

Cabinet Meeting

30 November 2016

Report title	Implementing the Devolution Agreement – Mayoral Combined Authority Functions	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Roger Lawrence Leader of the Council	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All	
Accountable director	Keith Ireland, Managing Director	
Originating service	Transformation	
Accountable employee(s)	Rachel Ratcliffe	Policy Officer
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Report to be/has been considered by	Matter referred by Council (9 th November 2016)	

Recommendation(s) for action or decision:

The Cabinet is recommended to:

1. Provide consent to the laying of the draft West Midlands Combined Authority (Functions and Amendment) Order 2016 in Parliament, attached at appendix A.
2. Delegate approval of the outstanding areas of drafting agreement to the Leader of the Council, in consultation with the Managing Director - namely the unanimous voting provision and the Mayoral WMCA development corporation provision, and drafting and minor amendments to the Order.

Recommendations for noting:

The Cabinet is asked to note:

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

2. That the decision to approve the draft Order was referred from Council on the 9th November 2016, as the draft Order was not available for Council consideration at that time, due to areas requiring government response and approval.

1.0 Purpose

- 1.1 To provide Cabinet with the Mayoral WMCA Scheme consultation summary.
- 1.2 To seek Cabinet's consent to lay the draft West Midlands Combined Authority (Functions and Amendment) Order 2016 (the Order) in Parliament. The Order details the functions required by the Combined Authority to deliver the devolution deal.
- 1.3 To seek delegated approval to the Leader of the Council, in consultation with the Managing Director, of outstanding areas of agreement in the Order, namely the unanimous voting provision and the Mayoral WMCA development corporation provision, and minor and drafting amendments of the draft Order. This delegation will ensure that the draft Order can be laid in parliament as soon as possible following the constituent councils and Combined Authority consideration of the draft Order, if all approvals given.

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 links 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 Council's ability to deliver its services and will not result in the transfer of Council's 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 Cabinet's information.

4.0 Scheme to Order process

- 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 then prepared 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.
- 4.3 At the Council meeting of the 9th November 2016 the draft Order was not available for Council approval as there were areas requiring government response and approval. Council therefore referred the matter to Cabinet for approval. The draft Order is available for Cabinet consideration, attached at appendix A.

5.0 The Draft Order

- 5.1 The draft Order reflects the devolution agreement and Scheme, as approved by Council on 18 May 2016. Where the draft Order does not reflect the Scheme, or there are variations, these key areas are detailed at paragraph 6.0 below and the full summary of drafting position at Appendix B.
- 5.2 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.

5.3 It is crucial for the delivery of the devolution deal and the wider devolution agenda that the draft Order is laid in Parliament as soon as possible. Therefore, Cabinet are asked to consent to the laying of the draft West Midlands Combined Authority (Functions and Amendment) Order 2016 in Parliament and delegate approval of outstanding areas of agreement, namely the unanimous voting provision and the Mayoral WMCA development corporation provision to the Leader of the Council, in consultation with the Managing Director. Minor and drafting amendments are to be included in this delegation.

5.4 Following the Constituent Council's consideration of the draft Order, and the Combined Authority on the 9th December 2016, the draft Order will be laid in Parliament if all approvals are given. It is important to note that the Order cannot be amended once laid in Parliament, it will either be approved or rejected by 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, capital budget of the Combined Authority and amendments to the standing orders (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.

6.1.3 Therefore these discussions have concluded largely in alignment with the held position – 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. Government's position reflect this, however if the decision in question affects the exercise of the Mayor's functions then the Mayor must be in agreement to carry that decision.

6.1.4 This drafting is yet to be agreed and is therefore incomplete in the draft Order (Part 12 of the draft Order at appendix A) and so delegation to the Leader, in consultation with the Managing Director, is recommended to agree the position on this matter. It is important to note that in both outcomes a decision cannot be forced onto the Combined Authority by the Mayor with regards to the unanimous items.

6.2 Finance

6.2.1 Finance Order - DCLG have confirmed that a generic Financial Regulation Order will be laid in Parliament to cover financial aspect for all Combined Authorities. These will cover

the Non-Transport Levy, Precepting etc. Non Transport Borrowing at this stage will not be included as this has not been agreed for any Combined Authority by the Treasury. Further discussions are required and across the country the case is being made for Combined Authorities. In the West Midlands the Chair and Vice Chair have written to the Chancellor and the Region's MPs briefed.

- 6.2.2 Mayoral WMCA Development Corporation – current drafting is under discussion (Part 4 of the draft Order) as legal leads have raised the non-discretionary rate relief granting element of Mayoral WMCA development corporations, and at which points the constituent council provides approval of the establishment and its conditions. The drafting needs to be worked through to ensure the appropriate balance on the impact on the constituent council and the desire for growth. Therefore it is recommended that the confirmation of the final drafting position of the Mayoral WMCA development corporation provision is delegated to the Leader, in consultation with the Managing Director.

7.0 Next Steps

- 7.1 The draft Order is attached at appendix A, and a summary attached at appendix B, for reference. If approved by Cabinet the draft Order provisions, identified in paragraph 6.0 of this report, will be worked through and finalised and draft Order consented to by the Leader of the Council, in consultation with the Managing Director.
- 7.2 Following Constituent Councils and the Combined Authority consideration of the draft Order, by the 9th December 2016, the draft 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. By consenting to the draft Order the Cabinet 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 None

12.0 Human resources implications

- 12.1 None

13.0 Corporate landlord implications

- 13.1 None

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 and Scheme:

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

PUBLIC
[NOT PROTECTIVELY MARKED]

Summary of consultation responses report:

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