

**Open Report on behalf of Tony McArdle, Chief Executive**

Report to:	<b>Councillor M J Hill OBE, Leader of the Council</b>
Date:	<b>21 November 2016</b>
Subject:	<b>Greater Lincolnshire Devolution Proposal</b>
Decision Reference:	<b>I012219</b>
Key decision?	<b>Yes</b>

**Summary:**

The Report sets out the latest position in relation to the implementation of the devolution agreement for Greater Lincolnshire.

On 20 May 2016 the Leader of the Council received the results of a Governance Review under section 108 of the Local Democracy Economic Development and Construction Act 2009 as amended by the Cities and Local Government Devolution Act 2016 (LDEDCA) and on the basis of that Review approved the preparation and publication of a Scheme for consultation under section 109 of the Act.

On 9 November 2016 the Secretary of State for Communities and Local Government wrote to the Leader of the Council requesting confirmation as to whether the Council wished to proceed with the devolution deal or not. The Council is in possession of a draft Order for the establishment of a Mayoral Combined Authority for the Greater Lincolnshire area (the MCA).

As this order is in a draft form it is not possible to describe the final terms on which the MCA would be established. The Secretary of State in his letter has, however, confirmed that the substantive content of the final order will be the same as that of the draft order.

This Report sets out for the Leader of the Council the various considerations to be taken into account including the outcome of the consultation exercise undertaken by the ten local authorities in the Greater Lincolnshire area and invites the Leader to determine whether or not to consent in principle on behalf of Lincolnshire County Council to the creation of a Combined Authority in Greater Lincolnshire.

If the Leader of the Council does determine so to consent, he is invited to delegate to the Chief Executive in consultation with the Leader authority to approve the final form of, and the giving of consent to the making of, the order.

**Recommendation(s):**

That the Leader of the Council:-

- 1 notes the contents of the consultation report at Appendix A.
- 2 notes and has due regard to the contents of the Equalities Impact Analysis at Appendix B.
- 3 determines whether or not to consent in principle on behalf of Lincolnshire County Council as a constituent council of the proposed combined authority for the Greater Lincolnshire area to the making by the Secretary of State of an order:-
  - (a) for the establishment of a combined authority for the Greater Lincolnshire area pursuant to section 110 of the Local Democracy, Economic Development and Construction Act 2009 (LDEDCA) on terms to be set out in the final Order
  - (b) for the making of constitutional provisions in relation to the combined authority pursuant to section 104 of LDEDCA to be set out in the final Order
  - (c) for the delegation to the combined authority of the Council functions specified in paragraphs 25 and 27 of this Report to be exercised by the combined authority pursuant to section 104 of LDEDCA on terms to be set out in the final Order
  - (d) for the delegation to the combined authority of functions of the Secretary of State and the other functions of public authorities pursuant to sections 104 and 105A of LDEDCA as set out in the final order
  - (e) for the functions of the combined authority specified in the final Order as only being exercisable by the mayor to be exercisable only by the mayor subject to the conditions and limitations specified in the final Order pursuant to S107D of LDEDCA
  - (f) for Chapter 1 Part 1 of the Localism Act 2011 to have effect in relation to the combined authority as it has in relation to a local authority
  - (g) for the combined authority to be treated as a levying body for the purposes of section 74 of the Local Government Finance Act 1988 in respect of expenses of the combined authority that are reasonably attributable to the exercise of any of its functions other than mayoral functions.
  - (h) for the combined authority to be given power to borrow under section 1 of the Local Government Act 2003 for a purpose relevant to any of its functions.
- 4 if the Leader of the Council determines to consent to the making of the orders specified in paragraph 3 above, delegates to the Chief Executive, in consultation with the Leader of the Council authority to approve the final form of, and the giving of consent to the making of, the final Order prior to it

being laid before Parliament

**Alternatives Considered:**

The alternatives are to give consent or not to give consent. The relevant considerations applying to either decision are set out in the Report.

**Reasons for Recommendation:**

The Leader of the Council is invited to determine whether or not to give consent. The relevant considerations applying to either decision are set out in the Report.

## **1. Background**

### **Previous Decision-Making**

- 1 The full County Council received the Greater Lincolnshire Devolution Interim Governance Proposal and the then latest version of the deal document at its meeting on 18 December 2015. Council, amongst other things:-
  - Supported the development of the Greater Lincolnshire devolution expression of interest, submitted to Government on 4 September 2015, into a fit for purpose devolution deal document via continued formal engagement with Government
  - Supported in principle the carrying out of a governance review
  - Supported in principle the establishment of a Combined Authority for the Greater Lincolnshire geography if that was the most efficient and effective means of securing strategic economic (and related) growth and
  - Endorsed certain principles as those that should underpin and inform the establishment of any formal governance arrangements.
  
- 2 On 5 January 2016 the Executive considered the same Interim Governance Proposal and:-
  - approved the carrying out of a governance review, as described in the report, to commence no sooner than January 2016 such review to be conducted, to the fullest extent envisaged by the Act, as a formal governance review under section 108 of the Local Democracy, Economic Development and Construction Act 2009; and
  - subject to the outcome of any governance review, supported in principle the establishment of a combined authority for the Greater Lincolnshire geography if that is the most effective and efficient means of securing strategic economic (and related) growth.

- 3 On 20 May 2016 the Leader of the Council received a report on the outcome of the governance review and appending a draft scheme for a combined authority and on the basis of the Report
- noted the contents of the Governance Review for Greater Lincolnshire, attached to the Report.
  - concluded, on the basis of the Governance Review, that the establishment of a Mayoral Combined Authority for the Greater Lincolnshire area would improve the exercise of statutory functions in that area.
  - approved the preparation and publication of a Scheme for the establishment of a Mayoral Combined Authority for the Greater Lincolnshire area under section 109 of the Local Democracy, Economic Development and Construction Act 2009.
  - approved in principle the publication of the draft Scheme for a Greater Lincolnshire Mayoral Combined Authority for consultation purposes,
  - delegated to the Chief Executive, in consultation with the Leader of the Council authority to approve the making of changes to the draft Scheme prior to the commencement of the formal consultation exercise and to submit the outcome of the consultation exercise to the Secretary of State

### **The Process**

- 4 The process towards the creation of a Combined Authority began with the signing by the Leaders of all the Councils in Greater Lincolnshire of a Greater Lincolnshire Devolution Agreement with Her Majesty's Government (HMG). A copy of that Devolution Agreement can be found at <https://www.lincolnshire.gov.uk/local-democracy/finding-your-views/greater-lincolnshire/>
- 5 The devolution agreement described a "deal" under which in consideration of the establishment of a combined authority with a directly elected mayor Greater Lincolnshire would benefit from greater local control and influence over matters that had historically been determined by central government together with financial benefits in the form of new funding to be spent by the combined authority in the Greater Lincolnshire area.
- 6 Key provisions of the Devolution Agreement from the point of view of the Constituent Councils were:-
- a commitment to £15m per annum of additional funding for 30 years consisting of 75% capital and 25% revenue
  - creation of a single investment fund
  - the potential for greater financial flexibility to create a single funding pot for investment in economic growth

- the conferring on the combined authority of strategic transport and strategic planning functions
  - future full devolution of funding and greater local decision-making in the area of skills
  - greater co-operation between Greater Lincolnshire and HMG across a range of areas including business support and innovation, housing and planning water and flood management and public protection.
- 7 It was a stated principle of the Devolution Agreement that there was no intention that existing powers be taken from local authorities without agreement, protecting the integrity of local authorities in Greater Lincolnshire
- 8 There are clear statutory processes that need to be followed in accordance with LDEDCA to establish a mayoral combined authority and devolve appropriate powers from central government. Those processes can be briefly be described as follows:-
- the Councils undertake a governance review under section 108 of LDEDCA;
  - the Council publish a Scheme under section 109 of LDEDCA;
  - the Councils carry out a public consultation on the proposals set out in the Scheme and report the outcome of the consultation to the Secretary of State;
  - the Secretary of State, having regard to the Scheme and consultation, determines whether to make an order for the creation of a combined authority;
  - the Secretary of State drafts an order and seeks the consent of the Councils to the making of the order;
  - the Councils determine whether to give consent;
  - if they all give consent, the Secretary of State lays the order before Parliament
- 9 The Councils have undertaken a governance review and published a Scheme. The Governance Review can be found at Appendix D.
- 10 The Governance Review recognised Greater Lincolnshire's successes in the delivery of a significant number of development and growth projects through informal partnership working. However a number of limitations were identified in the existing informal governance arrangements. After considering a number of alternative arrangements it identified that a combined authority would enable the bringing together in a single legally recognised body the key decision-making powers for strategic transport and economic development and planning devolved from central government. It would also enable a unified approach to insight, evidence and intelligence and a shared understanding of Greater Lincolnshire as a single economic area together with a framework for a single coherent response to national initiatives.

- 11 Building on these foundations the Governance Review identified the combined authority with a directly elected mayor as the governance option which most fully permits the effective discharge of devolved functions in the area. Key considerations in respect of the inclusion of a mayor were the potential future consolidation of the functions currently exercised by the Police and Crime Commissioner and the fact that the mayoral combined authority was the only model which the government would permit in relation to the implementation of the Devolution Agreement.
- 12 On the basis of the Governance Review the Greater Lincolnshire Councils prepared and published a Scheme for the creation of a Mayoral Combined Authority. A copy of the Scheme is attached at Appendix C.
- 13 Between the 27<sup>th</sup> June and 8<sup>th</sup> August 2016 the Councils conducted a public consultation on the proposals set out in the Scheme for the establishment of a Mayoral Combined Authority for Greater Lincolnshire. The next section sets out the results of that consultation.

## **The Consultation**

- 14 A report on the findings from the consultation is attached at Appendix A and full details of the feedback are available on the Council website at <https://www.lincolnshire.gov.uk/local-democracy/finding-your-views/greater-lincolnshire/>. 4,432 surveys were received during the period. The results indicated support was split across Greater Lincolnshire on the setting up of a mayoral combined authority (46.7% for and 48.6% against). Results were more clearly against combining the roles of Directly Elected Mayor and Police and Crime Commissioner (38.1% for and 55.8% against). Strong support was expressed for more collaborative working around economic growth, infrastructure and housing (73.1% for and 24.7% against) and pursuing powers and funding (77.2% for and 19.5% against).
- 15 2984 responses were received from people in the Lincolnshire County Council area of which 95% came from individual residents. The percentage responses to the following questions were as follows:
  - 53% indicated disagreement to a mayoral combined authority
  - 58% indicated disagreement in combining the Mayoral and PCC roles
  - 57% agreed with pursuing devolution of powers and funding
  - 75% agreed to the 10 Councils working together and
  - 79% agreed with pursuing funding in excess of the proposed “deal”
- 16 The Leader of the Council is referred to the Report at Appendix A for a more thematic analysis of the reasons given for the views expressed in the consultation. For the purposes of this Report it is worth drawing out the following elements of the consultation:-

- the strong theme based on concerns that the MCA represented a further layer of bureaucracy. This is returned to below in considering the upward transfer of functions;
- the opposition to the combining of the role of the Mayor with the Police and Crime Commissioner, the reasons for which revolved around concerns that the remit of the role was simply too great for both roles to be fulfilled to the required standard by one individual. This is relevant in particular to the Governance Review which saw the potential to combine these two roles as an advantage of the Mayoral Combined Authority rather than a combined authority without an elected mayor.

## **The Draft Order**

- 17 The governance review, the Scheme and the consultation on the Scheme have been provided to the Secretary of State to enable the Secretary of State to decide whether to make an order establishing the Mayoral Combined Authority. The Secretary of State has determined that he is minded to make an order subject to the consent of all of the Greater Lincolnshire Councils and has provided draft wording for the Order he is minded to make. The Order is not attached as there is further work to be done on the structure and detailed drafting of the Order.
- 18 There are two sets of conditions that must be met before making such an order. The first is that the Secretary of State must consider that the establishment of a combined authority for the area is likely to improve the exercise of statutory functions in the area or areas to which the Order relates. The second is that the consent of the constituent councils is necessary for the establishment of a combined authority and a number of the specific provisions of the Order. These consents are separately set out in paragraph 3 of the recommendations.
- 19 On 9 November 2016 the Secretary of State for Communities and Local Government wrote to the Leader of the Council requesting confirmation as to whether the Council wished to proceed with the devolution deal or not. The Secretary of State in his letter has confirmed that the substantive content of the final order will be the same as that of the draft order. The following paragraphs of this section are therefore based on a comparison of the draft order with the Scheme. The Secretary of State must have regard to the published Scheme but is not bound by it. The draft Order therefore can and does differ from the Scheme.
- 20 Before proceeding to the comparison it should be noted that some statutory provisions will not be contained in the specific order creating the MCA but will be contained in general secondary legislation. This includes certain of the provisions governing the establishment and operation of Overview and Scrutiny Committees and Audit Committees and financial provisions including levying, precepting and budget-making powers and processes.

- 21 A late draft of the Regulations governing Overview and Scrutiny Committees and Audit Committees has been seen and is consistent with the provisions in the Scheme. The finance Regulations have not been developed or seen but are expected to be consistent with the position set out in the Scheme in relation to levying and precepting. The budget-making provisions are expected to mirror those already operated by local authorities who have an elected mayor.
- 22 Before moving on to highlight the areas where the Order differs from the Scheme it is worth noting the similarities between the Order and the main features of the Scheme as follows:

- the establishment of a Greater Lincolnshire Mayoral Combined Authority (GLMCA) with a directly elected mayor
- The GLMCA to have twelve members being the Mayor, 10 members appointed by the constituent councils and a member appointed by the GLLEP who is non-voting unless the GLMCA itself resolves to confer voting rights
- The functions of the GLMCA are split between functions exercisable only by the Mayor and those exercisable by the combined authority
- Mayoral functions include the development of a strategic transport plan and spatial framework together with responsibility for transport and highway funding
- The Mayor must appoint a Deputy Mayor from among the members of the GLMCA and the Mayor may exercise the Mayoral functions him or herself or through the Deputy Mayor or individual members of the GLMCA
- When the Mayor is adopting a strategy or making a funding decision a proposal may be defeated by a two thirds majority of the GLMCA members
- In the exercise of the GLMCA functions voting will be by majority (to include the vote of the mayor) except for certain qualified voting rights
- Unanimous voting will be required for budgetary decisions and for other decisions including whether to seek further powers for the GLMCA

- 23 A number of issues have been raised with HMG concerning the draft order but they are predominantly of a drafting nature rather than of principle. The most significant of these probably relates to the way in which the voting rights of the GLLEP representative are treated. Work will continue to ensure that the detailed drafting of these provisions is correct. The main substantive areas where the Order differs from the Scheme are addressed below.

#### *Local Authority Functions*

- 24 As discussed above the Devolution Agreement stated that there was no intention to take existing powers from local authorities without agreement, protecting the integrity of local authorities in Greater Lincolnshire. This was reflected in the Scheme which stated that the Scheme did not provide for the

transfer of powers from any local authority to the proposed combined authority. The Order, however, makes provision for the transfer of local authority functions (including County Council functions) in the areas of transport and 16 to 19 education and training

25 In the area of transport the functions which would transfer to the MCA are the Council's functions under Parts 4 and 5 of the Transport Act 1985 and Part 2 of the Transport Act 2000. These are essentially as follows

- Production of a Local Transport Plan
- Quality Partnership Schemes
- Quality Contracts Schemes
- Duty to provide local bus information
- Securing provision of passenger transport services
- Service subsidies
- Travel concession schemes
- Grants for facilities and services

26 The transport functions referred to in paragraph 25 above are transferred to the MCA to be exercised in respect of the Local Transport Plan powers only by the mayor and otherwise by the MCA as a whole. They are transferred in such a way that they are exercisable by the mayor and MCA instead of the local authority. This means that from the date on which the functions transfer the County Council will cease to exercise the functions and the mayor and MCA will exercise them from that point on. On this basis (and unless local arrangements can be made which change this position) there can be expected to be a transfer of Council staff to the combined authority together with IT assets and the right to use relevant IT systems. There is no expectation that this element of the draft order can be changed.

27 In the area of 16 to 19 education and training the functions to transfer are the following Council functions within the Education Act 1996:-

- Duty to secure that enough suitable education and training is provided to meet the reasonable needs of persons in their area who are over compulsory school age but under 19, and persons in their area who are aged 19 or over and for whom an EHC plan is maintained (section 15ZA);
- Duty to co-operate in performing their duties as above (section 15ZB)
- Duty to encourage participation in education and training by persons in their area who are within section 15ZA and encourage employers to participate in the provision of education and training for such persons (section 15ZC).
- Power to establish nursery schools; maintain nursery schools established by them or by an authority which was a local education authority within the meaning of any enactment repealed by the

Education Act 1944 or an earlier Act; and assist any nursery school not so established (section 17).

- Duty to secure that enough suitable education and training is provided to meet the reasonable needs of persons who are over compulsory school age but under 19, and subject to youth detention in their area (section 18A(1)(b)).
- Power to secure the provision of boarding accommodation in connection with the provision of education or training for a person in their area who is over compulsory school age and for whom an EHC plan is maintained (section 514A).
- Power to secure the provision of (and a duty to encourage participation in) work experience for persons in their area who are over compulsory school age but under 19, or who are aged 19 or over and for whom an EHC plan is maintained (section 560A).

28 These functions would be exercised by the combined authority and not the mayor. They would also be exercised concurrently with the Council. That means that the Council will not lose the functions and will be able to continue to exercise them in its own name. The combined authority would also be able to exercise the same functions and it is to be expected that there would be discussions between the two organisations to ensure that their exercise of the functions is co-ordinated. Discussions with HMG have indicated that these are functions which would not be transferred if the Council objected.

29 Although the transfer of the transport functions of the Council could be seen to be contrary to the principle that functions would not transfer from the local authorities without agreement, the giving of consent to the final order would amount to agreement if the order remains unchanged. Furthermore the Governance Review identified the unification of decision-making around transport and economic regeneration at the strategic level as being a benefit of the establishment of a mayoral combined authority. The Devolution Agreement also referred to the combined authority being the transport authority.

30 That said, the extent of the functions being transferred and the fact that the MCA exercises those functions instead of the Council leads to a very strong form of transfer. There is a potential for the MCA to become a service provider in relation to transport employing staff and owning assets. This tends to exacerbate the concerns expressed in the consultation about the creation of a new tier of local governance. Historically the model for this kind of transfer of functions has been in urban areas which already have an Integrated Transport Authority or Passenger Transport Executive. In those circumstances the wholesale transfer of functions to a combined authority to be exercised alongside economic regeneration powers makes sense and does not add a governance layer.

- 31 In relation to education and training it has not previously been apparent that the proposal for devolving decision-making around skills would involve the upward transfer of these functions. Nor could it be seen to address an issue identified within the Governance Review. Although the proposed transfer would see the functions being exercised concurrently with the Council (which would mean that the Council's current use of these functions would not be impacted) it is not easy to see why having two authorities exercising the same functions within a single area would improve the exercise of those functions.

### *Highway Funding*

- 32 The functions of Lincolnshire County Council as highway authority for its area are not affected by the devolution proposal and this is reflected in the draft order. The County Council remains the highway authority and none of its highway functions are exercisable by either the combined authority or the mayor.
- 33 However, the Devolution Agreement provided for highway maintenance funding to be managed by the combined authority ensuring that appropriate allocations are made to individual highway authorities. The Scheme provided for highway funding to be pass-ported by the combined authority to the highway authorities during years for which there are indicative allocations by the Department for Transport.
- 34 The current situation is that the draft Order provides mechanisms for highway funding to be allocated by the mayor (as opposed to the combined authority).
- 35 The Department for Transport has agreed that highway funding will not be given to the mayor until the financial year 2020/21. This is not currently reflected in the draft order and HMG are considering whether they have the power to include it or not. If not it is anticipated that the position will be confirmed by the Department for Transport in writing. From and including the financial year 2020/21, the highway maintenance funding will be allocated to the highway authorities by the mayor having regard to the desirability of ensuring that the highway authorities have sufficient funds to facilitate the effective discharge of their functions as highway authorities. In determining allocations the mayor is required to take into account any other sources of funding available to the highway authority in fulfilling its functions and the most recent determination by the Secretary of State. Overall the practical position in relation to the highway funding is not fundamentally different to that provided for in the Scheme although suggestions have been made as to ways in which the drafting can be tightened to give the highway authorities greater protection.
- 36 In addition to this the three highway authorities acting together will be able to amend or reject the mayor's local transport plan and two thirds of the constituent council members of the combined authority can amend or reject the mayor's spending plans. The first of these is a strengthened veto

compared to the Scheme in which the highway authorities could only jointly amend or reject the plan if they were part of a two thirds majority of the constituent council members of the combined authority.

### *General Funding*

- 37 The greater difficulty is that the section in the draft order that provides for the mayor to be given the power to allocate highway funding is very widely drafted and would enable the Secretary of State to channel through the mayor any funding that might otherwise have been provided to an upper tier authority in the form of grant under section 31 of the Local Government Act 2003. The draft Report would not permit the mayor to allocate funding of a local authority other than an upper tier authority.
- 38 In principle this is a power that has been granted once and for all and new legislation would not be required in order for any other funding to be channelled through the mayor. This means it could be done without further consent from the constituent councils of the combined authority. It should also be noted that aside from the two thirds majority veto on strategies and funding decisions, there would be no special protections in the Regulations for the upper tier authorities except the specific protections for the highways funding.
- 39 Enquiries of HMG have identified that this represents a substantive position of HMG that is not going to change. This represents a new understanding of the scope of the devolution proposal in Greater Lincolnshire and the potential powers of mayor as against the upper tier local authorities.

### **Securing the Devolution Deal**

- 40 The main purpose of the Order for the establishment of a combined authority is to give effect to the Greater Lincolnshire Devolution Deal as set out in the Devolution Agreement.
- 41 In order to achieve these benefits the government have been clear that a combined authority would be required. Furthermore, they have been clear that that combined authority would have to be a mayoral combined authority – i.e. would be chaired by a directly elected mayor who would be given direct authority to exercise certain of the combined authority's powers
- 42 One of the benefits of a combined authority is that it provides a vehicle for pursuing further devolution of functions and funding. To this end Greater Lincolnshire has already had detailed discussion of what further functions and funding could be devolved through a second devolution deal. Although a deal has not been finalised potential areas being discussed include Housing; Public protection; Infrastructure Investment; Advanced food manufacturing and Environmental Management.
- 43 The benefits of a second devolution deal cannot be realised without the establishment of a mayoral combined authority.

## **Operation of the combined authority**

- 44 The Mayoral Combined Authority, if approved, will receive a £15m gain-share single pot payment each year, for 30 years, starting from when it is legally created, currently estimated to be in early 2017. This funding is understood to be new money to the Greater Lincolnshire area that would not be received without the devolution deal. This gain-share pot is allocated 25% revenue and 75% capital, the spending priorities against this pot will be considered and approved by the Combined Authority. In addition to the gain-share pot further resources in respect of skills and employment will also be devolved, with the potential for the further devolution of resources in subsequent devolution deals.
- 45 The indicative costs for the Mayoral Combined Authority budget for 2017/18 are currently estimated to be £2.2 million in respect of combined authority functions and £0.2 million in respect of mayoral functions. These indicative costs include the cost of the Mayoral Election, seconded officer time, programme management, support services and specialist support. Each of the participating local authorities will contribute towards the cost of the Mayoral functions and Combined Authority functions. The balance of funding will be resourced from the revenue element of the gain-share pot.
- 46 The Council's 2017/18 Budget to be considered by Council on 24th February 2017, will contain a proposal for provision of an anticipated contribution to the Mayoral Combined Authority. It has been agreed that each Constituent member of the combined authority will contribute the same.
- 47 The establishment of the Combined Authority will involve the use of seconded officer time and resources. This includes programme management, support services and specialist support. The financial or other resource requirements will be met from within the indicative budget. The Mayoral combined Authority will be required to appoint statutory officers i.e. a Head of Paid Service, a Monitoring Officer and a S151 Officer. A process for these appointments has been developed with appointments to be made on an interim part time basis from secondments from the constituent authorities. The proposed costs of the seconded officer time are included within the indicative costs of the Mayoral Combined Authority.

## **Consideration within the Council**

- 48 An earlier version of this Report was considered by the Overview and Scrutiny Management Committee on 29 September 2016. The views and decision of the Committee are set out in Appendix E.
- 49 This matter was also debated by the full County Council on 20 October 2016. The motion being considered is attached at Appendix F. The motion was defeated by 43 votes to 17 with 5 abstentions.

## Consequences of the Decision

- 50 If the Leader of the Council decides to consent in principle to the matters set out in paragraph 3 of the Recommendations, and the other Lincolnshire Councils consent, the Secretary of State will proceed to discuss the terms of the final order. The delegation at Recommendation 4 provides the mechanism through which the detail of that order would be determined. The delegation would also be the mechanism through which the Chief Executive in consultation with the Leader would take the final decision whether to consent to the making of an order in the terms of the final order. If consent is given and Parliament approves the Order, it will constitute secondary legislation creating a new corporate body, the Greater Lincolnshire Combined Authority from whatever date is specified in the order.
- 51 If the Leader of the Council decides not to consent in principle to the matters set out in paragraph 3 of the Recommendations, then because the consent of all the Greater Lincolnshire councils is required, the Secretary of State will not have the power to make the order and the MCA and the devolution deal related to it will not be able to proceed.
- 52 This would not prevent other authorities who may be in favour of the combined authority seeking to create a new combined authority on the basis of a different geography but they would have to produce a new governance review and Scheme and consult on it. If a district council from the Lincolnshire area wished to join in the new combined authority, the county council's approval to the scheme and consent to the creation of the new combined authority would be required.
- 53 If a new combined authority was created the County Council could not be required to join that combined authority without its consent.
- 54 If a district council within Lincolnshire wished to join an existing combined authority, the Secretary of State would have power to amend the boundaries of that existing combined authority to include that district council area without the consent of the County Council. The only basis on which the County Council could challenge that decision would be on the basis of the usual principles of judicial review on the grounds that the decision was irrational or procedurally flawed.
- 55 Otherwise the wider implications are not known. It is known that HMG will consider the existence of a mayoral combined authority in an area in determining applications for Local Growth Fund for that area and that areas that do have a mayoral combined authority will be considered to have more robust governance arrangements and are therefore likely to attract greater Local Growth Funding than areas that do not have a mayoral combined authority.
- 56 This tendency relatively to favour areas with a mayoral combined authority may be replicated in other areas of government activity. However, the basic principles governing government decision making give good grounds to

believe that Greater Lincolnshire will not be treated any worse than other areas that do not have mayoral combined authorities all things being equal.

- 57 More locally the Devolution Agreement identifies many areas of potential collaborative working both with the other local authorities in Greater Lincolnshire and with HMG which are not and never have been dependent on devolution of functions and therefore are not dependent on the creation of a combined authority. The County Council would still be able to pursue those opportunities and the results of the consultation were that the citizens of Greater Lincolnshire would expect the County Council and the other authorities in Greater Lincolnshire to do so.

## **General Legal Considerations**

### *Equality Act 2010*

- 58 The Council's duty under the Equality Act 2010 needs to be taken into account by the Leader when coming to a decision.
- 59 The Council must, in the exercise of its functions, have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
  - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 section 149(1).
- 60 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
  - Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
  - Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
- 61 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

- 62 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding
- 63 Compliance with the duties in this section may involve treating some persons more favourably than others.
- 64 The relevant protected characteristics are:
- ❖ Age
  - ❖ Disability
  - ❖ Gender reassignment
  - ❖ Pregnancy and maternity
  - ❖ Race
  - ❖ Religion or belief
  - ❖ Sex
  - ❖ Sexual orientation
- 65 A reference to conduct that is prohibited by or under this Act includes a reference to:
- ❖ A breach of an equality clause or rule
  - ❖ A breach of a non-discrimination rule
- 66 It is important that the Leader is aware of the special duties the Council owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Leader. The duty applies to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.
- 67 To discharge the statutory duty the Leader must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.
- 68 An Equality Impact Analysis (EIA) on the creation of a mayoral combined authority has been prepared and is attached at Appendix B. This EIA takes into account comments made during the consultation. Overall, however, as the proposals concern the governance arrangements for the exercise of devolved powers by the Mayoral Combined Authority there is not considered to be any implications for the Council's Equality Act duty. The EIA makes clear that the proposed Combined Authority itself will be bound by the Equality Act duty as a body exercising public functions and will therefore be under an obligation to have regard to it when it exercises devolved functions.

*Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy*

69 The Council must have regard to the above documents in fulfilling its functions. These documents have been taken into account in producing this Report. The Governance Review identifies that there are benefits to be had from the establishment of a mayoral combined authority in terms of the exercise of statutory functions especially in regard to economic development and regeneration. However, if the MCA is not created the constituent local authorities will still have the functions to positively impact on health and wellbeing and will continue to do so in accordance with their local policies and priorities.

*Crime and Disorder*

70 Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

71 Due regard has been had to these issues in preparing this Report. There are not considered to be any direct implications for crime and disorder of a decision to consent or not consent to the creation of a mayoral combined authority. Although the deal document identifies ways in which closer working with HMG on public protection could be facilitated through a combined authority such working would not be prevented by a failure to approve the MCA. The Council would remain committed to taking such initiatives forward. It would as it was before be dependent on the will of HMG to engage with local authorities.

**2. Conclusion**

1 The Report presents the results of the work that has been done to date on a devolution deal for Greater Lincolnshire including the Governance Review, draft Scheme and consultation. It compares the latest draft order from the Secretary of State with the Governance Review and Scheme. It sets out the relevant considerations and invites the Leader to determine in principle whether or not the Council consents to the creation of a mayoral combined authority in Greater Lincolnshire on the basis of what is known about the proposed order. If the Leader does give such consent the Report invited him to delegate to the Chief Executive in consultation with the Leader authority to approve the final form of, and the giving of consent to the making of, the order

### **3. Legal Comments:**

The consent of the Council is required to the matters set out in recommendation 3 to enable the Secretary of State to make an order giving effect to those matters as part of the establishment of a combined authority under the Local Democracy Economic Development and Construction Act 2009.

The matters to which the Leader must have regard in reaching a decision whether or not to approve in principle the giving of such consent are addressed within the Report.

The function of the giving of such consent is an executive function. It is consistent with the Policy Framework and therefore within the remit of the Leader if it is within the budget

### **4. Resource Comments:**

A decision in principle to give consent will potentially require the County Council to make an annual budget provision as a contribution towards the operating costs of the Greater Lincolnshire Mayoral Combined Authority. This requirement will be incorporated into the development of budget proposal for 2017/18 which is now underway.

### **5. Consultation**

#### **a) Has Local Member Been Consulted?**

n/a

#### **b) Has Executive Councillor Been Consulted?**

Yes

#### **c) Scrutiny Comments**

An earlier version of this report was considered by the Overview and Scrutiny Management Committee on 29 September 2016. The decision and comments of the Committee are attached at Appendix E

#### **d) Policy Proofing Actions Required**

As set out in the Report

## 6. Appendices

These are listed below and attached at the back of the report	
Appendix A	Consultation Report
Appendix B	Equality Impact Assessment
Appendix C	Scheme for a Mayoral Combined Authority
Appendix D	Governance Review
Appendix E	Scrutiny Comments
Appendix F	Motion Considered by Full Council

## 7. Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Full Council Report Greater Lincolnshire Devolution - Interim Governance Proposals dated 18 December 2015	Democratic Services
Executive Report Greater Lincolnshire Devolution - Interim Governance Proposals dated 5 January 2016	Democratic Services
Greater Lincolnshire Devolution Agreement	Chief Executive's Office
Full Council Report Devolution - Governance Review and Scheme dated 20 May 2016	Democratic Services
Full Council Report Devolution – Approval to Creation of a Greater Lincolnshire Combined Authority dated 20 October 2016	Democratic Services

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