

Cabinet

14 November 2016



Report Title: Consideration of the establishment of the West of England Combined Authority

Ward: All

Strategic Director: Stephen Hughes, Interim Chief Executive

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Purpose of the report:

To seek consent to the draft order establishing the West of England Combined Authority and related matters

Recommendation for the Mayor's approval:

1. Notes the Summary of Consultation Responses report and the Representations submitted to the Secretary of State;
2. Subject to the safeguard in recommendation 4 below, to give consent to the establishment of the West of England Combined Authority.
3. Appoints the Mayor as this Council's Member of West of England Combined Authority,
4. Delegates to the Chief Executive, in consultation with the Mayor, the authority to take all decisions, to make all necessary appointments, arrangements and provide written confirmation to the Secretary of State consenting to the making of the Order creating a West of England Combined Authority,
5. Delegate to the Monitoring Officer to make all consequential amendments to the Council's constitution



Background

- 1 At its meeting of 29th June 2016, Cabinet resolved that, having taken account of the views of Full Council (meeting held on 29 June 2016) and the views of the Overview and Scrutiny Management Board (meeting held on 15 and 27 June 2016), which were endorsed by Full Council on 29 June 2016, approval be given to the following recommendations:
 - i. To agree to proceed with the devolution deal as set out in the governance scheme.
 - ii. To note the West of England Devolution Agreement (Appendix 1).
 - iii. Having considered the Governance Review for the West of England 2016 (Appendix 2) conducted under s.108 of the 2009 Act, to 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.
 - iv. Having considered the proposed Governance Scheme for a Mayoral Combined Authority (Appendix 3), to agree to publish the Scheme for public consultation under s.109 of the 2009 Act (as amended).
 - v. To 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.
 - vi. To authorise the City Director to make any minor amendments or corrections to the governance scheme to enable publication of the scheme for public consultation.
 - vii. Refer any resulting Order back to the appropriate decision making body, Cabinet, for approval.
- 3 This report now provides Cabinet with an update of the actions taken since the 29th June and seeks Cabinet approval to the recommendations set out above.
- 4 The report of 29th June 2016 provides detailed background information relevant to the proposed Devolution Scheme. The information is not repeated in this report. The report can be viewed at:

<https://democracy.bristol.gov.uk/ieListDocuments.aspx?CId=135&MId=2147&Ver=4>

Public Consultation

- 5 Consultation on the Scheme for the WECA ran for a six weeks between 4th July and 15th August 2016. The consultation was undertaken in accordance with the methodology approved on 29th June. The purpose of the consultation was to seek views from the public on the establishment of a WECA as a means of exercising devolved powers from Government. Responses were sought from as wide and diverse an audience as possible – using Plain English and various communication and engagement methods to achieve this.

6 Consultees including residents, businesses, voluntary and community organisations, and other stakeholders were invited to participate through a range of mechanisms. Responses were received online, on paper and in some cases sent directly to government. Information and surveys were made available across the region.

7 A high level summary of the responses received is set out below:

- 2,011 individual residents, businesses, voluntary and community organisations and other stakeholders participated in a survey
- 14 organisations and individuals provided a response by email.
- 471 responses were received from Bath and North East Somerset,
- 685 from Bristol and
- 531 from South Gloucestershire.
- 66 responses were received from 13 other local authority areas
- 258 had missing or incomplete postcodes.

8 The majority of respondents (55%) expressed support for the WEMCA. There were differences in views in the different council areas.

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| Bath and North East Somerset: | 44% agreed and 45% disagreed |
| South Gloucestershire: | 50% agreed and 37% disagreed |
| Bristol | 70% agreed and 20% disagreed. |

There were also clear differences in views with age, with younger respondents more likely to be in favour of proposals compared to older people.

9 In response to whether a Mayor would provide increased accountability and transparency for decisions affecting the region:

47% of respondents agreed, 38% disagreed and 14% were unsure.

10 There was more support for transport and housing proposals compared to adult education and business proposals, although the shift in views was due to respondents being unsure rather than disagreeing with business and adult education proposals.

11 Following the close of the consultation a report summarising the outcome of the consultation responses was prepared. In addition a Representation made on behalf of the WEMCA Authorities was also prepared. In accordance with the resolution of the Council, both documents were submitted to the Secretary of State. The submission can be viewed in full at:

<http://www.westofenglanddevolution.co.uk/>

12 The Secretary of State must take account of the consultation responses in determining whether the proposed scheme meets the statutory tests, and thus proceed to lay the draft Order before Parliament with the intention of it making an Order establishing the WEMCA.

Internal consultation:

13 At its meeting on the 24 August the Overview and Scrutiny Management Board considered the outcome of the public consultation process which ran from the 4th July to the 15th August. The Board considered whether it would wish to submit further comments to the

Secretary of State by the deadline of the 26th August and whether there should be an Extraordinary Full Council before final consent was given by Cabinet. The Board resolved;

(1) To note the consultation and that there were no further comments from the Board.

(2) That there would not need to be a further Full Council meeting on the issue.

External consultation:

14 As set out above the Governance Scheme was subject to six weeks statutory public consultation, details of which have been reported to the Secretary of State and in the event the Secretary of State lays the draft Order before Parliament, his accompanying report will contain details of the consultations taken into account.

The Statutory Tests

15 Having considered the Scheme and the responses to the public consultation, the Secretary of State must consider whether the statutory tests have been met. The tests are:

- i) whether the establishment of a combined authority for the area is likely to improve the exercise of statutory functions
- ii) the constituent authorities consent to the establishment of a combined authority.

16 The governance review was included as Appendix 2 to the June 2016 report. It concluded that a combined authority would improve the exercise of statutory functions.

17 If the Secretary of State is satisfied that the statutory tests have been met, he can proceed to lay an Order before Parliament. In making the Order, the Secretary of State must have regard to the Scheme as submitted by the Constituent authorities and should not deviate from the Scheme without good reason.

18 It is understood that the Secretary of State has reached the conclusion that the scheme does meet the statutory tests. Based on discussions between Officers and DCLG, Officers have been advised that the Order will reflect the scheme, subject to a table which will highlight any final variations. The table to be circulated prior to the meeting.

19 Members will be provided with details of the latest draft Order prior to the meeting along with any relevant update to this report.

Parliamentary Process

20 In the event the Councils approve the terms of the draft Order, and resolve to continue to proceed with the devolution deal, the Secretary of State will be required to lay before Parliament:

- i) a draft statutory instrument containing the draft Order
- ii) a report explaining the effect of the draft Order and why the Secretary of State considers it appropriate to make the Order.

21 The report must include details of the consultations, representations and any other evidence or contextual information the Secretary of State has considered.

22 The Parliamentary timetable indicates that the draft statutory instrument and report of the Secretary of State will be laid before Parliament by 21st November 2016. Once a draft

statutory instrument is laid before Parliament, there is no opportunity for it to be further amended.

- 23 It is anticipated that the Parliamentary process will be concluded by the Christmas recess, allowing the Order establishing the WECA to be made prior to Christmas, and the election for the directly elected Mayor will be held on 4th May 2017.

Other options considered:

- 24 Not applicable

Risk management / assessment:

A risk assessment related to the issues and recommendations in this report have been undertaken, in compliance with the Council's risk management framework.

The key risk is that no order is made and no combined authority established.

Public sector equality duties

- 25 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.
- 26 However in undertaking public consultation the Councils were conscious of the PSED. The report of 29th June approved a consultation methodology that took full account of the PSED. The consultation was undertaken in accordance with the approved methodology. A working Equalities Impact Assessment has been established for the devolution project as a whole and this will be updated at each stage of the process to ensure that actions taken are relevant to the specific stages.
- 27 The scheme for the establishment of the WECA will ensure that it is subject to the PSED. And the WECA itself when established will be bound by the PSED as a body exercising public functions and will therefore be under an obligation to have regard to it when exercising its functions

Eco impact assessment

- 28 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

Financial implications:

- 29 The financial implications were previously set out in detail as part of the Cabinet Report dated 29th June 2016, specifically at Appendix 7

<https://democracy.bristol.gov.uk/ieListDocuments.aspx?CId=135&MId=2147&Ver=4>

The financial implications are largely unchanged from the position presented there, with the exceptions set out below. The impact of the treatment of specific highways and transport powers are detailed as follows;

30 Highways – no statutory highway authority functions will now be conferred on the WECA and as such no apportionment of existing revenue funding will be required.

31 Transport – the DCLG has indicated that, in line with the Scheme, the WECA will be designated as the Transport Authority with:

- joint powers in respect of passenger transport in areas other than integrated transport areas and passenger transport areas (socially necessary bus services);
- the delivery and operation of bus lanes/gates remaining with the constituent Councils; and
- the WECA being responsible for Concessionary Fares.

32 Arrangements will need to be made by the WECA for the delivery of the relevant functions, most likely by way of commissioning or delegation back to the relevant constituent council. The WECA will levy appropriately for the costs of these services and no net additional costs are anticipated to those currently incurred by the individual councils.

33 Borrowing – final details have yet to be confirmed by DCLG although we anticipate that borrowing may initially to be limited to Transport capital schemes, specific borrowing limits may be applied to MCAs. The draft Order for the WECA is expected to confirm that any borrowing proposals will be subject to unanimous agreement by the WECA.

34 Levying Arrangements – It is understood that transitional arrangements will be put in place to ensure any initial levy for powers transferring to the WECA (e.g. transport) will not impact on the constituent councils' calculations for council tax referendum limits.

35 In addition to the provisions within the original deal, the Government is introducing pilot schemes for 100% business rate retention in 2017/18 in advance of a national scheme later in the Parliament. Only authorities with signed devolution deals are eligible to be in a pilot: the pilot for the West of England would therefore include B&NES, Bristol and South Gloucestershire.

36 The 100% pilot will give the three authorities the opportunity to retain 100% of any business rates growth over the next two to three years, with no downside financial risk when compared to remaining in the national system. It also gives the three authorities the opportunity to help shape the national scheme. Based on the budgeted level of business rates income in 2016/17, this will deliver a significant benefit.

37 The pilot will run until the national 100% retention scheme is introduced in either 2019/20 or 2020/21. The Pilot will include the rolling in of the Revenue Support Grant for the three councils, with the WECA receiving a share of the business rates to reflect the rolling in of the DfT Integrated Transport Block and Highways Maintenance Capital Grants; this is expected to be 5%.

38 As part of the Local Government Finance Settlement for 2016/17, the Government included plans to provide Local Authorities a 4 year financial settlement. This is subject to individual councils submitting a fully approved Efficiency Plan covering this period. Subsequent to this the Secretary of State agreed as part of the West of England Devolution Deal, a lighter touch approach to the Efficiency Plan requirements for the three authorities.

39 Each of the three authorities made the appropriate light touch submissions to the DCLG to meet the 14th October 2016 deadline. DCLG subsequently advised that the approval of efficiency plans announcement is anticipated in November 2016.

40 DCLG has clarified that Mayoral Election Costs should initially be met by the three authorities and will then be fully recharged to the WECA. The WECA will be able to meet these costs from the revenue element of the gainshare funding.

Advice given by Mike Allen, Principal Accountant
Date 4th November 2016

c. Legal implications:

- 41 As above the legal implications were set out in the report of 29th June 2016. Each stage of establishment of the WECA is subject to statutory process. Details of the process to be followed by the Secretary of State are set out at paragraphs 15 to 23 above.
- 42 In addition to the Order establishing the WECA, there will be a number of associated generic orders; these will relate to all authorities seeking devolution deals. The generic orders relate to Finance, Overview and Scrutiny, Audit and Election arrangements. It is not anticipated that these Orders will require separate consents from each Council.
- 43 As referred to at paragraph 19 above, members will be provided with details of the latest draft order and any relevant update report, prior to the meeting.
- 44 The consent of the Mayor is required to the matters set out in this report so as to enable the Secretary of State to make an Order to establish the West of England Combined Authority.
- 45 Call in will not apply given the prior consideration by Overview and Scrutiny Management Board – see paragraph 13.

Advice given by Shahzia Daya, Service Director - Legal Services
Date 4th November 2016

d. Land / property implications:

None flowing directly from this report

Advice given by Robert Orrett / Service Director, Property
Date 4th November 2016

e. Human resources implications:

- 46 As set out in the July report. None flowing directly from this report

Advice given by Richard Billingham / Service Director, HR
Date 4th November 2016

Conclusion

- 47 The outcome of the public consultation across the region broadly supported the creation of the WECA and it is understood that the Secretary of State is of the opinion:

“that the Order is likely to improve the exercise of statutory functions in the area of the proposed combined authority and has regard to the need to reflect the identities and interests of the local communities and to secure effective and convenient local government”