

## DRAFT FOR DISCUSSION V5

### PROTOCOL FOR THE CONCURRENT EXERCISE OF FUNCTIONS & ASSOCIATED CONSENTS

THIS PROTOCOL IS DATED XXXX 2021

#### PARTIES

1. **WEST YORKSHIRE COMBINED AUTHORITY** of Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE (“Combined Authority”).
2. **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of City Hall, Centenary Square, Bradford, West Yorkshire BD1 1HY.
3. **BOROUGH COUNCIL OF CALDERDALE**, of the Town Hall, Crossley Street, Halifax, West Yorkshire, HX1 1UJ.
4. **THE COUNCIL OF THE BOROUGH OF KIRKLEES**, of the Town Hall, Ramsden Street, Huddersfield, West Yorkshire, HD1 2TA.
5. **LEEDS CITY COUNCIL** of Civic Hall, Calverley Street, Leeds, LS1 1UR.
6. **THE COUNCIL OF THE CITY OF WAKEFIELD**, Town Hall, Wood Street, Wakefield, West Yorkshire, WF1 2HQ.

Each a **party** together the **parties**, and the parties (2) to (6) above collectively the “**Constituent Councils**” of the Combined Authority.

#### 1.BACKGROUND AND INTRODUCTION

1.1 The West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021 SI 2021/XXX made on XXX (“2021 Order”) provides for:

- i. the election of a mayor for the area of the Combined Authority (“Mayor”) from May 2021,
- ii. the Mayor to exercise the functions of a Police and Crime Commissioner, and
- iii. the following functions to be conferred on the Combined Authority:
  - adult education functions of the Secretary of State (to be exercised instead of or concurrently with the Secretary of State),
  - functions of Homes England relating to housing and regeneration (to be exercised concurrently with Homes England),
  - functions relating to grants to bus 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).

## **Concurrent Functions**

1.2 Appendix A to this protocol sets out each function (that is, power or duty) of the Combined Authority (including a function exercisable by the Mayor) conferred by the 2021 Order which is exercisable concurrently with the Constituent Councils (a “**Concurrent Function**”).

1.3 Under the 2021 Order, there is

- no transfer of any Concurrent Function to the Combined Authority from any Constituent Council; each Constituent Council may continue to exercise any Concurrent Function in relation to its area,
- 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.

1.4 That is, each Constituent Council may continue to exercise any Concurrent Function within their area, and in the exercise of any Concurrent Function no Constituent Council is subject to any restriction or condition imposed by the 2021 Order.

## **Statutory Consents**

1.5 The 2021 Order provides that the Combined Authority’s exercise of specified functions is subject to a consent provision, (“**Statutory Consent**”), to safeguard the Constituent Councils’ role in local decision-making and delivery. These are detailed in Appendix A to this protocol.

## **Aim of this Protocol**

1.6 The aim of this protocol is to promote:

- **Co-operation** and **collaboration** between the Combined Authority and the Constituent Councils in a spirit of partnership,
- **transparency** of roles and processes to engender mutual trust and confidence, and
- the **best use of resources** through co-ordination and reducing duplication between the parties.

1.7 The Combined Authority and Constituent Councils have agreed to follow this protocol when exercising any Concurrent Function, and in relation to any Statutory Consent.

1.8 The Combined Authority is committed to on-going engagement with Constituent Councils about all aspects of its work. This includes engagement about how the

Combined Authority exercises its functions. Any timescales set out in this protocol therefore should be regarded as a minimum; there should be additional lead-in time in relation to the development of any projects or schemes involving the possible exercise of any Concurrent Function.

## Miscellaneous

1.8 For some Concurrent Functions, (as indicated in Appendix A), the 2021 Order provides that a Constituent Council's duty to exercise the Concurrent Function is met when the Combined Authority carries it out. This means that provided the Combined Authority performs the duty, the Constituent Councils will not be in breach of their statutory duty if they do not do so.

1.9 The 2021 Order provides for a Statutory Consent in relation to some functions of the Combined Authority which are to be exercised by the Mayor, (as indicated in Appendix A), including the power to acquire land for housing development under section 17(3) of the Housing Act 1985, which is a Concurrent Function. It is intended this protocol shall extend to the Mayor once they are in office in relation to the exercise of these functions.

1.10 Where the Combined Authority and any relevant Constituent Council reasonably consider that the nature and scale of the exercise of any Concurrent Function is of a complex, sensitive or significant nature, then the Combined Authority and Constituent Council may agree a **bespoke protocol** to govern the way the Combined Authority exercises that Concurrent Function<sup>1</sup>.

1.11 This protocol does not itself constitute an arrangement for the discharge of functions made in accordance with section 101 of the Local Government Act 1972 and/or the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012. Any such arrangement may be made by separate agreement between relevant parties.

1.12 This protocol does not address the **scrutiny** of the Combined Authority in relation to how it exercises any Concurrent Function, which will be subject to separate arrangements.

## 2 CONCURRENT FUNCTIONS – UNDERLYING PRINCIPLES

2.1 This protocol sets out how the Combined Authority and each Constituent Council intend to **work together** to secure that Concurrent Functions are exercised in the best interests of the inhabitants of their areas and for their mutual benefit, although the Combined Authority and each Constituent Council acknowledge that, by law, a Concurrent Function may be exercised by the Combined Authority or a Constituent Council acting alone (subject to any Statutory Consent requirement).

2.2 The Combined Authority will exercise any Concurrent Function reasonably and after taking all relevant factors or considerations into account, including how any

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<sup>1</sup> The Combined Authority will send a copy of any bespoke protocol to any Constituent Council which is not a party to it, for information.

Constituent Council is exercising or proposes to exercise the Concurrent Function and the potential effect of a decision on any Constituent Council. In exercising any Concurrent Function, the Combined Authority will comply with the public sector equality duty under section 149 of the Equality Act 2010<sup>2</sup>.

2.3 The Combined Authority will ~~agree the exercise endeavour so far as reasonably practicable to exercise of~~ any Concurrent Function with a Constituent Council in such a way as to be **compatible** with and **complementary to** the exercise of the Concurrent Function by any Constituent Council.

2.4 Subject to each party complying with requirements relating to data protection and the law of confidentiality, the Combined Authority and each Constituent Council agree to **share any information** as reasonably requested by any other party, to facilitate their exercise or proposed exercise of any Concurrent Function.

2.5 The parties will consult with each other before **approving, varying or revoking any strategy or plan** which is likely to determine or significantly affect how any Concurrent Function is exercised by the Combined Authority.

2.6 The Combined Authority will so far as reasonably practicable seek to develop and agree with each Constituent Council a common and consistent approach to any **monitoring arrangements** relating to any Concurrent Function exercised by the Combined Authority.

2.7 The Combined Authority will so far as reasonably practicable seek to develop and share **best practice** with each Constituent Council in relation to the exercise of any Concurrent Function exercised by the Combined Authority.

### **3 STATUTORY CONSENTS: PROCEDURE**

3.1 The 2021 Order provides for any **Statutory Consent to be given at a meeting of the Combined Authority**<sup>3</sup>. The request for any consent will therefore be set out in a report to be considered at a meeting of a Combined Authority, and any consent will be duly recorded in the minutes of the meeting.

3.2 The Combined Authority will seek any Statutory Consent **in a timely way**; the Combined Authority's Access to Information Annex defines any request for a Statutory Consent as a **Key Decision** and notice of the request should therefore be published at least 28 clear days in advance of the Combined Authority meeting at which it is sought.

3.3 To further facilitate the appropriate and timely briefing by the Chief Executive (or their nominee) of the member of the Combined Authority who may provide a Statutory Consent, the Combined Authority's Managing Director will **notify the Chief Executive** of each relevant Constituent Council (or their nominee) at least 10 working days before ~~as soon as reasonably practicable of~~ any proposal to seek a

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<sup>2</sup> That is, will have due regard to those matters specified in S149 Equality Act 2010.

<sup>3</sup> See further the Combined Authority's Procedure Standing Orders (*amendment to be drafted*)

Statutory Consent ~~is published by giving, and at the latest when the~~ notice of the Key Decision ~~is published~~. The Combined Authority will provide the Chief Executive with details about the proposed exercise of the function, including the commencement date/projected timescales and the manner in which it is to be exercised.

3.4 In relation to any transport-related function in respect of which a Statutory Consent is required, the Combined Authority agrees that this is subject to the Combined Authority and the Constituent Councils agreeing a **Key Route Network** in respect of which the function is to be exercised.

#### **4 CONCURRENT FUNCTIONS: CONSULTATION WITH CONSTITUENT COUNCILS**

4.1 **Where a Statutory Consent is not required, the Combined Authority will consult the Constituent Councils about any proposal by the Combined Authority to exercise any Concurrent Function, subject to the following:**

- the Constituent Councils have agreed that no consultation is required, or
- ~~it is jointly agreed that~~ there are no significant implications arising for Constituent Councils.

4.2 The Managing Director will notify the relevant Chief Executive (or their nominee) of any proposal to exercise ~~a the~~ Concurrent Function ~~which is not a Key Decision at least 15 working days before its proposed exercise as soon as practicable, and will provide at least 10 working days' notice before publication in any event before of~~ any Key Decision notice ~~is published~~ by the Combined Authority in relation to its proposed exercising the Concurrent Function.

4.3 The Managing Director will consult the Chief Executive about the proposed exercise of the Concurrent Function, including the commencement date/projected timescales and the manner in which it is to be exercised.

4.4 Such consultation must be fair and carried out with adequate notice for responses which must be conscientiously considered by the Combined Authority with a view to reaching agreement on the exercise of the Concurrent Function.

#### **5 DISPUTE RESOLUTION**

5.1 The Combined Authority and the Constituent Councils will act at all times in a constructive spirit of mutual cooperation and partnership to resolve disagreements

5.2 Any dispute between the Combined Authority and any Constituent Council about the exercise of a Concurrent Function (whether before or after its exercise) will be referred to the Managing Director of the Combined Authority and the Chief Executive of the relevant Constituent Council with a view to resolution.

5.3 In default of successful resolution between the parties, any dispute will be referred to the Mayor of the Combined Authority and the Leader of any relevant Constituent Council for resolution, provided always that notwithstanding any

recommendations made, any Statutory Consent of any Constituent Council will continue to be required in their absolute discretion.

## **6 REVIEW**

6.1 The Combined Authority and the Constituent Councils agree to review this protocol annually and before any additional concurrent functions which may be conferred on the Combined Authority in future by any other Order are exercisable by the Combined Authority.

6.2 The Combined Authority and the Constituent Councils may revise this protocol from time to time, provided such revisions are agreed in writing by the Managing Director of the Combined Authority and the Chief Executive of each Constituent Council.

## **7 SIGNATURE**

Signed for and on behalf of the West Yorkshire Combined Authority

Name .....

Date.....

Signed for and on behalf of the City of Bradford Metropolitan District Council

Name .....

Date.....

Signed for and on behalf of the Borough Council of Calderdale

Name .....

Date.....

Signed for and on behalf of the Council of the Borough of Kirklees

Name .....

Date.....

Signed for and on behalf of Leeds City Council

Name.....

Date.....

Signed for and on behalf of the Council of the City of Wakefield

Name .....

Date .....

**Appendix**

Concurrent Functions and Statutory Consents requirements