

Council Meeting

9 November 2016

Time 5.45 pm **Public Meeting?** YES **Type of meeting** Full Council

Venue Council Chamber - Civic Centre, St Peter's Square, Wolverhampton WV1 1SH

Membership (Quorum for this meeting is 15 Councillors)

Mayor Cllr Barry Findlay (Con)

Deputy Mayor Cllr Elias Mattu (Lab)

Labour

Cllr Ian Angus
Cllr Harbans Bagri
Cllr Harman Banger
Cllr Mary Bateman
Cllr Philip Bateman
Cllr Payal Bedi-Chadha
Cllr Peter Bilson
Cllr Alan Bolshaw
Cllr Greg Brackenridge
Cllr Ian Brookfield
Cllr Paula Brookfield
Cllr Ian Claymore
Cllr Craig Collingswood
Cllr Claire Darke
Cllr Steve Evans
Cllr Val Evans

Cllr Bhupinder Gakhal
Cllr Val Gibson
Cllr Dr Michael Hardacre
Cllr Julie Hodgkiss
Cllr Keith Inston
Cllr Jasbir Jaspal
Cllr Milkinderpal Jaspal
Cllr Andrew Johnson
Cllr Rupinderjit Kaur
Cllr Welcome Koussoukama
Cllr Roger Lawrence
Cllr Linda Leach
Cllr Hazel Malcolm
Cllr Louise Miles
Cllr Lynne Moran
Cllr Anwen Muston

Cllr Peter O'Neill
Cllr Phil Page
Cllr Rita Potter
Cllr John Reynolds
Cllr John Rowley
Cllr Judith Rowley
Cllr Zee Russell
Cllr Sandra Samuels
Cllr Caroline Siarkiewicz
Cllr Stephen Simkins
Cllr Mak Singh
Cllr Tersaim Singh
Cllr Jacqueline Sweetman
Cllr Paul Sweet
Cllr Martin Waite
Cllr Daniel Warren

Conservative

Cllr Christopher Haynes
Cllr Christine Mills
Cllr Patricia Patten
Cllr Arun Photay
Cllr Paul Singh
Cllr Udey Singh
Cllr Wendy Thompson
Cllr Andrew Wynne
Cllr Jonathan Yardley

UKIP

Cllr Malcolm Gwinnett

Information for the Public

If you have any queries about this meeting, please contact the democratic support team:

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Wolverhampton WV1 1RL

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Agenda

<i>Item No.</i>	<i>Title</i>
5	Implementing the Devolution Agreement - Mayoral Combined Authority Functions (Pages 5 - 18) [To consent to the draft West Midlands Combined Authority (Functions and Amendment) Order 2016]

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Meeting of the City Council

9 November 2016

Report title	Implementing the Devolution Agreement – Mayoral Combined Authority functions	
Referring body	None	
Councillor to present report	Councillor Roger Lawrence	
Wards affected	All	
Cabinet Member with lead responsibility	Councillor Roger Lawrence, Leader of the Council	
Accountable director	Keith Ireland, Managing Director	
Originating service	Transformation	
Accountable employee(s)	Rachel Ratcliffe Tel Email	Policy Officer 01902 551969 rachel.ratcliffe@wolverhampton.gov.uk
Report to be/has been considered by		

Recommendations for action or decision:

The Council is recommended to:

1. Note the development of the draft West Midlands Combined Authority (Functions and Amendment) Order 2016 to date, detailed in appendix A.
2. Agree that the draft Order is considered and, if appropriate, approved (subject to minor and drafting amendments) at Cabinet on 30 November 2016, as elements require government response and approval. Constituent Council approvals pending, Cabinet approval will ensure the Order can be laid in Parliament following the Combined Authority consideration of the Order on 9th December 2016.

Recommendations for noting:

The Council is asked to note:

1. The summary of consultation results in respect of the Mayoral WMCA Scheme, as submitted to the Secretary of State for Communities and Local Government on 5th September 2016, the link is provided in paragraph 3.3 of this report.

1.0 Purpose

- 1.1 To provide Council with the summary of consultation responses in respect of the Mayoral WMCA Scheme.
- 1.2 To bring the development of the draft West Midlands Combined Authority (Functions and Amendment) Order 2016 to Council's attention, and agree that Cabinet consider the draft Order.

2.0 Background

- 2.1 The development of the government's devolution agenda created the opportunity for the West Midlands Combined Authority to negotiate and subsequently agree a proposed Devolution Agreement. A period of clarification was carried out on the agreement and then ratified by the seven constituent councils throughout February and March 2016, including the City of Wolverhampton on 2 March 2016.
- 2.2 The devolution agreement was the first step for the West Midlands in securing the powers, resources and independence needed to drive economic growth, public service reform and deliver real outcomes for local people in terms of jobs, homes, better transport and better public services. It provided for a Government 'Gainshare' payment of £36.5 million per year and opens up potential investment funds totalling £8 billion pounds whilst increasing confidence in the local area so that further private sector investment can be leveraged. It sits alongside the Midlands Engine project, a partnership with government covering the whole West and East Midlands, including the Midlands Connect initiative to take forward east-west transport investment.
- 2.3 Following the ratification of the devolution agreement, the next stage established the position of the Mayor, a prerequisite to the devolution agreement. The Mayoral (elections) Order, to create the position of the Mayor, was approved by Council on 18 May 2016. The Mayoral (Elections) Order was subsequently made by Parliament on the 15th September 2016.
- 2.4 The 'Scheme' detailing the proposed Mayoral WMCA functions was also approved for consultation at the 18th May 2016 Council meeting. The conferral of these powers does not affect the Councils ability to deliver its services and will not result in the transfer of Councils powers to the Mayor or Mayoral Combined Authority.

3.0 Consultation for functions to be conferred upon a Combined Authority

- 3.1 It is a requirement that a public consultation be undertaken in most cases where additional functions are to be conferred upon a Combined Authority. The functions required by the West Midlands Combined Authority to deliver the devolution agreement were identified in a Governance Review and subsequently detailed in the 'Scheme' which was then consulted on.

- 3.2 The consultation was carried out from 4th July – 21st August 2016. The consultation sought views from the public and stakeholders on the additional functions proposed to be conferred on the West Midlands Combined Authority, in order to deliver the devolution agreement.
- 3.3 The summary report is available on the WMCA website via the following link: <https://westmidlandscombinedauthority.org.uk/media/1354/mayoral-wmca-consultation-report-for-upload.pdf> for Council's information.

4.0 The Mayoral West Midlands Combined Authority Order

- 4.1 Following the consultation, the Scheme and a summary of the responses were submitted to the Secretary of State for Communities and Local Government, as required.
- 4.2 The Department for Communities and Local Government prepare the draft statutory West Midlands Combined Authority (Functions and Amendment) Order 2016 based on the Scheme, in consultation with the West Midlands Combined Authority and the relevant government departments. The draft Order is in development at the time of writing, as there are elements requiring government response and approval.

5.0 Scheme to Order process

- 5.1 The developing draft Order reflects the devolution agreement and Scheme as approved by Council on 18 May 2016.
- 5.2 Where the developing Order does not reflect the Scheme, or there are variations at this stage, key areas are detailed at paragraph 6.0 below and the full summary of drafting at Appendix A.
- 5.3 The rationales for any variations are that: the detail is being considered further by government, it is not appropriate for some of the elements of the Scheme to be contained within the legislative Order (for example where the matter is already contained within existing legislation), and/ or the outcome required will be achieved through a different legislative means.
- 5.4 It should be noted that not all aspects of the West Midlands devolution agreement require legislative change to implement. The functions outlined are those that require legislative or regulatory change before they can be exercised by the West Midlands Combined Authority or the Mayor.
- 5.5 It is crucial for the delivery of the devolution deal and the wider devolution agenda that the finalised Order is laid in Parliament as soon as possible. Therefore, Council are asked to note the development of the draft Order from the Scheme and agree that Cabinet consider the draft Order on the 30th November 2016. Delegated authority will be sought from Cabinet to the Leader and Managing director for minor and drafting amendments to the Order

5.6 Following the Constituent Council's consideration of the Order, and the Combined Authority on the 9th December 2016, the Order will be laid in Parliament.

6.0 Key areas of variation through Scheme to Order process

6.1 Items requiring unanimous decision of the Constituent Members

- 6.1.1 Within the Order to establish the West Midlands Combined Authority and re-stated in the Scheme, there were certain items reserved to require the unanimous decision of the Constituent Members, such as amendments to the Constitution, the approval of borrowing limits, investment strategy and capital budget of the Combined Authority (full list in paragraph 15 of the Scheme).
- 6.1.2 Following the incorporation of the Mayoral governance model into the Combined Authority, the government's position is that the exclusion of the Mayor in such items is not aligned to the devolution agenda - given the Mayor's role as the Chair of the Combined Authority and the single accountable figure for the West Midlands.
- 6.1.3 Therefore these discussions have concluded from a WMCA perspective in alignment with the held position – namely that the though the Mayor can vote on the items requiring the unanimous vote of the constituent members, the Mayor's vote is not required to carry a decision regarding the unanimous items, it is the unanimous decision of the Constituent members that is required to carry the decision. The government position on this item is not yet confirmed.
- 6.1.4 In addition to the establishment Order unanimous items reference above, a further unanimous voting item was actually added into the Scheme:

Any delegation of any Combined Authority function pursuant to Section 101 the Local Government Act 1972 is a matter for the unanimous decision of the Constituent Members only.

- 6.1.5 As this was not referenced within the devolution agreement and after further consideration it has been agreed that this no longer needs to be a unanimous voting requirement but will be subject to the conventional West Midlands Combined Authority voting – i.e. any vote requires a two-thirds vote in favour of the constituent members, present and voting and the vote of the Mayor (required to carry the vote if arisen from the devolution deal). This allows flexibility where required.

6.2 West Midlands Key Route Network (WMKRN)

- 6.2.1 A Mayoral responsibility, requiring members and officers to assist with its operation. In line with the devolution agreement, the WMKRN is a Mayoral responsibility, but to be included in the Order, is the statutory condition that the members and officers of the Combined Authority assist with its operation. Matters are also to be subject to a two-thirds vote of the constituent members, with the mayoral vote in that two-thirds majority in favour.

6.2.2 Moving Traffic Enforcement on the WMKRN – Ministers have previously declined the extension of this power, even where Mayors currently exist. With the timescale available and the evidence required DCLG have proposed that this be the subject of future devolution discussions and therefore will not be drafted for this Order.

6.3 Finance

6.3.1 DCLG have confirmed that a generic Financial Regulation Orders will be laid in Parliament to cover financial aspect for all Combined Authorities. These will cover Non Transport Levy's, Precepting and Non Transport Borrowing (however, see below).

6.3.2 Non Transport Borrowing – This has not been agreed by Treasury, further discussion is required and if agreed will be included in the Finance Order detailed above. In order to make the case at a West Midlands level, the West Midlands Combined Authority Chair and Vice Chair have written to the Chancellor and the Regions MP's have been briefed.

6.3.3 Business Rate Supplement – DCLG are developing new Primary Legislation (Local Growth and Jobs Bill) to provide for a business rate supplement without the need for a business referendum but it would still require the agreement of the relevant LEP Board(s). The Bill is to be introduced in Parliament in 2017.

7.0 Next Steps

7.1 The Combined Authority leads will continue to work with government to finalise the drafting of the Order.

7.2 Cabinet will be in a position to consider a draft Order on 30th November 2016, with minor and drafting amendments delegated to the Leader, in consultation with the managing director.

7.3 Following Constituent Councils and the Combined Authority consideration of the Order, by the 9th December 2016, the Order will be laid in Parliament for the functions required to deliver the devolution deal to be conferred on the West Midlands Combined Authority.

8.0 Financial implications

8.1 Wolverhampton Council has now paid the agreed contribution of £500,000 to the Combined Authority in 2016/17 and set aside a budget to meet this levy in future years. It is understood that the other participating local authorities have made corresponding arrangements. [GE/26102016/D]

9.0 Legal implications

9.1 The approval of all seven of the Constituent Councils of the West Midlands Combined Authority is required before the draft Order can be laid in Parliament. The draft Order will then go through the parliamentary process necessary for the draft Order to be formally

approved and to become law. The consent of City of Wolverhampton Council is therefore required before this can be progressed.

- 9.2 The consent of the Council is an executive function and is therefore a decision which can be taken by Cabinet.
- 9.3 The Order provides details of the functions and powers that both the WMCA and the Mayor will have, the status of the Order drafting is detailed in Appendix A.
- 9.4 By consenting to the draft Order the Council will be approving the conferral of the functions on the Mayoral WMCA required to deliver the devolution deal.
[Legal Code: TS/03112016/W]

10.0 Equalities implications

- 10.1 An initial equalities analysis has been carried out on the Mayoral West Midlands Combined Authority Scheme, having due regard to the equalities implications of the Scheme, on which the draft Order is based, and it was concluded that further detailed analysis was not required. However, any project/programmes to result from the incorporation of the Scheme detail are subject to an individual equalities analysis.

11.0 Environmental implications

- 11.1 There are no direct environmental implications arising as a result of this report.

12.0 Human resources implications

- 12.1 There are no direct human resources implications arising as a result of this report.

13.0 Corporate landlord implications

- 13.1 There are no direct corporate landlord implications arising as a result of this report.

14.0 Schedule of background papers / links used

- 14.1 The West Midlands Devolution Agreement:
<https://westmidlandscombinedauthority.org.uk/media/1024/westmidlandsdealdocument.pdf>

2nd March City of Wolverhampton report:
<http://wolverhampton.moderngov.co.uk/documents/s21634/Agenda%20item%206%20Creating%20the%20Combined%20Authority.pdf>

18th May City of Wolverhampton report:
<http://wolverhampton.moderngov.co.uk/documents/s25079/18052016%20-%20Wolverhampton%20Council%20Report%20-%20Provision%20for%20a%20Mayoral%20WMCA.pdf>

Mayoral West Midlands Combined Authority Governance Review

<https://westmidlandscombinedauthority.org.uk/media/1237/mayoralwmca-governance-review.pdf>

Mayoral West Midlands Combined Authority Scheme:

<https://westmidlandscombinedauthority.org.uk/media/1236/mayoral-wmca-scheme.pdf>

Initial Equality Analysis on the Mayoral West Midlands Combined Authority Scheme:

<https://westmidlandscombinedauthority.org.uk/media/1235/initial-equality-analysis-mayoral-scheme.pdf>

Consultation document:

<https://westmidlandscombinedauthority.org.uk/media/1355/summary-of-consultation-responses-appendix-a-consultation-documents.pdf>

Summary of consultation responses report:

<https://westmidlandscombinedauthority.org.uk/media/1354/mayoral-wmca-consultation-report-for-upload.pdf>

Local Democracy, Economic Development and Construction Act 2009:

<http://www.legislation.gov.uk/ukpga/2009/20/contents>

Cities and Local Government Devolution Act 2016:

<http://www.legislation.gov.uk/ukpga/2016/1/contents/enacted/data.htm>

Appendix A – Summary of Order proposals and status by Scheme line

Scheme Proposal	Draft Order Proposal
Membership	
Prior to appointment of Mayor, CA will appoint a Chair and up to 2 Vice Chairs	Yes
Mayor to appoint a Deputy from Constituents	Already in Primary Legislation
New non constituents approved	Yes
Leader to be one of 2 Constituent Members appointed	No – Can't be specified in Order, to be reflected in constituent council constitutions
Mayor and Cabinet	
Portfolio leads for aspects of the WMCA's responsibilities	No – Can't be specified in the Order, to be reflected in CA Constitution
The Mayor will delegate to areas of Mayoral responsibility to Portfolio leads	No – Can't be specified in the Order. Portfolio roles to be reflected in CA Constitution, with the requirement that the Mayor has due consideration and regard to the portfolios
The Cabinet will examine the Mayors draft annual budget and plans, policies and strategies	Yes – with the ability for two-thirds of constituent members to reject.
Mayors allowance	Yes – by Independent Review Panel
Mayors Political Advisor	Yes, 1 advisor can be appointed in accordance with S9 of the Local Government and Housing Act
Voting	
Existing two-third and simple majority voting to remain	Yes, unless specified otherwise
Mayoral WMCA functions specified in the Scheme will be subject to the two-third constituent vote with the Mayor's vote 'for' in the two-third votes	Yes

Functions contained in the establishment Order (previous transport and economic development and regeneration functions) are not subject to the Mayor being in the two-third 'for' vote.	Yes – unless affected by the Devo Deal in which case the mayor would need to be part of the vote 'for'
Unanimous voting by Constituent Members	Still under consideration
Overview and Scrutiny	
Proposed Overview & Scrutiny Regulations from DCLG	Will amend CA Constituent when issued
No member of WMCA or its other (i.e. non-Overview & Scrutiny) committees can be a Member of Overview & Scrutiny	In Primary Legislation
Transport	
The powers and functions funded by the WMCA levy will remain solely functions of the WMCA and not Mayoral/ Joint Mayoral	Yes
Multi-year consolidated local capital allocation	Yes – Mayor will allocate but will be required to have due regard to the maintenance requirements of the network. WMCA can reject the Mayors proposal if two-thirds of constituent members vote to do so, within Mayoral budget mechanism
Bus Service Operators Grant Allocation	No – Transport for West Midlands have agreed that, providing they receive the agreed detail of the allocations to operators, nothing further is required at this stage.
Additional Powers for Safer Travel Police on bus assets/ network	Yes - DCLG are still talking to Department of Health and Home Office re smoking and anti-social behaviour
Bus Lane Contraventions	Yes – this will be held concurrently with Constituent Authorities to enable a consistent approach. Day to day enforcement to remain with Constituent Authorities.

Bus Refranchising and Enhanced Partnerships	No – provided for in the Buses Bill
Statutory Definition of the Key Route Network (KRN)	In line with the devolution agreement, the WMKRN is a Mayoral responsibility, but with the statutory condition that the members and officers of the Combined Authority have to assist in its operation. The exercise of functions on the WMKRN is also subject to a two-third constituent member vote, with mayoral vote in that two-thirds. The definition of the KRN will be specified in the Order with any changes specified in future Orders
S6 Highway Act ability to enter into agreement to undertake work on a trunk road or motorway for the KRN	As above (Statutory Definition of the KRN) but would also require Secretary of State approval
S8 Highway Act ability to enter into agreement to undertake work on a constituent authority road for the KRN	As above (Statutory Definition of the KRN) but would also require Constituent Authority approval
S62 Highway Act ability to make improvements to the KRN	As above (Statutory Definition of the KRN) but would also require either S6 or S8 approval as well
Ability to be classed as a Highway Authority for the purposes of Diversionary Work contributions from Utility Companies and for the future development of Permit Schemes	Yes, on KRN
Provision of traffic flows/ growth and reduction forecasts on the KRN	Yes - Mayoral
Moving Traffic Violations e.g. 'box junction' cameras on the KRN	No – under discussion for future devolution discussions
Promoting Road Safety	Yes - Mayoral
Clean Air and Low Emission Zones concurrently with Constituent Authorities	No - Confirmed we already have the ability to enforce this jointly with the local traffic authorities (Constituent Authorities)

HS2 Growth	
Combined Authority led Development Corporation	Yes – two-third CA Vote with vote of Mayor in two-third. Affected Constituent Authorities would also need to agree through their Council.
Land Compensation disregard of certain development – to put us on same footing as UDC.	Still under discussion – new Neighbourhood Planning Bill may supersede this
Skills	
Preparing for local Commissioning	No Powers required at this stage
Employment	
Ability to assist people to train.	Awaiting DWP feedback
More and Better Homes	
Objectives and Functions of HCA	Yes – Mayoral - HCA content awaiting Government Scrutiny Counsel comments
HCA CPO Powers subject to the consent of the affected Cabinet Member agreeing	Yes – Mayoral - HCA content awaiting Government Scrutiny Counsel comments. The wording will be 'subject to the affected Constituent Members agreeing.'
S23 Compensation exemption	No - not required – this section of the Land Compensation Act is being repealed by the Neighbourhood Planning Bill
Supporting and Attracting Business Innovation	
Government working to support the 3 LEP Integrated Business Support Ecosystem	No Powers required at this stage
Culture	
Ability to provide and support cultural activities and entertainment concurrently with constituent authorities	Yes
Data Sharing	
Sharing of various data sets for Skills, Employment, Environmental to assist with our Commissions	Still under discussion

Mayoral Powers	
Transport – Consolidated Budget KRN	Subject to two-third constituent member vote to reject as part of Mayoral budget and for the exercise of functions is conditional on assistance of WMCA and agreement of affected constituents
More and better Homes – HCA powers and objectives	Exercise of functions are subject to two-third constituent member vote and agreement of affected constituent member
Mayoral Precept	Subject to two-third constituent member vote to reject as part of Mayoral budget. Primary legislation restricts use to only Mayoral Functions.
Business Rate Supplement	No – Will be provided for in Local Growth and Jobs Bill expected to be laid in January 2017
Functional power of Competence	Yes
Financial (these powers will be subject to a separate generic financial regulations order)	
Devolved investment Strategy	DCLG have reconfirmed Mayor can only contribute to those areas that are Mayoral functions.
Precept	Yes - but limited to the cost of Mayoral Functions
Levy (Non Transport) on Constituent Authorities	Yes
Non Transport Borrowing	No – Written to Chancellor and Briefed MP'S
Business Rate Supplement	Suggesting we wait for Local Growth and Jobs Bill expected to be laid in January 2017
100% Business Rate Retention	Pilot
Work with Government to achieve Intermediate Body Status for GBS LEP	Awaiting clarification following Brexit
Sub Structure	
Ability for CA to have Committees/ Sub Committees	Nothing required in Order

