

BOROUGH OF KETTERING

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|--------------------------|--|------------------------------|-----------------|
| Committee | COUNCIL | Item 5 | Page 1 of 13 |
| Report Originator | STRATEGIC MANAGEMENT TEAM | | |
| Wards Affected | All | 29 th August 2018 | |
| Title | LOCAL GOVERNMENT REFORM IN NORTHAMPTONSHIRE – SECRETARY OF STATE'S INVITATION | | |

1. PURPOSE OF REPORT

For Council to determine whether to submit a proposal to the Secretary of State for the reorganisation of local government in Northamptonshire and to endorse next steps accordingly.

2. RECOMMENDATIONS

That it be RESOLVED:

1. That Council determines whether it wishes to respond to the Secretary of State's invitation.
2. That subject to Council having resolved to respond to the Secretary of State's invitation and subject to at least one other Northamptonshire principal council signing up to it, Council submits the 'Northamptonshire Local Government Reform Proposal'.
3. That subject to the submission of 'Northamptonshire Local Government Reform Proposal' by any council, Council endorses the Chief Executive's deployment of resources required to progress work on the next steps including those ahead of any decision by the Secretary of State, up to a maximum of £500k to be taken from existing budgets and/or reserves.
4. That subject to the submission of the 'Northamptonshire Local Government Reform Proposal' by any council, Council approves the interim governance structure of a Northamptonshire Central Programme Team overseeing a West Northamptonshire Project Board and a North Northamptonshire Project Board for the preparatory phase leading up to shadow authorities.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|-----------------|
| Committee | COUNCIL | Item 5 | Page 2 of 13 |
|-----------|----------------|-----------|-----------------|

3. **BACKGROUND**

- 3.1 On 27/3/18 the Secretary of State for Housing, Communities and Local Government invited all eight principal councils in Northamptonshire to “develop and submit locally led proposals for establishing new unitary authorities across the county which will be right for the communities and people they serve”.
- 3.2 The Secretary of State’s invitation stemmed primarily from the well-documented severe financial and operational plight that Northamptonshire County Council (NCC) faced, continues to face and is expected to otherwise face in future. This plight has most recently been evidenced by the issue in July 2018 of a second Section 114 Notice by its Chief Financial Officer. These statutory Section 114 Notices add to reports on NCC’s financial arrangements by a Secretary of State appointed inspector (‘the Caller Report’) and by its external auditors (KPMG). Following the Caller Report, the Secretary of State assigned commissioners in May 2018 to oversee the management and decisions of NCC.
- 3.3 After receipt of the invitation, and a series of county-wide meetings between Leaders and Chief Executives, some principal Councils considered reports at their Council meetings in Spring 2018 which asked them to agree to work up a high level draft submission that met the guidance set out in the invitation and to return to full Council for further debate to determine whether or not to submit a formal proposal to government.
- 3.4 A draft submission has since been prepared and this report invites consideration of the whole matter by Council. The report seeks to establish the Council’s formal position on reorganisation as prompted by the Secretary of State.
- 3.5 Any proposal has to be submitted to the Secretary of State by no later than Friday 31st August 2018.

4. **INFORMATION**

- 4.1 In the invitation, the Secretary of State sets out guidance with the criteria that any proposal must meet and the matters that should be taken into account (Appendix 1). In particular, it highlights that any proposal should seek to achieve unitary structures which are likely to:
- Improve local government and service delivery across the area;
 - Command a good deal of local support; and
 - Be based on a credible geography.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|-----------------|
| Committee | COUNCIL | Item 5 | Page 3 of 13 |
|-----------|----------------|-----------|-----------------|

- 4.2 The invitation requires a ‘combined proposal’ and states that a proposal for a single unitary authority covering the whole of Northamptonshire is not an option. In terms of credible geography, the guidance is that any new unitary authority is to be one “consisting of one or more existing local government areas and having a substantial population that at a minimum is substantially in excess of 300,000”.
- 4.3 Having received the Secretary of State’s invitation, and thus faced with the prospect of reorganisation, the Leaders and Chief Executives of the eight councils in Northamptonshire have been keen to work together to achieve, if possible, a common proposal.
- 4.4 Within the limited prescribed timeframe, albeit having been extended by four weeks by the Secretary of State, there has been desire to make any proposal as informed as possible – necessarily directly addressing the Secretary of State’s guidance. The overriding ambition has been to seek sustainable local government for Northamptonshire.
- 4.5 Of course, the fundamental question for Members to answer is whether they wish to submit a proposal to the Secretary of State – as prompted in Recommendation 1. If the decision is to submit, then there is need to consider the proposed submission.
- 4.6 There has been much consideration of issues and options by senior Officers and senior Members of all of the councils, much in group sessions facilitated by commissioned external support. There have been bespoke formative seminars for other council Members too. The county’s MPs have been engaged. Advice has also been received from civil servants working to the Secretary of State.
- 4.7 Expert consultants have also been jointly commissioned by the Chief Executives of all councils to assist with evidence-gathering. In particular, PricewaterhouseCoopers (pwc) and Opinion Research Services (ORS) have utilised available data, conducted public consultation and engaged various agencies, authorities and groups in assessing future prospects. The outputs from their various activities have been interpreted with their expertise. ORS has confirmed that, on the basis of the Secretary of State’s invitation and timeline, its consultation has followed the requirements of a fair consultation.
- 4.8 The consequent reports of pwc, at Appendix 3, and of ORS, at Appendix 4, need to be fully taken into account by Members. These reports are key background papers. The reports have helped inform the ‘Northamptonshire Local Government Reform Proposal’ (‘the Proposed Submission’) at Appendix 2.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|-----------------|
| Committee | COUNCIL | Item 5 | Page 4 of 13 |
|-----------|----------------|-----------|-----------------|

- 4.9 In the Proposed Submission, alternative unitary authority options have been considered against the Secretary of State's guidance. During the public consultation, alternative unitary authority options were also able to be identified by participants though, in considering these, it has been assessed that the option identified in the Proposed Submission best meets the Secretary of State's guidance and is one that is credible in terms of coordination with other public sector agencies.
- 4.10 In summary, the Proposed Submission is for a 'West Northamptonshire' unitary council and a 'North Northamptonshire' unitary council, thereby covering the whole county. The Proposed Submission assesses how this accords with the Secretary of State's guidance.
- 4.11 Particular statutory officers (Monitoring Officers and Chief Financial Officers (CFOs)) have needed to review the implications of the decision to submit or not which, though narrowly focussed at this time, is nonetheless the start of a journey from which there could be no turning back and thus later would lead to replacement local authorities.
- 4.12 In particular, the financial data and base budgetary assumptions used by the consultants have needed CFOs' review. Members' attention is drawn to the CFOs' full assessment in the Implications section of this report.
- 4.13 In light of the Secretary of State's ability to modify any proposal, it has to be acknowledged that there is no guarantee that the key challenges affecting success of new unitary authorities, as set out in the Proposed Submission, will be met. However, it is deemed fundamental to identify these. The Proposed Submission, its evidence base and the CFOs' position make it clear that the financial sustainability of new councils will not be achievable by reorganisation alone.
- 4.14 In terms of Recommendation 2, the options for the Council are to either submit the Proposed Submission as is or not.
- 4.15 Theoretically, if Members decide to submit, there is an option of submitting an alternative proposal but no credible alternative that meets the guidance has been identified. Also, given the timeframe for submitting a proposal, there is no practical ability to assess the compliance and robustness of an additional alternative proposal and achieve all-council sign-up to it. Therefore, any desire to amend the Proposed Submission must be regarded as a rejection of its coherence such that any substantive amendments would in effect make up a separate proposal for whoever promoted it to separately submit. However, as earlier said, the Proposed Submission now being offered is judged by Leaders and Chief Executives to best fit the guidance and, hopefully with strength in numbers, the best that can be expected to have influence with government. It is highlighted though that, legally, only one principal council need submit a proposal for it to be considered by the Secretary of State.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|-----------------|
| Committee | COUNCIL | Item 5 | Page 5 of 13 |
|-----------|----------------|-----------|-----------------|

- 4.16 If a proposal is submitted, the Secretary of State must determine whether or not to accept a proposal. If he accepts such a proposal, with or without his modification, he can be expected to issue a decision that he is “minded to” implement the proposed reorganisation, and at this stage set out a timetable for implementation. At this point a further period will be given (expected to be around two months), during which he will consider any further representations made, before making a final decision. This will include formal consultation with any council not supporting the proposal. Once a final decision is made, a Structural Change Order will be laid before Parliament (expected to be by March 2019), and once that is made, other consequential orders will follow, that will achieve the demise of this Council and establishment of successor authorities.
- 4.17 Considerable further work and resource deployment will be required to progress the next steps, if a proposal is submitted. There will be a need for a mix of external commissioning and use of existing staff. A key lesson from another area currently undergoing unitary reorganisation is not to underestimate the aggregation and disaggregation work required; indications from that area are that it is appropriate to budget for up to £500k for the next steps. It is considered essential to deploy resource on this work - including ahead of a ‘minded-to’ decision so as not to lose time waiting. There is already no doubt that the reorganisation debate is taking up significant time for senior Officers and Members in all councils. That will be exacerbated if this Council, or any other council, submits a proposal. Recommendation 3 and 4 have particularly responded to the assessment of the next steps.
- 4.18 Recommendation 3 particularly relates to resourcing those next steps, should any proposal for reorganisation be submitted. Much preparatory work is required to set up new authorities, including shadow authorities and any other shadow local arrangements that might be appropriate. At subsequent stages, if the Secretary of State progresses matters, there will be need for more focused assessments of implications depending on the topic - including some presumed to be required of the Secretary of State.
- 4.19 Recommendation 4 relates to interim governance structures for initial next steps. It has been advised that it is wise to be working in shadow to the shadow, as it were, for good programme management. To that end, if a proposal is submitted, it is recommended that informal shadow arrangements are established by councils ahead of any formal shadow authorities; namely an overall central programme team supported by separate project boards for the West and North of the county. This structure will help oversee the numerous work streams in the preparatory phase for shadow authorities.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|-----------------|
| Committee | COUNCIL | Item 5 | Page 6 of 13 |
|-----------|----------------|-----------|-----------------|

4.20 For clarity, Members should be aware that:

- Should the Council decide not to be part of the joint submission, but does decide to approve the subsequent Recommendation 3 and Recommendation 4 regarding funding and governance, this would not give the Council an automatic entitlement to be involved in discussions that would follow about the detailed workings of the new authorities.
- It is, however, anticipated that the councils that vote in favour of submitting the proposal will invite those authorities to fully participate in the detailed discussions at an appropriate point after the 31 August 2018.
- Councils that decide not to be part of the joint submission, and decide not to approve Recommendation 3 and 4 regarding funding and governance are unlikely to be involved in any of the discussions that follow until such time as a Parliamentary Order is made - likely to be in early 2019.

4.21 If a proposal is not submitted by any of the councils, there are no such next steps as the Secretary of State will not be able to implement reorganisation under the chosen legislation without a proposal.

4.22 To emphasise, first and foremost is for the Council to decide if it wishes to make a proposal in response to the Secretary of State's invitation.

5. LEGAL IMPLICATIONS

5.1 The invitation is made by the Secretary of State for Housing, Communities and Local Government using his powers under Part 1 of the Local Government and Public Involvement in Health Act 2007, supplemented by the Cities and Local Government Devolution Act 2016. Under the same legislation the Council is legally able to make a proposal. The Council needs to determine either to submit a response to the invitation, or not; these choices have their merits and demerits and Members need to identify these in making that determination. The Council must have regard to the Secretary of State's guidance. (Practically, it would likely be futile to submit a proposal that does not meet the Secretary of State's guidance as presumably that is how any proposal will be evaluated).

5.2 Public authorities are under a public law duty to consult, to show fairness in the exercise of their functions. Where there is no statutory process for consultation, it is for the authority to determine what amounts to fair consultation. There is no statutory consultation process in relation to this decision, but the Secretary of State's invitation made it clear that he expected to see "extensive local consultation" prior to any local submission being made.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|-----------------|
| Committee | COUNCIL | Item 5 | Page 7 of 13 |
|-----------|----------------|-----------|-----------------|

- 5.3 In taking the decision whether to submit a proposal to the Secretary of State, the Council must show that it has considered the consultation responses – as fully set out in the appended ORS report - before making its decision.
- 5.4 It is important to note that the legislation provides that the Secretary of State has the power only to invite proposals, and cannot order reorganisation if a proposal is not received. However, the Secretary of State may accept proposals made, or an amended version of them, “if at least one relevant local authority consents”. Therefore if any one of the eight principal Northamptonshire councils decides to submit a proposal to the Secretary of State, the Secretary of State may accept the proposals made, or an amended version of them, without the consent of the remaining councils in the county.
- 5.5 In terms of elections, Members are advised that the current election arrangements remain in place unless and until the Secretary of State decrees otherwise by Statutory Order. However, it is anticipated that, at the same time any Orders are laid to create new authorities (if a proposal is made and the Secretary of State wishes to implement a proposal), then parallel Orders will be laid to replace the elections due in 2019 with elections to the new authorities in 2020. This would also provide the opportunity for the Secretary of State to delay the Town and Parish Elections by a year if he decides to do so.

6. FINANCIAL RESOURCE IMPLICATIONS

- 6.1 The financial impact of a proposal for local government reorganisation in Northamptonshire is likely to be substantial and the associated risks significant. To assess the financial implications pwc were commissioned to provide an independent report on the proposal. pwc have worked closely with all eight CFOs in the councils across Northamptonshire who have jointly written and signed off the financial implications section of this report.
- 6.2 The main conclusions from a financial perspective in pwc’s report are set out on pages 11-17. The financial modelling in the report shows potential transition and transformation savings of up to £12.1m and £51.6m per annum, respectively. The likely one-off costs to achieve these savings would be £29.9m for transition and £41.9m for transformation. Whilst these savings are projected to improve the financial position in Northamptonshire there is still a funding gap over the medium term. The CFOs from all councils in Northamptonshire have reviewed and challenged the figures, their timing and the underlying assumptions contained in the report.
- 6.3 There are a number of financial implications arising from the submission of the proposal to government. The key ones are set out below:

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|-----------------|
| Committee | COUNCIL | Item 5 | Page 8 of 13 |
|-----------|----------------|-----------|-----------------|

- 6.4 The primary implication is that the model assumes all councils balance their budgets on a sustainable basis prior to the new unitary authorities becoming operational in April 2020. NCC is forecasting a potential shortfall of £60-70m in 2018/19 and has issued a second section 114 notice. In 2019/20 NCC has a further savings target of around £52m. The total NCC financial deficit could be £122m over the next 18 months against an annual net budget of £441m. The delivery of these savings through on-going means is essential to provide the new authorities with a sustainable financial position to start from and it is likely that the savings required to deliver this balanced position will overlap with the transformation activity proposed for delivering further savings in future years. There is almost certainly likely to continue to be a funding gap once savings programmes have been delivered.
- 6.5 The cost of transition and transformation will need to be funded. The Proposed Submission recognises this as a challenge and councils will work with government to find a solution. If a solution to this isn't found then the costs would need to be funded locally from any existing reserves, in-year savings or through Flexible Use of Capital Receipt. There is no certainty that local funds will be available to meet these one-off costs.
- 6.6 On the assumption the proposed move to two unitary authorities delivers the transition and transformation savings estimated there is still a funding gap in each year. It should be recognised the figures are at a point in time and will change. Further proposals will need to be implemented to deliver a balanced financial position.
- 6.7 The transition from eight to two new authorities will require the amalgamation, and in NCC's case the apportionment, of revenue budgets, capital programmes and the balance sheet (assets and liabilities) into those for the two new authorities. At this stage there is insufficient information available to fully assess the apportionment and amalgamation of costs, income, assets and liabilities.
- 6.8 The different levels of council tax in each of the seven Northamptonshire district and borough councils will need to be harmonised to one level, in each new unitary authority. The harmonisation of council tax will also need to include harmonisation of Council Tax Support. pwc have undertaken some initial modelling which is contained in their report.
- 6.9 Northamptonshire is part of the SEMLEP Growth Area. The Proposed Submission recognises the funding challenges faced in growing areas, both the initial infrastructure costs and the on-going costs.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|-----------------|
| Committee | COUNCIL | Item 5 | Page 9 of 13 |
|-----------|----------------|-----------|-----------------|

- 6.10 The Proposed Submission is being made at a time when there is uncertainty in the wider local government finance environment with the outcome of EU Exit, a Spending Review anticipated in 2019, the outcome of the Fair Funding Review expected in 2020, further changes to New Homes Bonus and the implementation of further reforms to Business Rates Retention from April 2020. Whilst all of these will impact on councils in Northamptonshire whether or not a proposal is made to government, it should not be underestimated the uncertainty this brings.
- 6.11 Further significant work to assess the detailed financial implications will be required if the Proposed Submission is submitted and accepted by government. CFOs will continue to work together on the financial implications as part of any transition process to new authorities.
- 6.12 To summarise, it is clear from the pwc report that a unitary proposal does not solve the financial sustainability of local government in Northamptonshire on its own.
- 6.13 The report from pwc demonstrates the Proposed Submission contributes to reducing, but not eliminating, the funding gap. CFOs in all councils are broadly comfortable with the financial assumptions made by pwc in their report, which underpins the Proposed Submission. It must be stressed that these numbers are likely to be refined over time.
- 6.14 CFOs recognise the number and level of significant financial risks set out elsewhere in this report. CFOs advise that specific attention is given to these financial risks, including the importance of developing and implementing mitigating actions to these and any further financial risks that emerge.
- 6.15 CFOs believe it is essential government work with the councils to find a solution to the funding challenges and all councils, particularly NCC, deliver sustainably balanced budgets prior to 2020 to ensure the future financial stability of the new councils.
- 6.16 Aside from the assessment of pwc's modelling, as noted elsewhere, indications from an area undergoing reorganisation from two tier to unitary authorities suggest that it is wise for the Council to budget for up to £500k for the next steps. This is a best estimate at this time. This amount is based on equal sharing between councils of the overall costs (indicative £4m). It is proposed that these costs be met from existing budgets and/or reserves.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|---------------------|
| Committee | COUNCIL | Item 5 | Page 10 of 13 |
|-----------|----------------|-----------|---------------------|

7. EQUALITIES/HUMAN RIGHTS IMPLICATIONS

- 7.1 The Proposed Submission itself addresses the impact of reorganisation on all communities of Northamptonshire and is supported by a bespoke Equality Impact Assessment (EIA). This is an important, publicly available, background paper to Members' consideration of the Proposed Submission. This EIA is a live document and will be continuously reviewed and updated to reflect the impacts on residents as more information is gathered about the proposal and the future of service delivery across Northamptonshire.
- 7.2 The current EIA identifies an impact on some protected characteristics as a result of a change to two unitary authorities - as regards age; disability; pregnancy/maternity. The anticipated impact is for current residents of one new unitary authority that access services at a location that will be within the remit of the other unitary authority. One authority may not be under any obligation to provide services to a resident outside of it. Additionally, arrangements or funding of travel to locations outside the authority may be affected. Thus a resident may have to access the service at a different location inside their own unitary authority, which may be further away. This will primarily impact those living near the proposed border between the two authorities; and is of particular concern in cases where the resident has difficulty with mobility/travel. This impact is likely to be more prevalent amongst older age groups. The current mitigation for this impact is that dialogue between any new unitary authorities should be maintained after any reorganisation to ensure appropriate transition arrangements in service provision and access for those affected, before appropriate alternative arrangements are established.
- 7.3 Other characteristics not covered under the Equality Act that have been identified as having an impact include: council staff; rurality; deprivation; resident representation. Some mitigating actions for these have also been identified, such as dialogue between any new unitary authorities, support for those on a low income in the most deprived areas and ensuring residents are appropriately represented regardless of location.
- 7.4 In generating their reports, the approach of pwc and ORS has been to engage all groups and individuals openly and fairly. The public consultation particularly invited responses from all.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|---------------------|
| Committee | COUNCIL | Item 5 | Page 11 of 13 |
|-----------|----------------|-----------|---------------------|

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The Council's decision is of significant consequence and, as with all decisions, open to challenge. If this Council agrees to submit a proposal, it will potentially lead to a profound change in service delivery arrangements in the Council's area. If the Council doesn't agree to submit, but another Northamptonshire principal council does, the same impact applies. The Recommendation only proposes sign-up to the Proposed Submission if at least one other principal council signs up; this is to mitigate both undue risk to service uncertainty and to reputational damage for inviting change unilaterally when it needn't have done so.
- 8.2 As the Council's decision – whatever it is - involves taking full account of the business case in the Proposed Submission and the evidence upon which it is based, there is risk of challenge on the grounds of failing to properly take the business case/evidence base into account or a failure of the business case/evidence base to be properly formed; or that some other consideration was wrongly taken into account. The engagement of expert consultants has assisted in mitigating the risk of challenge of the business case or evidence base - given that wholesale reorganisation has not been a workstream in Northamptonshire since the last local government reorganisation across England and Wales.
- 8.3 There are a number of high risks from a financial perspective. These include: NCC and other councils not delivering a financially sustainable position prior to the new councils being created; historical liabilities and assets inherited by the new authorities not being sustainable; insufficient cash to fund transition/transformation programmes; inadequate level of reserves for the new authorities; loss of revenue from council tax harmonisation and council tax support; making short-term financial decisions which have long-term financial consequences; the assumptions underpinning the level and timing of savings/costs are proved to be unrealistic and the funding challenges are not recognised by government.
- 8.4 There is uncertainty for communities and it is arguable that there is risk to communities in the Council's area in not presenting a proposal to the Secretary of State, given NCC's plight. The Secretary of State is clearly keen to see what could otherwise be introduced to improve the management of council finances in Northamptonshire. Consequently, the desire of Chief Executives and Leaders has been to influence what alternative construct might be introduced by the Secretary of State should at least one council decide to submit a proposal.

BOROUGH OF KETTERING

| | | | |
|-----------|----------------|-----------|---------------------|
| Committee | COUNCIL | Item 5 | Page 12 of 13 |
|-----------|----------------|-----------|---------------------|

9. **HUMAN RESOURCE IMPLICATIONS**

- 9.1 In terms of the Recommendation, there would be a direct requirement for staff resource (supplemented by commissioned support). This is difficult to quantify at this time, depending in part on the nature of any proposal and the Secretary of State's decision. Some senior staff would need to be deflected from other work which could require compensatory backfilling. Commissioning may need to be subject to separate decisions in due course.
- 9.2 An inevitable general consequence of a proposal being submitted is continuing uncertainty for staff in the Council. This is not to be underestimated and will need to be carefully managed so as to avoid the risk of loss and/or inability to recruit and consequent further disruption of normal service.

10. **POLICY IMPLICATIONS**

- 10.1 Whilst the Recommendation doesn't directly impact on current policy, ultimately the submission of a proposal could lead to the creation of new authorities that will affect and determine policy for the Council's area as they see fit.

11. **ENVIRONMENTAL/ICT/CRIME & DISORDER IMPLICATIONS**

- 11.1 None arise from the Recommendation directly.

12. **CONCLUSIONS**

- 12.1 In response to the funding difficulties of Northamptonshire County Council, the Secretary of State has invited proposals for new unitary authorities in the county to replace all existing councils. There are various political, financial and technical considerations which the Council will wish to carefully assess in deciding, firstly, whether to respond to the invitation.
- 12.2 Should the Council decide to respond to the invitation, a proposal has been drafted that is considered to fit the criteria set by the Secretary of State after evaluating options and considering public consultation results. The financial position of Northamptonshire County Council in particular is clearly a major problem now, but it has been identified that reorganisation alone will not lead to the sustainability of new unitary authorities. The proposal (and technical assessments) identifies the challenges that need to be addressed to achieve sustainability of new authorities.

BOROUGH OF KETTERING

| | | | |
|------------------|----------------|-----------|---------------------|
| Committee | COUNCIL | Item 5 | Page 13 of 13 |
|------------------|----------------|-----------|---------------------|

12.3 The Council is invited to judge the acceptability of the proposal if it has first decided to respond to the invitation.

12.4 If the Secretary of State decides to accept a proposal, after his modification or not, there is considerable work and resource required to prepare for transition to new unitary authorities.

Appendices:

- App1: Invitation to Submit a Proposal for a Single Tier of Local Government in Northamptonshire
 - App 2: Northamptonshire Local Government Reform Proposal
 - App 3: Northamptonshire Area Local Government Reform – Outline Approach - PWC
 - App 4: Future Northants Report of Local Government Reform Consultation - ORS
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Background Papers:

- Northamptonshire County Council Best Value Inspection: January – March 2018 (the Caller Report)
- Opinion Research Services report “Future Northants Local Government Reorganisation. Equalities Impact Assessment”

Previous Minutes/Reports:

Ref:15.C.83

Date: Council 20th April 2016

Ref: 17.C.84

Date: Council 25th April 2018