

Name of meeting: Cabinet
Date: 16th March 2021
Title of report: Protocol on Concurrent Powers

Purpose of report:

To inform Cabinet of the making of an Order creating a Mayoral Combined Authority (MCA) in West Yorkshire and to provide Cabinet with a draft protocol between Kirklees and the other West Yorkshire Councils and the MCA dealing with consents and concurrent functions for approval.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u> ?	Key Decision – No Private Report/Private Appendix – No
The Decision - Is it eligible for call in by Scrutiny?	Not Applicable
Date signed off by <u>Strategic Director</u> & name	Jacqui Gedman 1 st March 2021
Is it also signed off by the Service Director for Finance?	Not applicable
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft 1 st March 2021
Cabinet member portfolio	Cllr Shabir Pandor

Electoral wards affected: ALL
Ward councillors consulted: N/A
Public or private: Public
Has GDPR been considered? Yes

1. Summary

- 1.1 The West Yorkshire “minded-to” Devolution Deal was announced as part of the Budget on 11 March 2020. A report submitted to Cabinet in May 2020 outlined the details of the devolution deal, its benefits for the region and the District, its people and its businesses and set out the required next steps.
- 1.2 At their meetings in September, the Combined Authority and each Constituent Council considered the outcome of the public consultation on the Scheme which has been undertaken throughout the summer. Subsequently the consultation summary report, along with representations from Leeds City Council and Kirklees Council were submitted to the Secretary of State. This submission, along with the Scheme would be used to draft the Order.
- 1.3 In response to points raised about how we work with the mayoral authority and future reporting procedures, Cabinet invited Corporate Governance and Audit Committee to consider the governance arrangements in place, including those which enable the council to hold the mayoral authority to account. In particular:
 - To consider whether agreement should be sought from the Combined Authority and Mayor, when they enter office, for an annual report to be provided to Full Council for debate.
 - To consider whether arrangements should be made to invite the Mayor to Full Council to answer elected members’ questions at least once a year.
- 1.4 Subsequently the consultation summary report, along with representations from Leeds City Council and Kirklees Council were submitted to the Secretary of State.
- 1.5 During November, the Combined Authority and each Constituent Council were asked to consent in principle to the draft Order, to establish a mayoral combined authority and associated changes as set out in the ‘minded to’ Devolution Deal. It was discussed at Council in Kirklees 25th November and agreed by Cabinet 26th November.
- 1.6 Parliamentary approval of the statutory instrument to establish the mayoral combined authority was given on 29th January 2021.
- 1.7 This report concerns the draft Protocol on Concurrent Functions agreed by officers in the Combined Authority and 5 West Yorkshire Councils and attached at [Appendix 1](#). Cabinet are asked to consider and adopt the Protocol. The draft is to be approved by each constituent council’s Executive before being approved by the Combined Authority.

2. Information required to take a decision

- 2.1 The West Yorkshire Combined Authority Order 2021 provides for the election of a mayor for the area of the Combined Authority from May 2021, the Mayor to exercise the functions of a Police and Crime Commissioner, and the following functions to be conferred on the Combined Authority:
 - Adult education functions from Secretary of State
 - Functions of Homes England/HCA relating to housing and regeneration
 - Functions relating to grants to bus service operators
 - Functions in relation to the designation of a Mayoral development area (MDA) and establishing a Mayoral development corporation (to be exercised by the Mayor)
 - Functions in relation to Business Rates Supplements to be exercised by the Mayor
 - Functions of the Constituent Councils to be exercised concurrently by the Combined Authority relating to:
 - education, skills and training

- housing, regeneration and planning, and
 - transport (including in relation to highways, traffic orders, traffic signs, pedestrian crossings, street works, permit schemes and bus lane contraventions).
- 2.2 Appendix 1 to this report includes a table of the functions that will be conferred on the Mayoral Combined Authority (MCA). The new functions have either been devolved or granted to the MCA by Government or are functions which shall be exercised concurrently with the Constituent Councils i.e., powers and duties which Constituent Councils hold co-extensively and which the MCA could exercise independently. In theory this could potentially cause difficulties and consequently therefore a protocol between Kirklees Council and the other West Yorkshire Councils and the MCA for dealing with concurrent functions makes sense.
- 2.3 The Constituent Councils have not lost any of their functions and it is important to stress that there are already existing concurrent powers between Councils and WYCA that work perfectly well. The draft Protocol for Concurrent Functions aims to establish the process for how the Combined Authority will exercise those functions concurrently with the Constituent Councils. The protocol does not apply to non-concurrent functions such as the PCC functions.
- 2.4 The Order confers concurrent powers on the Mayoral Combined Authority (MCA). These are powers which the Constituent Councils also hold and which the MCA could exercise independently and provides for certain decisions (termed statutory consents in the Protocol) to be made by the MCA only with the express consent of a Constituent Council.
- 2.5 Under the 2021 Order, there is:
- no transfer of any Concurrent Function to the MCA from any Constituent Council; each Constituent Council may continue to exercise any Concurrent Function in relation to its are
 - no requirement for the joint exercise of any Concurrent Function by the Combined Authority with Constituent Councils – that is, that they are not required to act together, and
 - no requirement for a Constituent Council to involve, consult or seek the consent of the Combined Authority in relation to the exercise of any Concurrent Function by a Constituent Council.
- 2.6 The Protocol is **not** intended to be legally binding and supplements the Order and any arrangements with the Constitution of the MCA. It cannot override the Order. It records the aim of the partners to co-operate and collaborate in the best interests of residents of the region, to have transparency and make best use of resources, reducing duplication. It also records the ongoing commitment of the MCA to engagement with the constituent Councils.
- 2.7 In respect of consents, it sets out that these will be sought in a formal report considered at a meeting of the MCA and that notice of the intention to seek consent will be given as early as practicable and no later than the date that a key decision notice is published (at least 28 days prior to the decision). In reality such schemes will have been discussed much earlier than 28 days prior to a formal meeting and will have passed through gateway approval processes such as outline and detailed business cases.
- 2.8 For example, the Combined Authority (CA) has the power under section 51A of the Further and Higher Education Act 1992 to give notice to the governing body of a FE college based in Kirklees requiring them to provide specified 16-19-year olds with “appropriate “education. This is an example of a non-Mayoral concurrent function in relation to Education, Skills and Training. The CA does not need “statutory consent “under the Order 2021 from Kirklees Council before deciding to issue such a notice.
- 2.9 However, when the Protocol is signed it will mean the Managing Director of the CA will notify Kirklees Council’s Chief Executive before any Key decision Notice is published, if relevant. In

addition, the CA's Managing director agrees to voluntarily consult Kirklees Council's Chief Executive (or their nominee) about the proposal to exercise the above FE power to serve the notice (except where it is agreed that is not required) in accordance with paragraph 3.3 and 3.4 of the Protocol.

- 2.10 In respect of concurrent functions, it provides that where there are significant impacts from the proposal of the MCA to exercise concurrent functions prior notice will be given to the relevant Chief Executive so that the proposal can be considered within the relevant council.
- 2.11 As with consents it is likely that larger and significant schemes where concurrent functions are being exercised will have been discussed prior to the formal notification stage. Members will therefore note that the protocol forms a 'fall back' position. It is the strength of the joint working between the MCA and the Council that will ensure that the interests of the District are properly represented. To that end, the Councils and the MCA have been undertaking a piece of work to ensure that they are 'MCA ready' for May 2021 and that partnerships are assessed and strengthened where required.
- 2.12 The Protocol does not address the scrutiny of the Combined Authority in relation to how it exercises any Concurrent Function, this will be the subject of separate arrangements, which are also currently under consideration.

Mayoral Combined Authority Governance Arrangements

- 2.13 Over the last couple of months, colleagues and members from WYCA and the 5 constituent councils as well as scrutiny have been reviewing the proposed governance and scrutiny arrangements. A formal update is expected 9th March at the West Yorkshire Combined Authority Board meeting. The papers will be in the public domain shortly.
- 2.14 Members of Corporate Governance & Audit Committee (CG&AG), chairs of Scrutiny and representatives from other parties attended a workshop 14th January to discuss mayoral accountability and the potential arrangements the Council would like to see in place.
- 2.15 CGAC will be considering proposals and agreeing how to take forward potential recommendations for holding the Mayor to account at the meeting 9th March. The report is attached at [Appendix 2](#). The committee is asked to delegate the Chair to submit a separate and independent submission to WYCA setting out CG&AC recommendations for mayoral accountability and refer the outcomes from discussions to Cabinet 16th March for their consideration.

3. Implications for the Council

3.1 Working with People

The premise of the Devolution Deal is on bringing funding and functions to a more local level. The establishment of the Mayoral Combined Authority will have staffing implications in terms of additional resources to deliver the ambition of the Deal and these will be considered at the appropriate point to ensure operational effectiveness and efficiency of the Combined Authority.

Working with Partners

The Deal will encourage collaboration on systems, structures and procedures to support the area to make decisions, set strategy and manage delivery across a range of partners in West Yorkshire. Inclusive Growth is a key priority for West Yorkshire Combined Authority and the LEP.

Place Based Working

The Deal will put in place appropriate governance structures that reflect the needs and opportunities across the West Yorkshire area and the places within it.

Climate Change and Air Quality

As part of the Deal text, the Government welcomed West Yorkshire's commitment to becoming a net zero carbon economy by 2038, with significant progress by 2030. There are, however, no immediate implications on Clean Growth arising as a direct result of this report.

Improving outcomes for children

The Deal includes measures around funding and functions focused on skills and education, including careers advice, apprenticeships and Further Education.

Other (eg Legal/Financial or Human Resources)

None. The draft Protocol is non-legally binding.

Do you need an Integrated Impact Assessment (IIA)?

No.

4. Consultees and their opinions

- 4.1 Corporate Governance and Audit Committee considered the draft Protocol on Concurrent Powers and Associated Consents at a meeting 9th March. All 5 WY Councils and the MCA have been engaged in negotiating and agreeing the draft Protocol. It is not recommended that further changes to the Protocol be sought at this stage. It is not legally binding and will be subject to an annual review. The wording represents a good compromise ensuring transparency and prior notice of decisions. A delay during which the draft Protocol is renegotiated would risk the MCA starting to operate without the safeguards that it provides.

5. Next steps and timelines

Once the draft Protocol has been agreed by all 5 Constituent Councils and the Combined Authority, it will come into use.

6. Officer recommendations and reasons

Cabinet is requested to:

- (i) Adopt the draft Protocol on Concurrent Functions and Associated Statutory Consents attached as *Appendix 1* to this report.
- (ii) Delegate authority to the Chief Executive, in consultation with the Leader, to finalise the protocol and agree any drafting amendments (should that be necessary) and sign it on behalf of the council and to agree any subsequent changes to the Protocol when it is reviewed.
- (iii) Note the report to Corporate Governance and Audit Committee on 9th March and the work done by members in the Workshop

7. Cabinet Portfolio Holder's recommendations

To adopt the draft Protocol.

8. Contact officer

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9. Background Papers and History of Decisions

West Yorkshire Devolution Deal – Review of Governance Arrangements: Cabinet 24th March 2020

<https://democracy.kirklees.gov.uk/documents/s35794/West%20Yorkshire%20Devolution%20Deal.pdf>

Devolution Deal for West Yorkshire – Review, Scheme and Consultation: Cabinet May 21st 2020

<https://democracy.kirklees.gov.uk/documents/g5962/Agenda%20frontsheet%2021st-May-2020%2015.00%20Cabinet.pdf?T=0>

Devolution Deal for West Yorkshire – Consultation Outcomes 1st September 2020

<https://democracy.kirklees.gov.uk/documents/s37197/Devolution%20Deal.pdf>

West Yorkshire Devolution – Consent to draft Order 26th November 2020

<https://democracy.kirklees.gov.uk/documents/g6606/Public%20reports%20pack%2026th-Nov-2020%2010.00%20Cabinet.pdf?T=10>

Mayoral Accountability: Report to Corporate Governance and Audit Committee 9th March 2021

[CGAC Mayoral Accountability 9 March21 v4.pdf \(kirklees.gov.uk\)](#)

10. Service Director responsible

Julie Muscroft - Service Director, Legal Governance and Commissioning

11. Appendices

Appendix 1 - *Protocol for the Exercise of Concurrent Functions and Associated Statutory Consents*

Appendix 2 - *Mayoral Accountability: Report to Corporate Governance and Audit Committee 9th March 2021*