

**Council
23 February 2016**

**Update on the West Midlands Combined Authority
and the wider devolution agenda since September 2015**

**Information Report of the Strategic Director for Communities and
the Strategic Director for Resources**

1. Introduction:

- 1.1 The County Council met on the 3rd September to debate the issue of devolution and the proposal to join the West Midlands Combined Authority. A further debate was held on the 24th September Council meeting.

The Council on 3rd September agreed:

That Warwickshire County Council:

1) Does not enter into the West Midlands Combined Authority as proposed

2) Continues to support and pursue the Coventry & Warwickshire Combined Authority as its preferred devolution model

3) Establish a Member Working Group consisting of the Leaders and one other Member of the Conservative, Labour and Liberal Democrats Groups, plus 1 Green Party and 1 Independent to attend as observers, to task officers to engage with Government on the devolution issue and develop proposals for alternative devolution models for Warwickshire. These models to include a stand-alone Warwickshire model and alternatives with neighbouring non-metropolitan councils.

4) The work of the member group should be as open and transparent as practicable and should be underpinned by effective consultation. Its proposals and recommendations should be subjected to the widest possible consultation with the citizens of Warwickshire before any final decisions are taken by this Council.

- 1.2 At the further meeting of Council on 24th September, it was resolved that:

[I]n the light of the news that the Shadow Board representing a West Midlands Combined Authority (WMCA) comprising authorities from Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton (which expects to be established in April 2016) has submitted proposals for devolved powers to the government, this Council agrees that the new Member Working Group should explore all options, including any improved WMCA proposal put forward. Any options supported by the Member Working Group, and subsequently the Council, should be formally consulted on before any final decisions are taken

1.3 This report provides background information for members to assist any debate and covers an update on developments since the Council meetings in September 2015, including the progress of the proposal to establish a West Midlands Combined Authority, details of the Devolution Deal that the proposed West Midlands Combined Authority has negotiated with Government, an update on the changing legislative background to this agenda, and a summary of activity elsewhere in the country.

2. Progress on establishing a West Midlands Combined Authority

2.1 A scheme for the establishment of a West Midlands Combined Authority was submitted to Government on the 26th October 2015. A copy of this Scheme is contained in **Appendix A**. This scheme proposes that the Combined Authority's area shall be the whole of the following seven constituent authority areas:

- Birmingham City Council
- City of Wolverhampton Council
- Coventry City Council
- Dudley Metropolitan Borough Council
- Sandwell Metropolitan Borough Council
- Solihull Metropolitan Borough Council, and
- Walsall Metropolitan Borough Council

2.2 The Combined Authority will initially consist of 15 members of which 7 will be constituent members and 8 non-constituent members. The constituent members would be one elected member from each of the seven constituent authorities, referred to as "Constituent Members" namely Birmingham City Council, City of Wolverhampton Council, Coventry City Council, Dudley Metropolitan Borough Council, Sandwell Metropolitan Borough Council, Solihull Metropolitan Borough Council and Walsall Metropolitan Borough Council. Each constituent member would have two votes. There will be 8 non-constituent members appointed, one from each from the following Councils and LEPS:

- Greater Birmingham and Solihull LEP
- Black Country LEP
- Coventry and Warwickshire LEP
- Cannock Chase District Council
- Nuneaton and Bedworth Borough Council
- Redditch Borough Council
- Tamworth Borough Council

- Telford and Wrekin Borough Council

It is understood that Stratford District Council has voted in favour of becoming a non-constituent member, however as they were not included in the original scheme it is not intended they would be included in the initial Combined Authority Order but would join at the second phase.

- 2.3 The Chair and Vice Chair will not have a second or casting vote. Non-constituent members would be non-voting members of the Combined Authority unless the constituent members resolve to extend voting rights to all or any non-constituent members. Subject to the provisions of any enactment, the Combined Authority will aim to reach decisions by consensus. Where that is not possible a two thirds majority of constituent members would be required.
- 2.4 As per the legislative process for establishing a Combined Authority, the Government are undertaking a consultation of the proposed West Midlands scheme. A consultation survey has been launched and was available on the West Midlands Combined Authority [website](#). The consultation closed on 8 February 2016.
- 2.5 The ambition remains that the initial Combined Authority will be approved in April 2016 with a view to the Combined Authority becoming operational over Spring/Summer 2016. However, this timescale is dependent on parliamentary time to debate the issue.
- 2.6 It is expected that there will be a second phase to create a mayoral combined authority to enable the devolution deal to be fully implemented. The directly elected Mayor would be a voting member and also Chair of the mayoral combined authority. The governance arrangements would need to be refreshed at that time to reflect the inclusion of the mayor, the transfer of powers and any other membership changes.

3. West Midlands Combined Authority Devolution Agreement

- 3.1 On the 17th November 2015, the Chancellor of the Exchequer agreed and signed a proposed devolution deal with members of the West Midlands Combined Authority. The deal is contingent on a number of factors, including the legislative process to establish the Combined Authority; the establishment of a mayor for the West Midlands Combined Authority area; agreement by the constituent councils; agreement by Ministers; the outcome of the Spending Review; and further public engagement.

3.2 The following presents a summary of the key elements of the Devolution Agreement, along with some commentary/analysis. A full copy of the Agreement is contained in **Appendix B**.

- The Devolution Agreement requires the establishment of a Mayoral Combined Authority. The Mayor will be the Chair and a member of the proposed Combined Authority, and will have certain powers devolved from central government. These include responsibility of a consolidated, devolved transport budget; powers over the franchising of bus services in the CA area; responsibility for an identified Key Route Network of local authority roads that be collaboratively managed and maintained at the CA level; the ability to place a supplement on business rates to fund infrastructure (up to a cap); planning powers to drive housing delivery and improvements in housing stock, and given the same competencies as the Homes & Community Agency (HCA). The agreement does not go into the detail of how these powers will be utilised and delivered. Any proposal for decision put forward by the Mayor will be decided by way of two thirds majority of constituent members (unless specifically delegated through the Authority's constitution).
- The Combined Authority will create a fully devolved funding programme covering all domestic budgets for devolved functions, to be called the West Midlands Investment Fund. The Fund will operate as a single programme, bringing together resources for economic growth, skills and employability, regeneration, transport and housing; including future allocations from the Local Growth Fund. This suggests that funding from both central and local government will be transferred and pooled into this single fund, although not clear what the scope and quantum of this would be. We are requesting further information in order to better understand this. The use of this Fund will be based on an objective means to assess interventions and programme design so that they are aligned with the balanced economic outcomes for the area. We are seeking more information of what this would mean in practice.
- The Government will make an initial allocation to the Investment Fund of £36.5m per annum for 30 years in revenue funding. This will be subject to a jointly agreed 5-yearly gateway assessment process to review progress and confirm that investment has contributed to economic growth. The Treasury have been clear from the outset on devolution that these agreements must be cost-neutral to the government, but it is currently unclear exactly what existing source this

funding is coming from and whether it is new to the area. Officers are seeking clarity on the source of this funding from the WMCA.

- The Devolution Agreement contains a commitment from Government to pilot a scheme that would enable the Combined Authority to retain all business rates growth above an agreed baseline that would otherwise have been paid to central Government, for an initial period of 5 years. However, in the Spending Review, the Government announced its intention to enable all local areas to retain their business rates in the future. It is not clear whether this agreement will enable the Combined Authority to benefit from increased retention before the wider retention comes into force, but clearly this key plank of devolution is no longer confined to Combined Authority areas.
- With respect to the skills agenda, the Government is taking a phased approach to devolving adult skills funding, enabling the Combined Authority to take full devolved control of funding from 2018/19. The Combined Authority will be responsible for allocations to providers and the outcomes to be achieved, consistent with statutory outcomes. Arrangements will be jointly agreed between Government and the Combined Authority for sharing financial risk and managing failure of 16+ providers. It should be noted that the adult skills budget has reduced significantly in recent years, is largely demand led (therefore limited scope to influence provision), and that there are concerns over the financial viability of some FE provision going forward. This is part of the reason for the wider Area Review of post 16 education and training institutions, which is looking to restructure provision to make it more effective and efficient, and potentially freeing up resources.
- The Combined Authority will be able to work with the Department for Work & Pensions to co-design future employment support, from April 2017, for the hardest to help claimants. This should enable greater synergies and co-ordination with locally funded support programmes, however DWP will remain responsible for the resources and any contracts commissioned.
- The devolution agreement includes provisions to devolve responsibility for the Business Growth Service through the Growth Hubs, and develop a devolved approach to delivery of business support from 2017 onwards. However, the Business Growth Service was effectively removed as part of the Spending Review. The agreement also commits the Government to explore how there could be improved joint working/co-location between the Combined Authority and UKTI (who

lead on Foreign Direct Investment and international trade activity). However, there are no promises as to what this would look like beyond agreeing shared priorities and regular monitoring meetings.

- The Government will support the Combined Authority Shadow Board to co-design and implement approaches to improving the life-chances of troubled individuals and looking to reduce the cost of public service interventions for this group and improve effectiveness. This pilot programme would be funded by the constituent members of the Combined Authority, and the outcomes of this will inform a business case for further funding from NHS England. The Government will also commit to discussions on improved data sharing to support the Combined Authorities ambition to develop an integrated data system to improve outcomes for individuals with multiple indicators of vulnerability.
- The agreement states that the deal is the first step in a process of devolution of funding, powers and responsibilities. Other areas that it has been indicated will be explored in the future include proposals for an “appropriate relationship between the functions of a Mayor, future role of the Police & Crime Commissioners, including in relation to fire services, to be developed”; the government’s review of the youth justice system and scope for further devolution of youth justice services; and outcomes from the Combined Authority’s Mental Health Commission.

3.3 In summary, the Devolution Agreement provides a long-term commitment to funding to the West Midlands Combined Authority, and provides increased flexibility and certainty over major transport funding. However, this is not strictly “new”/additional money (as it is revenue neutral to the Treasury), although it is not currently clear where this funding is being redirected from. As part of the deal in securing these resources, the West Midlands Combined Authority has promised to establish a West Midlands Investment Fund, into which these government resources will be directed and combined with the constituent member’s resources for economic growth, skills and employability, regeneration, transport and housing; and any future allocations from the Local Growth Fund. We are clarifying the basis upon which constituent councils would be expected to commit resources on these functions to this fund and the amount and coverage (i.e. would all local authority resources for economic development be put into this fund or just a share) of this contribution is not yet clear. Further clarification is also being sought about has the specific control and governance arrangements as to how these resources were utilised and distributed. Beyond this financial picture, the Devolution Agreement largely

focuses on the establishment of a Mayor, and improved joint working with Government on key policy agendas.

4. The Cities and Local Government Devolution Act 2016

4.1 The Cities and Local Government Devolution Act 2016 received the Royal Assent on 28 January 2016 and will come into force on 28 March 2016. Further Regulations are expected which will need to go through the affirmative procedure in both Houses of Parliament. The key points of the new legislation are

- Combined authorities can be given a wider range of functions than transport, economic development and regeneration. For example central government could transfer health powers, councils could delegate some of their other powers
- The functions of Police & Crime Commissioners can be passed to mayors of combined authorities.
- The Government can make devolution deals conditional on the inclusion of a directly elected mayor in the arrangements
- The directly elected mayor is automatically a member and the Chair of a mayoral combined authority.
- The Government only need 2 constituent councils to agree (and the combined authority if existing) to make an Order providing for a Mayor and transferring central government functions to a combined authority. The area of any non-consenting council would be removed from the mayoral combined authority arrangements.
- District and County Councils can join combined authorities as constituent members without the consent of the other, there are no geographical constraints but the Secretary of State has to take into account the impact on neighbouring areas of the arrangement.
- A Council cannot be a constituent member of more than one combined authority. There is no limit on the number of memberships a council can have as a non-constituent council.
- The Secretary of State is able to fast track structural and boundary changes to non-unitary authorities with the consent of just one council in the area for a 3 year period to 31 March 2019.
- The Secretary of State can devolve central government powers to other configurations of local authorities with the agreement of those councils.
- Councils may put forward proposals for Sub-National Transport Bodies (STBs) provided all constituent councils consent.

Impact on WMCA proposals

- 4.2 The WMCA is currently proposed on the basis of 7 constituent councils, 5 non-constituent councils and 3 non-constituent LEPS. The area of the combined authority only covers the area of the seven 'constituent authorities' notwithstanding the engagement of the non-constituent members.
- 4.3 Constituent councils are automatically-entitled to vote whilst non-constituent councils and other non-constituent members depend on the decisions of the Combined Authority for their voting rights. Ultimately it is intended that the WMCA becomes a mayoral combined authority with a directly elected mayor to give effect to the devolution deal.
- 4.4 Potentially the 5 non-constituent councils could become 'constituent councils' as the geographical bars and the requirement for consent of both councils in two tier areas have been removed. The WMCA may look again at its membership and governance arrangements, in the light of the new legislation, when it comes to the establishment of the mayoral combined authority.
- 4.5 After 28 March 2016 it is no longer a requirement for establishing a combined authority that all the authorities must have been included in the original published scheme. Therefore it is potentially open to the Secretary of State to include other consenting councils within the proposed WMCA arrangements without starting the process afresh. The LEPs would remain non-constituent members as they are not eligible councils. It is of course open to the Secretary of State to extend the current public consultation if he considers it necessary prior to making any order. Alternatively as the governance arrangements would need revision to reflect a mayoral arrangement in any event, any other changes in membership could be reflected in the second phase order.
- 4.6 The WMCA devolution proposal includes provision for a directly elected mayor. An individual may not be both a councillor and a mayor of a combined authority. An order providing for a mayoral combined authority can be made if at least 2 of the constituent councils in the WMCA proposal agree and the combined authority if already established. If any constituent council did not agree then that council and its area would not be included within the final order establishing the mayoral combined authority.
- 4.7 Combined authorities are major precepting authorities. In relation to a mayoral authority it would be for the mayor to issue the precept. Mayoral

functions can be funded from the precept. (If the Mayor is also the PCC there would be a separate PCC precept). Other funding comes from central government and/or the constituent councils. It is unclear whether or not the WMCA would have powers to borrow.

- 4.8 The Secretary of State has wide powers to set out in the Order requirements relating to decision-making i.e. what powers can only be exercised by the Mayor, what powers can be delegated, committees, membership, application of political balance requirements etc. This could include provision about different voting rights and provision for a different weight to be given to the different descriptions of members. Councils will have thought through what powers they should delegate to the combined authority/mayor to exercise either alone, jointly or concurrently as part of developing the proposal. Councils can only delegate their existing functions to the combined authority.
- 4.9 Further regulations are expected in relation to the powers to fast track changes to local government structures and boundaries. These regulations will be subject to the affirmative procedure in parliament. It is through these powers rather than powers related to combined authorities per se that there is the potential for a re-distribution of local government functions between existing councils. This could involve the transfer of county council functions in relation to a specific geographic area transferring to a district borough council and vice-versa.
- 4.10 The potential for creating a sub-national STB puts another option on the table with regard to transport functions. Unlike the arrangements for combined authorities all involved authorities have to agree to these arrangements.

5. Other developments

- 5.1 The Chancellor of the Exchequer, in the build up to the Spending Review, invited areas wanting to agree a devolution deal to submit formal, fiscally-neutral proposals with an agreed geography to the Treasury by 4 September 2015. Over 30 proposals were received from a wide range of areas. Details of these proposals can be found on the [LGA website](#), and Figure 1 overleaf presents a diagrammatic summary of the key elements of these bids.
- 5.2 To date, the only new Devolution Agreement that has been proposed is for the West Midlands Combined Authority. Sheffield City Region had already secured a limited devolution deal, and submitted an enhanced proposal in September which centred on their commitment to introducing a Mayor for their Combined Authority. This enabled them to secure a deal similar to that of the

West Midlands Combined Authority, including a devolved transport budget with a multi-year settlement, responsibility for franchised bus services and responsibility for an identified Key Route Network of local authority roads. The deal also grants the Mayor devolved powers over strategic planning. The Sheffield City Region Combined Authority, working with the Mayor, gains control of a new additional £30 million a year funding allocation over 30 years, responsibility for chairing an area based review of 16+ skills provision and devolved 19+ adult skills funding from 2018/19. The deal also outlines a joint responsibility with Government to co-design employment support for harder-to-help claimants and to develop and implement a devolved approach to the delivery of national business support programmes.

5.3 No two-tier county area has yet secured a devolution agreement, although a number of areas (including Nottinghamshire and Derbyshire) are currently negotiating with Government. Two county councils are involved in the North East Combined Authority, although these are both unitary councils.

5.4 The Department for Communities & Local Government Select Committee have recently published the outcome of their Inquiry into devolution. While strongly supportive of the concept and need for devolution to enable stronger local economic growth, the Committee highlighted a number of key points which are summarised below:

- The Committee found a significant lack of public consultation and engagement at all stages in the devolution process. *“People are keen to be involved; our public session in Greater Manchester highlighted residents’ strong appetite to be included and consulted. The public should be engaged in the preparation of devolution proposals, insofar as possible during the negotiations and once the results of a deal have begun to make an impact, and communicated to throughout the process. This is particularly the case for health devolution where the systems in place are complex, changes are consequently more difficult to understand and the public’s response is likely to be more emotional”.*
- The committee noted that the Government’s approach to devolution in practice has lacked rigour as to process: *“there are no clear, measurable objectives for devolution, the timetable is rushed and efforts are not being made to inject openness or transparency into the deal negotiations. We suggest various ways in which proper process can be ensured; for example, with an agreed timetable for the negotiation and agreement of a deal”.*

- Once deals are up and running, there will be a complex division of responsibility— between local authorities, the combined authority and, in some places, the directly-elected mayor—which will not necessarily be apparent to the public. *“Responsibility needs to be determined in a way that makes sense to the public, and consideration of these issues should be a significant part of the deal-making process with the division of responsibilities clearly spelled out. We received no clear explanation as to how accountability under health devolution will work and have recommended that the Government revisits this issue. There is a need for a clear articulation of how health devolution will work”.*
- The Committee highlighted that differences in scale, geography and economic diversity of areas may require different governance models, and that elected mayors should not be seen as the only route to secure substantial devolution.

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