

Meeting of the City Council

18 May 2016

Report title Implementing the Devolution Agreement –
Provision for a Mayoral West Midlands
Combined Authority

Referring body

**Councillor to present
report** Cllr 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 Policy Officer
Tel 01902 551969
Email rachel.ratcliffe@wolverhampton.gov.uk

**Report to be/has been
considered by**

Recommendations for action or decision:

The Council is recommended to:

1. Consent to the draft West Midlands Combined Authority Mayoral (elections) Order (appendix A), providing for the election of a directly elected Mayor for the West Midlands Combined Authority (WMCA).
2. Delegate approval of any minor and drafting amendments of the Mayoral (elections) Order to the Leader of the Council, in consultation with the Managing Director, for final consent. This delegation is to include approval of the precise term of the elected Mayor, as this is still under ministerial discussion.

3. Endorse the conclusion of the Governance Review (appendix B) that the making of an Order to confer on the WMCA the additional functions in the draft Mayoral WMCA 'functions' Scheme (appendix C), and the associated revisions to the governance arrangements, would be likely to improve the exercise of statutory functions in the West Midlands.
4. Approve the draft Mayoral WMCA 'functions' Scheme to be published and consulted on, pursuant to section 112 of the Local Democracy, Economic Development and Construction Act 2009, as amended.
5. Delegate minor and drafting amendments of the draft Mayoral WMCA 'functions' Scheme to the Leader of the Council, in consultation with the Managing Director. This delegation is to include the approval of additional members of the Combined Authority, as per paragraph 4.4 of this report.
6. Endorse the arrangements for public consultation on the proposals in the Mayoral WMCA 'functions' Scheme.

1.0 Purpose

- 1.1 To seek Council's consent to the Mayoral (elections) Order, to be laid in Parliament, establishing the position and term for a Mayor for the West Midlands Combined Authority (WMCA). The Mayoral 'functions' Scheme is provided to Council for approval alongside the Mayoral (elections) Order, to ensure that the proposed functions and powers of the Mayor can also be considered and approved for consultation, as once the Mayoral (elections) Order is approved by all Constituent Councils, and by Parliament, the position of Mayor is established.

2.0 Background

- 2.1 A Combined Authority is a statutory body that facilitates the collaboration and joint working between local authorities, to drive economic prosperity for the area. On 2nd March 2016 The City of Wolverhampton Council consented to a draft 'establishment' Order to be laid before Parliament to allow for the creation of the WMCA. This 'establishment' Order is currently before Parliament and is anticipated to come into force on 1st June 2016 (or shortly thereafter), on which date the WMCA will be established.
- 2.2 Continuing Councillor and Officer support from all member authorities is key, ensuring that operationally the close working relationship between the City of Wolverhampton and the WMCA continues. Elected member representatives to the WMCA are to be considered and resolved at the AGM on 18 May 2016.

3.0 The Mayoral (elections) Order

- 3.1 On the 2nd March 2016 the City of Wolverhampton Council endorsed the devolution agreement. A condition of the devolution agreement is that a new directly elected Mayor for the West Midlands is a member and the Chair of the WMCA.
- 3.2 The draft Mayoral (elections) Order makes provision for there to be an elected Mayor and for the first elections to take place in May 2017. The Mayoral (elections) Order is appended to this report (appendix A) for consideration by Council, with minor and drafting amendments delegated to the Leader, in consultation with the Managing Director. The term of the Mayor is currently under ministerial discussion to determine whether there will be a three or four year term for the first cycle, therefore Council are asked that the delegation is inclusive of the approval of the Mayoral term by the Leader, in consultation with the Managing Director.
- 3.3 Subject to consent of all the Constituent Councils, it is anticipated that the Secretary of State for Communities and Local Government will lay the Mayoral (elections) Order before Parliament in June 2016. In the event that one or more of the Constituent Councils do not consent then the consent required is that of the WMCA (following its creation) and at least two of the Constituent Councils. The Secretary of State must then make an Order to remove the area of each non-consenting Constituent Council from the existing area of the Combined Authority.

4.0 The draft Mayoral WMCA 'functions' Scheme

4.1 The Mayoral (elections) Order does not deal with the functions and powers of the Mayoral WMCA, it provides only for the position and election of a Mayor. Therefore in conjunction with the Mayoral (elections) Order, **a draft Mayoral WMCA 'functions' Scheme** (appendix C) has been prepared for consideration by Council, which will be the subject of public consultation if approved by all Constituent Councils. The Secretary of State must then take into consideration the proposed Mayoral WMCA 'functions' Scheme and consultation responses. A further Order (the Mayoral WMCA 'functions order'), based on the Scheme, is then laid in Parliament. In relation to the transfer of any local authority function such transfer would require the consent of the Constituent Councils and functions would be run concurrently/jointly. It is anticipated that the Mayoral WMCA 'functions' Order would be considered by Council in September/October 2016, before being laid in Parliament. The Mayoral WMCA current working timeline is detailed in paragraph 7.0 of this report.

4.2 Legal context

Section 113 of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act"), as amended by the Cities and Local Government Devolution Act 2016 ("the 2016 Act") enables the Secretary of State, to make changes by Order in relation to the functions of an existing Combined Authority. Such changes can be made where the authority has carried out a governance review and concluded that conferring on the Combined Authority additional functions, to be set out in the Scheme, would be likely to improve the exercise of statutory functions in the Combined Authority's area. The Scheme is then prepared, published and consulted on.

The 2016 Act makes provision for conferring additional functions on Combined Authorities established under Part 6 of the 2009 Act. Sub-section 1(2)(e) of the 2016 Act refers to *"the principle that powers should be devolved to Combined Authorities or the most appropriate local level except where those powers can more effectively be exercised by central government."* Therefore the 2016 Act has amended the 2009 Act so that a Combined Authority is no longer restricted to the exercise of statutory functions relating to economic development, regeneration and transport.

4.3 The 2016 Act is enabling legislation and confers the specific Combined Authority and Mayoral powers and functions, detailed in the Governance Review and Scheme. The conferral of powers and functions onto the Combined Authority will be subject to Orders, which will require the consent of all of the Constituent Members as well as WMCA. The 2016 Act also provides the legislative framework to address other issues, particularly in relation to governance. Whilst such issues are not an explicit part of the devolution agreement, the WMCA Orders will address such issues to ensure the efficient and effective operation of WMCA governance arrangements.

- 4.4 Additional governance arrangements in the Mayoral WMCA 'functions' Scheme will include additional members, in pursuit of the WMCA's ambition to collaborate across the West Midlands geography. A deadline of 10th June 2016 has been given for consideration by the WMCA Shadow/WMCA Board of additional membership. Therefore Council is asked that the delegation to the Leader, in consultation with the Managing Director, regarding the Scheme is inclusive of the approval, through the Shadow/WMCA Board, of additional members.
- 4.5 The review operates on the principle that devolution is **not** about taking powers away from Constituent Councils, but is about drawing down powers from central government or government agencies. Therefore, where the Scheme proposes that there should be conferred on WMCA functions of constituent councils (mainly in the area of skills and transport) these will only be exercisable concurrently or jointly with the Constituent Council and will be subject to agreed protocols, any deviation from this will be clearly listed.
- 4.6 The proposal for the functions and powers that the Mayoral WMCA will exercise are outlined in the Scheme (appendix C). The powers and functions proposed in the Scheme are sought by the WMCA to enable a Mayoral WMCA, in conjunction with the Mayor, to deliver the Devolution Deal.
- 4.7 The Scheme is based on the establishment of an elected Mayor for the West Midlands Metropolitan area working as part of the Combined Authority, with a Cabinet of Council Leaders of the Constituent Councils and subject to local democratic scrutiny. The Scheme also outlines the importance of the collaboration across the three Local Enterprise Partnership (LEP) geography as well as neighbouring councils across the West Midlands.
- 4.8 The Mayoral WMCA Cabinet will examine the Mayor's draft annual budget and the plans, policies and strategies, as determined by the Mayoral WMCA, and will be able to reject them if two-thirds of the Mayoral WMCA Cabinet agree to do so. In the event that the Mayoral WMCA rejects the proposed budget then the Mayoral WMCA shall propose an alternative budget for acceptance by the Cabinet, subject to a two-thirds majority of those present and voting. The Mayor shall not be entitled to vote on the alternative Mayoral WMCA proposed budget.
- 4.9 Proposals for a decision of the Mayoral WMCA may be put forward by the Mayor, or any Member of the Mayoral WMCA. Any questions that are to be decided by the Mayoral WMCA, unless otherwise specified in the Scheme or the Mayoral WMCA Constitution, are to be decided by way of two-thirds majority of Constituent Members, and overall majority of all Members present and voting.

4.10 The Scheme details those functions that will be a Mayoral function, a joint Mayoral WMCA/Mayoral function and a Mayoral WMCA function, in summary:

- **A Mayoral Function**

Exercised by the Mayor, WMCA Cabinet do not have a vote or limitation on these functions unless explicitly stated.

- **HCA CPO powers** (with the consent of the appropriate authority(ies))
- **Grants to Bus Service Operators** (Secretary of State to consult the Mayor)
- **Devolved, consolidated transport budget**
- **Reporting on the West Midlands Key Route Network (WMKRN)** (in consultation with the authorities)
- **Mayoral precept**
- **Raising of a business rate supplement** (in agreement with the relevant LEP Board(s) and the Mayoral WMCA)
- **Functional power of competence**

- **A Joint WMCA/Mayor Function**

The responsibility of the Mayor, but for example is maintained/managed by the Mayoral WMCA. These functions are the responsibility of the Mayor therefore matters in relation to the exercise of these functions by the Mayoral WMCA require two-thirds of Constituent Member votes in favour and would be subject to the Mayor's vote in favour:

- **The West Midlands Key Route Network** – The WMKRN is the responsibility of the Mayor but maintained and managed by the WMCA, powers and functions sought to achieve this are outlined in the Scheme (appendix C). Further joint WMCA/Mayoral transport functions sought are regarding bus re franchising and enhanced quality contracts
- **Low emissions and clean air zones** - the Mayor and the Mayoral WMCA will have the power, subject to proposals being brought forwards, to create low emissions and clean air zones, with the affected highway authority(ies) consent.
- **Homes and Communities Agency (HCA) objectives and functions** – Mayoral WMCA to exercise functions concurrently with the HCA to drive housing delivery.
- Arrangements, exercised jointly/concurrently with the Secretary of State, for the purpose of **assisting persons to train for, obtain and retain suitable employment**, and enter into agreement for the provision of ancillary goods and services.

- **A Mayoral WMCA Function**

Exercised by the Mayoral WMCA by two-thirds of Constituent Member votes in favour and **not** subject to the Mayor's vote in favour, the Mayor votes as a member.

- **Current WMCA powers and functions** – contained within the WMCA establishment Order – i.e. transport functions currently undertaken by the Passenger Transport Executive (PTE), and economic development and regeneration functions. It is not appropriate that the Mayor is required to vote in favour as such functions are Local Authority functions, exercised concurrently/in parallel and with the Local Authorities.
- **HS2 Growth: Development Corporations** - The WMCA to have the ability to designate any area of land, with the consent of the local planning authority(ies) for the area(s) in the Mayoral WMCA Area, as a development area leading to the establishment, by Order, of WMCA development corporations. As per the devolution agreement, this would be a Combined Authority-led development corporation to deliver local growth.
- **Matters reserved to unanimous Constituent Member voting** – contained within the WMCA establishment Order and WMCA Constitution, agreement of such matters are subject to a unanimous vote of the Constituent Member.

4.11 It is to be noted that not all aspects of the West Midlands devolution agreement requires legislative change to implement, the Scheme details those that require legislative or regulatory change before they can be exercised by the Mayoral WMCA.

5.0 Options considered and recommended proposal

- 5.1 Council is recommended to continue being an instrumental member of the developing WMCA by consenting to the draft Mayoral (elections) Order, that the Secretary of State intends to lay before Parliament, to allow for an elected Mayor of the WMCA. The provision for an elected Mayor is a requirement of the devolution agreement.
- 5.2 Council is recommended to approve the draft Mayoral WMCA 'functions' Scheme that outlines the proposals for the powers and functions of the Mayor and WMCA, to be published for public consultation.

6.0 Public Consultation

6.1 Consultation requirements

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 consultation will relate to the proposals contained in the Mayoral WMCA 'functions' Scheme (appendix C). It is proposed that, subject to agreement of the Scheme by the Constituent Councils in

May and the WMCA in June 2016, the public consultation is launched on towards the end of June, for an eight-week period.

6.2 Once the consultation period is complete, the WMCA is required to provide the Secretary of State with a summary of the consultation responses. The law requires that the Secretary of State must then be satisfied that no further consultation is required. There is no requirement for such responses to come back to the Constituent Councils or the WMCA before being submitted to the Secretary of State. However, it should be noted that the WMCA and the Constituent Councils are required to consent to any draft Order before it is laid before Parliament.

6.3 Consultation approach

The consultation is intended to seek views from the public and stakeholders on the additional functions proposed to be conferred on WMCA, following the devolution agreement, as set out in the Scheme.

6.4 Every resident, business and stakeholder in the West Midlands will have the opportunity to respond if they wish to do so. A number of organisations will also be contacted directly to invite them to make a response to the consultation.

6.5 The consultation will be led by the WMCA and the Constituent Councils and include key partners to raise awareness of the WMCA, the ambitions of the West Midlands and the benefits of devolution to Wolverhampton, the West Midlands and its residents.

6.6 The draft Scheme will be accompanied by a plain English summary of what the proposed legal changes mean in practice. Key messages to be reflected during the consultation include:

- that the proposed changes are not about taking powers from the individual Constituent Councils (all local authority powers would be exercised concurrently/jointly with the Councils) but gaining additional powers for the WMCA from central government;
- that the process of transferring / providing additional powers is being carried out in partnership with central government departments and agencies; and
- that the proposed changes are the first in a series of changes to powers for the West Midlands and that local people will have opportunities to comment on those future proposed changes.

6.7 The consultation will be conducted primarily through digital channels with consultation feedback gathered via the WMCA website. Proposed channels include:

- pro-active media releases and pro-active engagement of regional and local media throughout the consultation
- web content for the WMCA website, including a feedback form

- similar, but locally adapted content for local authority and partner websites
- social media using WMCA channels
- staff messaging.

6.8 Respondents will also be able to submit responses by letter or email should they wish to do so. Consultation documents and publicity materials will be made available in key local authority buildings.

7.0 Current working timeline

Mayoral WMCA Timeline	
May 2016	<p>The Constituent Councils are presented with:</p> <ol style="list-style-type: none"> 1. Mayoral (elections) Order, to create the position of a Mayor and allow for the election of a Mayor. 2. The Mayoral Combined Authority 'functions' Scheme, for approval to consult on the proposals in the Scheme.
June 2016	<ul style="list-style-type: none"> - Subject to Parliamentary approval, the Combined Authority is vested on, or soon after the 1st June 2016. On vesting day the WMCA will be presented with: <ol style="list-style-type: none"> 1. The Mayoral (elections) Order - to create the position of a Mayor and allow for election of a Mayor <i>only</i>. 2. The Mayoral Combined Authority 'functions' Scheme - for approval to consult on the proposals in the Scheme. - Constituent Councils approvals dependent, the Mayoral (elections) Order will be laid in Parliament in June 2016. - Constituent Councils approval dependent, the Mayoral Combined Authority, 'functions' Scheme will be published and consulted on. (The indicative date for the consultation is that it will begin following the EU referendum, on Monday 27th June 2016.)
July – Aug 2016	<p>Consultation on the proposals in the Scheme takes place (indicative 27th June – 22nd August 2016).</p>
Sep 2016	<p>The consultation responses are collated and submitted to the Secretary of State and DCLG. The Constituent Councils are not required to consider the outcome of the consultation.</p>
Sept - Oct 2016	<ul style="list-style-type: none"> - The Mayoral Combined Authority 'functions' Order is drafted based on the Mayoral Combined Authority 'functions' Scheme. - The Mayoral Combined Authority 'functions' Order is presented to Constituent Councils for consent to lay the Mayoral Combined Authority

	'functions' Order in Parliament.
Nov 2016	The Mayoral (elections) Order is in place at least 6 months before the election of a Mayor.
Nov 2016 – Feb 2017	Any further Orders required (Buses Bill etc.) are required to be in place by February 2017 to allow sufficient time for Mayoral candidates to be fully aware of the powers of the elected Mayor and to prepare a Manifesto.
May 2017	First Mayoral election.

8.0 Financial implications

8.1 The agreed Combined Authority establishment budget for 2015/16 was £2.1 million, each of the participating local authorities contributing £300,000. The actual expenditure incurred totalled £1.5 million in 2015/16, with the remaining budget committed to be spent early in 2016/17. Wolverhampton Council has now set aside a further budget of £500,000 to meet an anticipated levy from the Combined Authority in 2016/17. It is understood that the other participating local authorities have made corresponding arrangements. [GE/09052016/O]

9.0 Legal implications

9.1 The Local Democracy, Economic Development and Construction Act 2009 (as amended) allows two or more local authorities to form a combined authority which is a separate public body and which may exercise certain functions of the member authorities.

9.2 Council is being asked to consent to the Order that there be an elected Mayor. Under s107A Local Democracy Economic Development and Construction Act 2009 (as amended) the Secretary of State may by Order provide for there to be a Mayor for the area of a Combined Authority. Requirements in connection with the making of the Order include that there be either a proposal for there to be a Mayor from the appropriate authorities or for the appropriate authorities to consent. In the case of an existing Combined Authority (which is the intention here) the consent required is that of the CA and at least two constituent councils. The Secretary of State must then make an order to remove the area of any non-consenting Constituent Councils.

9.3 The further functions and powers of the WMCA and the Mayor are provided by an Order under s.105 Local Democracy Economic Development and Construction Act 2009 (as amended). The process that is proposed to be followed to create this Order is by the making of a proposal to the Secretary of State by submission of the scheme. Once the proposal is made the draft order is prepared by the Secretary of State having considered the scheme, consultation outcome and statutory "tests". Any transfer of local authority functions in the draft order would then require consent of the Constituent Councils and WMCA. [Legal Code: TS/09052016/C]

10.0 Equalities implications

- 10.1 An initial equalities analysis has been carried out on the draft Mayoral WMCA Scheme, having due regard to the equalities implications of the draft Scheme. Any project/programmes to result from the Scheme are subject to an individual equalities analysis. Once established a Combined Authority is expected to meet the requirements of the Equality Act as a public sector body.

11.0 Environmental implications

- 11.1 None

12.0 Human resources implications

- 12.1 ITA and PTE are to be dissolved and taken into the WMCA on its establishment, this will involve the TUPE of ITA and PTE employees.

13.0 Corporate landlord implications

- 13.1 None

14.0 Schedule of background papers

- 14.1 [The West Midlands Devolution Agreement](#)

Cities and Local Government Devolution Act 2016:

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

Local Democracy, Economic Development and Construction Act 2009:

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

Initial Equality Analysis on the Mayoral Scheme