

REPORT TO EXTRAORDINARY COUNCIL

Date of Meeting: 21 March 2024

Report of: Chief Executive

Title: Response to Consultation on the proposed Devon and Torbay Devolution Deal

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 A proposed Devon and Torbay devolution deal was announced by the Secretary of State for Levelling Up, Homes and Communities (DLUHC) on 25 January 2024. A copy of the proposed deal, published by DLUHC is attached at Annex A.

As the two Constituent Councils of the proposed Combined County Authority (CCA) that would be formed as part of the deal, Devon County Council and Torbay Council are seeking views on the proposal by 24 March 2024. Details of the deal and the consultation are available at: www.devontorbaydeal.org.uk

This report provides members with detailed information on the proposed deal and seeks approval of a response to the consultation.

Next steps

The anticipated timetable for the next steps is:

- 12 February 2024 to 24 March 2024 –public consultation on the draft proposal for the establishment of DT CCA and proposed devolution deal;
- April 2024 – Cabinet (Monday 22 April) and Council (Monday 29 April) consideration of the results of the public consultation and final proposal and, subject to Council's decision, submission of final proposal for the DT CCA to Government;
- May 2024 – Government decision on proposal;
- June 2024 - Statutory Instrument to create the DT CCA finalised;
- July 2024 - Review by Joint Committee on Statutory Instruments;
- Autumn 2024 – Devon and Torbay Councils formally consent to the Statutory Instrument;
- Autumn 2024 – Statutory Instrument laid in Parliament;
- Autumn 2024 – Statutory Instrument comes into force;
- Autumn/Winter 2024 – Launch of the DT CCA and establishment of the Team Devon Joint Committee.

2. Recommendations:

It is recommended that Council notes the proposed Devon and Torbay devolution deal and formation of the Devon and Torbay Combined County Authority and submits the following response to the consultation:

1. Voting rights and governance

The council notes that the Government rejected the proposed amendment by the House of Lords to allow district councils to be constituent members of the new Combined County Authorities. We contend that this creates a democratic deficit for all district councils, and we look forward to this being rectified in Devon.

More specifically, from the perspective of Exeter and its residents and communities, with a population of more than 130,000, the city is one of two major urban areas south west of Bristol, and the main growth hub for the South West, with specialisms in science, tech, big data, and significant assets, such as the University of Exeter and Exeter College, which are vital to skills generation, innovation, and productivity growth. There are over 35,000 people who commute into the city to work but nearly half a million who travel-to-work within Greater Exeter.

The capacity for future development and growth could be markedly improved with vital investment to:

- accelerate green growth and improve economic productivity;
- increase private sector employment particularly in transformative sectors where higher skills, higher levels of research and development and deep technology in climate sciences and health are predicted;
- grow, retain, and attract a better skilled workforce and invest in employment, education, and skills plans;
- provide better digital connectivity;
- deliver high-quality, sustainable new neighbourhoods incorporating a pipeline of housing sites on brownfield land across the city, unlocking 12,000 green homes;
- retrofit a further 4,000 council houses to reduce carbon footprint and tackle fuel poverty;
- improve public transport connectivity, promote active travel choices, tackle congestion, and improve accessibility to the city centre;
- expand and secure the city's future green energy supply, including new renewable sources.

The ambitions and purported benefits of the CCA mirror these challenges and it is imperative that Exeter's democratically elected representatives have direct input to decisions on prioritisation and allocation of funding and resources as constituent members of the CCA. With a population of around 136,00 and three constituent members of the CCA, Torbay is afforded disproportionate and inequitable democratic input, which would be more accurately and reasonably allocated if the governance arrangements were represented by Devon's urban, rural, and coastal communities, with three seats to reflect this balance.

2. Local Government Restructuring

The Council notes that DLUHC's published deal and the background text for the consultation are silent on the impact of the devolution and CAA on local government restructuring. The Council also notes the following statement in the Constituent Councils' press release of 25 January 2024: "The Government has chosen Devon and Torbay as one of only a small number of local authority areas in the country to form a Combined County Authority (CCA), that will not require an elected Mayor or changes to the current structure of local councils." The Council looks forward to receiving a record of the CCA's formal endorsement of this position following its inception.

3. District Council Common Issues

In common with other district council colleagues across Devon, we recognise the potential benefits of a CCA, in giving Devon and Exeter a voice in government and attracting funding to support our ambitions. We want to work collaboratively with our Devon colleagues and government to address concerns in a number of specific areas:

- UK Shared Prosperity Fund (UKSPF) – we expect this (or its successor) to continue to be devolved to districts within Devon to deliver. We note that there is currently no certainty about any future rounds of the UKSPF programme. However, in line with the Government's commitment to replace lost EU funding, we would expect the shared prosperity fund, or equivalent replacement funding streams in future, to be devolved from the CCA to district level by default. With the remaining CCA remit being to broker conversations about strategic commissioning of countywide (generic) business support activity, to maximise the effectiveness of local investment aligned to the economic activity newly returning to the county council as part of the winding down of the Local Enterprise Partnership (LEP). However, since the LEP failed on both its democratic mandate and local relevance to businesses, we would wish the CCA to set off firmly on the right foot by committing to retain local delivery methods for business support where this is currently in place via districts.
- Housing empowerment – we expect the CCA to enable and accelerate delivery with and through districts and local housing associations. Much is made of the potential for a shared strategic investment pipeline with Homes England, and while we recognise the potential for shared investment and the need for strategic conversations to deliver this, we would wish to make it clear that districts expect existing housing functions and groupings to be utilised – such as the Devon Housing Task Force, which covers the whole of the Devon and Torbay area (and which is currently chaired by a District Council Leader). The aims of the CCA should be to build on best practice and expertise; to provide a stronger platform and empower the excellent work being done across the Team Devon landscape, not to duplicate or add extra bureaucracy. We understand that this is the intention, however we would wish to be involved more fully in the discussions around 'operationalising' the CCA.

3. Reasons for the recommendation:

3.1 To ensure that the council's position and concerns regarding the devolution deal and CCA are registered as part of the consultation.

4. What are the resource implications including non financial resources

4.1 The proposed CCA will be funded by the two Constituent Councils. Funding has been secured as part of the deal from central Government to cover the financial years 2024/25, 2025/26 and 2026/27. In addition, the proposed CCA would consider whether to seek the power to borrow and explore the extent of these powers.

In practice it is expected that the running costs of the proposed CCA will be met by either continued central Government support or with funding from the Constituent Councils. The proposed CCA will not have the power to raise a precept. That means it will not be able raise money through increasing Council Tax.

Member and officer time will be required to participate in the various groups that form the CCA but, initially, this is not expected to exceed the time spent on current arrangements, including Team Devon and the Local Enterprise Partnership. This commitment will continue to be reviewed following inception of the CCA.

5. Section 151 Officer comments:

5.1 At this stage there are no immediate financial implications for Council to consider. There may be opportunities for Exeter to benefit from some of the additional resources, however some future funding streams will be diverted to the CCA, which have previously been awarded to individual Councils (e.g. UK SPF).

6. What are the legal aspects?

The Levelling-up and Regeneration Act (LURA) received Royal Assent on 26 October 2023. Part 2 (Local democracy and devolution) Chapter 1 (Combined County Authorities) of the Act provides for the formation of Combined County Authorities (CCAs) as corporate bodies.

The proposed Devon and Torbay devolution deal was announced by the Secretary of state for Levelling Up, Homes and Communities on 25 January 2024. If approved by the Secretary of State, secondary legislation will be made to set up the Devon and Torbay Combined Authority. The consultation period for the proposed CCA commenced on 12 February 2024 and will close on 24 March 2024.

Section 46 of LURA sets out the requirements in connection with establishment of a CCA. The Secretary of State may make regulations establishing a CCA for an area only if:

- (a) The Secretary of State considers that to do so is likely to improve the economic, social, and environmental well-being of some or all of the people who live or work in the area,
- (b) The secretary of State considers that to do so is appropriate having regard to the need-
 - (i) To secure effective and convenient local government, and
 - (ii) To reflect the identities and interests of local communities,

- (c) Where a proposal for the establishment of the CCA has been submitted and a public consultation has been carried out and provided to the Secretary of State, then the Secretary of State may constitute a CCA by Regulations.

Devon County Council and Torbay Council have sought a Level 2 devolution framework. The authority will have wide ranging powers relating to governance, finance and investment, skills and education, housing and land, transport, net zero and climate change, culture, and tourism, 'digital', innovation, trade and investment, sector development, public service reform and resilience and public safety.

The report to Devon County Council's cabinet on 2 February 2024 stated that 'Whilst the DT CCA would be a separate body from the existing councils [i.e., Devon and Torbay], it would be led by members of those councils. The DT CCA would take responsibility for devolved powers and functions that are not currently subject to direct local democratic control'.

A CCA can be established in areas with two-tier local authorities and unitary authorities. The Act provides for CCA constituent membership to consist solely of upper-tier local authorities. Governance of the CCA will lie primarily with the two constituent councils, Devon County Council and Torbay Council. Each authority will appoint three of their elected members to the CCA. District Councils are accorded 'non-constituent' member status and will be nominated by the District Councils within Devon. Membership is limited to two Districts in accordance with the proposals put forward by Devon County Council and Torbay Council. Non-constituent members of a CCA are non-voting members unless the voting members resolve otherwise. The 'Devon and Torbay Devolution Deal' document states that of the four non-constituent members, '...two will be members nominated by the District councils within the Devon area to act as District representatives' There will be no individual representation for the eight Devon District Councils. There will also be two associate members who will be decided by the CCA. They will, for example, represent '...the voice of business and another the skills/education sector'. In addition, there will be four non-constituent members, two of which will be members nominated by the District Councils within Devon. They will '...act as District representatives.

The report goes on to state:

'The district councils in Devon will be empowered to nominate two members to represent their interest on the CCA. Devon County Council and the eight district councils have worked together to agree system of nominations, it has been agreed that a Team Devon joint committee will be established under section 101 to 103 of the Local Government Act 1972 and all other enabling legislation, members of the Team Devon joint committee will include representatives of Devon County Council; the City, District and Borough Council in the Devon area; the National park Authorities and the Devon Association of Local Councils. The terms of reference of the Team Devon joint committee will enable it to have a voice and establish a collective position in the CCA'. This does not appear to include voting rights to the proposed Team Devon joint committee.

There is limited information on broader decision making. The draft proposal states that *'[t]he CCA will determine how it will deal with voting and decision-making between the CCA's membership on general matters, for example local policy and strategy making, as part of its broader Constitution'.*

The proposed devolution arrangements also provide for an Overview and Scrutiny Committee and Audit Committee which also allow for non-constituent council representation.

Section 18 of the LURA 2023 enables the Secretary of State to make regulations to *'...provide for a function of a county council or a district council that is exercisable in relation to an area which is within a CCA's area to be exercisable by the CCA in relation to the CCA's area...if the Secretary of State considers that the function can appropriately be exercised by the CCA'*.

Section 18 also provides for regulations to allow for County and District functions to be exercised by a CCA concurrently or jointly with a County or District council or continue to be exercised by the Council alone. However, such Regulations can only be made by the Secretary of State with the consent of the constituent councils. The [Table of Functions](#) sets out those powers which the Constituent Councils propose are to be exercised by the CCA on the basis that the Constituent Councils consider those functions *'...are needed to enable the CCA to deliver the purposes outline in [the] proposal'*. Members will note from the Table of Functions that the powers sought by the Constituent Councils are extensive. The 'Devon and Torbay Devolution Deal' document states at paragraph 27:

'No local authority functions are being removed from any local authority in the area, other than transport functions as agreed with the constituent councils. Where other local authority functions are conferred on the CCA they will be held concurrently with the local authorities in the area to ensure joined up decision making. Arrangements for the concurrent exercise of the functions will be a matter for agreement between the CCA and the constituent councils as appropriate'.

Section 19 of the LURA 2023 provides for other public authority functions to become functions of the CCA. Section 19 does not apply to County or District Councils.

Sections 47 and 48 of the Act set out the requirements for changes to existing arrangements relating to CCAs which provide for the secretary of state to make changes to the CCA arrangements where proposals are submitted by the CCA, County Council or Unitary Council provided that the Section 48 criteria are satisfied.

The Devon and Torbay Devolution Deal published by the Department for Levelling Up, Housing and Communities (DLUHC) states in its introduction that:

'Government recognises that devolution is a journey, not a one-off event, The agreement is the first step in a process of further devolution, As institutions mature, they can gain greater responsibility, and Devon and Torbay will be able to deepen their devolution arrangements over time, subject to Government agreement. The Government will also continue to work with Devon and Torbay on important areas of public service reform and infrastructure investment, to support inclusive economic growth in towns, cities, rural and coastal areas whilst tackling the climate emergency on our journey to 2050'.

7. Monitoring Officer's comments:

7.1 Given that this report recommends Exeter City Councils' response to the consultation the Monitoring Officer has no comment to make but Members attention is particularly drawn to the legal aspects highlighted in paragraph 6 above.

8. Report details:

In summary, based on the published documentation, the proposed devolution deal includes:

- The formation of the CCA, including the creation of a leadership group led by a nominated chair, to provide overall vision and leadership, seek the best value for taxpayer's money, and be accountable to local residents.
- New powers to better shape local skills provisions to ensure these meet the needs of the local economy. This will include devolution of Adult Education functions and the core Adult Education Budget, and the opportunity to provide input into Local Skills Improvement Plans.
- £16 million of new capital funding in this Spending Review period to support the delivery of local housing priorities, drive Net Zero ambitions, support green skills and accelerate wider low carbon business transition across the Devon and Torbay area. This investment is subject to agreement of the relevant business cases.
- Greater collaboration between the Devon and Torbay CCA and Homes England to reduce the barriers to affordable housing delivery, regeneration, and housing growth – with a particular focus on rural and coastal communities. By combining skills and capacity, Devon and Torbay CCA and Homes England will develop a shared development pipeline, underpinned by a clear action plan, and explore ways to support the delivery of that pipeline via current and future national housing programmes. Devon and Torbay CCA have also secured agreement from government to discuss the recommendations of the Devon Housing Commission.
- New powers to improve and better integrate local transport, including the ability to introduce bus franchising subject to approval from the Secretary of State for transport, and control of appropriate local transport functions e.g., responsibility for an area-wide local transport plan.
- Subject to funding, policy and delivery considerations at the next Spending Review, UK Shared Prosperity Fund (UKSPF) planning and delivery at a strategic level from 2025/26.
- The integration of the functions of the Heart of the South West Local Enterprise Partnership held by Devon County Council and Torbay Council into the Devon and Torbay CCA, alongside the provision of a strong and independent local business voice which informs local decision making and strategic economic planning.
- A commitment to developing, in partnership with the Government, an arrangement which ensures close cooperation with the Police and Crime Commissioner (PCC).
- A clear role for Devon and Torbay in local resilience and civil contingency planning, preparation, and delivery

9. How does the decision contribute to the Council's Corporate Plan?

9.1 There is no direct link to the corporate plan.

10. What risks are there and how can they be reduced?

The council's response identifies and seeks to mitigate the negative impact of the democratic deficit.

The published deal is silent on the subject of local government restructuring but does state at paragraph 38 that *"This deal does not rule out in principle any future options for further local alignment and joint working."* Coverage of this subject is included in the recommended response to the consultation.

Paragraph 134 of the published deal states that "The Devon and Torbay CCA and its members will continue to adhere to their public sector equality duties, for both existing and newly devolved responsibilities."

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation, and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies, and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage, and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact on equality of decisions, policies and practices has been identified on people with protected characteristics because the legal duty and impact assessment is the responsibility of the Constituent Councils of the CCA.

12. Carbon Footprint (Environmental) Implications:

12.1 Net zero and climate adaptation are identified as a priority in the Devolution Deal and the Constituent Councils have stated:

"We will unlock Devon and Torbay's huge green economic potential, with more investment in green business growth and attracting inward investment to the area. Our transition to a net-zero economy will be accelerated, capitalising on our area's world-leading expertise in green science and technology."

Local leaders are well placed to engage with all part of their communities and to understand local policy, political, social, and economic nuances relevant to climate action in the area.

From the £16 million of new Government funding which the CCA will receive, funding will be made available to invest in green jobs, homes, skills, and business growth, accelerating Devon and Torbay's transition to a net-zero economy, and capitalising on our area's world-leading expertise in green science and technology, in this spending review period."

Council members and officers will engage with the CCA and seek to ensure that Exeter's Net Zero ambitions are duly prioritised and delivered by the CCA.

13. Are there any other options?

13.1 The proposal is defined by the Constituent Councils and the options are prescribed by legislation.

Chief Executive, Bindu Arjoon

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

- Devon and Torbay Devolution Deal (DLUHC 2024)

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