

**Sandwell Metropolitan Borough Council**

**8 March 2016**

**Approval of Draft Order to Establish a Combined Authority**

**1. Summary Statement**

- 1.1 The purpose of this report is to update the Council on the progress of the work to create a Combined Authority for the West Midlands, to seek final consent from the Council to become a constituent member of the Combined Authority and to approve the draft Order to establish the new body.
- 1.2 Council at its meeting in July 2015 gave its approval to the continued pursuit of the Council's interest in the creation of a Combined Authority for the West Midlands. In order to progress those interests, Council approved the establishment of a Combined Authority Shadow Board. The Leader of the Council and the Chief Executive were authorised to agree all matters appropriate to their respective position, that were required to progress the development of the Shadow Board and to secure the delivery of a Combined Authority.
- 1.3 Council at its meeting in October 2015 received a second report setting out the progress that had been made by the Shadow Board towards the next stage of establishing a Combined Authority including undertaking the Governance Review previously agreed by Council. Council confirmed its commitment to becoming a constituent member of the Combined Authority. The draft Scheme which set out the basis on which the Combined Authority will work in practice, together with the Governance Review, were endorsed for submission to the Secretary of State for Communities and Local Government (DCLG).
- 1.4 The Scheme as approved by the seven prospective Constituent Councils, was submitted to DCLG on 26 October 2015.

After further dialogue in relation to the Scheme, and having been satisfied that the necessary consultation has been completed, the Secretary of State has now confirmed his intention to establish the West Midlands Combined Authority. The draft Order from the Secretary of State is attached as Appendix 1.

- 1.5 An independent due diligence exercise has been undertaken in order to ensure that the Council has sufficient information and confidence to enter into a combined authority arrangement. The due diligence report is set out in Appendix 4 and further referred to in paragraphs 6.15 and 6.16 below. The report provides assurance to the Council that all relevant statutory processes have been followed and progressing a combined authority will maximise opportunities for Sandwell residents and businesses.
- 1.6 Council should note that the proposal for the Combined Authority is based upon the draft Scheme approved by Council in October 2015 and does not include a provision for a mayoral authority. Members will be aware, following the publication of the Scheme, a Devolution Deal was signed by the Leaders of the seven Constituent Councils, and the three Local Enterprise Partnership Chairs in November 2015. The proposed Devolution Deal is dependent on a separate approval by each Constituent Council and will be the subject of a separate report to the Council in due course.
- 1.7 Council is now required to confirm its previous commitment that the Council should formally become a Constituent member of the West Midlands Combined Authority, and consent to the draft Order.

## **2. Recommendations**

- 2.1 That Council consents to the draft Order annexed at Appendix 1.
- 2.2 That subject to 2.1 above, the Council becomes a constituent member of the West Midlands Combined Authority with effect from the commencement date determined by the final Order.

- 2.3 That the Chief Executive and, Leader of the Council, be authorised to agree, on behalf of the Council, any minor drafting amendments to the draft Order and take any other actions necessary to give effect to the Council's commitment to the Order, including consent to the final Order.
- 2.4 That the proposed [draft Constitution for the West Midlands Combined Authority](#) be received.
- 2.5 That the Chief Executive be authorised, in consultation with the Leader of the Council, to make any technical amendments to the draft Combined Authority Constitution.
- 2.6 That in support of recommendation 2.2, Council appoint the Leader of the Council and one other member of the Cabinet to act as the Council's appointees to the West Midlands Combined Authority and appoint two further members to act as substitutes.

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### **3. Strategic Resource Implications**

- 3.1 The establishment of the Combined Authority in the West Midlands will provide opportunities to Sandwell and contribute to the achievement of the council's corporate priorities as noted in section 5 below.

The outcome of the Governance Review was reported to Council on 20 October 2015 and Council endorsed that the Combined Authority would be beneficial for the region. The Governance Review concluded that:

“A Combined Authority would be the most appropriate governance model for the local authorities to act together to deliver their economic development, regeneration and transport functions. This stronger governance will deliver a more joined up strategic approach. It will bring together policy interventions in transport and in respect of the key economic drivers that will deliver enhanced growth.

By working this way, members of a Combined Authority can deliver shared strategic priorities that are best addressed at a scale above local boundaries.”

- 3.2 However, as with all opportunities, the establishment of the Combined Authority naturally carries some risk which members need to be aware of. Measures have been put in place to mitigate against these risks so that the opportunities arising can be successfully achieved.
- 3.3 A joint risk register, which is currently being managed by the Shadow Board captures the risks associated with the Combined Authority.
- 3.4 Potential risks include the following:
  - Inappropriate governance and risk sharing arrangements.
  - Lack of engagement with stakeholders.
- 3.5 These risks are/will be mitigated through the establishment of robust controls including:
  - The constitution for the WMCA.
  - An effective communications strategy.
  - An effective governance assurance and accountability framework.
  - The due diligence exercise undertaken (Appendix 4).
- 3.6 If the recommendations being sought are not approved, then opportunities will be missed for Sandwell in the achievement of its corporate priorities.

3.7 The existing Independent Transport Authority has the power to determine a levy on those Councils within its area of service delivery. The Combined Authority will incorporate this levy and will need to agree with the Constituent Members of the Combined Authority, a levy level for the economic development functions of the Combined Authority.

#### **4. Legal and Statutory Implications**

4.1 A Combined Authority is created pursuant to an order by the Secretary of State once conditions under section 103 of the Local Democracy, Economic Development and Construction Act 2009 are satisfied.

4.2 A Governance Review pursuant to section 108 of Local Democracy, Economic Development and Construction Act 2009 has been carried out. The Governance Review was undertaken jointly with the authorities forming the Combined Authority.

4.3 A Scheme for the Combined Authority was prepared under and was compliant with section 103 of the Local Democracy, Economic Development and Construction Act 2009. The Scheme which contains details of the functions and purpose of the Combined Authority, has been approved by the Secretary of State. A draft order has been submitted by the Secretary of State to the member authorities for approval by Council (Appendix 1)

4.4 The Cities and Local Government Devolution Act 2016 makes provision for the election of mayors for the areas of, and for conferring additional functions on, combined authorities. However, it is important to note that these provisions would require a further separate approval by Council and a new Order from the Secretary of State. This is not, therefore, the subject of this report.

#### **5. Implications for the Council's Scorecard Priorities**

5.1 The Council's scorecard priorities have been established to guide the Council in the improvement of its services to its constituents. The commitment to the establishment of a Combined Authority further demonstrates the Council's ambition to accelerate growth and public sector reform across the West Midlands region.

It is anticipated this will have significant benefits for the Borough of Sandwell and the delivery of its priorities, particularly in the areas of jobs, skills, investment and transport.

## 6. Background

6.1 The Seven Metropolitan Councils of the West Midlands conducted a Review of Strategic Governance in 2014 to assess whether the arrangements for economic development, regeneration and transport as they stood should continue or would benefit from improvements. This review highlighted the positive joint working to date that has been in place through informal arrangements, and then considered the options for the future. It considered change against the key statutory tests under the Local Democracy, Economic Development and Construction Act 2009 :

- The exercise of statutory functions relating to economic development, regeneration and transport;
- The effectiveness and efficiency of transport; and,
- The economic conditions in the area.

6.2 This concluded that the establishment of a Combined Authority for the West Midlands was best placed to support business, to further growth, to create jobs and to secure an improvement in the region's economic conditions. The Combined Authority would draw together strategic work across transport, economic development, employment and skills, improving outcomes and providing opportunity for the region.

6.3 The outcome of the Governance Review was reported to Council in October 2015 and concluded that the functional area of the West Midlands will be best served by a Combined Authority model of governance, bringing together local authorities, LEPs, and other partners to drive growth.

6.4 Next steps involved the drafting of a Scheme which is the legal basis for the creation of a Combined Authority. The Scheme contains details in relation to membership, powers, functions and voting arrangements. Council endorsed the draft Scheme at its meeting in October 2015. The Scheme was then submitted to DCLG for approval on 26<sup>th</sup> October 2015.

- 6.5 The process for the Combined Authority was commenced under the Local Democracy Economic Development and Construction Act 2009 which requires the Secretary of State to carry out a further consultation exercise before an order is laid before Parliament to create a Combined Authority. However, in response to changing legislation set out in the Cities and Devolution Act 2016, discussions were held with DCLG and to ensure that a Combined Authority could be established within a reasonable timescale, the seven prospective Constituent Councils carried out a further consultation which closed on the 8<sup>th</sup> February 2016.
- 6.6 The aim of this consultation was to build on the engagement already carried out in the region from July 2015, and to satisfy consultation requirements in the Cities and Local Government Devolution Act 2016, which enables the Secretary of State to make an Order setting up a Combined Authority without a further consultation if he is satisfied with the existing consultation exercise carried out by the member authorities, (A summary of the consultation responses sent to DCLG are attached in Appendix 3).
- 6.7 Following the submission of the consultation summary responses, the Secretary of State has now confirmed his intention to establish the West Midlands Combined Authority. The Constituent Councils have been provided with the draft Order and it is now necessary for the Council to confirm its previous commitment that the Council should formally become a Constituent member of the West Midlands Combined Authority. The Council will also have to consent to the draft Order, with any final drafting amendments delegated to the Chief Executive in consultation with the Leader. This will ensure that the draft Order can be laid before Parliament without delay.
- 6.8 Once consent is given to the draft Order the Secretary of State will invite Parliament to approve the Order to establish the Combined Authority, and for the abolition of the West Midlands Integrated Transport Authority, which will be subsumed within the Combined Authority
- 6.9 Subject to the above approvals and the passage of the Draft Order through Parliament, the Combined Authority's inaugural Annual Meeting will be held in June 2016 at which point it will agree its Constitution and ways of working.

This will enable the Combined Authority to assume democratic responsibility for the functions of the West Midlands Integrated Transport Authority, and Passenger Transport Executive (Centro), as well as accepting transfer of its assets and liabilities.

- 6.10 As detailed above, the proposal for the Combined Authority is based on the draft Scheme approved by Council in October 2015. Members are aware, following the publication of the Scheme, that a Devolution deal was signed by the Leaders of the seven Constituent Councils and the three Local Enterprise Partnership Chairs in November 2015. The proposed Devolution deal is dependent on a separate approval by each Constituent authority and will be the subject of a future report to Council.

### **Remit of the Combined Authority**

- 6.11 Council will be aware from previous reports that the remit of the West Midlands Combined Authority will be strategic economic development, regeneration, transport, employment and skills functions that can be better delivered collaboratively across the West Midlands. The Combined Authority will remain a focused strategic decision making body, with responsibility over those strategic issues where it is mutually beneficial for local authorities, Centro, and the Local Enterprise Partnerships to work together. It is not a 'super Council' and each Council will maintain its independence and sovereignty.

### **Constitution**

- 6.12 As a statutory body, the Combined Authority requires a Constitution to be in place to describe how it will operate its functions. This is currently being finalised by Legal and Democratic Services officers from all Member Councils in line with the approved Scheme. A summary of the key provisions in the Constitution are set out in Appendix 2. Council are also therefore requested to endorse the [draft Constitution for the Combined Authority](#).

### **Appointments to Combined Authority and Structure**

- 6.13 Each Constituent Council will be represented on the Combined Authority by the Leader and one other member of the Cabinet. This is to ensure that Constituent Members are the majority (there are 7 Constituent Members and 8 Non-Constituent Members).



The Constituent members will form the core membership of the Combined Authority, with the one representative from each Non-Constituent member.

- 6.14 The Combined Authority will be held to account through the establishment of scrutiny arrangements. These arrangements were set out within the Scheme approved by Council at its meeting in October 2015 and are reflected in the draft Constitution for the Combined Authority. Members will need to be aware, however, that the Scrutiny arrangements for Combined Authorities have been amended by the Cities and Local Government and Devolution Act 2016, and will be the subject of Regulations to be issued by the Secretary of State. Appointments to the Scrutiny body will therefore be made following the Annual Meeting of Constituent Councils in May 2016.
- 6.15 The Shadow Board for the Combined Authority commissioned an independent due diligence exercise of the stages for the establishment of a Combined Authority to date, the remaining steps and remaining potential risks to the establishment of the Combined Authority. The independent assessors have concluded exercise concluded that “We have been provided with sufficient evidence to conclude that, at this point in the process, enough has been done to prepare Councils for the decisions they need to take.”
- 6.16 By necessity, reference has been made in the due diligence exercise to the devolution deal, however, as has already been stated in this report, these issue does not impact on the establishment of the Combined Authority and have only been left in the document for completeness. The following particular sections do not affect the decisions before members but will be relevant to the future report to the Council – Sections 26, 37, 57, 58 and 59.

#### Source Documents

There are no source documents required for this report that are not already in the public domain.