

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Cabinet
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Title:	Devolution – Positioning the County Council
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Report From:	Chief Executive

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1. Introduction

- 1.1. The national political scene has, since before the Referendum in Scotland, been dominated by issues around Devolution. The recent General Election had similar characteristics with Devolution, at a national level, being the subject of much comment. In addition, in recent months, there has been a growing interest in how Devolution as a concept could be developed around local government in England, particularly given developments of ideas and models in the North West of England and the Country's large cities around Combined Authorities. This report proposes the County Council's position for next steps in this debate.
- 1.2. Around half the people in England live in two-tier Local Government. The County Council last year agreed to continue to support improvements in Local Government in Hampshire, on the basis of the two-tier model. The Hampshire and Isle of Wight Local Government Association, the Hampshire Partnership, and the Partnership for Urban South Hampshire (PUSH) have considered suitable models for devolution. In addition, there have been discussions with adjacent County Council's recognising the importance of skills, capacity and road and rail infrastructure. The Leader has, throughout these discussions, emphasised the importance of a model based on the two tiers of Local Government in Hampshire with the adjacent Unitaries Portsmouth, Southampton, and the Isle of Wight. This is known as the Wider Hampshire Model, and is similar to those being developed elsewhere, for example in Derbyshire. The combined authority model envisaged by the Cities and Local Government Devolution Bill ('the Devolution Bill') envisages the devolution of functions from agencies and central government to combined groups of local authorities to discharge the devolved functions (in other words, the 'ask from Government').

2. Emerging Policy Considerations

- 2.1 The (new) Government has not made clear its approach to local government, though there does not appear to be support for any form of structural re-organisation. The debate so far has focused on large cities, rather than non-metropolitan Local government. The models most being considered are those that build on existing boundaries and groups of Local Authorities. The issue also overlaps with role and purpose of LEPs. The purpose of this paper is not to develop arguments for or against any particular model. It suggests that the County Council's policy should be developed into a position recognising the preference for a Wider Hampshire Model, which builds on the two-tier system in Hampshire. A copy of the Wider Hampshire Model has been circulated to the Cabinet already and to Leaders of Local Authorities in Hampshire and members of the Hampshire Partnership.
- 2.2 Early agreement with the local authorities in a Wider Hampshire model about the shape of devolution in Hampshire and beyond would leave the county and partners well placed to seize what opportunities the new Government's devolution agenda may extend to areas that demonstrate strong political consensus and a shared will to use devolved powers to deliver more efficient and responsive public services.
- 2.3 The Local Government Association and many county councils have, while welcoming the new Secretary of State's commitment to devolution, called on him to extend his vision beyond cities to include county areas, which are in many cases more powerful economic entities than cities (for example Wider Hampshire has a GVA of £47bn and a population of nearly two million). The Devolution Bill, published following the Queen's speech appears to provide such an opportunity. An analysis of the provisions of the Bill is set out in Annex 1. It is worth noting the emphasis on the mayoral form of governance which the Chancellor has explicitly stated should be adopted in city combined authorities. While it has not been explicitly stated that a mayoral form of governance would be required for a county combined authority, the availability of additional powers for a mayoral combined authority and the general policy landscape suggests that this is a possibility. The Bill also contains wide powers for the Secretary of State to change the governance arrangements of local authorities to facilitate devolution deals where a combined authority is not appropriate e.g. where a county on its own is a functional economic area and powers for additional local government and central government functions to be delegated to combined authorities.
- 2.4 The debate about models and geography will be in vain if there is not broad, and some would argue, strong political agreement and consensus behind any emerging model. Without that consensus, it is unlikely that the Government will wish to take seriously (or intervene to resolve local conflict or arguments) any "ask for devolution". There is a growing political consensus from the Districts and Unitaries in support of the Wider Hampshire Model. Discussions with the Department for Communities and Local Government (DCLG) are also focussing around models that integrate and deliver on: growth and infrastructure, public service transformation, health and social care and focus on a sense of place.

3. Next Steps

- 3.1. In terms of the constitutional position it would be appropriate to have an Executive Decision which supports further work and future development of the County Council's preference for the Wider Hampshire Model. Ultimately, it would be a decision of the County Council (and other Authorities) to endorse such a model after the political, economic and other arguments have been thoroughly evaluated. This paper recommends that the Wider Hampshire Model be the preferred option upon which further work is taken forward.
- 3.2. While these models are the subject of much debate within Local Government, successful and effective public provision in Hampshire and elsewhere is also highly dependent upon other partners such as Police and Fire and in particular, Health, the Voluntary Sector and Private Sector representatives. The County Council's partnership working has also engaged the Armed Forces. Emerging issues such as faith groups and community associations will also require successful partnerships as austerity and generally the decline in resources available for many County Council services will require new and innovative solutions. In this particular connection, the next steps upon which to build future effective partnerships will of course be the Local Authorities agreeing to the wider partnership model and then as a second step, building effective partnerships on and with that model alongside suitable delivery mechanisms.
- 3.3. A constant theme of discussions is also what should be the 'ask of Government'. This is already variable across England. In general terms, the opportunities will exist in infrastructure, economic development, skills and employment, transport, capital financing, health and social care, rural and cultural activities. Issues of business rate and tax retention have also arisen. This list is by no means exhaustive. Experience would indicate that, notwithstanding strong Ministerial leadership within Government, that the different Departments of Whitehall will have different positions. The economic reality will also impinge quite strongly on the simple question – if you devolve something, who will then fund and pay for it?
- 3.4. In a two-tier model, and in partnerships with other Local Authorities, there are opportunities for aggregation, scale, cross boundary working and of course, the huge financial and professional capacity that the County Council has as a Local Authority and with its existing partnerships. The County Council's performance and financial resilience are nationally acknowledged. Similarly, the scale and capacity can also translate difficult issues into reality on the ground, be that services, functions or projects. Equally, there would be an expectation in a two-tier area that the concept of 'Double Devolution' would come into play around what could be devolved by the County Council to other layers of Government and equally, what could be done at a scale such as wider Hampshire or as part of a multi-county collaboration, particularly on strategic infrastructure, with cities and LEPs.
- 3.5. Like so much of the discussion in Local Government, the challenge will be to harness the contributions into cohesive political agreement upon which sound business and partnership models could be built. The objective should be that any model for the devolution of services or functions should ensure that public

services are developed and delivered locally, are more cost effective and responsive. Any model should be resilient and contain the capability to deliver in a harsh economic landscape. The Leader will also bring Members up to date with recent discussions.

4. Conclusion

- 4.1. The purpose of this paper is to bring Cabinet up to speed on current developments. Creating some certainty of the political will around authorities to co-operate, both in relation to partners and Government, would seem to be a sensible next step. Subsequently, political agreement to Governance, delivery and capacity would be an important step to translate the discussion into action.

5. Recommendation

- 5.1. That the Leader and Chief Executive are authorised on the basis of the Wider Hampshire Model to continue discussions with partners and Government.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes
Maximising well-being:	yes
Enhancing our quality of place:	yes

Other Significant Links

Links to previous Member decisions:		
<u>Title</u> None	<u>Reference</u>	<u>Date</u>
Direct links to specific legislation or Government Directives		
<u>Title</u>	<u>Date</u>	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

Not applicable at this stage.

2. Impact on Crime and Disorder:

2.1. Not applicable

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption? Not applicable
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? Not applicable

Cities and Local Government Devolution Bill

Executive Summary

The Cities and Local Government Devolution Bill ('the Devolution Bill') builds on the existing statutory framework for combined authorities set out in the Local Democracy, Economic Development and Construction Act 2009.

While much of the political narrative has been about devolution to the northern cities to create a 'northern powerhouse' the provisions of the Devolution Bill apply to all combined authorities and are therefore potentially accessible by Counties and Districts (including Unitary Authorities) across the whole of England.

While the Chancellor of the Exchequer has made his view clear that for combined authorities in city areas to benefit from the wider powers available to them under the Devolution Bill they must adopt a mayoral form of governance the Devolution Bill does not require a combined authority to be governed in this way. It is however the case that some powers are only available to mayoral combined authority e.g. precepting and taking over the role of the Police and Crime Commissioner and, given the Chancellors position on cities, it is has to be a possibility that County combined authorities would also have to adopt a mayoral form of governance to be approved.

Notwithstanding the potential application of the Devolution Bill to County combined authorities the government's primary focus is still likely to be on facilitating mayoral combined authorities based on the major cities. The guidance issues with the Bill states in this respect,

'The context in which the powers are to be exercised is expected to be where the government has agreed devolutionary deals with particular areas. For example, in November 2014 such a deal was agreed with Greater Manchester, the implementation of which is being enabled through the provisions of this Bill'

The implication here is that for County combined authority deals to be agreed a particularly compelling case will have to be presented to the Government.

The Devolution Bill does however include wide ranging powers for the Secretary of State (with the consent of the relevant authorities) to change local authorities governance arrangements, constitutions, membership and structural and boundary changes. This is ostensibly to facilitate devolution deals in areas where, for example, a single County constitutes a functional economic area although the power is very wide ranging and could conceivable be used in other circumstances. The guidance issued with the Devolution Bill suggest that the power would be used where a combined authority was inappropriate and that any such 'devolution deal' may involve mergers of councils, moves to unitary structures or changing the democratic representation of the area with different electoral cycles and fewer Councillors. The Devolution Bill also includes powers for additional Local authority and central government functions to be undertaken by combined authorities.

Overview of the Devolution Bill

The Devolution Bill is enabling legislation which provides a legislative framework which can be applied flexibly to different areas by regulations. It will enable regulations to:

- provide for an elected mayor for a combined authority's area who would exercise specified functions individually and chair the authority;
- provide for the possibility for the mayor additionally to undertake the functions of Police and Crime Commissioner for a combined authority area (in place of the Police and Crime Commissioner);
- where a mayor is to have Police and Crime Commissioner functions, cancel Police and Crime Commissioner elections that would otherwise have taken place and allow the current Police and Crime Commissioner's term of office to be extended until the mayor is in place;
- remove the current statutory limitation on functions that can be conferred on a combined authority (currently economic development, regeneration, and transport) enabling further local government and central government functions to be transferred to the combined authority; and
- provide for streamlined local governance as agreed by councils facilitating specific devolutions deals (ostensibly where a combined authority is not appropriate)

Mayoral Combined Authorities

Clause 1: Power to provide for an elected mayor

Clause 1 inserts new Sections into the Local Democracy, Economic Development and Construction Act 2009, which empower the Secretary of State to provide by order for there to be an elected mayor of a combined authority area, who would be a member of, and chair, the combined authority.

The Devolution Bill provides that the Secretary of State can make an order for there to be an elected mayor of the area of a combined authority following a proposal being made by each county and district council within the area of a proposed, or existing, combined authority, or by an existing combined authority (the appropriate authorities) or with their consent.

Such an order can be made without a proposal being made if:

- (a) the Secretary of State considers it appropriate and all constituent councils consent; or

- (b) if all of the appropriate authorities, of an existing combined authority, consent save one does not wish to adopt the mayoral model.

In the event that one authority does not consent the Devolution Bill provides that the Secretary of State must make an order changing the area of the combined authority by removing the area of the non consenting constituent council from the existing area of the combined authority.

Clause 2: Deputy mayors etc.

The Devolution Bill requires a mayor of the area of a combined authority to nominate a deputy mayor from the members of the combined authority. The deputy mayor would take over the functions of the mayor in the event that the mayor is unable to act (e.g. due to illness) or the office of mayor is vacant (e.g. the mayor resigns). The deputy mayor cannot however perform Police and Crime Commissioner functions although a separate deputy can be appointed to perform them.

Clause 3: Functions

A mayoral combined authority is a single body corporate, which comprises the mayor and the remaining members of the combined authority.

The Devolution Bill allows the Secretary of State to provide by order that any function that is a function of the mayoral combined authority is exercisable only by the mayor. The mayor may arrange:

- (a) for the deputy mayor to exercise any function exercisable by the mayor; or
- (b) for any other member or officer of the combined authority to exercise any such function.

The Devolution Bill provides that such an order may provide that the mayor may only delegate certain functions or that the mayor cannot delegate certain functions.

The Devolution Bill provides that an order may:

- (a) provide for members and officers of a mayoral combined authority to assist the mayor in the exercise of his/her functions;
- (b) confer ancillary powers on the mayor;
- (c) authorise the mayor to appoint a political adviser; and
- (d) provide for the terms and conditions of any appointment of a political adviser.

The Devolution Bill also enables the Secretary of State by order to enable the mayor to exercise the functions of a Police and Crime Commissioner in relation to the area of the combined authority. Such an order may only be made with the consent of all appropriate authorities. Where such an order is made the Secretary of State must provide that there will be no Police and Crime Commissioner for that area from a specified date (in practice this will be the date that the mayor takes office) and enables the Secretary of State to cancel any Police and Crime Commissioner ordinary election that would otherwise take place in the area (whether before the date that the mayor takes over or after).

The order can also extend the term of the existing Police and Crime Commissioner for the area and cancel any Police and Crime Commissioner by-election to fill a vacancy that arises in the six month period before the date that the Police and Crime Commissioner functions pass to the mayor.

Further details about how a Mayor would exercise the functions of a Police and Crime Commissioner are set out in a schedule to the Bill.

Clause 4: Financial matters

The Devolution Bill amends the Local Government Finance Act 1992 to include a mayoral combined authority as a major precepting authority, and enables a precept to be set in relation to funding of the mayoral functions. It also inserts a new section enabling the Secretary of State to make provision for the costs of a mayor for the area of a combined authority that are incurred in, or in connection with, the exercise of mayoral functions to be met by precepts issued by the combined authority.

The Devolution Bill provides that the Secretary of State may by order make provision

- (a) requiring the mayor to maintain a fund in relation to receipts arising and liabilities incurred, in the exercise of the mayor's functions, and
- (b) about the preparation of an annual mayoral budget.

Combined authorities: additional functions

Clause 5: Local authority functions

The Devolution Bill enables any combined authority by order to be conferred a broader set of functions than economic development, regeneration and transport (the current scope of powers available to combined authorities). The order can be laid if the authorities concerned undertake a review and publish a scheme or the Secretary of State considers that the order is appropriate and the authorities provide consent. The authorities' review would consider whether the proposed changes would improve the exercise of the statutory functions.

Clause 6: Other public authority functions

The Devolution Bill enables the Secretary of State by order to make provision for a function of a public authority (a Minister of the Crown or a government department) that is exercisable in relation to a combined authority's area to be undertaken by the combined authority; or confer on a combined authority, in relation to its area, a function which corresponds to a function which another public authority has in relation to another area. Such an order may make provision for the combined authority to have the function instead of the public authority or for the public function to be exercised concurrently with the public authority. It is not clear from the Devolution Bill just how these functions would be funded. The order under subsection may also make provision for:

- (a) the making of a scheme to transfer property, rights and liabilities from the public authority to the combined authority; and
- (b) abolishing the public authority if it will no longer have any functions.

The Devolution Bill specifies that such an order can only be made if;

- (a) the appropriate authorities make a proposal for the making of the order;
- (b) if, in the case of an existing combined authority, the authority consents and the Secretary of State considers that the making of the order is likely to improve the exercise of statutory functions in the area or areas to which the area relates.

Combined authorities: other provision

Clause 7: Overview and scrutiny committees

The Devolution Bill requires all combined authorities to establish one or more overview and scrutiny committee(s) with the functions and powers specified. It also enables the Secretary of State to make provision by order about the overview and scrutiny committee(s) of a combined authority. This provision may include details about the membership of an overview and scrutiny committee (it already provides that members of the combined authority cannot be members of the scrutiny committee) and the voting rights of such members; the person who is to be chair of such a committee; the appointment of a scrutiny officer of an overview and scrutiny committee; the circumstances in which matters may be referred to an overview and scrutiny committee; obligations on persons to respond to reports or recommendations made by an overview and scrutiny committee; the publication of reports, recommendations or responses; and the information which must, or must not, be disclosed to an overview and scrutiny committee.

Clause 8: Funding of combined authorities

The Devolution Bill enables the Secretary of State by regulations to provide that a combined authority can levy for transport and any specified functions with the consent of the constituent councils. Specified functions cannot include functions which are exercisable individually by the mayor. It also enables the Secretary of State by order to enable a combined authority to borrow to fund these specified functions, with councils' consent.

Clause 9: General power of competence

The Devolution Bill enables the Secretary of State by order to confer the General Power of Competence, on a combined authority, which would align its General Power of Competence with that of its constituent councils. The General Power of Competence gives authorities the same power to act that an individual generally has.

Local authorities: governance and constitution

Clause 10: Governance arrangements etc. of local authorities in England

The Devolution Bill provides for the Secretary of State to make regulations making provisions about local authorities' governance arrangements, their constitution and membership, and structural and boundary arrangements. For these purposes a local authority is a county council in England, a district council or a London Borough.

Governance arrangements mean the arrangements an authority operates for taking decisions, executive arrangement or the committee system.

The guidance issued alongside the Devolution Bill suggests that for structural, boundary, or other changes, the context in which this power could be used is where Devolution Deals, conferring powers and budgets on an area, are agreed by Government with areas where it may not be appropriate simply for the existing councils to establish a combined authority, or indeed where a combined authority is not appropriate.

The example given is where a single county, which may or may not be a unitary authority, covers a functional economic area which may be the basis for a Devolution Deal, and all the constituent councils involved agree that the strong and accountable governance needed for the new powers and budgets to be conferred on the area necessitates simplifying the local government structures for the area. That may involve mergers of councils, moves to unitary structures, or changing the democratic representation of the area with different electoral cycles and fewer councillors.

This power is intended to enable the Secretary of State to effect those changes simply and efficiently. Regulations under this clause are to be made only with the consent of the local authorities to which the regulations apply.