



Committee report

Committee	FULL COUNCIL
Date	16 MARCH 2016
Title	DEVOLUTION DEALS WITH GOVERNMENT AND THE DEVELOPMENT OF COMBINED AUTHORITIES
Report of	THE LEADER AND EXECUTIVE MEMBER FOR RESOURCES AND CHILDREN'S SERVICES

EXECUTIVE SUMMARY

1. The pace of the government's devolution agenda has increased significantly since the beginning of the year and it has also begun to establish the core principles to guide future deals following the passing of the Cities and Local Government Act 2016. Progress on the Hampshire and Isle of Wight area proposals have stalled as a result of these core principles although the potential for a Solent area deal has emerged in recent weeks. This report sets out the background to these developments and considers the options available to Council at this time.

BACKGROUND

2. Following the 'no' vote in the Scottish independence referendum the government announced proposals for additional devolution in Scotland, Wales and Northern Ireland. It also committed to consider proposals for the devolution of some of its powers to English local authorities or areas. This manifested itself in a call for proposals to be made to the Treasury by 4 September 2015 so they could be taken into account in the comprehensive spending review during the autumn.
3. At its meeting in September 2015 the council agreed to support the emerging proposals for a devolution deal for the Hampshire and the Isle of Wight (HIOW) area, on the basis of a prospectus that had been discussed and agreed by the fifteen local authority partners in the proposed deal. Council also agreed any final devolution deal must ensure the financial security of the Isle of Wight and that its support for the then proposals should only be considered nothing more than a commitment to continued involvement in the development of a potential deal.
4. Government received 38 devolution bids by its September deadline. None were announced as part of the spending review although four were agreed prior to the review's publication.

5. The government's expectation is that its individual departments will actively consider devolving powers wherever possible. Therefore, following the submission of the HIOW proposals, local authority officers have been in extensive dialogue with individual government departments to reach agreement on the final terms of any proposed deal across the area and with Government.
6. During the late autumn government officials and the HIOW partners felt the proposals for a devolution deal were sufficiently well developed to be presented for the government's consideration. This was done in the form of a 'challenge' session with the Secretary of State for Communities and Local Government, Rt Hon Greg Clark MP which, after some false starts took place on 17 November 2015. The challenge session was attended by small number of local authority leaders (including the Isle of Wight Council Leader) and the chairman of the EM3 Local Enterprise Partnership as representatives of the partnership. The session was considered to have gone well and only two areas of additional work were required:-
 - 6.1. An improvement in the number of houses to be delivered by the HIOW partners as part of the deal. The original offer to accelerate the delivery of the 76,000 homes already provided for in local plans by two years plus and an additional 4,000 (all by 2026) homes was not considered ambitious enough by the government.
 - 6.2. To better define the terms of the governance arrangements for the combined authority that would need to be accountable for the devolution deal. The original proposal for a full governance review to determine the least bureaucratic and most cost effective structure was not considered sufficiently robust for the government to agree a deal with the HIOW partners.
7. Work was started on the production of a 'deal document' (Heads of Terms) between the government and HIOW partners. The additional work undertaken in respect of these two areas was presented by a majority of the local authority leaders in the partnership to James Wharton MP, Minister for Devolution at a private update briefing held on 29 January 2016. At this meeting it was clear the government's position had hardened in respect of its preferred governance arrangements for a combined authority and that it would only consider the devolution of 'meaningful' powers to a combined authority if it was led by a directly elected mayor. The exact scope of a mayor's powers is however it seems a matter for some flexibility and local agreement.
8. The HIOW partnership has taken a pragmatic approach to the issue of an elected mayor. As a whole it did not support the concept and had not therefore included it in the original proposals to government. It was however content on revisiting the issue at the point government was clearer about the extent of the powers it would consider devolving to local control with and without a directly elected mayor. This it did when the leaders of the local authorities and chairman of the Local Enterprise Partnerships met on 12 February to discuss the overall deal and progress to date. In the absence of a devolution offer from government but with a clear steer it required a

directly elected mayor for the combined authority the partners agreed not to offer an elected mayor as part of the governance arrangements. The HIOW partners did however agree to complete the work to finalise the HIOW offer on the basis of the outcomes from the challenge session with the Secretary of State.

9. No further work has been undertaken on the deal document since this decision and the HIOW partners are scheduled to meet again on 11 March to agree the final 'offer' to be made for government to respond with its own if any offer for devolution to the HIOW area.
10. In the week of the 22 February representatives from the Treasury contacted local authorities in the south Hampshire area and the Solent Local Enterprise Partnership to see if there was any support for a devolution deal and the creation of a combined authority, led by a directly elected mayor, in the Solent area. In order to learn more about the government's offer underpinning this proposal all of the parties signalled an interest in discussing it with government. This meeting took place on the 26 February and discussions about a devolution deal took place between government officials and officers of the Solent partners on 3 March.
11. At the time of writing no devolution deal is agreed for either the Solent or the HIOW areas. It is important to note that any potential deal will be set out in a deal document capturing the terms of the proposed agreement between government and the deal partners; it would be subject to the partners consulting on the proposals and ratification by each local authority covered by them.
12. The fundamental ask of the Isle of Wight Council for its involvement with both the HIOW and the Solent devolution proposals has been to secure the financial sustainability of the Isle of Wight. This has and continues to be the key negotiating position taken by both the leader and the chief executive throughout all of the negotiations and discussions in respect of devolution deals and the creation of a combined authority.
13. The development of devolution deals delivered through the creation of new combined authorities to manage the devolved powers but not without agreement, replace the sovereignty of existing local authorities has very much been an iterative process. Those areas able to agree arrangements with government early on in the process seem to have fared better, been offered more flexibility about what can be in the deal and had better funding offers than some of the more recently announced deals. Nevertheless government's intention is that once an area has a deal it will be able to negotiate further deals and acquire powers that might never have been originally conceived of or been out of scope at the time of the initial deal being struck.
14. As the principle of further deals has been established and become embedded so the basis of the original deal has become more formulaic covering the following areas:
 - Restructuring the further education system – local commissioning of the adult skills budget from 2016/17 and full devolution from 2017/18.

- Business Support – unification of local and central business support services.
- The Work Programme – local management of the welfare to work programme
- EU Structural Funds – Assuming ‘Intermediate Body’ status means that the Combined Authority takes control for where EU structural funds are allocated.
- Fiscal Powers – An annual investment fund to the combined authority and power to retain 100 percent of business rate growth.
- Integrated Transport Systems – Powers to introduce bus franchising and smart ticketing arrangements and commitment to improve joint working with Network Rail and Highways England.
- Planning and Land Use – Powers to create spatial plans for the area and establish Land Commissions to improve the management of surplus land and buildings across public sector bodies.

Appendix 1 summarises the powers devolved by government under the devolution deals agreed to date.

15. Discussions with government about both the proposed HIOW and Solent devolution deals have focussed on these seven areas; also on delivering the construction of new homes across the areas and the financial sustainability of the Isle of Wight.
16. The issue of fiscal powers has generated the greatest interest amongst the local authorities agreeing devolution deals and the creation of combined authorities led by a directly elected mayor. Typically the government has offered annual funds of in the order of £30 million a year for thirty years (Tees Valley offer was £15 million) to support the provision of the infrastructure necessary to create the economic growth in these areas.
17. The Cities and Local Government Devolution Act 2016 permits a combined authority to establish a directly elected mayor. It is intended that the mayor will chair and be a member of the combined authority and allocate ‘Cabinet’ portfolios to each of the combined authority members. The order that establishes a combined authority will confer functions solely on the mayor or the combined authority. The mayor’s powers will extend to the functions of the combined authority only although it is possible that the combined authority agrees with its local authority members to exercise functions jointly with them (section 101 of the Local Government Act 1972).

STRATEGIC CONTEXT

18. 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”.
19. 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

CONSULTATION

20. The council has been in dialogue about its challenging budget position with government's Department of Communities and Local Government (DCLG) since summer 2015. Further meetings and discussions were held following the publication of the comprehensive spending review and the provisional and final local government finance settlement. Part of the focus of these discussions has been to understand how the government might agree the council has reached the 'tipping point' where it no longer has sufficient resources to meet its legal duties.
21. The work to negotiate the HLOW deal has been overseen by the leaders of the local authorities and chairmen of the two LEPs working together to produce the proposals for consideration by members. The Solent area proposed deal has been coordinated by the leaders of the local authorities in the area and largely builds on the work completed in respect of the HLOW area.
22. Further informal consultation with key stakeholders is likely to be undertaken as part of the governance review and the government itself will need to undertake a consultation exercise as part of its process to approve the devolution deal.
23. Only one local authority (a Unitary Council) in the country has arranged a referendum of its local community to agree to accept a devolution deal including a combined authority and directly elected mayor. The extent to which a referendum could be considered necessary may depend on the degree of devolution proposed by government, the investment offered for the local infrastructure, the potential for developing the combined authority for the overall benefit of the area and any time constraints on securing a deal. Any referendum would need to be supported by significant communications and media activity to explain the likely benefits and risks in joining a combined authority.

FINANCIAL / BUDGET IMPLICATIONS

24. The direct financial implications to this council of a devolution deal will become clearer as the detail is negotiated with government once it has accepted the proposed terms of a devolution deal have been agreed (if at all). An analysis of the costs and benefits of the final deal will need to be undertaken once agreement has been reached with government and between the partners.
25. Throughout all of the negotiations around a devolution deal the leader and the chief executive have continued to press with all of the potential partner authorities involved with the development of any proposal that it must have a mechanism which sustains the delivery and provision of public services in the Isle of Wight and secures the financial security and sustainability of an

independent Isle of Wight. Central to these discussions have been the need to secure transitional/relief funds of £17 million pa for two years until such time as the government's review of the local government funding formula has been completed and recognition of the impact of Island's unique circumstances in delivering public services.

26. The council's challenging budget position has been discussed extensively as part of the budget setting process over the last few months. A devolution deal may help the council be sustainable in the medium term but it will still need to consider other alternatives to ensure that it can remain sustainable in the short term. The government's commitment to a visit from the Secretary of State for Communities and Local Government, Rt Hon Greg Clark MP, and its recognition of the Island's unique circumstances will be a key part of the process of identifying how the council can continue to be sustainable and meet its legal obligations.
27. The cost of holding a public referendum about the Isle of Wight joining a devolution deal is estimated to be in the order of £160,000.

LEGAL IMPLICATIONS

28. A combined authority is a legal structure that may be established by an Order issued by the Secretary of State at the request of two or more local authorities. Powers to set up a combined authority only extend to England and are contained within the Local Democracy, Economic Development and Construction Act 2009 which has been substantially amended by the Cities and Local Government Devolution Act 2016 (The Act).
29. The Cities and Local Government Devolution Act 2016 reserves significant powers for government to introduce changes to the local government landscape where there are perceived barriers to public service transformation in a particular area. Specifically it:-
 - enables an elected mayor for the combined authority's area who would exercise specified functions individually and chair the authority;
 - enables the mayor to undertake the functions of Police and Crime Commissioner for the area in place of the PCC;
 - removes the current statutory limitation on functions that can be conferred on a combined authority (currently economic development, regeneration, and transport) and geographical limitations;
 - provides for the creation of Sub-National Transport Bodies;
 - enables public body functions (including those of government departments) to be devolved to local authorities and combined authorities facilitating health devolution
 - enables local authority governance to be streamlined, including allowing the Secretary of State to change the constitution and membership of local authorities and make structural and boundary arrangements that may not be agreed by all councils.
30. This final point is covered by section 15 of The Act and permits an expedited process for creating unitary authorities, reviewing ward boundaries and

councillor numbers within local authorities or for the review of local authority areas. Where a new combined authority is to be created this could also allow the simultaneous creation of unitary authorities if this was desired locally.

31. The Act also permits a combined authority to take on powers from a county council if some districts have joined the combined area but the county council has not and therefore only part of the county area is within the combined authority.

EQUALITY AND DIVERSITY

32. The council has to comply with Section 149 of the Equality Act 2010. This provides that decision makers must have due regard to the elimination of discrimination, victimisation and harassment, advancing equalities, and fostering good relations between different groups (race, disability, gender, age, sexual orientation, gender reassignment, religion/belief and marriage/civil partnership). An equality impact assessment will be required in respect of relevant proposals once a potential devolution deal has been agreed.

OPTIONS

33. In respect of the council's involvement with any arrangements to take on devolved powers from government the following options are available:-
 - (a) To continue to support the development of devolution proposals for both the Hampshire and Isle of Wight and the Solent areas until such time as a proposed detailed devolution deal and combined authority for one or both areas is available for consideration.
 - (b) Where the proposed terms of a devolution deal⁷ ensure the financial security of the Isle of Wight but are conditional upon a directly elected mayor of the combined authority to agree the principle of the deal.
 - (c) To agree that the powers of any directly elected mayor of the combined authority should be limited to the combined authority's functions only and that the mayor should not have the ability to interfere with the role of any local authority in undertaking its legal duties.
 - (d) To commit to a detailed and proportionate consultation with the Isle of Wight community on any devolution deal and combined authority led by a directly elected mayor the council is considering accepting.
 - (e) Not to support any devolution proposals from any area at this time.
 - (f) Not to accept the principle of a directly elected mayor for the combined authority irrespective of the financial security the appointment of a mayor might deliver for the Isle of Wight.

EVALUATION

34. The fundamental reason for any local authority engaging with the devolution agenda leading to the creation of a combined authority has to be to improve the overall economic and social wellbeing of its area. This can come from working collectively with other local authorities and public services to improve the overall effectiveness and impact of the public spending in the area. Many of these improvements will come from a transformation of public services

which can most easily be achieved by the devolution of powers from government to the local area.

35. The financial challenges facing the Isle of Wight Council are well known and will continue to have an increasing negative impact on the scale and quality of services the council is able to secure for the Island. The challenges will ultimately be detrimental to the overall economic, environmental and social wellbeing of the Isle of Wight if alternative approaches to the delivery of public services cannot be implemented. The council and the Island continue to, “fight for the Wight”, and to press for a fairer funding arrangement with government that which takes proper account of the Island’s unique circumstances. In the meantime the possibility of a devolution deal with government opens up better opportunities for the council to work collectively with local partners to grow the economy and help improve the overall wellbeing of the Island. Growth in the economy is an essential response to the financial challenges as the government seeks to fund all local authority services by the 100 percent retention of business rates from 2019/20.
36. The likely offer by government of an annual investment fund and the retention of 100 per cent of business rate growth in an area underpins its intentions to deliver economic growth to sustain public services. It is therefore important that the council continues to be involved with the detailed discussions around any devolution deals so that it can be clear about the Island’s needs in terms of infrastructure investment to unlock development and employment sites. It will be considerably harder to negotiate any investment to the area from the combined authority once it has been formed and without the council’s involvement in its formation.
37. The combined authority would administer any investment fund and would use it to deliver against an agreed programme of projects. The fund may unlock schemes on the Island that have so far failed to attract support from other key sources of public funding such as the Solent Local Enterprise Partnership (SLEP). Any schemes (e.g. Newport Traffic Infrastructure, Kingston Marine Park) will need to be taken account of at the inception of the combined authority. A key part of any negotiation will be in agreeing with government the right level of funding for the combined authority area so that the partners are able to achieve everything that is needed.
38. The original Hampshire and Isle of Wight devolution deal proposal was based around a local scheme for the 100 per cent retention of business rates. This would have been implemented ahead of the national scheme due to begin in 2019/20. In fact the HIOW proposals were made before the government had indicated its intentions. The purpose of the HIOW scheme is to build financial resilience into the funding of local authority services across the HIOW area including the financial sustainability for the Isle of Wight. A scheme for the allocation of HIOW business rates was still in development at the time of the meeting with the Minister for Devolution and has not been progressed since.
39. The original view of the HIOW partners was that they would not consider the possibility of a directly elected mayor for the combined authority needed to deliver the devolved powers across the whole area. This view has now changed in some of the key players in the partnership which has reignited the

stalled conversations with government about the HIOW area. It does seem however that the government's limited capacity to negotiate deals is diverted elsewhere at this time and it is unclear when detailed discussions could take place about the HIOW deal proposals.

40. In contrast government officials are heavily engaged in dialogue about a Solent devolution deal to the extent that heads of agreement are expected from shortly. Conversations about the Isle of Wight's financial security in this proposed deal have centred on the provision of transitional/relief funds of £17 million pa for two years until such time as the government's review of the local government funding formula has been completed; although there is a possibility for the area to be pilot for the national scheme for business rates retention. The progress of this deal may however depend on how the government wishes to take account of the renewed interest in the HIOW proposals.
41. Council may wish to take a view about whether it wants to back either the HIOW or the Solent proposals, but this would be seen as premature at this stage. For as long as the Isle of Wight Council is represented in both sets of negotiations it is able to press for a deal that secures its financial security but care must be taken that this can be achieved over both the short and medium terms.
42. The provision of a directly elected mayor is understood to have been a difficult consideration for almost all of the devolution deals done to date. It does however seem to be a fundamental condition of government especially in respect of the devolution deals it has done or expects to do in the medium term. In considering whether this is something that could be accepted Council will want to consider the overall benefits the Isle of Wight could secure by accepting a directly elected mayor of the combined authority. Of equal importance will be the extent of the mayor's powers. These should only be in relation to the functions of the combined authority but Council will want to assure itself that in exercising these functions the mayor does not have the ability to interfere with the Isle of Wight Council's own democratic processes and local strategies and policies.
43. In general terms there is likely to be more gained than lost from entering into a devolution deal with government in the near future, if that can be achieved. Although a detailed cost benefit analysis could not be completed until either the Solent or HIOW deal has been proposed by government to the partners. There are presently no published timescales for this, although a Solent proposal is expected shortly.
44. The Council could also choose to disengage from the whole devolution and combined authority discussion altogether and focus its attention on building its case to government in respect of the unique costs associated with delivering public services on an Island. This work can however still progress alongside any devolution discussions and should not be prejudiced by the outcomes of those discussions. The challenge of growing the Island's economy might be made harder if the Council's near neighbours are acting collectively in a combined authority and in receipt of devolved powers and additional funds if the council is not part of the combined authority overseeing these activities.

45. Any proposals for a devolution deal would be subject to a public consultation exercise and it would be premature to define what form the consultation exercise might take until there is clarity about the terms of the deal. So far only one local area has committed to undertaking a public referendum at an estimated cost of over £250,000. Council would need to take a view that the devolution of powers from government in an overall deal 'offer' was so poor to warrant such an expensive exercise. Any referendum would have to stand alone if it were undertaken before the May 2017 local authority elections and could not be tagged on to the EU referendum for example.

RISK MANAGEMENT

46. Perhaps the most significant risk to the council is that it is not part of any devolution deal with government agreed for some or all of the Hampshire and Isle of Wight area. Indications are that the initial deals in an area will set the tone for further deals and that whilst it is possible to join existing deals those organisations involved with its development are the most likely to secure the maximum benefits from the arrangement. The council is mitigating this risk by continuing to engage in discussions about the proposed devolution deals for HIOW and the Solent areas.
47. There is a risk however that despite the council's active involvement with the construction of both devolution deals, the final deal offered by government still does not provide the Isle of Wight with the financial sustainability it is seeking from the process. The council does not have to 'sign up' to the deal that is offered by government if it does not meet its needs but it would need to give due consideration to the implications of not accepting the deal offered.
48. There is an extremely high risk in assuming that government will provide significant support to the Isle of Wight outside of a devolution arrangement and it has given no indication that it would do so. The Cities and Local Government Devolution Act 2016 gives the government power to impose changes to the structure of local authorities if it feels the need to act for any reason. It is therefore reasonable to assume that the government might consider combining the Isle of Wight Council with a mainland authority as a possible solution to the council's financial challenges.
49. The government is very much in control of the terms of any devolution deal that may be agreed with HIOW or Solent areas. There is therefore a risk that the partners in the proposals will not secure everything they are seeking from a deal. The most significant ask is in the amount of investment funding offered to the areas which would need to be considered in relation to need and the offers made as part of other devolution deals. Ultimately it will be for each partner in the deal to consider the 'offer' and become involved with its delivery. The Act does make it possible for a deal to be progressed with only some of the initially proposed partners but there will need to be a critical mass of local authorities in the partnership without which the remaining partners may be reluctant to proceed.
50. The establishment of a combined authority to be responsible for the devolution deal is an absolute condition of government. The combined

authority is only intended to be responsible for the powers being devolved from government to the area and responsibilities that may be agreed in advance to be transferred to it from the existing local authorities; initially in the fields of transport and economic development. Combined authorities are not intended to replace the existing local government structures in the areas in which devolution deals are agreed. There is a risk however that this arrangement is not well understood leading to ill-informed debates about the need for the combined authority and the benefits it may bring. This could lead to a challenging consultation process which could lead to a risk that the council is unable to secure the benefits of a devolution deal for the Isle of Wight.

51. Combined authorities are intended to be the vehicle by which the government devolves its powers and responsibilities to local areas as it seeks to transform public services. Without being part of a combined authority there is a risk the council and therefore the Isle of Wight might not be in the strongest position to take full advantage of the devolution agenda for the overall economic, social and environmental wellbeing of the area.
52. Acceptance of a directly elected mayor for the combined authority is likely to be the most challenging risk in accepting a devolution deal. Indications are that the government does not wish to be prescriptive about the range of powers for a mayor and that this can be left to the local authorities in the combined authority area to determine. It is clear however these powers can only relate to the work of the combined authority and not the local authorities in the combined authority area. There is a risk that the election of a mayor becomes the focus of debate in respect of the devolved deals and that the potential benefits and outcomes of a deal become lost and confused around this single issue. There will need to be agreement for significant and robust scrutiny arrangements of the work of the mayor by the local authority members of the combined authority.

RECOMMENDATIONS

53. On the basis of the information contained in this report it is recommended that Council agrees to:
 - (a) To continue to support the development of devolution proposals for both the Hampshire and Isle of Wight and the Solent areas until such time as a proposed detailed devolution deal and combined authority for one or both areas is available for consideration.
 - (b) Where the proposed terms of a devolution deal ensure the financial security of the Isle of Wight but are conditional upon a directly elected mayor of the combined authority to agree the principle of the deal.
 - (c) To agree that the powers of any directly elected mayor of the combined authority should be limited to the combined authority's functions only and that the mayor should not have the ability to interfere with the role of any local authority in undertaking its legal duties.
 - (d) To commit to a detailed and proportionate consultation with the Isle of Wight community on any devolution deal and combined authority led by a directly elected mayor the council is considering accepting.

APPENDICES ATTACHED

[Appendix 1](#) – The main powers government has agreed to devolve across the country

BACKGROUND PAPERS

[“Devolution to local government in England”, Mark Sandford, House of Commons Library Briefing Paper Number 07029, 15 January 2016](#)

[“Combined Authorities”, Mark Sandford, House of Commons Library Briefing Paper Number 06649, 12 February 2016](#)

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