

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: Cabinet Member for Finance and Resources jointly with Corporate Director, Economy

Report of: Assistant Director Development

Date of Decision: 05 October 2018

SUBJECT: TUPE Transfer of the Birmingham City Council HS2 Growth Team to the West Midlands Combined Authority

Key Decision: No **Relevant Forward Plan Ref:**

If not in the Forward Plan: Chief Executive approved ☐
(please "X" box) O&S Chair approved ☐

Relevant Cabinet Member(s) or Relevant Executive Member: Councillor O'Reilly – Finance and Resources

Relevant O&S Chair: Councillor Sir Albert Bore, Resources

Wards affected: All

1. Purpose of report:

1.1 To brief the relevant Cabinet Member on the proposed transfer under the Transfer of Undertaking Protection of Employment Regulations (TUPE) 2006, in respect of the HS2 Growth Team, formerly part of Major Projects and Programmes in the Economy Directorate.

1.2 To seek authority for the proposed transfer of the HS2 Growth Team from Birmingham City Council (BCC) to the West Midlands Combined Authority (WMCA) on 1 November 2018.

2. Decision(s) recommended:

That the Cabinet Member for Finance and Resources jointly with the Corporate Director, Economy :-

2.1. Agree to the transfer of the HS2 Growth Team from BCC to WMCA and delegate implementation to the Corporate Director, Economy.

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3. Consultation:

There have been ongoing discussions with a range of stakeholders within BCC and WMCA with regards to four BCC employees transferring to WMCA.

3.1 Internal

BCC recognised unions and the staff concerned are currently being consulted on the transfer. Recognition of the trade unions and current collective agreements will follow the employees.

3.2 External

WMCA are currently being consulted as the receiving transferee.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

4.1.1 The transfer is in line with BCC's TUPE Protocol and the Transfer of Undertaking Protection of Employment Regulations (TUPE) 2006.

4.2 Financial Implications:

4.2.1 Prior to the creation of the WMCA the Growth Delivery Board funded this activity and was supported by BCC in delivery. Following the creation of the WMCA in June 2016 the support continued and the cost of the team was being met by the WMCA Investment Programme budget. This is and always has been cost neutral to BCC.

4.2.2 The cost of the team's salaries comprising of four members of staff and direct employment costs is circa £0.3 million in a full year which will be met from existing budget allocation for HS2 Growth from the WMCA Investment Programme budget.

4.2.3 The employment risk will TUPE transfer to WMCA and will be managed accordingly for the duration of the 10 year programme that the team is currently forecast to support.

4.2.4 It has been agreed that BCC will retain the past service liabilities of these staff members following transfer with regards to Pension. It is usual for outsourcing provision to be fully funded on transfer, which means that BCC retain the deficit.

4.2.5 There are also certain indemnities required by WMCA as part of this transfer which BCC fully accepts.

4.3 Legal Implications

4.3.1 The transfer of the HS2 Growth Team to WMCA is a TUPE Transfer and the TUPE Regulations 2006 will apply in respect of the transfer.

4.3.2 All affected employees will be consulted in relation to the proposed transfer. Consultation will be meaningful.

4.3.3 As part of the Authority's due diligence our legal team are currently working on the provisions of the transfer document.

4.4 Public Sector Equality Duty

4.4.1 There are currently no adverse impacts attributable to the transfer.

5. Relevant background/chronology of key events:

5.1 A small team comprising of four officers are currently employed by BCC to deliver support to the HS2 Growth Programme. The WMCA took over the lead role in coordinating HS2 growth for the West Midlands in June 2016.

5.2 The HS2 Growth Team are responsible for the management and coordination of the programme and governance arrangements in relation to the Midlands HS2 Growth Strategy.

5.3 In order to make sure the HS2 Growth Implementation Plan is continued to be given a high priority, a joint BCC and WMCA recommendation was agreed by the WMCA Board on 23 June 2017 for the BCC HS2 Growth Team to move to WMCA via a secondment arrangement. A subsequent review of further information determined that the Transfer of Undertaking Protection of Employment Regulations (TUPE) 2006 did apply and both BCC and WMCA HR and Legal teams have agreed this to be the case. A further decision was therefore made on 9 March 2018 by the WMCA Board to seek a TUPE transfer of the team.

5.4 The staff have been advised that TUPE applies and BCC are currently consulting with both staff and trade unions on the proposed measures (terms and conditions) document produced by WMCA.

5.5 WMCA are already members of the West Midlands Local Government Pension Scheme.

5.6 The trade unions have not raised any objections to the transfer and UNISON (who represent two of the employees) are working with BCC to ensure a smooth transfer, subject to internal sign off.

5.7 The proposed transfer date is 1 November 2018.

5.8 There are four staff impacted by the proposed transfer.

1 x Grade 7 HS2 Programme Manager

2 x Grade 5 HS2 Project Managers

1 x Grade 3 HS2 PSS Administrator.

6. Evaluation of alternative option(s):

6.1 The team are organised by BCC but work directly to the WMCA, and are wholly funded through the WMCA programme. From the Council's perspective, as the team are dedicated 100% to the project, it has been recognised that TUPE applies and a transfer should take place.

7. Reasons for Decision(s):

7.1 TUPE Transfer

To enable the Council to enter into a TUPE transfer from BCC to WMCA in respect of four members of staff within the BCC HS2 Growth Team.

<u>Signatures</u>	<u>Date</u>
Councillor Brett O'Reilly Cabinet Member for Finance and Resources
Waheed Nazir Corporate Director, Economy

List of Background Documents used to compile this Report:

Relevant Officer's file(s) on the matter, save for confidential documents

List of Appendices accompanying this Report (if any): None

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in section 4.4 of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

- 1 The Council must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 2 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 4 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) tackle prejudice, and
 - (b) promote understanding.
- 5 The relevant protected characteristics are:
 - (a) marriage & civil partnership
 - (b) age
 - (c) disability
 - (d) gender reassignment
 - (e) pregnancy and maternity
 - (f) race
 - (g) religion or belief
 - (h) sex
 - (i) sexual orientation