

For Publication

Decision regarding full membership of the Sheffield City Region Mayoral
Combined Authority

Meeting: Council

Date: 7 September 2016

Report by: Chief Executive

1.0 Purpose of report

- 1.1 To provide members with an update on the steps being taken to implement the council's decision to apply to be a full constituent member of the Sheffield City Region Mayoral Combined Authority in line with the statutory process (Minute No. 104, 2015/16).
- 1.2 To enable members to consider provisional independent analysis of the outcomes of the Sheffield City Region Devolution Consultation Exercise following the period of public consultation that ran for six weeks from 1 July through 12 August 2016.
- 1.3 To seek delegated authority for the Chief Executive in consultation with the Leader, if appropriate and subject to consideration of the full analysis of the outcomes of the Sheffield City Region Devolution Consultation Exercise and of any consequential revisions that may need to be made to the Governance Review and Scheme of Governance, to
 - (a) endorse the planned submission by Sheffield City Region Combined Authority to the Secretary of State for the Department for Communities and Local Government of key documents relating to the establishment of a Sheffield City Region Mayoral Combined Authority.

(b) consent to the parliamentary order for the Sheffield City Region Mayoral Combined Authority to be laid.

- 1.4 To advise members of legal action commenced by Derbyshire County Council against the Sheffield City Region Combined Authority seeking to challenge the Devolution Consultation Exercise.

2.0 **Recommendations**

- 2.1 That delegated authority is given to the Chief Executive in consultation with the Leader to consider the full analysis of the outcomes of the Sheffield City Region Devolution Consultation Exercise and any consequential revisions that may need to be made to the Governance Review and Scheme of Governance and if appropriate, taking full account of that analysis and opinions expressed by members at the council meeting on the provisional independent analysis of the outcomes of the Sheffield City Region Devolution Consultation Exercise to:

(a) endorse the planned submission by Sheffield City Region Combined Authority to the Secretary of State for the Department for Communities and Local Government of key documents relating to the establishment of a Sheffield City Region Mayoral Combined Authority and

(b) consent to the parliamentary order for the Sheffield City Region Mayoral Combined Authority to be laid.

- 2.2 That members of council note the legal challenge commenced by Derbyshire County Council against the Sheffield City Region Combined Authority seeking to challenge the Devolution Consultation Exercise and authorise the Chief Executive, in consultation with the Leader and the Regulatory and Local Government Law Manager, to take any steps as appropriate in connection with the challenge.

3.0 **Background**

- 3.1 On 6 April 2016, Chesterfield Borough Council resolved to apply to be a full constituent member of the Sheffield City Region Combined Authority in line with the statutory process. Council also delegated to the Chief Executive, in liaison with the Leader, authority to take further steps that are necessary as part of the process to put into effect that resolution.
- 3.2 The process for applying to become a full member was set out in the report to Council on 6 April. The process includes carrying out a review (the 'Governance Review') and preparing a draft scheme (the 'Scheme of Governance') for the proposed Sheffield City Region Mayoral Combined Authority. Having done so, the next step, in line with the statutory process, is to conduct a public consultation in respect of the proposals (i.e. the review and scheme).
- 3.3 Accordingly, the Chief Executive in consultation with the Leader made the delegated decision on 27 June to endorse the publication for consultation of documents that form the governance review and scheme of governance for a Sheffield City Region Mayoral Combined Authority.

4.0 **The review and scheme**

- 4.1 The review and scheme have been developed to take account of significant proposed changes when compared with the arrangements for the existing Sheffield City Region Combined Authority. Most notably, the Combined Authority would become a Mayoral Combined Authority, chaired by a directly elected mayor. There would also be a significant devolution of powers and funding to the Mayor and the Combined Authority, in line with the two devolution deals that the Sheffield City Region has secured over the last 18 months and subsequent negotiation with government. And the full constituent membership of the combined authority would be expanded to include Bassetlaw District Council and Chesterfield Borough Council, following decisions made by the two councils in March and April 2016.
- 4.2 The review considers the case for making an order to establish a Mayoral Combined Authority with an expanded geography having

proper regard to the statutory tests contained within the Local Democracy, Economic Development and Construction Act 2009, as amended by the Cities and Local Government Devolution Act 2016. These tests were set out in the report to Council on 6 April, also in the delegated report on 27 June and are included again here:

the Secretary of State considers that to [make an order] is likely to improve the exercise of statutory functions in the area or areas to which the order relates;

the Secretary of State must have regard to the need (a) to reflect the identities and interests of local communities, and (b) to secure effective and convenient local government

(s. 113 of 2009 Act as amended by s. 14 (8) of 2016 Act)

Given the proposal is to establish a Mayoral Combined Authority where one constituent member (Chesterfield) would be geographically separated from other constituent members, the legislation also specifies that:

in deciding whether to make the order under section 106 [to change the boundaries of a Combined Authority area], the Secretary of State must have regard to the likely effect of the change to the combined authority's area on the exercise of functions equivalent to those of the combined authority's functions in each local government area that is next to any part of the area to be created by the order (2016 Act, s. 12 (6)).

- 4.3 The review at appendix A sets out the case for the proposed Mayoral Combined Authority meeting the statutory tests. In doing so, it considers the implications of the extension of the geography of the Combined Authority area beyond South Yorkshire and the devolution of additional powers and functions, and promotes appropriate changes in governance to enable implementation of the October 2015 Sheffield City Region Devolution deal.
- 4.4 The scheme (appendix B), sets out the way in which the Mayoral Combined Authority would operate in exercising its additional powers and functions and related changes in governance, which provide the basis for the Secretary of State to make relevant

Orders following the conclusion of the statutory consultation process. It identifies in particular the functions which will be the responsibility of the Mayor alone and the functions which would be discharged by the Combined Authority of which the Mayor would be a member and be appointed as its Chair. As with the review, there has been an on-going dialogue between SCR and the member authorities regarding construct of the scheme.

5.0 **Consultation approach**

5.1 The review and scheme, as drafted, formed the basis for the Sheffield City Region wide statutory consultation, which was undertaken over a six week period from 1 July 2016 through 12 August 2016. Activity coordinated by the combined authority included public and business events, local meetings, overview and scrutiny meetings, a dedicated mircosite, press releases, newsletters, leaflets, e-mails, letters, social media and website promotion. A full description of the activity is expected to be included in the Ipsos Mori report (see section 6). Appendix C sets out the consultation questions that formed part of the process and appendix D the additional consultation and communication activities progressed in Chesterfield Borough to encourage participation.

5.2 The latter activities included:

- a) An extensive campaign to encourage participation in the consultation including information going out to 43,000 households via Your Chesterfield, an aligned social media campaign, information provision in key public buildings and community and voluntary sector newsletters.
- b) Opportunities for members of the public to ask questions and comment at a public meeting and at three drop-in sessions.
- c) Interaction via letter, telephone and e-mail.
- d) Information sharing and question and answer sessions with a variety of stakeholders including the local business community, parish and town councils, overview and scrutiny, older peoples forum.

5.3 Chesterfield Borough Council also responded to the consultation. The consultation response was approved by delegated authority to the Chief Executive, in consultation with the Leader, on 12 August.

The consultation response is attached at appendix E. The response made by the council was informed by an initial analysis of Derbyshire County Council's response to the consultation. The DCC response has been circulated widely to partners across the county and is available on request.

6.0 **Next Steps**

- 6.1 The latest information available shows that the Sheffield City Region Combined Authority has received 2510 responses to the online survey, 323 responses by post using paper copies of the questionnaire, 32 emails, 51 letters, 9 campaign responses and 1 petition. This makes a total of 2,926 respondents who also completed 6,342 open questions.
- 6.2 Ipsos Mori have been commissioned to support the Combined Authority with the statutory consultation process. And are currently codifying and analysing the consultation responses. In addition to this, Ipsos Mori will take into account the outputs of the various events and meetings including those listed in appendix D, drawing on evidence of notes made and pictures taken.
- 6.3 Given the level of response described above, Ipsos Mori's final report summarising the outcomes of the Sheffield City Region Devolution Consultation Exercise will not be available until 5 September 2016 at the earliest. A provisional summary of the results and analysis is anticipated to be available a few days before this and if it is available on this timescale, then an addendum to this report will be issued in advance of the council meeting.
- 6.4 Assuming that Ipsos Mori's final report is received on 5 September 2016, every effort will also be made to share the consultant's independent appraisal of the outcomes of the consultation exercise, and also any proposed consequential revisions that the Sheffield City Region Combined Authority intends to make to the Governance Review and Scheme of Governance with members at the council meeting.
- 6.5 It is essential that Chesterfield Borough Council is in a position to take a considered view and, if appropriate, endorse the planned submission to the Secretary of State for the Department for

Communities and Local Government of the Governance Review, Scheme of Governance and Consultation Summary relating to the establishment of a Sheffield City Region Mayoral Combined Authority in advance of a scheduled meeting of the Combined Authority on 12 September 2016.

- 6.6 At the 12 September 2016 meeting, Combined Authority members, including the Leader of the Council, will collectively consider the Consultation Summary, Ipsos Mori's report, any proposed changes to the Governance Review and Scheme of Governance (of which none are planned at present), and the Equality Impact Assessment prepared; with delegated authority to be afforded to the Sheffield City Region's Executive Director, in consultation with the Chair of the Combined Authority, to submit the afore-mentioned key documents to the Secretary of State of the Department for Communities and Local Government.
- 6.7 The Secretary of State will then consider the Sheffield City Region Combined Authority's proposals against the statutory tests contained within the Local Democracy, Economic Development and Construction Act 2009, as amended by the Cities and Local Government Devolution Act 2016 (see paragraph 4.2 above). If the Secretary of State is satisfied that the tests are met then parliamentary orders to establish the Sheffield City Region Mayoral Combined Authority will be laid mid to late October 2016 and debated in both the House of Commons and House of Lords.
- 6.8 As the council is likely to receive very little notice of the Secretary of State's intentions, delegated authority is again sought for the Chief Executive, in consultation with the Leader, to consent to the parliamentary order for the Sheffield City Region Mayoral Combined Authority to be laid.

7.0 **Derbyshire County Council Legal Challenge**

- 7.1 Derbyshire County Council has commenced a legal challenge of the Combined Authority's consultation exercise. The challenge came after a pre-action protocol letter was sent to the Combined Authority calling for a halt to the consultation and for it to be started again taking into account the alleged defects. The Combined Authority responded by rejecting the alleged defects.

- 7.2 The court application is against the Combined Authority but names the Secretary of State for Communities and Local Government and Chesterfield Borough Council as interested parties.
- 7.3 Before such a legal challenge can proceed in the courts, permission of the High Court must be obtained based on preliminary analysis of the case. It is not yet known when this will happen.
- 7.4 No application has been made by Derbyshire County Council to halt the statutory process relating to the establishment of the Mayoral Combined Authority pending the court's consideration of the challenge. And the Sheffield City Region Combined Authority has no plans to halt the devolution process pending the outcome of the challenge, which could take many months.
- 7.5 The grounds of Derbyshire County Council's challenge are very briefly summarised as follows:
- The consultation is unfair and unlawful and should be quashed.
 - Defects in the consultation are incapable of being corrected by the Secretary of State.
 - The consultation does not comply with the relevant devolution legislation or the law on consultation as developed by the courts.
- 7.6 The Combined Authority is currently considering the challenge and its response. The Council and the Secretary of State, as interested parties, will also need to decide on the extent of their engagement in the legal challenge.

8.0 Human resources/people management implications

- 8.1 There are not considered to be any human resource or people management implications arising from this decision. This statement is made on the basis that there are no proposals within either of the Sheffield City Region devolution deals to transfer current Chesterfield Borough Council powers and functions to the Sheffield City Region Mayoral Combined Authority.

9.0 Financial implications

9.1 Previous reports to Council have set out the financial implications of full membership of the Sheffield City Region, including the benefits to date and future potential benefits for the communities of Chesterfield. It is not anticipated that there will be any change regarding the costs of full as opposed to non-constituent membership and those costs are included within existing budgets.

10.0 **Legal and data protection implications**

10.1 The Sheffield City Region Combined Authority appointed Ipsos Mori to run the Devolution Consultation Exercise. Ipsos Mori have extensive experience of working with the public sector on such exercises and are well versed in ensuring compliance with data protection requirements.

10.2 The Local Democracy, Economic Development and Construction Act 2009, as amended by the Cities and Local Government Devolution Act 2016 provides the legal framework for the matters before council.

10.3 More specifically, Section 106 of the 2009 Act empowers the Secretary of State to make changes to the boundaries of an existing combined authority's area by order and section 107A, again by order, to provide for the election of a mayor for the area of a combined authority.

10.4 In advance of the making of such orders, Section 111 of the 2009 Act provides that an existing combined authority may carry out a review of "one or more combined matters" (the definition of 'combined matters' includes changes to the boundaries of an authority). And Section 112 that where a combined authority has undertaken such a review and concluded "that the exercise of the power to make an order under any one or more of sections 104, 105, 106 and 107 of the 2009 Act would be likely to improve the exercise of statutory functions in relation to an area of a combined authority or a proposed area of a combined authority" then it "may prepare and publish a scheme relating to the exercise of the power or powers in question".

10.5 Having completed such a review and developed such a scheme, Section 113 of the 2009 Act instructs an existing combined authority as to the consultation that must take place before any

order is made by the Secretary of State. Section 113 specifically provides, so far as relevant that:

(1) The Secretary of State may make an order under section 104, 105, 106 or 107 in relation to an existing combined authority only if - (a) the Secretary of State considers that to do so is likely to improve the exercise of statutory functions in the area or areas to which the order relates, and (b) any consultation required by subsection (2) has been carried out.

(2) The Secretary of State must carry out a public consultation unless - (a) a scheme has been prepared and published under section 112, (b) the authorities that prepared and published the scheme carried out a public consultation in connection with the proposals contained in the scheme and provided the Secretary of State with a summary of the consultation responses, and (c) the Secretary of State considers that no further consultation is necessary.

10.6 Given that legal proceedings are underway, no comment is made here on the legal challenge summarised in section 7.

11.0 Risk Management

11.1 The risks relating to the decision are set out below.

Description of the Risk	Impact	Likelihood	Mitigating Action	Impact	Likelihood
Outcome of devolution consultation exercise doesn't support case for extension of existing Combined Authority geography to include Chesterfield area	H	M	Within Chesterfield, the process has been supported as set out in Appendix D. This has included providing clarity on the case for full membership and rectifying misunderstandings arising from	H	L

			material published by Derbyshire County Council.		
Secretary of State finds that the statutory tests are not met	H	L	The scheme and review have been prepared by partners, including Chesterfield Borough Council, in line with the requirements of the statutory tests. Mitigation will include continuing to ensure that the material provided by Sheffield City Region Combined Authority makes a compelling case and addresses key substantive points raised in the consultation process.	H	L
Derbyshire County Council legal challenge is successful	H	?	For Chesterfield as an interested party, the council will require further advice on mitigating this risk. If the challenge is successful the likely impact would be a delay to the process and there would still remain options for establishing the proposed Sheffield	H	?

			City Region Mayoral Combined Authority.		
Shifting Government policy position on devolution and directly elected mayors following change to leadership and Cabinet	M	M	Continued close working with the Department for Communities and Local Government and Her Majesty's Treasury through the established relationships with Sheffield City Region. At present it is clear that substantive deals will continue to require a directly elected mayor.	M	L
Decisions taken by Chesterfield are not sufficiently informed by consideration of the potential impact on communities	M	L	The process has put this factor at the heart of decision making throughout. Equalities impact assessments have been conducted and updated throughout the process.	M	L

12.0 Equalities Impact Assessment (EIA)

12.1 A provisional Equalities Impact Assessment has been conducted and is included at appendix F. To inform the decision made on 6 April 2016 regarding full membership of the Sheffield City Region Mayoral Combined Authority a provisional EIA was developed.

During the development of the EIA several issues emerged which made it difficult to come to a fully considered view on the impact on protected characteristics. This is made more difficult in virtue of the new approach that 'deals' represent, whereby a broad agreement is made with the government that indicates the direction in which devolution of powers and funding is expected to move, but with government reserving the right to continue negotiating, department by department.

12.2 Since the decision on 6 April, there has been a continual refinement of the EIA and this will continue as further detail on the various deal commitments emerges. As part of that process, a revised assessment was published as part of the decision made on 27 June 2016 by the Chief Executive in liaison with the Leader to endorse documents for publication at the outset of the consultation process.

12.3 Key points arising from the current provisional assessment include:

- Accessibility was a key consideration during the development and delivery of the consultation. The subject matter and information required to take part in the consultation was however challenging. While efforts were made to simplify the information and consultation tools as far as possible, some people may have struggled to engage.
- Assistance was available at all of the events and drop-ins. Telephone and in person support was also available throughout the consultation. The consultation included a variety of opportunities to engage including different formats, times and dates to suit a diverse community.
- The areas of the Sheffield City Region Mayoral Combined Authority and devolution deal where there is most likely to be impacts on protected groups are those relating to transport, employment and skills. The assessment notes potential impacts both positive and negative on the protected characteristics.
- Further discussion and negotiation has taken place to develop key principles for the Local Transport Authority transition plan. This includes the overarching principle of evidence based strategic decision-making for the public good. There has also been an agreement regarding a 'steady state' period and a full

risk assessment undertaken to maximise positive impacts and mitigate against any potential negatives impacts.

- Mitigation includes ensuring that the combined authority is ready to deliver improved services as it receives powers and funding, which will include further impact assessment of specific programmes and policies as they are developed.
- Mitigation will also include working closely across local partners to consider potential impacts of programmes that make use of devolved powers and funding.

13.0 Recommendations

13.1 That delegated authority is given to the Chief Executive in consultation with the Leader to consider the full analysis of the outcomes of the Sheffield City Region Devolution Consultation Exercise and any consequential revisions that may need to be made to the Governance Review and Scheme of Governance and, if appropriate, taking full account of that analysis and opinions expressed by members at the council meeting on the provisional independent analysis of the outcomes of the Sheffield City Region Devolution Consultation Exercise to:

(a) endorse the planned submission by Sheffield City Region Combined Authority to the Secretary of State for the Department for Communities and Local Government of key documents relating to the establishment of a Sheffield City Region Mayoral Combined Authority and

(b) consent to the parliamentary order for the Sheffield City Region Mayoral Combined Authority to be laid.

13.2 That members of council note the legal challenge commenced by Derbyshire County Council against the Sheffield City Region Combined Authority seeking to challenge the Devolution Consultation Exercise and authorise the Chief Executive, in consultation with the Leader and the Regulatory and Local Government Law Manager, to take any steps as appropriate in connection with the challenge.

14.0 Reasons for recommendations

- 14.1 To enable consideration and endorsement of the review, scheme and consultation information to progress the establishment of the proposed Mayoral Combined Authority.

Decision information

Key decision number	658
Wards affected	ALL

Document information

Report author	Contact number/email
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Appendices to the report	
Appendix A	SCR Combined Authority Constituent Membership Expansion: The Economic and Spatial Argument (SQW)
Appendix B	Fit for devolution: Developing a model of mayoral governance within the Sheffield City Region (2016)
Appendix C	Consultation questions
Appendix D	Summary of additional consultation and communication activity undertaken within Chesterfield Borough
Appendix E	Chesterfield Borough Council’s Consultation response
Appendix F	Provisional Equalities Impact Assessment