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# *Consenting to the Combined Authority and Approving the Devolution Deal*

*West Midlands  
Combined Authority*

*Assurance report*

*29 February 2016*

Giving you comfort that  
your recommendations  
are sound

## *Executive Summary*



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*This Executive Summary is an extract from a  
full report provided to Members of the WMCA  
Programme Board on 29 February 2016*

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Councils are expecting to make key decisions over the coming months:

- Whether to consent to the order to create the West Midlands Combined Authority (WMCA).
- Whether to approve the devolution deal.

The WMCA has made considerable progress in a short space of time to enable these decisions to be taken safely. The work undertaken to date in the following areas should enable Members to take those decisions on the back of a body of evidence and with some confidence that the areas of future work are being planned effectively and that a robust and balanced process has been followed to date:

- Identification and resolution of legal matters relating to the approval and formation of the CA.
- Development of strategic objectives and a strategic economic plan supported by financial and non-financial evidence.
- Development of a detailed implementation plan and commencing planning for delivery.

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. There are some significant risks to the delivery of the Investment Programme, many of which would be faced without the Devolution Deal, which will need careful management as the Programme moves forward.

## Background

1. The Local Democracy, Economic Development and Construction Act 2009 (LDEDCA) gives the Secretary of State the ability to establish a Combined Authority (CA), to give it powers and transfer into it the powers of existing bodies, for example Passenger Transport Executives and Integrated Transport Authorities.
2. The Cities and Local Government Devolution Act 2016 (CLGDA) received Royal Assent on 28 January, and gives the Secretary of State further powers to confer additional functions, and make provision for the election of mayors.
3. Combined Authorities formalise the commitment of a number of local authorities to work together. The West Midlands CA (WMCA) is set to be established in June.
4. Councils are making key decisions over the coming months:
  - whether to consent to the order to create the West Midlands CA; and
  - whether to approve the Devolution Deal (“the Deal”).
5. This follows:
  - the WMCA Devolution Agreement published last November;
  - resolutions last October by all seven constituent authorities to approve in principle the formation of the CA; and
  - resolution of non-constituent authorities to accept the invitation to join the CA.
6. The Shadow Board of the WMCA asked us to provide assurance on preparations so that members could make informed decisions.

## *Working together*

7. All seven of the West Midlands Metropolitan Boroughs along with the Integrated Transport Authority (ITA), three Local Enterprise Partnerships (LEPs) and a number of District Councils are working together on a programme which will see:
  - radical devolution of funding, powers and responsibilities from central government
  - an ambitious Strategic Economic Plan (SEP); and
  - major economic and social challenges addressed.
8. In a very short space of time at the end of last year, the organisations put proposals to Government which have been welcomed and agreed. Since then, considerable focus has been given to plans for establishment of the CA, and to clarifying and preparing for the Devolution Deal.
9. The commitment of Authorities and their elected Councillors, from a broad spectrum of political balance, with diverse heritage giving rise to very different social and economic conditions, is striking and commendable. In our conversations with all the Councils, it is clear that there has been a considerable shift in outlook, with each Council gaining a better understanding of its role in the West Midlands.
10. There has been agreement in principle that the Devolution Deal will benefit all areas, but in different ways and to a different extent, with different timing over the life of the Deal. All of this has been achieved through a continual and intensive process of informal and formal discussion and debate. It is in this context that the Councils will now individually formally commit to the new arrangements.

## *Combined Authority*

11. Following the submission of the summary of responses to the consultation on the formation of the CA, the Secretary of State has confirmed his intention to establish it. The draft order was issued by the Secretary of State as this report was drafted. Each Council will now be recommended to consent to the draft Statutory Order, to create the West Midlands CA, subject to minor amendments and to delegate to the Chief Executive (or equivalent), in consultation with the Leader of the Council, final consent to the Order.
12. In comparison to the Devolution Deal, the formation of the CA is more reliant on adhering to a clear process with defined stages. Most questions that are currently being clarified relate to governance and the role of the mayor.
13. There are still a number of risks associated with the establishment of the CA including the possibility of a Judicial Review, or of one or more Councils not giving consent to the draft Order. The risk of the Secretary of State requiring further consultation has now passed with the issue of the Draft Order. Judicial Review is possible at several points, and the Shadow Board has taken advice to identify risks; three months from the draft Order is recognised as the key date.
14. Having said that we are satisfied that the process followed and decision making to date has been effective in identifying, managing and mitigating these risks as far as possible to reduce the possibility of any delays in the establishment of the CA.

## *Planning for the operation of the new Authority*

15. The decision to establish the CA, and the commitment from each of the constituent and non-constituent authorities is a significant landmark in itself, but there is much to be done between the approval and day 1 of the new CA. Areas for consideration include:
  - Establishment of Board, executive arrangements, audit and scrutiny arrangements;
  - Consideration of committee structures, appointment of members to committees and terms of reference;
  - Formal approval of the constitution;

- Establishment of new systems and processes;
  - Establishment of workforce including capacity and capability issues; and
  - Drafting and approval of mayoral scheme and Order by both the CA and constituent councils.
16. These and other issues will need full consideration before and after the establishment of the CA. Sufficient resource will be required from individual Councils while dealing with business as usual and elections in some cases.
  17. There is also the possibility of changes to the CA in the longer term. Governance arrangements need to be sufficiently flexible to accommodate new members within the 3 LEP geography, and agile enough to ensure that any potential expansion in membership does not dilute the effectiveness of the CA. Future governance arrangements and inclusion of new members will require a Secretary of State approval and a new Order.
  18. The political implications of any potential expanded membership will need to be understood and worked through, particularly if member Council leaders are to have distinct responsibilities for programmes, initiatives or projects.
  19. The past 18 months has seen an unprecedented level of engagement between the member councils and significant input and commitment from each one, this level of commitment will need to be sustained if the new CA is to be successful from its inception.
  20. The draft Governance Review was approved at a meeting of the West Midlands Metropolitan Leaders in July 2015 and approval given to engage with stakeholders on the Governance Review.
  21. Although combined authorities are still relatively new, a process has been followed, with the support of legal and financial advisers, at both Shadow Board and individual councils, resulting in a well documented trail with evidence available to support key decisions taken. Formal legal advice has been obtained when necessary.
  22. The Shadow Board and Programme Board have met regularly.
  23. All organisations involved should be commended for the pace which has enabled the progress to date. There has been significant commitment from both officers and members and a real drive to establish the CA which is anticipated to be in place from June 1<sup>st</sup> 2016.
  24. The possibility of a Judicial Review cannot be discounted. The Shadow Board legal adviser submitted a paper outlining the implications of a Judicial Review and the Shadow Board are aware of the possibility of this. However, to date no threat of judicial review proceedings has been received.

## *Devolution Deal*

25. The Deal is set to tackle the economic and social challenges that the region faces.
26. With an annual contribution to the CA of £36.5m for 30 years, along with capital funding, a precept on Council Tax, retained business rates growth of 0.3% of the share currently held centrally and a 2% levy on business rates, the current proposed overall investment package generated amounts to approximately £8bn. This is dependent on a number of factors, including a future mayor raising a levy on business rates and a Council Tax precept.
27. The Deal is underpinned by an agreement signed by the Chancellor of the Exchequer and the Leaders and Chairmen of each constituent Authority member and three LEPs, setting out the devolution of powers and functions from Central Government, covering:
  - transport, including franchised bus services and smart ticketing
  - a new Key Route Network of local authority roads
  - Homes and Communities Agency CPO powers in relation to housing delivery

- control of funding for investment
  - devolved skills funding
  - joint responsibility for employment and business support
28. None of this is deliverable without the further funding, as well as business case approval and funding for schemes included in the Deal.
29. Government has in turn offered:
- support for the High Speed 2 (HS2) growth strategy and Strategic Transport Plan
  - funding commitment for the Eastside Metro extension, and support for the work on the delivery plan for extensions to Brierley Hill and Interchange
  - to work with the Authority on the Roads Investment Strategy
  - to support work on public service reform
30. Some of the constituent Councils will seek approval of the Devolution Deal in the coming weeks and others will seek approval in May 2016. This split timetable meets the requirements of the Parliamentary timetable and the commitments set out in the Devolution Deal.
31. Significant progress has been made in a relatively short time period and the direction of travel in relation to the Devolution Deal is positive. Given the scale of the Devolution Deal and the complexities involved it is to be expected that the resolution of some matters is still ongoing and it is important to ensure that processes are established to monitor the effective resolution of these outstanding issues in the required timescales.
32. It is clear from discussions with all constituent and non-constituent members that engaged with us that the establishment of the West Midlands CA and the negotiation of a Devolution Agreement with Government has provided Councils with the ability to go further and faster in exploiting the economic potential of the area. It also enables authorities to take more concerted action on productivity in the public and private sectors, including a programme of ambitious public service reform.
33. Our review of the economic market assessment information available to the constituent authorities supports this conclusion and would appear to be a sound basis on which to develop proposals.
34. Although the provisional Devolution Agreement was subject to approval by each Authority and further work was required to refine exactly what was meant by each section of the Agreement, the Leaders of each of the seven West Midlands Metropolitan Boroughs agreed the provisional Agreement as a statement of intent to work with the government on what devolution could look like.
35. Our review supports the conclusion that the content of the Deal sufficiently met its objectives and, subject to its ongoing clarification, this appears to be a sound basis on which to sign the provisional agreement.
36. The intention of the Programme Board is to complete the 'super clarification' process by the end of February which should provide constituent and non-constituent members of the CA with sufficient information to make an informed decision on approving the Deal. As an example, we are aware that other Councils are considering whether to join the CA, but as yet there is no certainty. Were other parties to join, consideration would need to be given to the impact on a Devolution Deal for constituent members, and on the governance of the CA, including requirements for further Orders from the Secretary of State. We understand that there may be some slippage in the proposed super clarification timetable although an exact date for completion is not known.
37. Each Council will need to determine whether or not the outstanding matters are of such significance that the Devolution Agreement cannot be approved in accordance with the proposed timetable. Ratification of the draft Deal is required for the first tranche of £36.5m to be released. Some, if not

all, of the Metropolitan Councils are looking to consent to the Devolution Deal in March to meet the CA's commitments, as set out in the provisional Devolution Agreement.

38. The WMCA has commissioned the production of a vision-led Strategic Economic Plan that sets out the action that needs to be taken in order to deliver the vision and the detail of the Devolution Agreement. The development of the SEP has been subject to a rigorous governance process and is expected to be delivered on time to allow Shadow Board sign off before the CA vesting day. The development of the SEP is being delivered alongside the development of associated implementation plans and supporting documents.
39. Regular reports have been made to Shadow Board meetings. We found a significant body of work in progress that has gone a long way to addressing outstanding issues covering the following topics:
  - Finance, funding and investment strategy;
  - Balance
  - Joined up linked work streams
  - Appraisal and performance frameworks
  - Governance planning for delivery
  - Other practical matters
40. The WMCA committed to establish three major independent Commissions to inform future work that it expects to be co-commissioned with central government as they represent critical shared challenges.
41. A significant programme of work has taken place since signing the proposed Devolution Deal in November 2015 to maximise the opportunities and minimise the challenges faced in achieving the WMCA's strategic objectives. The politicians and officers should be commended for the achievements to date. We have seen evidence of the decision making arrangements put in place operating on a regular basis and we have identified a significant number of developments that indicate the arrangements are working.
42. A lot of the developments are live and current so we cannot reach final conclusions on outcomes but the direction of travel is positive.
43. By developing a Devolution Agreement Implementation Plan with support from government the WMCA is well positioned to monitor ongoing implementation plans and quickly identify any areas of slippage so that action can be taken.
44. It is important that the pace of implementation continues and does not slow due to distractions arising from the formation of the CA or the upcoming elections.

### *Finance*

45. Significant progress has been made in a relatively short period. The Investment Programme sets out schemes and funding streams which will inevitably be subject to change and further iteration as proposals develop.
46. The headline figures of a new government contribution of £36.5m pa and the total Investment Programme of £8bn are based on the best information currently available and are subject to change. We have examined supporting information on each element and are satisfied that the totals are the best estimate currently of the total cost and funding required. However, the majority is subject to further feasibility and business case work, and political decisions being taken, before funding can be finalised. At each stage there is considerable risk of change in scope, cost and funding availability, all of which the new Authority will need to keep under constant review. These are risks which each constituent member of the Authority would face if schemes were to be funded and delivered piecemeal. The government has identified new revenue streams in the Devolution Deal.

47. Many of the financial risks are related to the market, but the analysis of the deal is underpinned by assumptions on borrowing costs. Where we have seen these assumptions set out these broadly align with what we would expect with reference to current projections of relevant indices, but they need keeping under regular review.
48. The range of risks which exist, the number of future actions that are required and the wide scope of the Investment Programme, mean that establishing an effective, proportionate CA governance structure will be critical to ensure that appropriate decisions are made. The ability of the CA to make well-informed decisions, and to deliver against its stated priorities, will be fundamental to its future success.

### *Prioritisation and Balance*

49. The CA has made good progress in developing the Balance work stream. It is critical that the CA agrees an open, transparent and fair process through which individual schemes, and programmes of interventions will be identified, assessed, prioritised and their success monitored. There needs to be clarity and agreement amongst all key stakeholders on the process to be followed, and on the specific metrics by which schemes will be analysed. Once this is agreed, the decision-making process should be the primary way in which investments are prioritised.
50. Once the Balance metrics and Decision Economic Impact Model (DEIM) model have been finalised, the extent to which the existing Investment Programme is consistent with the emerging SEP, and the degree to which the proposed interventions will deliver the intended outcomes, will need to be established. Given the range of risks associated with the Investment Programme it is also likely that re-prioritisation will need to occur. This should be driven by the agreed process for decision-making referred to above.

### *Delivery risks*

51. There is a five year review of the Devolution Deal, the criteria for which are yet to be defined. This is set to determine the success of the Deal, and whether further Deals should be made. While there are a range of risks, this five year review is critical for the Deal and the CA. There is a balance to be struck in prioritising projects which provide benefits quickly against those which might take longer to deliver but which have significantly more impact. A combination of effective prioritisation and programme management will be required, and need to be planned for in preparation for the CA.
52. The CA has made significant strides towards getting ready to implement the Devolution Deal. Strategic objectives have been set and a strategic economic plan is close to being finalised. A detailed Devolution Agreement Implementation Plan is being finalised which will allow progress to be measured over the coming months. Significant progress has been made preparing for delivery and attention must now turn to delivering the deal.
53. The draft governance arrangements for the CA are now well advanced. As the delivery of the Devolution Deal develops, and if membership of the WMCA evolves, it is critical that the governance arrangements for delivery are integrated, agile and robust.
54. Establishing the CA and clarifying the Devolution Deal have been the main priorities to date. This has taken significant commitment and drive and the pace of change is continuing to accelerate. More focus can now be given to implementing and embedding effective working practices to support the delivery plan and the achievement of objectives.
55. Detailed monitoring and reporting will be required once the Devolution Deal is being delivered, but a robust Assurance Framework has to be defined and then approved with BIS before funds can flow to the CA. This task is now time critical. There are a number of decisions to take to finalise the Assurance and Performance Management frameworks, and these need to be taken well in advance of vesting day.

### *Other main risks*

56. The risks associated with the delivery of the Devolution Deal are potentially considerable:

#### *Geopolitical risk*

57. Many economies around the world are in largely uncharted territory, with oil prices as low as a decade ago, financial market volatility in China and other developing economies, a very strong dollar, and interest rates in western economies at near zero. At the same time, there is considerable debate about the movement of people across continents, and Britain's membership of the European Union.
58. While all these factors could impact the Devolution Deal's costs and benefits, they are all faced by each member of the CA, regardless of the Authority's formation. Conversely, they emphasise the importance of acting together at scale to make the most of the UK's current performance, and to grow and strengthen the West Midlands Economy underpinned by the Devolution Deal.

#### *Political risk*

59. Members need to be conscious of the risk that the devolution deal might not be delivered as planned because of changes in political will or priority, at national, regional or local level. This is relevant particularly since there will be elections at each level, and for the Authority's Mayor, in the period of the first Devolution Deal. It will be the responsibility of the Mayor to determine whether or not to raise additional revenue from local tax payers to underpin the Investment Programme. Again, the individual elements of the Devolution Deal are subject to political risk with or without the CA.
60. The Shadow Board is working to clarify the governance arrangements within the Authority, and further clarification is expected from Central Government.

#### *Market risk*

61. As with all significant programmes, particularly including construction, there are cost and delivery risks associated with the market because of availability of contractors, labour and materials. This is a particular feature of current markets as the economy grows out of recession, but is likely to remain a risk in the future because of the timing and significance of projects such as HS2. Success is also reliant on private sectors partners such as land owners and developers. Progress on this risk can be made as business cases are finalised, the delivery mechanism for the CA is defined, and plans for engagement with the market are put in place. These should be key priorities for the Shadow Board and for the Authority on formation.

## *Overall conclusions*

62. Councils are expecting to make key decisions over the coming months:
- Whether to consent to the order to create the West Midlands Combined Authority (WMCA).
  - Whether to approve the Devolution Deal.
63. The WMCA has made considerable progress in a short space of time to enable these decisions to be taken safely. The work undertaken to date in the following areas should enable Members to take those decisions on the back of a body of evidence and with some confidence that the areas of future work are being planned effectively and that a robust and balanced process has been followed to date
- Identification and resolution of legal matters relating to the approval and formation of the CA.
  - Development of strategic objectives and a strategic economic plan supported by financial and non-financial evidence.
  - Development of a detailed implementation plan and commencing planning for delivery.



- 64. 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. There are some significant risks to the delivery of the Investment Programme, many of which would be faced without the Devolution Deal, which will need careful management as the Programme moves forward.**



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