

# Draft

## Consultation Scheme for the Establishment of a Combined Authority for West Yorkshire

### Background

The interim findings of the Review<sup>1</sup> of governance arrangements relating to transport, economic development and regeneration, pursuant to Section 108 of the Local Democracy, Economic Development and Construction Act 2009 (LDEDC) and Section 82 of the Local Transport Act 2008, are that for the area of West Yorkshire, the ITA should be dissolved and a Combined Authority (CA) created both as the best option for the area going forward in terms of delivering the City Deal and because it would be likely to improve:

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

Subject to the five WY District authorities and the ITA endorsing the findings of the Draft Review, the purpose of the proposed draft consultation Scheme set out below is to form the basis for public and stakeholder consultation by the individual WY District authorities and the ITA, prior to the submission of a draft statutory Scheme to the Secretary of State by July 2013, in line with the timeline agreed within the City Deal Implementation Plan.

In preparing the draft Scheme, regard must be had to the requirements of the LDEDC Act 2009 and the Local Transport Act 2008 as well as any guidance published by the Government relating to both pieces of legislation.

Any draft CA scheme submitted to the Secretary of State in July for his consideration will be required to cover the following which will then be included in the statutory order:

- the area of the CA, its proposed membership, voting and any other constitutional arrangements;
- its proposed functions (to be exercised by the CA or shared with the constituent District authorities);
- the way in which it will be funded, including for example the transport levy and prudential borrowing powers for transport; and any property, rights and liabilities that will be transferred to the CA The name of the CA

In addition to this information, there are a number of other practical issues that need to be considered but may not need to be included in the statutory order eg. staffing, internal structures including any committees and advisory groups, and ensuring transparency, eg via scrutiny arrangements.

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<sup>1</sup> The Review was authorised by the five WY District authorities and the ITA in November 2012.

## **Draft consultation Scheme**

The draft consultation Scheme sets out the overall framework for the powers, duties and functions in relation to those currently exercised by the ITA and PTE and those required to deliver the City Deal (including managing the West Yorkshire Plus Transport Fund, devolved rail franchising and the LCR Economic Infrastructure Fund), whilst seeking to leave the door open as appropriate to discharge further public functions and use other public funds yet to be devolved via future City Deals (eg City Deal 2).

The key components for the scheme are therefore as follows:

### *Establishment of Authority*

That a Combined Authority for West Yorkshire shall be established pursuant to Section 103 of the Local Democracy Economic Development and Construction Act 2009 (LDEDC).

### *Dissolution of West Yorkshire Integrated Transport Authority (WYITA)*

The West Yorkshire Integrated Transport Authority (WYITA) shall be dissolved, pursuant to Section 91 of the Local Transport Act 2008 (LTA).

### *Area*

It is proposed that the area of the CA will be the whole area of each of the five WY District authorities of:

- City of Bradford Metropolitan District Council
- Borough Council of Calderdale
- Kirklees Metropolitan Council
- Leeds City Council
- City of Wakefield Metropolitan District Council

An area also covering York would be more representative of the City Region functional economic market area (FEMA), however for the reasons discussed in the Review, this is not legally deliverable in the short term. Nevertheless, the evidence suggests that WY represents a self-contained FEMA in its own right and that there would likely be an improvement in economic prosperity should a CA for the area of West Yorkshire be established.

### *Membership*

Ahead of any legislative change which would enable York to become a constituent member, there is a strong case for including York in the meantime as a non-constituent (partner) member of the CA, and making provision for including other City Region authorities in due course. Also there is clear benefit in LCR LEP Chair becoming a partner member in order to bring in broader City Region business perspectives.

It is proposed that the membership arrangements are as follows:

- Constituent members:
  - **Five West Yorkshire District** authorities to be represented by one member per authority who shall be the Leader.
  - Chair and Vice Chair shall be Leaders of the constituent authorities.
  - **Three WY Opposition group leaders** to be selected to provide cross party political representation, and which provides flexibility to adjust to the prevailing political representation across WY.<sup>2</sup>
  
- Partner/ non-constituent memberships:
  - **York** – represented by one member who shall be the leader in order to recognise a wider economic footprint, and where permitted by legislation, to take joint decisions on pooled transport and economic investment funds.
  - **The LEP Chair** to provide the private sector link to the LCR Plan, provide a business voice e.g. on CA funding prioritisation and to satisfy DfT's compliance (LTB) requirements for a devolved funding.
  - Other partner members who may be appointed by the CA, eg from neighbouring City Region authorities.

The constituent and non-constituent councils shall each appoint another of its elected members to act as a member of the CA in the absence of the member appointed in accordance with the terms above.

A council may at any time terminate the appointment of a member or a substitute member appointed by it to the CA.

Where a member or a substitute member of the CA ceases (for whatever reason) to be a member of the council that appointed them, the member shall cease to be a member of the CA, and the relevant council shall appoint a replacement as soon as practicable.

All appointments shall be for a one year term.

It is also proposed that no remuneration shall be payable by the CA to its members other than standard allowances for travel and subsistence.

The CA once established may decide to appoint future members to the CA provided that any non-local authority members remain in a minority. In addition, the CA may co-opt additional, non-voting representatives onto the CA. Any decision to change the membership or co-opt representatives must be a decision taken by the CA itself.

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<sup>2</sup> Based on the current political balance and proportionality across WY this would equate in addition to the five leaders above, to two further appointees drawn from Conservative Group members and one additional Liberal Democrat member.

## Voting

It is proposed that the following voting arrangements will be applied:

- Un-weighted voting, based on one member one vote, with no casting vote for the Chair or Vice Chair.
- Non-constituent members would initially be non-voting (a requirement of S85(4) of the LTA 2008) but could individually be given a vote on some or all issues voted upon, subject to agreement of the constituent members (in accordance with s85(5) of the LTA 2008).
- Simple majority voting would apply eg:
  - West Yorkshire Plus Transport Fund and any Economic Investment Fund decisions;
  - accepting devolved powers from Government e.g. under future City Deals;
  - setting the transport levy and CA budget;
  - agreeing levels of borrowing; and
  - signing off the Local Transport Plan.

## Executive Arrangements

Executive Arrangements (within the meaning of the Local Government Act 2000) shall not apply to the CA. However, the discharge of the functions of the CA will be subject to the scrutiny arrangements set out in this scheme.

## Name

There is no legal restriction on naming the CA. The suggestion is that it be named the West Yorkshire Combined Authority

## Passenger Transport Executive

When the ITA is dissolved and the CA becomes the Local Transport Authority (LTA), the statutory duties and functions of the PTE still need to continue to be delivered.

There are 2 broad options for the delivery of the PTE functions:

- Option 1 –transfer the PTE to the CA and the CA then delivers the functions.
- Option 2 - the PTE delivers the functions for the CA as a separate body reporting directly up to the CA.

Both options have the same objective but entail different governance arrangements. Whilst both options require further development during the consultation stage, Option 1 will require development of a transfer scheme. Stakeholder views will therefore be sought on the above, and any other proposed options, to inform proposals within any Scheme submitted to the Secretary of State. Appraisal of options will consider the relative costs, benefits and deliverability of the available options.

## Scrutiny arrangements

The requirement to ensure accountability and transparency will in part be satisfied by including Opposition members on the CA. It is also proposed that the CA will also be subject to scrutiny by the individual District authorities in respect of the CA's activities, including on LTP, WYTF, major transport policies, Economic Investment, budget and levy. There is a case, on grounds of efficiency and accountability, for putting in place sub regional scrutiny arrangements. One option is to establish a 'joint scrutiny committee' comprised of non-executive members from each council. This could for example reflect the size of the combined authority membership or a slightly increased membership could be considered e.g. 3 non-executive members from each council which would provide some greater flexibility and would permit politically balanced representation.

However until such time as the government introduces the necessary regulations this option does not have a statutory basis and would rely upon appropriate standing orders for the Combined Authority and the Joint Scrutiny Committee operating by agreement between the authorities and voluntary cooperation. It is therefore requested as part of this Scheme that the Secretary of State bring forward the introduction of the necessary regulations pursuant to section 123 of the Local Government and Public Involvement in Health Act 2007 (as amended by the LDEDC 2009).

## Functions, Powers and Duties

There are a number of ways in which the functions of the CA can be exercised:

- **exclusively**, such as by assuming existing ITA and PTE functions; and
- **concurrently** between the CA and the constituent District authorities, to be governed by convention or formal protocol.

In addition, functions can be retained by the District authorities and either:

- **delegated** on a voluntary basis by the District authorities to the CA; or
- **exercised jointly by the District authorities** via a Joint Committee arrangement between the constituent District authorities and the CA.

The functions in scope for the CA, exclusively or to be shared with District authorities, have been informed by the following considerations:

- the ambition to develop a CA with a clear, ambitious focus in order to deliver the LCR Plan;
- the requirement for the CA to take on the ITA's duties, functions and powers;
- the opportunity to take on those functions needed to deliver the City Deal; and
- whilst City Deal 2 discussions have yet to formally commence, there is also an opportunity to consider leaving the door open for the CA to take on additional powers and funding devolved from government by ensuring that the CA is established with the appropriate legal powers, duties and functions.

Therefore, the following proposed duties, powers, functions and activities to be undertaken by the CA are identified:

- By virtue of sections 99 and 102A of the Local Transport Act 2008, the CA will have broad well-being powers to promote economic prosperity, which can be exercised together with general ancillary powers granted by section 113A of the LDEDC Act 2009 (as amended by the Localism Act 2011) . It is proposed that the CA will be focussed on strategic economic development issues such as:
  - co-designing with the LEP the LCR Plan;
  - setting and reviewing the objectives for strategic investment, such as the £1bn West Yorkshire Plus Transport Fund and £400m LCR Economic Investment Fund;
  - making decisions with regard to the WYTF and EIF; and
  - acting as the accountable body, eg for devolved major transport scheme funding (£182m over ten years) and the single pot for economic investment, including EU funds.
- There may be further advantages in also securing the use of the General Power of Competence under section 1 of the Localism Act 2011 which may potentially be helpful in enabling the CA to engage on the strategic economic agenda with York and the wider City Region partnership, and also in terms of any future joint accountability for devolved North of England rail franchises. Outside the scope of Local Transport Authority functions, this would only be exercised concurrently with the District authorities, and governed by protocol agreed by the Executive of the District authorities in terms of the extent of its use.
- The functions powers and duties of the **WYITA** shall be transferred to the CA (see Annex A).
- The primary focus of the CA is to manage a significant programme of investment in transport and economic infrastructure, and to influence and align with government investment, in order to boost economic growth. The related interventions will have differential spatial impacts across the CA area but should aid delivery of key growth projects in the emerging and future local plans of constituent councils. Having regard to the duty to co-operate, effective alignment between decision making on transport and decisions on other areas of policy such as land use, economic development and wider regeneration will be a key aim.

### Funding

The CA shall be the levying body in relation to transport in the area covered by the constituent authorities, and apportioned on a per capita basis. The City Deal makes provision for the Government to consider proposals for the CA to assume precepting powers, to replace the transport levy.

The costs attributable to the CA in exercise of its functions relating to economic development and regeneration including economic investment (such as the Single Pot and European Funding) (together with any start up costs) will be apportioned between the constituent authorities (and non-constituent authorities where appropriate) on a per capita basis.

### Transfer of property, rights and liabilities

All property, rights and liabilities of the WYITA existing at the transfer date shall be transferred to the CA, including any rights and liabilities (if any) in relation to contracts of employment.

### Sub structures

The CA will act as a strategic decision making body. Therefore in order to fulfil the significant range of operational duties, powers and functions transferred which are currently delivered by the ITA and PTE (see Appendix A), consideration should be given to putting in place fit for purpose sub structures. For example, a Joint Committee of the CA and constituent councils could be put in place (under section 101(5) of the Local Government Act 1972) to support the CA with the following tasks:

- to carry out operational transport functions;
- advise the CA on: the annual budget and transport levy, borrowing limits, major transport policies, LTP, and WYTF operation; and
- any functions delegated by District authorities, e.g. Local Transport Body functions; management of urban traffic control systems; management of the road network to improve the flow of freight across the area.

Additionally, a separate Joint Committee may be required to include wider LCR District authorities, such as Harrogate, in relation to investments in Economic Infrastructure.

### Local Enterprise Partnership (LEP)

The Review sets out the importance of a strong LEP which effectively brings together the private and public sector in driving the economic prosperity of the City Region.

By making provision for direct LEP representation on the CA, as well as working to a common Single Appraisal Framework and shared LCR Plan, investment decisions taken by the CA, for example major transport decisions, will fully reflect business views. These views, both in terms of shaping prioritisation and scheme design, will ensure that public investment is targeted to maximise business benefit which is key to economic growth. The CA will also directly support the LEP, and LCR Leaders Board, by:

- making recommendations on the LCR Plan; and
- acting as the accountable body for funding, for example:
  - Single capital pot funding
  - European funding
  - RGF and GPF
  - Any Future Skills Investment Fund
  - HCA funding

The outline schematic diagram at Annex B shows the intended functional relationship between the CA and the LCR partnership, and their related supporting functions and structures.

**26<sup>th</sup> March 2013**

## Annex A

### STATUTORY DUTIES OF THE ITA:-

**These are duties (the ITA must do them) common to Local Transport Authorities. The ITA is the LTA throughout West Yorkshire.**

- To procure that the public passenger transport requirements of the people of West Yorkshire are met, which would not otherwise be met, and in so doing:
  - to take any action to promote the availability of transport services and the convenience of the public;
  - have regard to the advice of the PTE; and
  - consider the requirements of the elderly and the disabled.
- To develop policies for the promotion of safe integrated efficient and economic transport to meet the needs of the people living, working and travelling through their areas, and the transport of freight.

*NB – the ITA is the sole body responsible for procuring public transport services in West Yorkshire. Principally, this relates to buses, but ALL forms of transport are covered by this duty, subject to other legislation dealing with rail and air services and inland waterways.*

- To take such steps as the Authority considers practicable and desirable to promote:-
  - research into matters affecting or arising out of the exercise of their functions, and
  - Turning the results of that research to account
- In relation to any expenditure on passenger transport, in the interests of the ratepayers of West Yorkshire, to secure the best value for money from its expenditure as a whole and to work with other Authorities where possible to achieve this. In relation to subsidised transport services:
  - to have regard to economy, efficiency and effectiveness;
  - the reduction of or limitation of traffic congestion, noise and air pollution;
- not to inhibit competition between providers of transport services.

*NB – The ITA is the sole body in West Yorkshire that can tender for the provision of public transport services. In relation to school transport, there is significant overlap with the duties of education authorities, with whom Metro works closely, to deliver and assess eligibility for home to school services.*



- To prepare and publish the Local Transport Plan for West Yorkshire in consultation with all appropriate authorities and bodies in accordance with guidance. The ITA receives and is responsible for the transport allocation from DfT.
- To implement and enforce the statutory concessionary travel scheme (ENCTS) and make payments to operators providing concessionary travel.
- To prepare an annual report, together with the PTE, on the expenditure and performance of the ITA.
- To set the levy payable by the District Councils of West Yorkshire.
- To provide information to the public in relation to public transport.

#### **SIGNIFICANT POWERS OF THE ITA – Matters that the ITA may decide to do:-**

- To develop policies for the promotion and encouragement of safe integrated and economic transport facilities and services to, from and within West Yorkshire, to meet the needs of people living and working within it, pedestrians and the movement of freight. In so doing,
  - to have regard to Government Policy and Guidelines in respect of adaptation to and mitigation of climate change or improvement of the environment.
- To establish, enforce and publicise travel concession schemes (in addition to the statutory ENCTS) which may benefit the elderly, disabled, school children amongst other categories of travelling public.
- To direct a rail network operator to provide a new rail facility, with the consent of the Secretary of State
- To make grants for the provision of vehicles, facilities and transport services.
- To make Quality Partnership Schemes and Quality Contract Schemes in accordance with the Transport Act 2000 and the Local Transport Act 2008.
- To take any action the Authority determines is likely to achieve the promotion or improvement of the economy, social and environmental **well being** (Local transport Act 2008) of its area or the people resident or passing to or through it.
- Jointly with eligible traffic authorities, to make a road-user charging scheme within or partly within the area of the ITA.

- To procure transport services without tender to meet unexpected transport needs without delay.
- To secure certain information from bus operators relevant to service provision.
- To lend money to the PTE.

**SIGNIFICANT FUNCTIONS OF THE ITA – roles that the ITA carries out:-**

- To approve any change to the basic level of charging for transport services or to the terms of any concessionary travel scheme.
- To approve any substantial capital expenditure by the PTE.
- To approve any substantial amendment to rail franchise agreements.
- To direct the PTE to take appropriate steps to reorganise its functions to be most efficient or to approve any such proposal by the PTE.
- To appoint the Director General of the PTE, and between 2 and 8 other directors of the PTE
- To approve the carrying out by the PTE of most of its significant functions.
- To approve borrowing by the PTE.

## **STATUTORY DUTIES OF THE PTE**

Transport Acts 1968, 1985, 2000 and LTA 2008; Railways Acts

- To secure the provision of the public passenger transport services that the ITA considers should be provided to meet the needs of the public in West Yorkshire, which would not otherwise be provided.
- To ensure the delivery of the general policies of the ITA relating to the availability of public passenger transport services and the convenience to the public of those services.
- To give advice to the ITA on the nature of public passenger transport services that it would be appropriate to provide in the ITA area.
- Not to inhibit competition between parties providing or seeking to provide public passenger transport services and to have regard to combination of efficiency effectiveness and economy.
- To tender for all public passenger transport services that are required in accordance with the Transport Act 1985 and associated regulations.
- To have regard to the needs of the elderly and the disabled when exercising their functions under the transport act 1968.
- To keep under review the railway passenger services provided within its area by passenger service operators.
- To give advice to the Secretary of State, on request, on any matter relating to railways and rail services.
- Make proper charges to revenue account, particularly in respect of depreciation, and to capital account in respect of interest on expenditure of a capital nature
- To provide the Authority at the request of the Authority with accounts and information regarding its operations and planned capital and revenue expenditure.

## **Powers and Functions of the PTE**

- To carry out any of the actions set out in Section 10 of the Transport Act 1968 including, by way of examples:
  - Carrying passengers.
  - The letting of passenger vehicles and rolling stock.
  - Provision of amenities for the travelling public.

- Acquiring land and developing it for the business of the Authority.
  - Lending money to third parties for the purposes of the Business of the Authority.
  - Laying or opposing a Bill before Parliament.
  - Making anything required for the purposes of its business.
  - operate ferries under the Ferries Act.
  - borrow monies with the approval of the ITA.
  - Acquire interests in land via compulsory purchase.
- To provide bus stations and associated facilities within or in the vicinity of their area and to operate and maintain them.
  - Power to provide and maintain on any public highway, on a public service vehicle route, bus shelters or other accommodation for passengers, and to erect signs and barriers for the regulation of passengers.
  - Power to make grants to persons providing, maintaining or improving vehicles, facilities and equipment for facilitating travel by disabled persons.
  - To enter into agreements with the Secretary of State to pay for the provision of rail passenger services and facilities. With the consent of the Secretary of State, to be party to rail franchise agreements.
  - To establish, publicise and pay for travel concessions schemes (in addition to the Statutory ENCTS).
  - Subject to any restrictions in other legislation, To do anything that the PTE considers appropriate for carrying out any of its functional purposes or incidental to those purposes, whether directly or indirectly, and for commercial purposes.
  - Well-Being Powers under the Local Transport Act 2008
  - To keep specific and general reserves, which shall be spent only for the purposes of the PTE.

**LCR Plan and Single Appraisal Framework**

**Annex B**



