

# North Yorkshire Council

## Joint Devolution Committee Meeting

15 December 2023

### Combined Authority Governance: Development of the Constitution for the Combined Authority.

#### Report of the Assistant Chief Executive Legal & Democratic Services.

#### 1.0 PURPOSE OF REPORT

- 1.1 To provide the Joint Devolution Committee with information in relation to the preparation of the Constitution for the Combined Authority.

#### 2.0 BACKGROUND

2.1 On 1 August 2022 the Secretary of State for Levelling Up, Housing and Communities announced that the Government was minded to enter into a Devolution Deal with York and North Yorkshire under which the region would benefit from £540 million of new Government investment to spend on local priorities to produce growth, together with a range of devolved powers. The Devolution Deal is dependent upon the establishment of a Combined Authority for the area with an elected Mayor.

2.2 The Deal proposes to the following benefits for the region:

- £18 million per year in Investment Fund/gainshare funding over 30 years to invest in local priorities (35% capital and 65% revenue). This will be subject to a five yearly gateway review assessment;
- Subject to a full business case, investment of up to £50 million to support and deliver the York Central brownfield regeneration scheme which would generate additional GVA and associated benefits for the whole York and North Yorkshire region;
- £7 million investment to enable York and North Yorkshire to drive green economic growth towards the ambition to become a carbon negative region;
- Investment of up to £2.65 million of projects to deliver affordable, low carbon homes;
- £13 million for the building of new homes on brownfield land across 2023/24 and 2024/25;
- A commitment to establish a working group to support the development of BioYorkshire;
- New powers from Government to drive regeneration and build more affordable homes;
- New transport powers to improve and integrate the regional transport network.

2.3 Following the publication of a proposed Scheme to describe the governance of the Combined Authority and consultation on the proposals the Scheme for Devolution and a consultation summary was submitted to Government. This was to allow the Secretary of State to consider putting in place the legislation needed to facilitate the creation of the Combined Authority.

2.4 Officers from both Councils have been working with Civil Servants from the Department of Levelling Up, Housing and Communities (DLUHC) to draft the regulations to implement the Devolution Deal. On 2 November 2023 the Department provided a copy of the final draft of the York and North Yorkshire Combined Authority Order 2023 to both Councils asking for

consent from the constituent authorities to the making of the Order. Both Councils provided the requested consent on 3 November 2023.

- 2.5 The Order was laid before Parliament on 7 November 2023 and advice from DLUHC is that, subject to the debate timetable, the Order is likely to be made during week commencing 8<sup>th</sup> January 2024.
- 2.6 Once the Order is signed the Combined Authority is legally created. It is therefore proposed that an agenda for the inaugural meeting of the new Combined Authority is published immediately the Order is made and the meeting will take place once the statutory publication period has expired. Certain funding will then become available to the Combined Authority at that stage, prior to the Mayor being appointed (namely Mayoral Capacity Funding, a proportion of the annual gainshare/Investment Fund, and, subject to the conditions being met, funding for the York and North Yorkshire Brownfield Housing Fund and Net Zero Funds). The Combined Authority will therefore operate with one of the constituent members chairing the meetings. It is then proposed for the Mayoral elections to take place on 2<sup>nd</sup> May 2024 and additional funding and powers will be received once the Mayor is in place, who will then chair the meetings of the Combined Authority.
- 2.7 At the inaugural meeting of the Combined Authority will need to approve the Governance Arrangements to put in place the framework which will set out how the Combined Authority is to operate, how decisions are to be made and the procedures to be followed to ensure that decisions are transparent. At the inaugural meeting the Combined Authority will be asked to approve the Constitution, appoint External Auditors, appoint to the Combined Authority Committees and approve the Budget.
- 2.8 In addition the Combined Authority will consider and approve how the Statutory Officer functions are to be undertaken in the interim period until the election of the Mayor in May 2024.

### **3.0 THE COMBINED AUTHORITY CONSTITUTION**

- 3.1 The Combined Authority is the legal and Accountable Body for the funding devolved and awarded to it. In addition, the Combined Authority is the Local Transport Authority for York and North Yorkshire. A draft constitution is being worked on by officers and a working draft copy is attached at Appendix B. This working draft looks at the governance issues for when the Combined Authority will be created in January 2024. Further work is underway to ensure the Police, Fire and Crime Commissioner functions are fully incorporated into the Constitution so that once the Mayor is appointed, those functions will be reflected in the new Constitution at that time. The draft Constitution is therefore subject to further refinement and revisions as this document is developed. It is important that the Joint Committee consider the proposed governance arrangements of how the new Mayoral Combined Authority will operate and for its views to be taken into account in any future drafting of the Constitution and governance arrangements. The Devolution Deal proposed the following governance arrangements for the Combined Authority and this is being included within the proposed future Constitution of the Combined Authority:

#### **Membership**

- 3.2 The Order proposes to implement the Scheme to provide that the Membership of the Combined Authority will be:
- (a) The Mayor (who will Chair the Authority) (voting member)
  - (b) Two Members from each of the Constituent Authority (voting members)

- (c) The Constituent Authorities will nominate one of these Members as “Lead Member” who gets special voting rights in certain circumstances.
- (d) Each Authority will nominate four substitute members.
- (e) The Secretary of State stated that one member would be appointed by the York and North Yorkshire LEP which would be non-voting, unless the Combined Authority resolved to give them a vote on any issues. The LEP Board would then become the Business Committee of the Combined Authority subject to the LEP integration process.

## Voting

- 3.3 The Mayor and Combined Authority Cabinet are the primary decision makers. The Statutory Order creating the Combined Authority specifies that certain decisions must be taken by the Elected Mayor and that some decisions rest with the Cabinet. The Constitution will reflect these legal requirements. In addition, Schedule 1 to the Order sets out specific voting and consent requirements which must also be reflected in the Constitution. Attached at Appendix A is a table which summarises the main parts of the Order and how decisions will be made.
- 3.4 The Mayor will provide overall leadership. The Combined Authority’s remit is the strategic economic development, housing, carbon reduction, skills, transport infrastructure and strategic and operational transport functions. The Mayor can choose to delegate certain functions to members of the Combined Authority. The Combined Authority can therefore appoint portfolio leads from its membership.
- 3.5 As shown in Appendix A, the Mayor can exercise certain of their functions autonomously as these have been devolved directly from Central Government to that post, namely:
  - Functional power of competence.
  - Housing and planning;
    - Power to designate a Mayoral Development Area and then set up a Mayoral Development Corporation (see consent requirements in Appendix A).
    - Housing and land acquisition powers (see consent requirements in Appendix A) to support housing, regeneration, infrastructure and community development and wellbeing.
  - Finance:
    - Power for the mayor to set a precept on council tax to fund mayoral functions (resulting from the setting of the mayoral budget subject to the potential veto provisions set out in Appendix A).
    - Power to charge business rate supplement (subject to ballot).
  - Transport:
    - Power to draw up a local transport plan and strategies (the combined authority will be able to amend the mayor’s transport strategy if 3 out of 4 constituent council members agree to do so).
    - Bus franchising powers.
    - The Mayor will be responsible for a devolved and consolidated integrated local transport budget, consisting initially of the local highways maintenance funding and integrated transport block.
  - Police, Fire and Crime Commissioner functions.
- 3.6 Subject to the above, the Combined Authority will be responsible for any function of the Combined Authority which is not the responsibility of the Mayor. Proposed decisions can be put forward by the Mayor or any Combined Authority member. Generally the Mayor will have one vote as will other voting members. Examples of Combined Authority functions (which are non-Mayoral functions) are:
  - Local Transport Authority functions

- Transport-related powers to set up and co-ordinate a Key Route Network on behalf of the Mayor (operational responsibility for Key Route Network roads will remain with the constituent councils subject to local agreement or national legislation).
- To operate a permit scheme on the Key Route Network.
- Housing and land functions.
- Economic development – duty to prepare assessment of economic conditions etc.

3.7 Any matters that are to be determined by the Combined Authority are to be determined by a simple majority and that majority must include the vote of the Mayor, except as identified in Appendix A. When approving the Combined Authority’s budget (but not the Mayor’s budget) and setting a levy, the lead member from each constituent council must be in the majority vote.

3.8 The Mayor will be required to consult the Combined Authority on their strategies and the Combined Authority will be able to amend the Mayor’s budget and the Mayor’s transport strategy if three out of four members agree to do so.

3.9 The Mayor and the Combined Authority Cabinet will be supported by Committees and the Senior Management Team.

3.10 The Constitution will initially include an Overview and Scrutiny Committee, an Audit Committee (which will have responsibility for the Standards function) and a Business Committee. The Business Committee will undertake the functions that previously rested with the Local Enterprise Partnership that will transfer into the Combined Authority.

3.11 Given the remit of the Combined Authority considerations is to be given to whether there should be a separate Transport Committee.

#### **4.0 COMBINED AUTHORITY COMMITTEES**

##### **4.1 Audit & Governance Committee**

The Audit & Governance Committee will focus on the audit, assurance and reporting framework underpinning the financial management and governance arrangements and it will also undertake the functions of the Standards Committee dealing with member conduct and ethical standards. The Audit & Governance Committee shall be appointed by the Combined Authority and the Scheme provided that the membership would be not less than eight members. It stated that there would be four members from each constituent council and at least one independent person appointed by the Combined Authority. The role of this Committee will be:

- Reviewing and scrutinising the Combined Authority’s financial affairs;
- Reviewing and assessing the Combined Authority’s risk management, internal controls and corporate governance arrangements;
- Reviewing and assessing the economy, efficiency and effectiveness with which resources have been used in discharging the Combined Authority’s functions; and
- Making reports and recommendations to the Combined Authority in relation to reviews the Committee has conducted.

4.2 The Audit and Governance Committee can include co-opted members but they would be non-voting members of the Audit & Governance Committee.

4.3 The governance arrangements for Policing, Fire and Rescue will need to be in place by May 2024 when those functions will be transferred upon the election of the Mayor and therefore there is more time to resolve the governance structures for that part of the Combined

Authority functions. However, the Scheme did propose that there would initially be a separate Joint Independent Audit Committee for Policing and a separate Independent Audit Committee for Fire and Rescue.

4.4 It is proposed that the Committees referred to above shall in practice be the Committees already established by the PFCC and the Chief Constable of North Yorkshire Police (in respect of the Joint Independent Audit Committee for Policing) and the PFCCFRA (in respect of the Independent Audit Committee Fire and Rescue) and that those Committees in place for the time being shall be adopted by the Combined Authority; and that the terms of reference of those Committees shall be amended so as to provide for their remit to extend to the PCC Functions and the FRA Functions, respectively, exercisable by the Mayor. It is then proposed that these arrangements can be reviewed during the initial term of the Mayor by the Combined Authority.

#### 4.5 Business Committee

The Scheme provides that the York and North Yorkshire Local Enterprise Partnership Board will transition into the Business Committee of the Combined Authority which will be an advisory committee for the purposes of relevant economic decisions. It is proposed will be comprised of five public sector members and ten private sector members. The LEP member will become a non-voting member of the Combined Authority (unless the Combined Authority resolves to give them a vote).

#### 4.6 Overview and Scrutiny Committee

The Overview and Scrutiny Committee holds the Combined Authority and Mayor to account for all the decisions taken, including devolved powers and funding. The Committee can, at their discretion, produce reports and make recommendations for change or improvement. The Membership of the Committee will be:

- (a) Six Members nominated from each constituent Council reflecting the political balance of the constituent authorities (12 in total),
- (b) The Chair and Vice-Chair will be appointed by the Combined Authority, following a proposal by the Overview and Scrutiny Committee,
- (c) The Chair and Vice-Chair shall not be a member of a registered political party of which the mayor is also a member.

4.7 Government have recently issued non-statutory guidance on a Scrutiny Protocol for Combined Authorities which can be found at: Scrutiny Protocol-GOV.UK ([www.gov.uk](http://www.gov.uk)). This recognises that *“Effective scrutiny is critical for ensuring there is appropriate accountability for the decisions made by local decision makers. When done well, local scrutiny should drive understanding, enhance the performance of services and improve the outcomes for those people affected by those decisions.”*

4.8 Scrutiny for a Combined Authority can be through a single Overview and Scrutiny Committee or through multiple committees. This guidance recommends that “a single committee model” for Scrutiny should be considered for Combined Authorities so that the Scrutiny Committee members can develop a strategic overview across all portfolio areas and an understanding of the interconnection of key policies to effectively scrutinise cross cutting issues. The Guidance sets out 18 Key Principles for Good Scrutiny within a Combined Authority that the new authority may wish to consider:

1. Pool of Members - all members and substitutes should have access to the same resources.
2. Politically balanced membership
3. Geographically balanced membership

4. Chair to be seen as an independent voice
5. Sustained appointments made on interest and skills
6. Well resourced training
7. Inviting technical expertise where appropriate
8. Remuneration and Status – through the use of an Independent Remuneration Panel.
9. Holding the Mayor and the Combined Authority to account.
10. Participation in pre-policy and pre-decision scrutiny – with a forward plan of key decisions.
11. Provision to “call-in” decisions.
12. Regular Performance monitoring.
13. Robust Work Planning.
14. Focused Task and Finish Exercises
15. Strong Relationships with Stakeholders
16. Regular Self-Evaluation and reflection.
17. Access to data, research and analysis for committees to improve their knowledge.
18. Strong relations with the Audit Committee.

4.9 The non-statutory guidance also recommends having additional scrutiny through the implementation of a question time process where the mayor takes questions from the public and for it to be chaired by an independent person.

4.10 It is therefore proposed to recommend to the Combined Authority to create a single Overview and Scrutiny Committee in line with the above guidance. The scrutiny of the Mayoral budget (and any Mayoral precept) will fall within the remit of the Combined Authority Overview and Scrutiny Committee.

4.11 The scrutiny of the Combined Authority is to be undertaken by the Combined Authority Scrutiny Committee and not the Scrutiny Committees of the constituent authorities.

4.12 Transport Committee

The Combined Authority is the Local Transport Authority for York and North Yorkshire. Given the remit of the Combined Authority consideration needs to be given as to whether a separate Transport Committee should be established.

## **5.0 REMUNERATION**

5.1 The Combined Authority may establish an Independent Remuneration Panel to recommend allowances payable to the Mayor and others as appropriate. Following a recommendation by the Panel an allowance may be paid to:

- (a) The Mayor;
- (b) The Deputy Mayor (provided they are not a Leader of a constituent council);
- (c) The Deputy Mayor for Policing and Crime (provided that they are not a Leader of a constituent council);
- (d) Independent Persons.

5.2 A constituent council, following a recommendation of its own Independent Remuneration Panel, may make a special responsibility allowance to a member of the Combined Authority.

## **6.0 PFCC FUNCTIONS**

6.1 The Mayor will exercise the PFCC functions of York and North Yorkshire once elected. Any PFCC function is to be taken to be a function of the Combined Authority exercisable by the Mayor acting individually, or as delegated in accordance with the Scheme. The Office of the Police, Fire and Crime Commissioner are currently working diligently to ensure these functions are transferred to the Combined Authority in an appropriate manner.

- 6.2 The Mayor may appoint a Deputy Mayor for Policing and Crime and delegation of certain Fire and Rescue Authority functions.
- 6.3 The scrutiny of the PFCC functions will continue to be performed by the Police, Fire and Crime Panel. The Panel will scrutinise the actions and decisions of the Mayor and the Deputy Mayor for Policing and Crime and assist in supporting them in the effective exercise of PFCC functions and to enable them to be scrutinised in public. There will be some consequential changes in the operation of the Panel to reflect their role in scrutinising the Mayor and Deputy Mayor for Policing and Crime as opposed to the Police, Fire and Crime Commissioner.

## **7.0 STATUTORY OFFICERS**

The Mayor and the Combined Authority will appoint four Statutory Officers to discharge duties and obligations on behalf of the Combined Authority. The Statutory Officers ensure that the Combined is acting in accordance with its legal duties and responsibilities, operating with the financial regulations and receiving appropriate advice on policy and governance. Until the Mayor is elected in May 2024 these roles will be undertaken on an interim basis by officers appointed by the Constituent Authorities or the Combined Authority and this will be kept under review as it may be necessary to permanently appoint certain roles earlier. The four statutory officers are:

- 7.1 Head of Paid Service – The Chief Executive fulfils the role of Head of Paid Service who discharges the functions in relation to the Combined Authority as set out in section 4 of the Local Government and Housing Act 1989.
- 7.2 Section 73 Officer – Fulfils the role of Section 73 Officer in accordance with the Local Government Act 1985. The Section 73 Officer administers the financial affairs of the Combined Authority. The Section 73 Officer is equivalent to a Section 151 Officer.
- 7.3 Monitoring Officer – The Monitoring Officers discharges the functions in relation to the Combined Authority as set out in section 5 of the Local Government and Housing Act 1989.
- 7.4 Scrutiny Officer – The Scrutiny Officer provides independent and impartial advice to scrutiny members in relation to their role, constitutional and governance issues.

## **8.0 ALTERNATIVE OPTIONS CONSIDERED**

- 6.1 The report contains the proposals for the setting up of the Combined Authority which is legal requirement. There are a number of ways of creating committees that sit under the Combined Authority to assist the discharge of the Combined Authority functions. It is proposed to adopt a “safe and legal” approach in creating a governance structure for day 1 of the Combined Authority and then to review the initial structure on a periodic basis.

## **9.0 FINANCIAL IMPLICATIONS**

- 9.1 The financial implications of creating the Combined Authority and the additional funding that the Devolution Deal provides have been considered in previous reports to the constituent authorities. This report looks at the proposed governance structure for the operation of the Combined Authority and notes that allowances can be paid to members.

## **10.0 LEGAL IMPLICATIONS**

10.1 The legal implications of the proposed Constitution are contained in the body of this report.

## **11.0 EQUALITIES IMPLICATIONS**

11.1 None

## **12.0 CLIMATE CHANGE IMPLICATIONS**

12.1 The climate change implications of creating the Combined Authority and obtaining additional funding and powers under the Devolution Deal have been considered in previous reports to the constituent authorities. This report looks purely at the governance arrangements for the Combined Authority.

## **13.0 REASONS FOR RECOMMENDATIONS**

13.1 To ensure the Joint Committee is aware of the proposals in relation to the drafting of the Constitution for the new Combined Authority.

## **14.0 RECOMMENDATION(S)**

i) That the Joint Committee considers the contents of the report and notes the proposals in relation to the drafting of the Constitution for the Combined Authority.

### **APPENDICES:**

Appendix A – Decision Making of the Mayoral Combined Authority

### **BACKGROUND DOCUMENTS:**

Barry Khan Assistant Chief Executive Legal and Democratic Services  
County Hall  
Northallerton

Report Author – Suzan Harrington and Barry Khan  
Presenter of Report – Suzan Harrington

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.