wishes to seek to establish a combined authority for the area with the two other authorities. The Governance Review is attached as Appendix 2 to this report. Notwithstanding that North Somerset Council has withdrawn from the deal, the Functional Economic Market Area of the remaining 3 Councils remains valid for the reasons set out in the Governance Review. Legacy issues arising from pre-existing joint working arrangements, such as the Strategic Leaders Board and the Local Economic Partnership, and matters which will impact on the geographic area of North Somerset Council, e.g., the Joint Strategic Partnership and the Joint Local Transport Plan will require transitional governance arrangements to enable those issues to be dealt with without interfering with the Order making process. The three remaining council's will work together engage with NSC to ensure that this happens.
6. If the Council agrees that the establishment of a mayoral led combined authority for the area is the appropriate option, it must prepare and publish a Scheme for the establishment of a combined authority. The draft Scheme which has been prepared is attached as Appendix 3 to this report. The main provisions of the scheme cover;
  - (1) the intention to establish a mayoral Combined Authority, together with the working arrangements for the Mayoral Combined Authority;
  - (2) the Functions, Powers & Duties of the Mayoral Combined Authority and
  - (3) Funding of the Mayoral Combined Authority.

## **2 RATIONALE**

5. Devolution is the 'transfer of powers and funding by central government to local government' and gives regions greater control over matters such as transport, housing, planning, as well as levers to grow local economies. Devolution is current Government policy. There have been 8 deals so far (Cornwall, greater Manchester, Liverpool City Region, North East, Sheffield City Region, Tees Valley, West Midlands, West Yorkshire). The March budget announced deals with the West of England, Greater Lincolnshire and Greater Anglia and other areas are in discussion with Government on a deal for their region.
6. The local authorities of the West of England in partnership with the West of England Local Enterprise Partnership, have worked together to secure the best available devolution deal for the West of England – equating to over £1billion of investment.



(Local Government Chronicle)

- The work to develop the devolution deal has built upon the existing, successful joint working arrangements in the West of England. This work had already seen the councils secure more than £700m for the area during the last five years through the Local Growth Deal (£230m) and City Deal (£500m over 25 years); this funding has supported large scale projects in the area, including Bath City Riverside.

### West of England devolution

- The West of England is the only region (outside of London) that has demonstrated above average productivity and economic growth (over the past 15 years). In recent times a number of issues have been identified by the local authorities of the West of England as needing to be addressed, including productivity, skills shortages, housing availability and affordability, deprivation and issues with skills attainment, and levels of traffic congestion which are amongst the highest in the UK.
- The existing Government investment to date (City Deal, 2012 and Local Growth Deals 2014 & 2015) is significant, but does not meet all the requirements to invest over the next 10 years if the West of England is to continue to attract high value investors and employers.
- The West of England devolution deal has the potential to help the area deliver more ambitious projects by providing greater certainty over future income streams and greater local flexibility over how this investment will be spent.
- The deal would secure £900 million of investment over 30 years with the potential to advance the investment through prudent borrowing to be paid back when the government monies are received.
- The deal has the potential to lever in additional funds such as a single capital pot mainly for transport funding linked to the Joint Transport Plan. It is therefore expected to be worth over £1 billion initially with the potential for additional financial benefits.
- The protection of the City Deal should be considered alongside the Devolution Deal. This protection is of a £500 million economic fund, already being used to support work on regeneration projects such as Bath Quays. This is important as the new system for

business rates retention due to be introduced by 2020 potentially has the effect of substantially diluting the worth of this funding.

14. The deal would also devolve significant powers to the region, including decisions about transport, investment, funding, skills training, business support, housing and strategic planning. The new powers will ensure that local people benefit from economic growth and that the area has a skilled workforce that meets the needs of business. (For further detail please see Appendix 1).

### **What does the deal mean for the Council?**

15. As a member of the Combined Authority, the Council would be able to access the funding allocated to the West of England through the devolution agreement, and be part of the decision making over how this funding is to be spent and allocated across the West of England.

### **How will it work?**

16. The deal sets out how the investment and new powers would be overseen by the leaders of the three councils, plus a West of England Mayor elected by the public. This will be through what is referred to as a 'combined authority'. The details of the governance scheme are set out in Appendix 3. The governance scheme will ensure that no single council can monopolise decision making.

### **What happens next?**

17. Now that a deal has been negotiated with Government, the three councils must decide whether they wish to support it or not by 4 July 2016.
18. If the deal goes forward, there would be a period of consultation with the public on the technical details of the deal, including governance arrangements, on behalf of the Secretary of State. This would be an opportunity for the public to express their views to Government.
19. In October 2016 an order would be laid in Parliament to approve the proposed deal.
20. If all other stages have been completed, an election for the West of England Mayor would take place in May 2017.
21. The West of England devolution deal has the potential to help the area deliver more ambitious projects (projects that address the challenges set out in 1.4) by providing greater certainty over future income streams and greater local flexibility over how this investment will be spent
22. The deal would secure £1 billion of investment over the next thirty years, as well as devolve significant powers to the region, including decisions about transport, investment, funding, skills training, business support, housing and strategic planning. The new powers will ensure that local people benefit from economic growth and that the area has a skilled workforce that meets the needs of business.

### **Internal consultation**

23. Advice has been sought from Bristol City Council Section 151 Officer, Monitoring Officer and HR Service Director.

## External consultation

24. We have worked with the Chief Executives, Section 151 Officers and Monitoring Officers from Bath & North East Somerset Council and South Gloucestershire Council to prepare this report. Advice has also been provided from HM Treasury, the Department for Communities & Local Government and the Department for Transport with regards to the content of the Strategic Governance Review and Governance Scheme included as appendices to this report.

## Stakeholder Engagement

25. The emphasis in this pre-decision phase has been to keep council members and key stakeholders fully apprised of the work being undertaken to develop a Strategic Governance Review and draft Scheme. Discussions have also been held with selected stakeholders to seek their views on the options appraisal which forms part of the review and, ultimately, helps inform the scheme and also to identify opportunities for future discussions to take place should the Councils agree to proceed. Appendix 4 provides a summary of the Stakeholder Engagement undertaken during 2015 and 2016 by each of the authorities.

26. If there is agreement to proceed and publish the Governance Scheme for the Mayoral Combined Authority, a period of public consultation will be carried out between 4 July and 12th August 2016. The proposed Consultation Plan is detailed in Appendix 5

27. Cabinet will request Council to scrutinise this decision and will adjourn to enable Council to scrutinise this Cabinet decision immediately following the Cabinet meeting. Cabinet will then reconvene and make its decision in light of the full Council decision. (As this is an urgent decision, the exemption to call-in applies and the final decision cannot be called-in.)

## Other options considered:

28. The deal is a package which includes the proposals as set out and cannot be disaggregated i.e. the package has to be accepted as a whole.

## Risk management / assessment:

29. A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

<b>FIGURE 1</b>							
<b>The risks associated with the implementation of the decision:</b>							
No.	RISK  Threat to achievement of the key objectives of the report	INHERENT RISK  (Before controls)		RISK CONTROL MEASURES  Mitigation (i.e. controls) and Evaluation (i.e. effectiveness of mitigation)	CURRENT RISK  (After controls)		RISK OWNER
		Impact	Probability		Impact	Probability	
1	Failure of the Council to work with the neighbouring authorities and the community at large to maximise the benefits of the			Public consultation will be undertaken during July both to ensure the public are informed and also to understand areas of concern and identify future opportunities			

Government devolution agenda to the best advantage of the people across the West of England.			<p>A joint implementation plan will be developed by the participating authorities with support from the Department for Communities and Local Government</p> <p>A robust approach to programme management will be continued through the next stage of the project</p>			
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**FIGURE 2****The risks associated with not implementing the decision:**

No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Probability		Impact	Probability	
1	We will not be able to meet HM Government timeframes to implement the current devolution deal			Mitigation (i.e. controls) and Evaluation (i.e. effectiveness of			

**Public sector equality duties**

30. Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

i) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

ii) advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

31. The Council has assessed its obligations in relation to the public sector equalities duty under section 149 of the Equality Act 2010 (PSED) and has concluded that the immediate decision primarily relates to the potential establishment of a different form of governance rather than decisions that could be deemed to impact on the rights of groups or individuals with a protected characteristic or others protected under the PSED. The scheme for the establishment of the MCA will ensure that it is subject to the PSED.

### **Eco impact assessment**

32. All schemes to be delivered by the Combined Authority will be assessed and prioritised according to a number of criteria including environmental impact.

### **Resource and legal implications:**

#### **Finance**

33. The key financial implications of the devolution deal are summarised in this section with a more detailed explanation set out at Appendix 6. There are no direct financial consequences on the current Council Budget or Capital Programme at this point over and above the current budgets set aside for the ongoing development of the MCA. The specific governance arrangements for all future financial decision making relating to the Mayor and Mayoral Combined Authority (MCA) are set out here. These could have financial implications for councils moving forward should a final decision to proceed be taken in October.
34. The devolution deal provides a number of new sources for funding for Mayoral and MCA functions, alongside a number of other financial benefits to the devolution deal. The associated financial implications of these and the wider elements of the scheme are set out in Appendix 6. This includes:
- a. £900m of new gainshare funding for the MCA over 30 years – 50% revenue and 50% capital. Of this funding, £150m is paid over the first 5 years, providing additional resources to support infrastructure investment and help to implement the areas integrated Joint Spatial Plan and Joint Transport Plan. The aim will be to develop a 10-year investment programme using the 30 year funding with the opportunity to cover the financing costs of any approved borrowing as well as the capital costs of that investment.
  - b. A fully-flexible, condition-free devolved transport settlement (with an additional £4.9M for the highest incentive funding level) for the Mayor worth a total of £71m to 2020/21; providing the city region with longer term funding certainty, the freedom to invest in local priorities and a reduction in the administrative burden that the current centralised system involves.
  - c. New revenue-raising mechanisms which provide the opportunity to generate additional resources locally to invest in infrastructure through the Mayor’s Business Rate Supplement, subject to the constituent authorities’ agreement and consultation with business.



- d. The opportunity for the MCA to borrow for, for example transport, highways, economic regeneration, investment functions etc. subject to the provisions of the prudential code and the constituent authorities' agreement to borrowing limits.
  - e. Devolution of the Adult Education Budget worth c£60m for 2018/19 and 2019/20, which will enable the area to self-determine adult education, so that it aligns with economic need and promotes economic inclusion.
  - f. Greater influence over European Regional Development Fund and European Social Fund together worth up to £35m to 2019/20, by the MCA taking on Intermediate Body status for project selection.
  - g. A platform for securing additional resources from Government's competitive funding processes, particularly where enhanced governance is a key factor in the bidding process. These budgets include, but are not limited to:
    - The Local Growth Fund (LGF) – bids are due in July for the third and final round of the LGF, with £1.8bn available nationally. Government has highlighted that MCA areas could be rewarded for strengthened governance arrangements in the allocation of funding.
    - Skills pilot – with £50m available nationally.
    - Affordable Investment Fund
  - i. Influencing national investment programmes – the enhanced and formal status of the MCA provides a strong voice for promoting and influencing investment in the area from national programmes (e.g. in transport, the investment programmes of Network Rail and Highways England).
35. The spending plans of both the Mayor and the MCA are subject to a range of specific safeguards and voting arrangements. The full governance arrangements are set out within the Scheme but in relation to funding, the key elements are summarised below and illustrated in the flowchart attached at Appendix 7:
- a. The Mayor may propose a supplementary business rate of up to 2p in addition in the £ subject to consultation with the local business community through the LEP and approval as part of the Mayor's Budget.
  - b. The Mayor will not initially be able to set a Council Tax precept – any proposal to do so in the future will require approval of the Secretary of State and unanimous consent of the Constituent Councils.
  - c. The Mayor's Budget proposal can be rejected if 2/3 of the Constituent Councils choose to do so. If this were to occur, the Constituent Councils would then propose alternative arrangements to be approved by 2/3 of the Constituent Councils. The mayor would not be entitled to a vote on the alternative arrangements.
  - d. The Mayor may not take any decision which would impose a liability on any of the Constituent Council's without their individual approval.
  - e. The Mayor's spending would then appear as a line item in the MCA Budget.
  - f. Any MCA proposals for a levy on the Constituent Councils is subject to a unanimous vote of the Constituent Councils only.

- g. The MCA Budget including the Mayor's budget, is then subject to a majority vote of all MCA members (including the Mayor).
36. The City Deal secured in 2012 worth a minimum of £500m over 25 years is protected as part of the Devolution deal and together with the £230m of LGF funding already secured in 2014 will require continuing partnership arrangements between all four councils in the LEP area. These investment programmes will complement the additional resources unlocked by the Mayoral Devolution Deal, however legacy funding will continue to be administered separately.
37. The West of England Office currently provides a range of management and support functions to the Strategic Leaders Board, LEP Board and the other existing WoE governance arrangements. Where appropriate it is expected this existing resource will be utilised to provide future support and delivery functions to the Mayor and the MCA, in addition to maintaining support for the LEP and legacy governance arrangements.
38. Bath & North East Somerset Council currently acts as the Accountable body for the various WoE funding streams including Local Growth Fund, Regional Growth Funds and the Economic Development Fund. For future funding this role will transfer to the MCA and, unless agreed otherwise, B&NES will continue this role for legacy arrangements.
39. Following the ratification of the Scheme, there are a number of detailed financial issues which will require further discussion or negotiation with Government. These issues are common across all devolution deal areas, and the Section 151 Officer will continue to finalise these details in accordance with the Scheme.

Advice given by Julie Oldale, Section 151 Officer  
Date 20/06/16

### **Comments from the Corporate Capital Programme Board**

40. Not applicable at this time

### **Legal implications**

41. As set out in the report

Advice given by Shahzia Daya, Monitoring Officer  
Date 20/06/16

### **Land / property implications**

42. Not applicable

### **Human resources implications**

43. Additional officer time will be required to support the consultation on the scheme process. The law requires the combined authority to appoint statutory officers (Head of Paid Service, Chief Finance Officer and Monitoring Officer) and the combined authority and the three councils will need to determine if this requirement will be discharged using lead authority arrangements. The three councils will work together to ascertain and agree a process for ensuring that the combined authority is adequately supported and resourced with regard to Human Resources

44. Once a combined authority is established, there will be potential for impact on staff resources within the Council which will need to be further quantified and managed within HR policies and processes at the time. Should an officer already serving in the Council be appointed to a role within the MCA, a risk management approach should be taken to resource and capacity implications which may arise.

Advice given by           Richard Billingham, Service Director, HR  
Date                           20/06/16

**Appendices:**

Appendix One: West of England Devolution Deal  
Appendix Two: Strategic Governance Review  
Appendix Three: Governance Scheme for Combined Mayoral Authority  
Appendix Four: Summary of Stakeholder Engagement  
Appendix Five: Public Consultation Proposal  
Appendix Six: Financial Implications  
Appendix Seven: Financial Governance Flowchart

**Access to information (background papers):**

Not applicable