

Sandwell Metropolitan Borough Council**14 June 2016****West Midlands Combined Authority Devolution Deal and Provision for a Mayoral West Midlands Combined Authority.****1. Summary Statement**

- 1.1 As members will be aware, Council at its meeting on 8th March 2016 agreed to be a constituent member of the West Midlands Combined Authority (WMCA), and gave its agreement to the draft Order for the creation of the WMCA. The Order (“Establishment Order”) is currently before Parliament, and is anticipated to come into force early June 2016, on which date the WMCA will be formally established. The nominations for Sandwell members on the WMCA, and its Scrutiny and Audit committees are the subject of a separate report on this Agenda.
- 1.2 In parallel to the discussions to establish the WMCA, negotiations have continued between the WMCA Shadow Board, and, Government to ensure that the WMCA creates the right economic development incentives for the people of Sandwell and the wider West Midlands conurbation area. This is reflected in the West Midlands Combined Authority Devolution Deal made between the Government and the WMCA Shadow Board (“Devolution Deal”).
- 1.3 The Devolution Deal sets out a range of initiatives and programmes announced by the Government which are designed to support localism and decentralisation. Central to the Devolution Deal is a reformed governance system for the WMCA which will involve adopting a model of a directly elected mayor for the West Midlands Combined Authority area. In return, the WMCA will receive a number of devolved powers and budgets from the Government on the basis that the WMCA will deliver additional economic growth and job creation.
- 1.4 Pursuant to the implementation of the Devolution Deal, the WMCA will become a Mayoral WMCA. This requires the preparation and approval of both the draft West Midlands Combined Authority (Election of Mayor) Order (the Mayoral Election Order), and a Mayoral Functions Scheme. The Devolution Deal stipulates that the Mayor will be the Chair of the WMCA.

The Mayoral Order

- 1.5 The Mayoral Election Order is attached as Appendix A to this report for consideration by Council. Each of the Shadow WMCA constituent members are required consent to the order in the same way as they gave consent to the original Establishment Order referred to in paragraph 1.1 above. This report now seeks the Council's consent to the draft Mayoral Election Order. The draft Order will then be laid in Parliament in June 2016, providing for the establishment of the position of a Mayor for the West Midlands Region, and for the election of a Mayor on the 4th May 2017.

WMCA Mayoral Functions Scheme

- 1.6 To comply with statutory requirements, and in conjunction with the Mayoral Election Order, a Governance Review has been undertaken and a draft Mayoral WMCA Functions Scheme prepared. This Scheme will be the subject of public consultation. The Governance review is set out in Appendix B and the draft Mayoral WMCA Functions Scheme is set out in Appendix C. The draft Mayoral WMCA Functions Scheme deals with the proposed functions and powers which are required to secure implementation of the Devolution Deal, and are summarised in this report.
- 1.7 Following consultation, the draft Mayoral Functions Scheme will form the basis of a third Order the "Mayoral WMCA Functions Order". It is anticipated that this would be considered by the Council in September/October 2016 before being laid before Parliament.
- 1.8 The draft Mayoral Functions 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, creating a Mayor and Cabinet style of governance structure. The WMCA, its Mayor, and Cabinet will be subject to local democratic scrutiny, through the establishment of a Scrutiny and Audit Committee.
- 1.9 Combined authority governance to deliver Devolution Deals represents a new area of challenge for local government and involves complex and not necessarily ideal governance configurations. . However, it is anticipated that once the Mayoral WMCA is up and running, governance arrangements will evolve and develop. The draft Mayoral Functions Scheme aims to ensure that local accountability is not eroded, and that there is good management and accountability of Mayoral powers.

2. Recommendations

- 2.1 That Council consent to the draft West Midlands Combined Authority (Election of Mayor) Order set out in Appendix A, which provides for the election of a directly elected Mayor for the West Midlands Metropolitan Area.
- 2.2 That subject to 2.1, the Leader and the Chief Executive make any necessary minor and/or administrative amendments to the draft Order, and that the final West Midlands Combined Authority (Election of Mayor) Order be approved by the Leader.
- 2.3 That the Council receive and acknowledge the conclusion of the Governance Review, that the making of an Order to confer on the WMCA, the additional functions in the draft Mayoral WMCA Functions Scheme, would be likely to improve the exercise of statutory functions in the West Midlands area.
- 2.4 That the Governance Review set out in Appendix B, be endorsed.
- 2.5 That authority be given to the Chief Executive, in consultation with the Leader of the Council, to approve and make any necessary amendments to the Governance Review.
- 2.6 That the draft Mayoral WMCA Functions Scheme set out in Appendix C be approved and published pursuant to section 112 of the Local Democracy, Economic Development and Construction Act 2009 (as amended).
- 2.7 That subject to 2.6 above, the Chief Executive be authorised, in consultation with the Leader of the Council, to approve and make any drafting amendments to the draft Mayoral WMCA Functions Scheme.
- 2.8 That the arrangements for public consultation on the proposals in the Mayoral WMCA Functions Scheme as set out in this report, be endorsed and that the Chief Executive agree the final arrangements on behalf of the Council.

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3. Strategic Resource Implications

3.1 The Devolution Deal for the West Midlands set out by the Chancellor in November 2015, includes an overall investment package for the region worth £8bn. The Deal amounts to the government making a contribution to the area of £36.5m each year for 30 years (subject to a jointly agreed 5 yearly assessment) and will create up to half a million jobs and thousands of new homes across the region.

3.2 The Deal will bring together resources for economic growth, skills and employability, regeneration, transport and housing. The Mayoral WMCA will align its programme of interventions to deliver balanced economic benefits for the area. In summary, the main benefits of the agreement for Sandwell's community and businesses are:

- opening up brownfield development sites for new businesses and housing;
- boosting job and skills opportunities;
- extending the Metro through Sandwell from Wednesbury to Brierley Hill;
- creating significant new business opportunities in the freight network for Friar Park, Wednesbury;
- investment for new homes – including potential new housing around the Midland Metropolitan Hospital in Smethwick;
- better connection to opportunities across the wider region through an improved transport network, including improving roads and public transport and reducing congestion;
- giving local businesses the opportunity to access the supply chain for HS2 and boost employment in Sandwell; and
- Sandwell businesses and people benefiting from economic growth across the region.

3.3 As with all opportunities, the Devolution Deal naturally carries some risk. The proposed WMCA is putting measures in place to mitigate these risks so that the opportunities arising can be successfully achieved.

3.4 The potential risks are associated with the effective governance and decision making in relation to the Devolution Deal, risk sharing arrangements and ensuring the capacity, capability and engagement is in place to deliver the objectives of the Devolution Deal. These are being mitigated through the establishment of robust controls including the WMCA constitution, the Mayor and Cabinet style of governance, a communication and engagement strategy, an effective assurance framework, development of robust financial and implementation plans and performance management framework.

4. **Legal and Statutory Implications**

4.1 The Local Democracy, Economic Development and Construction Act 2009 (as amended) (“the 2009 Act”) allows two or more local authorities to form a combined authority. A combined authority is a separate public body and may exercise certain functions of the member authorities, and receive devolved powers from Government.

4.2 Section 113 of 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 a 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 has further 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 Where there is an existing combined authority as will be the case for the West Midlands in early June, the consent of the WMCA and at least two constituent councils is required for the election of an independent Mayor. If any constituent authorities do not give consent, then 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.

4.4 The functions and powers of the WMCA and the Mayor are provided by an Order under Section 105 of the 2009 Act. The process for the creation of the Order is the submission of a proposal to the Secretary of State in the form of a draft Mayoral WMCA Functions Scheme. Once the proposal is made, the Order is prepared by the Secretary of State having considered the draft Mayoral WMCA Functions Scheme, the outcome of the consultation exercise and certain statutory “tests”.

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

5.1 The aim of setting up the West Midlands Combined Authority is to promote economic growth, improve the provision of transport and address public sector reform. This is in line with the Council’s aim to deliver prosperity and social justice by ensuring that local people, including those who are most disadvantaged, are able to benefit from that growth.

5.2 The Devolution Deal is anticipated to have significant benefits for Sandwell and the delivery of its Scorecard Priorities, particularly in the areas of jobs, skills, investment and transport. It will help us in our plans to transform the area as a place for businesses to grow, boost the local economy, improve transport and provide good quality housing. Through moving decision-making out of Whitehall directly to the West Midlands, we have the chance to make a real difference and directly address local need.

Investment to connect Sandwell to jobs and opportunity

5.3 Being located at the heart of the transport network, Sandwell is well placed to benefit significantly from investment in the region’s transport infrastructure, linking Sandwell residents to jobs across the region and helping businesses run more efficiently. It will enhance the way we use and manage the transport network, particularly allowing greater access to the wider area through more flexible ticketing on public transport, greater investment in public transport such as rail and metro. A priority will be extending the metro system from Wednesbury to Brierley Hill.

Priority will also be given to investment in roads, including improvements to junctions on the motorway network.

Giving Sandwell its share of growth in the region's economy

- 5.4 Sandwell's businesses and firms that support the wider West Midlands economy particularly around the manufacturing sector will benefit from investment in new infrastructure that aids movement of people of goods and trade but also in new buildings and premises.
- 5.5 The Devolution Deal is aiming to create thousands of new jobs in the Combined Authority area. A key imperative for Sandwell is to support our residents into better qualified and better paid jobs through providing them with the right skills to take advantage of the growth in job opportunities that will come from this investment. Resources will be used to devise policies and programmes to enhance the skills of Sandwell residents to compete in the future jobs market and take up the opportunities that are created.

Providing more land for homes and jobs

- 5.6 To make the West Midlands and Sandwell a prosperous place to live and work there needs to be more land for business premises and houses for people to live in. This Devolution Deal will help the redevelopment of derelict and older areas of Sandwell to create vibrant neighbourhoods and local opportunities for people to work. The Devolution Deal will provide Sandwell with access to resources to increase the pace of change across the borough providing residents with better housing and job opportunities.

6. Background Details

West Midlands Combined Authority (WMCA)

- 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.
- 6.2 The Governance Review concluded that the establishment of a combined authority for the West Midlands was best placed to support business to further growth and to create jobs, 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 A Scheme was then drafted to form the legal basis for the creation of the new body containing the membership, powers, functions and voting arrangements. At its meeting on 8th March 2016, Council endorsed these proposals and approved the Order to create the WMCA.

This “Establishment” Order is currently laid before Parliament and, subject to Parliamentary approval, it is envisaged that the Secretary of State will make the Order early June 2016 .

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

Devolution Deal

- 6.5 In November 2015, a proposed Devolution Deal was signed by the Leaders of the seven Constituent Councils and the three Local Enterprise Partnership Chairs. The Devolution Deal was negotiated for the benefit of Sandwell citizens and the wider West Midlands region. Price Waterhouse Coopers (PwC) and Grant Thornton have been engaged by the Combined Authority Shadow Board to undertake the assurance and due diligence work around the establishment of the WMCA and Devolution Deal. This assurance report was presented to Council on the 8th March 2016 and concluded that:

“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 the Government 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.

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. “

The Draft Mayoral Election Order

- 6.6 A condition of the Devolution Deal is that a new directly elected Mayor for the West Midlands will act as Chair to the WMCA, holding specific powers and functions. The draft Mayoral Election Order makes provision for there to be an elected Mayor and for the first elections to take place in May 2017. The draft Mayoral Election Order does not deal with the functions and powers of the Mayor and this will be subject to a separate Order by the Secretary of State following the submission of the draft Mayoral WMCA Functions Scheme.
- 6.7 The Secretary of State is to consider laying the Mayoral Election Order before Parliament, following the consent of all the constituent authorities. In the event one or more of the constituent authorities do not consent, then the consent that will be required is that of the WMCA (following its creation) and at least two 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.

The draft Mayoral WMCA Functions Scheme

- 6.8 The Mayoral Election Order only provides for the position and election of a Mayor. In accordance with the 2009 Act, and in conjunction with the Mayoral Election Order, a draft Mayoral WMCA Functions Scheme has been prepared for consideration by Council, and will be the subject of public consultation.
- 6.9 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. It is anticipated that the Mayoral WMCA Functions Order would be presented to the Council in September/October 2016, before it is laid before Parliament. The Mayoral WMCA working timeline is detailed in this report.
- 6.10 The Governance 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 draft Mayoral Functions 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.

Key Provision set out in the Mayoral Functions Scheme

- 6.11 The proposal for the functions and powers that the Mayoral WMCA will exercise to secure implementation of the Devolution Deal are outlined in the draft Mayoral Functions Scheme.
- 6.12 The draft Mayoral Functions 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. The Cabinet will comprise of the Leaders of the Constituent Councils who will hold portfolios of responsibility. Decisions of the Mayor and the Mayoral WMCA will be subject to scrutiny and the authority will therefore appoint its own scrutiny committee made up of representatives of each council. 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.
- 6.13 As mentioned earlier, there are proposed governance safeguards that will ensure that the constituent councils have a degree of control in matters that affect their area or have significant cost or risk. The prime example is that 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.
- 6.14 In a similar way, the Scheme details those functions that will be a Mayoral function only, a function carried out jointly by the Mayor and the Mayoral Combined Authority (a Mayoral WMCA/Mayoral function), and functions which are solely those of the Mayoral Combined Authority (a Mayoral WMCA function). It is accepted that the three tier arrangements for decision making set out in the Mayoral WMCA Scheme are complex and will need careful management in the early stages of a Mayoral WMCA. However, they are necessary to secure implementation of the Devolution Deal, and ensure that there is good management and accountability of Mayoral powers. It is expected that the governance arrangements will evolve and change as and when decision making in a Mayoral WMCA becomes more embedded.

In summary:

- **A Mayoral Function**

Exercised by the Mayor only. The WMCA Cabinet do not have a vote and cannot limit these functions unless explicitly stated. These include:

- **Housing CPO powers** (with the consent of the appropriate authority)
- **Grants to Bus Service Operators** (Secretary of State to consult the Mayor)
- Responsibility for a **devolved, consolidated transport budget**
- **Reporting on the West Midlands Key Route Network (WMKRN)** (in consultation with the appropriate 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**

These are the functions which are the responsibility of the Mayor, but are managed by the Mayoral WMCA. Therefore, matters in relation to the exercise of these functions by the Mayoral WMCA 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. Further joint WMCA/Mayoral transport functions are sought with regard to 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 relevant affected highway authority's 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 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 undertaken by the Passenger Transport Executive, and economic development and regeneration functions.
 - **HS2 Growth: Development Corporations** - the WMCA to have the ability to designate any area of land, with the consent of the relevant local planning authorities, as a development area leading to the establishment, by Order, of WMCA Development Corporations.
 - **Matters reserved to unanimous Constituent Member voting** – contained within the WMCA establishment Order and the WMCA Constitution.

6.15 Members may wish to note that not all aspects of the West Midlands Devolution Deal require legislative change to implement. The WMCA Mayoral Functions Scheme only details those functions that require legislative or regulatory change to be contained in an Order before they can be exercised by the Mayoral WMCA.

Public Consultation

6.16 It is a requirement that public consultation is 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. It is proposed that, subject to agreement of the Scheme by the Constituent Councils and the WMCA in June 2016, the public consultation is launched towards the end of June 2016, for an eight-week period.

6.17 Once the consultation period is complete, the WMCA is required to provide the Secretary of State with a summary of the consultation responses. Statutory provisions require 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.

6.18 The table provided below provides an overview of the timeline for the consideration of the various orders and schemes mentioned in this report.

Current working timeline

Mayoral WMCA Timeline	
May/June 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 (Election) 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 (Election) 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.

Background papers

The West Midlands Devolution Deal.

Cities and Local Government Devolution Act 2016:

Local Democracy, Economic Development and Construction Act 2009: