

# **Somerset West and Taunton Council**

## **Special Full Council – 30 April 2021**

### **Local Government Reorganisation – Potential Residents Poll**

**This matter is the responsibility of the Leader of the Council, Cllr Smith-Roberts**

**Lead Officer: James Hassett, Chief Executive Officer**

#### **1. Executive Summary / Purpose of the Report**

- 1.1 The Secretary of State conducted a consultation on the options for the future of local government in Somerset and this closed on 19 April 2021. Two alternative proposals exist. The Government has outlined that a factor in its considerations will be the degree to which a proposal has local support.
- 1.2 Concerns have been expressed about the consultation process and the lack of prominence given to the voice of the most important stakeholders, the actual residents of Somerset, within that consultation. There have been calls from Somerset residents for the councils to take steps to ensure residents' views on the proposed changes and their preference for the future of local government can be expressed in a clear and open manner.
- 1.3 This report recommends the holding of a local referendum to give residents a voice in the debate and help the Secretary of State in understanding and determining the level of support amongst residents for each of the options. If a referendum is to be held to inform the Secretary of State's considerations, it will need to take place in advance of the Secretary of State's decision, which is anticipated before Parliament's summer recess.
- 1.4 A report was originally scheduled to be discussed at a Special Council meeting on 15 April 2021. In the light of the Secretary of State letter of 12 April 2021 (Appendix A) it was decided to withdraw the report and obtain further legal advice. Legal advice has now been received from Bevan Brittan (attached as Appendix B) and James Goudie QC (Appendix C). In light of that advice, a response has been sent to the Secretary of State (letter attached as Appendix D).
- 1.5 Statements from the Monitoring Officer (Appendix E) and Section 151 Officer (Appendix F) have also been included with this report to offer further assurance to Members on lawfulness, fairness, value for money and the administration of the Council's financial affairs.

## 2. Recommendations

It is recommended that Full Council:-

- 2.1 Endorse the holding of a local authority poll (local referendum) of all residents of Somerset West and Taunton on the Electoral Register at 6 May 2021 who are eligible to vote on local elections, on the two options for the future of local government in Somerset i.e. the two Unitary Councils proposal from Stronger Somerset and the one Unitary Council proposal from One Somerset.
- 2.2 Approve funding of £86,000 to meet the costs associated with the local authority poll (local referendum). It is proposed that this supplementary budget is funded from General Reserves.
- 2.3 Note that the decision to hold the local authority poll (local referendum) requires an executive decision to be made before proceeding with the poll. It is proposed that following Full Council's decision as to whether to endorse the holding of the local authority poll (local referendum), the Leader of the Council will make the following executive decision:
  - a) to hold the local authority poll (local referendum) of all residents of Somerset West and Taunton on the Electoral Register at 6 May 2021 who are eligible to vote in local elections, on the two options for the future of local government in Somerset poll including:-
  - b) The conducting of the local authority poll (local referendum) as a postal and online referendum (option set out in 6.10ii) utilising Civica Electoral Services with the poll commencing on Tuesday 18 May 2021 and closing at 5pm on Friday 4 June 2021.
  - c) The holding of the local authority poll (local referendum) alongside such other Somerset Councils that agree.
  - d) The local authority poll (local referendum) will follow the single non-transferable vote system and the question to be asked will be:

*“Which of the two options for change in local government in Somerset to replace the existing five councils do you support (select one only):*

    - a. **One council for Somerset** (*“One Somerset” - the plan for a single council proposed by Somerset County Council*)
    - b. **Two councils for Somerset: Eastern Somerset and Western Somerset** (*“Stronger Somerset” the plan for two councils for Somerset – an Eastern and a Western Somerset council –proposed by Somerset West and Taunton Council / South Somerset District Council / Mendip District Council / Sedgemoor District Council and the other district councils of Somerset*)
  - e) That the Executive delegate the role of Counting Officer to Civica Electoral Services.

- f) That the Executive make such resources, including staff resources, as necessary to the Counting Officer to enable the local authority poll (local referendum) to be conducted;
- g) To delegate to the Chief Executive, the authority to take any further action necessary in relation to this matter
- h) To write to the Secretary of State to inform him of the local authority poll (local referendum) and its dates, and ask that the result of the local authority poll (local referendum) be properly considered as part of the decision making process on the future of local government in Somerset.

### **3. Risk Assessment**

- 3.1 As the Local Government Reorganisation decision will impact on the residents of Somerset for many years to come, it is crucial that they are given the opportunity to give their feedback to the proposals from Stronger Somerset and One Somerset, and that the Secretary of State takes this feedback into account when making the final decision.
- 3.2 The Monitoring Officer's statement (Appendix E) and Section 151 Officers statement (Appendix F) include a response to the matters raised by the Secretary of State.

### **4. Background and Full details of the Report**

- 4.1 All councils in Somerset have recognised the need to change in the way local government works in the county if services are to be sustainable and the challenges the county and our communities face are to be met. In addition, the government signalled that it wanted to see change within Somerset local government and invited all councils in Somerset to submit proposals for change in October 2020.
- 4.2 In response to that invitation two alternative proposals have been submitted to the Secretary of State for consideration. These proposals are the **Stronger Somerset** proposal for two new unitary councils – Eastern Somerset and Western Somerset - replacing the existing five councils together with reform, put forward by the four Somerset District Councils and the **One Somerset** proposal for one new unitary council for Somerset, replacing the five existing councils, put forward by Somerset County Council.
- 4.3 The government has made it clear that local support will be one of the key criteria in any decision on the future of local government in Somerset. The Secretary of State launched a consultation on 22 February 2021 and this closed on 19 April 2021.

### **5. The Consultation**

- 5.1 In the 9 October 2020 invitation letter to councils to submit proposals for change to local government in Somerset, the Secretary of State for Housing & Communities outlined that there were three key criteria that would be used in

reaching his decision around the options for change. The second of these criteria is that the reforms must 'command a good deal of local support in the round'.

- 5.2 In launching the consultation, the Government wrote to a number of stakeholder organisations. It also set out that anyone, inside and outside of Somerset, including residents, was able to respond to the consultation but that no approach would be made or publicity undertaken in this regard.
- 5.3 Somerset's district councils have made representations to the government outlining their concerns with the consultation process and its ability to support the Secretary of State in determining how each of the proposals meets the second criteria around the level of local support. These concerns can be summarised as:
- a. There is too limited a number of named consultees to determine the level of support for any proposal
  - b. The list is dominated by statutory bodies and excludes other key organisations that are important to community life and well-being and have proved to be essential in responding to the pandemic such as:
    - a. Somerset's highly active city, town and parish councils and their representative bodies
    - b. Somerset's voluntary and community organisations
  - c. There are too many bodies on the list which are either led by or form part of Somerset County Council and this may inadvertently skew the process.
  - d. Organisations such as Yeovil College and Bridgwater & Taunton College, who are key to improving skills, developing the economy and supporting improvements in outcomes and quality of life in our communities were omitted
  - e. Almost as many organisations outside the county are on the consultation list as inside the county, all with an equal say on the future of local services and local communities.
  - f. Whilst any individual or organisation can respond, narrowing the official list invited to respond risks the perception of a hierarchy where some voices are fundamentally much more important than others and therefore may have deterred residents and organisations of Somerset from responding.
  - g. Should a resident of Somerset wish to respond, the process and the structure of the consultation makes it particularly hard: the consultation makes no provision for people without easy access to the internet during the lockdown; and for those who are able to be online, the language is exclusionary and the questions asked are unclear.
  - h. That the available evidence suggests that the overall response rate from people and organisations in Somerset is low and the consultation process will therefore not allow the Secretary of State to make a fully informed decision in cognisance of the true picture as regards criteria 2 and the level of support for each proposal amongst the people who will be affected the most, the residents of Somerset.

- 5.4 At the District Council's Network meeting on 10 March 2021, the Secretary of State underlined the importance of residents' views in the reorganisation and reform process, stating that it must be right for residents to have equal footing in terms of responding to the consultation and that although there is a legal list of stakeholders that must be engaged, residents' views and what is popular and supported by the communities are vital. Unfortunately, neither the representations made to government nor the Secretary of State's support for residents' views have resulted in any changes to the consultation process.
- 5.5 There has been a call from some groups and sections of the community to let all residents have their say on the future of local government in Somerset through the holding of a referendum. These calls have increased in recent weeks, possibly due to the concerns around the consultation process.
- 5.6 In the light of the above, this report recommends the holding of a Local Authority Poll or what is commonly known as a Local Referendum as a means of supporting the Secretary of State in making his decision, particularly in respect of criteria 2 of the decision making process in determining the level of local support.

## **6. The Holding of a Local Authority Poll (Local Referendum)**

### **The Power to Hold a Local Authority Poll (local referendum)**

- 6.1 Section 116 of the Local Government Act 2003 provides a specific power for local authorities to hold a local advisory poll (referendum). The Act does not provide for local electors to be able to demand a referendum.
- 6.2 The result of a section 116 poll is not binding on the council or any other entity. It is purely advisory. It does however provide clear evidence of the public views on the matter being put before the voters. If the Council decides to hold a section 116 poll to ascertain the views of its residents on the future of local government in Somerset, that poll would be a purely advisory indication of residents' views to assist the Secretary of State in making a decision by providing evidence in respect of local support (the second of the government's assessment criteria).
- 6.3 Under section 116 it is up to the Council to determine who to poll and how the referendum is to be conducted. Accordingly, the Council needs to decide: -
- a. does it wish to hold such a local advisory referendum?
- And if it does:
- b. the franchise (who will have a vote)
  - c. the question; and
  - d. how the poll is to be conducted.
- 6.4 In addition to the power contained in Section 116, the General Power of

Competence set out in Chapter 1 of the Localism Act 2011, in giving councils the power to do anything an individual can do provided it is not prohibited by other legislation, is an alternative route that the Council could use to decide to hold a local poll/referendum, particularly as holding a poll/referendum is not prohibited by other legislation.

## Franchise

- 6.5 It is proposed that those to be included in the section 116 poll will be all those on the Somerset West and Taunton Electoral Register on 6 May 2021 who are entitled to vote in local elections.

## The Voting system and Question to be asked

- 6.6 The Electoral Commission has produced guidance for central Government for assessing referendum questions, and this provides a useful guide for determining the question to be used on the ballot paper for a section 116 poll. These guidelines state that a referendum question should present the options clearly, simply and neutrally, be easy to understand and to the point. It should be unambiguous, it should avoid encouraging voters to consider one response more favourably than another and it should avoid misleading voters. This point was also echoed by James Goudie QC. The question should be written in plain language (language that uses short sentences, is simple, direct and concise and uses familiar words while avoiding jargon or technical terms that would not be easily understood by most people).
- 6.7 The question should be written in neutral language, avoiding words that suggest a judgement or opinion either explicitly or implicitly. The information contained in the question should be factual, describe the question, the options clearly and accurately and the question should avoid assuming anything about voters' views.
- 6.8 In considering the question, the voting system needs to be taken in to account. Most polls in England utilise the single non-transferrable vote system, also known as first past the post. It is the system that voters are most familiar with when taking part in elections and polls. Therefore, it is proposed to utilise this system in the local authority poll.
- 6.9 Following independent advice from one of the country's leading elections and electoral law specialists it is proposed that the following question is put in the poll to the residents of Somerset:

*“Which of the two options for change in local government in Somerset to replace the existing five councils do you support (select one only):*

- a. **One council for Somerset** (“One Somerset” - the plan for a single council proposed by Somerset County Council)
- b. **Two councils for Somerset: Eastern Somerset and Western Somerset** (“Stronger Somerset” the plan for two councils for Somerset – an Eastern and a Western Somerset council –proposed by the

*Somerset West and Taunton Council/ South Somerset District Council / Mendip District Council / Sedgemoor District Council and the other district councils of Somerset)*

### **Conduct of the Referendum.**

6.10 There are three options that have been considered for running the referendum (all costs being the total cost across the four districts of Somerset):

***i. Postal poll using a supplier but with the district councils administering the count***

Estimated cost - £178,000 + return postage (approx. £55,000 to £110,000) plus staff time for administration and counting

***ii. Postal poll and internet poll using a supplier with the supplier also administering the counting process and verifying the result***

Estimated cost - £310,000

***iii. Traditional poll***

This would be a mixture of polling stations and postal votes, administered by the district council election teams.

Estimated Cost – up to £933,000

We are recommending option ii due to this being the most effective and efficient option in terms of value for money and the timescales involved.

6.11 As well as cost, there are a number of other important considerations in the conducting of the poll.

6.12 Due to the Covid 19 restrictions the 6 May 2021 is the first day an election or referendum can be legally held.

6.13 On 6 May 2021, elections for the Police and Crime Commissioners are due to be held. These elections are being conducted in accordance with the Police and Crime Commissioner Elections Order 2012 which facilitates combined elections, but only those types of elections prescribed within the regulations. The list of elections capable of being combined with the PCC elections does not include a referendum to be conducted under Section 116 Local Government Act 2003 and therefore it is not possible to combine the poll with the existing elections.

6.14 Whilst the poll could be held as a traditional, in person poll on another day, councils would not have the power to force public venues such as schools, to provide rooms or other facilities for voters. In addition, this would require considerable resources and significant additional cost at a time when council

resources are already stretched.

- 6.15 It will be important locally that the result of the poll is able to be regarded as a true reflection of locally expressed opinion. If the poll or part of it was administered by the district council electoral teams, they would undoubtedly uphold the highest standards and provide total impartiality in the process, and other safeguards such as independent observers would be in place. However, contracting out the entire poll to a third party with an excellent reputation for conducting impartial polls would give added assurance that the result is a true reflection of those who expressed a view in the poll. This also reduces the risk of bias referred to by the Secretary of State.
- 6.16 Accordingly, it is recommended that the poll be conducted as a postal and on line ballot entirely conducted by a third party, Civica Electoral Services (formerly the Electoral Reform Services). It is further recommended that the poll be held commencing Tuesday 18 May 2021 to avoid any confusion with the Police and Crime Commissioner Election, and close at 5pm on Friday 4 June 2021, giving residents two weeks to return their ballot papers or vote on line. Information on the ballot papers and on line voting is included at Appendix G to this report.

## **7. Links to Corporate Aims / Priorities**

- 7.1 There are no linkages to the Council's current Corporate Aims / Priorities

## **8. Finance / Resource Implications**

- 8.1 The total cost of the poll will be approximately £310,000, assuming the option set out in 6.10ii is adopted, although there is likely to be variance dependent on turnout and the number of voters choosing to vote online rather than by post. This cost for a poll covering the electors in all four districts of Somerset and would be shared with those councils in Somerset that agreed to a poll.
- 8.2 The estimated costs of the poll attributable to Somerset West and Taunton Council (SWTC) is circa £86,000. The costs have been based on the number of registered electors in each District Council area.
- 8.3 The total supplementary budget therefore requested within this report is £86,000, which is proposed to be funded from General Reserves.
- 8.4 If the Council endorses the holding of the poll, the contract award will need to be delivered as a matter of urgency to meet the needs of the project, and will be undertaken with a permitted exemption to the Council's Contract Procedure Rules, subject to the approval of the Director of Internal Operations and the Monitoring Officer.
- 8.5 A statement from the Council's S151 Officer can be found at Appendix F

## **9. Legal Implications**

- 9.1 The Local Government Act 2003 Section 116 provides a specific power for local authorities to hold a local advisory poll (referendum). The Localism Act 2011 Section 1 also gives Councils the General Power of Competence to hold a local poll/referendum.
- 9.2 Section 61 of the Coronavirus Act 2020, relates to the power to postpone certain other elections and referendums in the period from 16 March 2020 to 5 May 2021, and this applies to a poll under Section 116 of the Local Government Act 2003. This means that the earliest date a local poll could commence is 7 May 2021. However, if the Council choose to endorse this report, and the Leader of the Council then makes an executive decision, Civica need 15 days lead in time to commence the poll, hence it would not start until 18 May 2021.
- 9.3 A statement from the Council's Monitoring Officer can be found at Appendix E.

## **10. Environmental Impact Implications**

- 10.1 None arising from this report

## **11. Safeguarding and/or Community Safety Implications**

- 11.1 None arising from this report

## **12. Equality and Diversity Implications**

- 12.1 None arising from this report

## **13. Social Value Implications**

- 13.1 None arising from this report

## **14. Partnership Implications**

- 14.1 None arising from this report

## **15. Health and Wellbeing Implications**

- 15.1 None arising from this report

## **16. Asset Management Implications**

- 16.1 None arising from this report

## **17. Data Protection Implications**

- 17.1 External Legal advice has confirmed that the Council is legally able to use the Electoral roll for the purpose of holding a local poll/referendum. This is also covered in the Monitoring Officer statement attached as Appendix E.

## **18. Consultation Implications**

18.1 The consultation implications are set out in the body of this report

#### Democratic Path:

- **Audit, Governance and Standards Committee** – No
- **Cabinet/Executive** – As legally this is an Executive decision, the Leader will complete a delegated decision once the Council has made the decision as to whether to endorse the proposal to carry out a local authority poll
- **Full Council** – Yes

#### List of Appendices

Appendix A	Letter from the Secretary of State dated 12 April 2021
Appendix B	Bevan Brittan Legal Advice
Appendix C	James Goudie QC Legal Advice
Appendix D	Letter to the Secretary of State dated 22 April 2021
Appendix E	Monitoring Officer Statement
Appendix F	S151 Officer Statement
Appendix G	Ballot Paper

#### Links:

One Somerset full proposal can be accessed [here](#)

Stronger Somerset full proposal can be accessed [here](#)

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