

IMPLEMENTATION OF THE NEW DISTRICT UNITARY COUNCIL

Cabinet Member: Councillor Katrina Wood

Wards Affected: All

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PROPOSED DECISION

Members are recommended to:

- (i) Delegate the wording of the representations to be made to the Minister for Housing, Communities and Local Government in response to the Written Ministerial Statement (WMS) and the proposed content of the Structural Change Orders on single tier arrangements for Buckinghamshire to the Chief Executive in consultation with the Leader;
- (ii) note that the Leader of the Council will continue to take part in discussions with the County Leader, Ministers and other parties with a view to taking forward the implementation provided that where decisions are required from this authority these will be made in accordance with existing governance requirements;
- (iii) re-establish the meetings of the Member group on Modernising Local Government to act as a consultative body on the wording of representations and implementation;
- (iv) note the need to set aside a provisional budget in 2019/20 for the delivery of the implementation to include the proportion of the of the costs of the Shadow Authority as may be required; such as project management resource and any other costs in 2019/20 that may fall directly to WDC subject to a review at year end by the Head of Finance and Commercial in consultation with the Portfolio Holder for Finance & Resources; and
- (v) approve if required the expenditure of up to £300k as required to facilitate the delivery of the new unitary authority and any impact on Wycombe District Council to be funded from the MLG reserve.

Reason for Decision

To respond to the announcement of the Minister and to seek to secure the best arrangements for the delivery of services to the residents of the Wycombe District.

To enable the Council to meet the legal requirements of the proposed Structural Change Orders including the provision of the Shadow Authority budget and project management support.

Corporate Implications

1. This report supports the implementation of legislative change which will have fundamental implications of the future of the Council.
2. This report has some financial provision which will be required as transition work progresses.

Executive Summary

3. This report seeks approval for the process for agreeing the wording of the representations to be made to the Secretary of State for Housing, Communities and Local Government. It also seeks to ensure that sufficient resources are available to enable the authority to respond to the requirements of the proposed orders and to support transition within the council.

Background and Issues

4. Members will recall that on 17 January 2017, Wycombe District Council, alongside the other three district councils, agreed to submit a proposal to the then Secretary of State for Communities and Local Government for a single tier arrangement for the existing two tier part of the county of Buckinghamshire. This was to comprise of two new councils - one in the north covering the current area served by Aylesbury Vale District Council and one in the south covering the areas served by Wycombe, Chiltern and South Bucks District Councils.
5. Members will also recall that in September 2016 the county council for the current two tier area submitted a proposal for a single tier arrangement which comprised of a single council covering the area currently administered by Buckinghamshire County Council.
6. The Secretary of State delayed consideration of both proposals until after the general election which took place in June 2017 and further until 12 March 2018, when he announced his intention to support a single tier council but to have only one council covering the whole of the current administrative area of the county council.
7. This council, together with the other district councils, set out detailed representations to the Secretary of State in support of a two unitary arrangement. The representations were successful in demonstrating to the Minister that there was broad local support and consensus for a two unitary proposal. However he concluded that the two unitary arrangement did not meet the requirement for improved local government and a credible geography. As a result the Secretary of State, by written statement, announced a decision in favour of a single new unitary district council for the area. The Written Ministerial Statement is attached at Appendix A.
8. Throughout the period in which the submission was prepared, a working group of members received information and presentations about the progress of the work being carried out across the four districts to prepare; the strategic options case; the stakeholder engagement and the submission and more recently, the representations. It is suggested that this working group should be reinstated to support the steps being taken by Wycombe District Council to implement single tier arrangements and to oversee the transition.
9. In order that final adjustments to any wording can be made quickly and in order to comply with the timetable set out by the Minister it is proposed that the Chief Executive have the ability to finalise the wording in consultation with the Leader.

The Written Ministerial Statement (WMS)

10. The WMS (Appendix A) makes it clear that the decision is to implement the proposal of the County Council for a single unitary council. The statement

includes some matters which are decided and some matters which he intends to consult on before reaching a decision.

Decisions

11. Firstly that the new authority will be implemented on 1 April 2020 and that elections to the council will take place on 7 May 2020.
12. It also makes it clear throughout the statement that it will be a new council and there will be no continuation of any existing council.
13. The WMS specifically refers to a single new unitary council several times. The fifth paragraph is more explicit, in two ways. First, the actual decision is to implement a proposal to replace all five existing councils including the abolition of the county council (as the county council itself proposed. Second, the replacement is to be by a new district council. The latter on its own is decisive and determinative as to the proper interpretation of the WMS. So the Minister has decided that there will be a single new district council for Buckinghamshire.

Matters for Consultation

14. The statement includes a suggested modification to the proposal put forward by the county council. It proposes that instead of the 98 councillors which the county council proposed, the WMS suggests there could instead be three members per county division which would result in 147 members. This is something that MHCLG is open to, but not yet decided upon.
15. The WMS also includes a proposal to consult the district councils about whether the election due to be held in 2019 should be postponed to avoid the need for councillors to be elected for a single year if Parliament approves the Order. This again is a suggestion which is open to representations from the district councils only (as these are district council elections).

The Consultation Process

16. The Chief Executives met with civil servants within MHCLG and were advised of the process for parliamentary approval of the draft Orders to give effect to the WMS. The Orders are very similar to those Orders which have previously been approved in relation to the two new unitary councils in Dorset.
17. There are different ways in which secondary legislation can be made. The legislation relevant to this decision requires what is known as the approval process. This is important because it requires the positive approval of both Houses of Parliament. The Electoral Arrangements order is in contrast by a negative process which simply requires that an order is laid and if there is no objection within the relevant number of days the order will come into force. The approval process is a longer process and will require that the orders are laid in time for the passage through both houses of Parliament.
18. The civil servants have advised that the Orders will be laid on 14th January 2019. To meet that requirement they will need to have the final content agreed in early December and representations will need to be made by 30th November 2018 at the latest.

The Content of the Structural Change Orders

Creating the New District Council

19. The Orders used for previous reorganisations in Durham, Wiltshire and Cornwall for example were continuing authority Orders. These provide that a new district area is created which coincides with the county area, but there is no Council for that area as the county council is in existence and will continue. The district councils are abolished. The Orders provide that district council functions are simply transferred to the county council.

'On the coming into force of this Order there shall be added to the functions of the County Durham council the function, which is to be exercisable only during the first and second transitional periods, of preparing for and facilitating the economic, effective, efficient and timely transfer of the district councils' functions, property, rights and liabilities ("the main transitional function").'

20. In contrast, the Orders in Dorset provide that a new district area is created to coincide with the county area, but in this case the county council is abolished and a new district council is created. The existing district councils are also abolished.
21. The civil servants have provided the content of the proposed Buckinghamshire Orders and the content is consistent with the Orders used in Dorset.
22. Following representations by both the county and district councils in Buckinghamshire, the Leader of the Council was pleased to receive a letter from the Parliamentary Under Secretary (Ministry of Housing, Communities and Local Government) dated 19 November 2018 which stated that

'Taking into account the full context in Buckinghamshire, the Secretary of State is persuaded that establishing a new district council, as set out in his statement, which is not a continuing authority, is the better option.'

Shadow Arrangements

23. The following articles set out the provisions for the shadow arrangements in Buckinghamshire.
24. They describe an implementation process which establishes a new shadow authority with all the members of the existing district and county councils as members. That body will have the transition powers and will carry them out through a smaller Shadow Executive which will make the day to day transition decisions.
25. There will also be an implementation team - made up of district and county council employees - who will be responsible for carrying out the Implementation Plan which will need to be approved by the Shadow Authority.
26. Unlike previous processes for developing new unitary councils, these arrangements are collaborative and allow the district and county councils to work together to set up the new arrangements. This process was developed by the councils in Dorset which started out the development of their submission on a conciliatory and joint approach.

The Proposal

27. The Draft Statutory Orders provide that their purpose is to implement the proposal of the County Council set out below.
28. *Our proposition is to abolish the county council and the four district councils and establish a brand new, county-wide single unitary council at the forefront of modern local government, committed to improving the quality of life and wellbeing for all local residents, designed to engage effectively with each of the multiple communities county-wide, and to develop a prosperous and sustainable future for Buckinghamshire.*
29. The Orders will not implement the proposal put forward by the district councils for two unitary Councils in Buckinghamshire.
30. The Orders do however provide that in carrying out the implementation, the Shadow Authority only has to 'have regard' to the information provided by the county council in support of their proposal.' The term 'information' refers to the business case and blueprint set out in the county council's submission. The district Leaders have sought clarification from MHCLG about the extent to which the Shadow Authority has to follow this information. It has been made clear that the Shadow Authority will need to consider the information but it does not have to follow it at all. It is also possible that the Shadow Authority could be required to have regard to the information provided in support of the district councils' proposal, provided that it is not inconsistent with the county council proposal set out above. The Shadow Authority can decide to follow the information in the district case in preference to the information included in the county case.

The Shadow Executive

31. The arrangements for the Shadow Executive will be key to driving this forward. It is therefore important that there is a broad spread of representation from the different authorities and different geographical parts of the area so that the needs of all residents can be properly represented. Arrangements for the Shadow Executive will need to be set out in the Order and will form part of the matters about which all five councils will be consulted before the final Orders are laid.

Leader of the Shadow Executive

32. This can be specified in the Order as either a mechanism for election by either the Shadow Executive or the Shadow Authority or it could also be specified as the Leader of a particular Council.

The Negotiations

33. The leader of Wycombe District Council, together with the other district council leaders and chief executives met with Rishi Sunak, Parliamentary Under Secretary of State (Ministry of Housing, Communities and Local Government) and Lord Porter, Chairman of the LGA. The leaders have also met with the leader and chief executive of Buckinghamshire County Council.

34. These meetings have led to some agreement between the authorities about the decision to defer the 2019 elections and for elections to occur in 2020, and then five years later in 2025. These arrangements remain subject to a decision from the Minister and Parliamentary Order.
35. The shadow arrangements and other details within the Orders remain subject to further negotiation at the time of writing. Final representations can be made until 30 November 2018. After that date all matters will be subject to a decision from the Minister. The final drafting and preparation will be carried out before the Orders are laid on 14 January 2018.

Budget

36. The Shadow Authority and Shadow Executive will have an implementation plan for the new council which will need to be funded by the current councils. The requirement for a proportion of the cost of transition to be met by all five councils will be set out in the orders. The proportions are to be agreed through negotiation with a provision for arbitration if a decision cannot be reached. At this stage, the final costs for implementation of the new council have not been agreed. The share of funding for the implementation that Wycombe District Council will need to contribute will form part of the 2019/20 budget and will be brought forward to Cabinet and Council as part of the budget setting process.

Consultation

37. The proposal for two unitary councils was the subject of stakeholder consultation and engagement.

Conclusions

38. The Chief Executive will ensure that Wycombe District Council is able to make appropriate representations in conjunction with Leader of the Council and the Leaders of the other three District Councils for Buckinghamshire.

Background Papers

Council Report 17th January 2017

Council Report 16th April 2018

Submission of the District Councils to the Minister