

WMCA Board

Date	9 November 2018
Report title	West Midlands 5G – Structure, Governance and Funding
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Report has been considered by	WMCA Programme Board - 26 October 2018 WMCA Investment Board - 1 November 2018

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Approve the participation by the WMCA in the WM5G Project as set out in this report.
- (2) Confirm and approve the proposed governance structure for the WM5G Project and grant permission for the Joint Venture and Delivery Entity to be incorporated and the Overarching Grant Agreement entered into (including any associated ancillary documentation) in conjunction with the Department for Digital, Culture, Media & Sport.
- (3) Confirm and approve an allocation of £4.75 million to the Delivery Entity, subject to the normal WMCA Assurance Framework, to be allocated to projects using the governance structures set out in this paper.

1. Purpose

- 1.a The West Midlands has successfully bid for regional test-bed status as part of the Government's Urban Connected Communities programme (UCC). The benefits and implications of this for the region are substantial (outlined in brief below). This is a national effort to accelerate the deployment of next-generation mobile connectivity in the UK – with the West Midlands leading the way.
- 1.b Over the last month an interim project team has been established to work alongside our Department of Digital, Media, Culture and Sport (DCMS) partners as part of a mobilisation and setup phase. The purpose of this phase is to prepare long-term funding, contracting and project planning; develop necessary business cases; and build the regional and commercial relationships that will be necessary for success.
- 1.c The WM5G programme will report regularly to WMCA Board over the coming months and years. The purpose of this early-stage report is as follows:
- Request Board approval to participate in this programme
 - The WM5G UCC Project (the **Project**) has reached a stage where confirmation and approval of the governance structure is required. The governance model will be used to implement the 5G infrastructure and roll-out test-bed projects
 - The report therefore proposes a governance structure and potential funding model (including WMCA funding allocation), with a view to receiving approval of both from the WMCA Board.
- 1.d This is a national project hosted in the West Midlands with global significance. We want to make sure the governance of this project reflects our way of working in the region – ambitious, collaborative, and with inclusive growth and ambition for our citizens at its heart.
- 1.e Our proposition – developed with DCMS and outlined below – means to continue the spirit of collaboration and mutual benefit that characterised our successful bid. We are already engaging with WMCA members and the public, business and social sectors across the region to ensure they are plugged in to governance and advisory functions to the extent that is appropriate and desirable. This process has been accelerated pending approval of the governance model from WMCA Board.

2. Current Status and Proposed Structure

Background

- 2.a The West Midlands has been selected to become the innovative home to the UK's first multi-city 5G test bed. The multi million pound trial of new high speed mobile connectivity will pave the way for the future rollout of 5G across the UK, making the West Midlands the first region in the UK ready to trial new 5G applications and services at scale. 5G is short for 'fifth generation mobile networks' and is set to be significantly faster than previous generations, as well as providing reliable and flexible connectivity.

- 2.b The project will develop a large-scale 5G prototype across the region, with potential hubs in each of the regional clusters of Coventry/Solihull, Birmingham, and the Black Country. A key aspect of the design phase will involve exploring options for shared infrastructure.
- 2.c Up to £75m of public funding is available for the project, subject to further development and approval of the business plan. This includes £25m from the Department for Digital, Culture, Media and Sport (DCMS) and £25m match funding from regional partners. An additional £25m may be made available from DCMS at a later stage.
- 2.d 5G mobile connectivity is expected to revolutionise the digital environment across the UK, with massive attendant benefits to business, public services and society. But the current market environment for the introduction and uptake of 5G mobile coverage is not optimal. Market demand, competitive mobile operator environment and 5G network deployment approach are not yet clear enough to lower the barriers to investing in the technology at scale.
- 2.e The Government introduced the Urban Connected Communities programme to facilitate the successful introduction of 5G, overcoming the barriers of scale and the current competitor market in the UK. The Government has introduced a 5G Testbeds and Trials programme, through which it will provide funding for a series of projects to explore 5G connectivity solutions and business models. WMCA has been selected as the preferred partner for the implementation of their Urban Connected Communities (UCC) – to test 5G across a broad urban area.
- 2.f As part of this project we seek to:
- Increase the rate of adoption and deployment of new technologies needed to support higher productivity growth;
 - Act as a large-scale prototype for the UK in the deployment of 5G; evolution of market structures; and development of new business models and services, and
 - Enable full digital inclusion to accelerate the move towards the digital delivery of inclusive public and commercial services.
- 2.g WM5G is the catalyst for shaping and scaling the deployment of 5G across the region and ultimately the country, with WMCA being the first region to receive the benefits this revolution will bring. The project will support the strategy of inclusive growth: driving fast economic growth, with the benefits of that growth shared across the region through participation in new digital technologies.
- 2.h As an evolution of this concept, WM5G will:
- Make the West Midlands the “go to” region for innovating and testing scalable use cases for 5G - attracting investment and talent to the region, spurring economic growth and development.
 - Provide opportunities for locally based businesses to contribute to the innovation ecosystem that will evolve to make the project a success; and
 - Improve connectivity to support our small and social enterprises, such as social enterprise communities, social impact movements and the region’s blossoming digital and creative SME sector.

Strategic objectives and benefits

- 2.i In light of the context to WM5G outlined above, the overall strategic objectives for the project are to:
- Increase the rate of adoption and deployment of new technologies needed to support higher productivity growth;
 - Act as a large-scale prototype for the UK in the deployment of 5G; evolution of market structures; and development of new business models and services; and
 - Enable digital inclusion to accelerate the move towards the digital delivery of better, more cost effective public and commercial services in the West Midlands and UK.
- 2.j The achievement of these overarching objectives will enable the delivery of key strategic and economic benefits for the region – WM5G will enable faster and better coverage across the West Midlands, lowering the cost of communications for the public sector, and positioning us as a national and global leader.

Current status

- 2.k At present the West Midlands Combined Authority (**WMCA**) has entered into a Mobilisation Grant Agreement which has awarded grant funding from DCMS for the Project until the end of November. Additional match funding has been provided by GBSLEP and the WMCA in equal shares. It is a condition of future grant funding from DCMS that a joint venture vehicle owned by the WMCA and DCMS be established. This joint venture company will have a subsidiary that will engage in delivery activity. The two companies will both be limited by guarantee (a diagram of the proposed structure is set out at the end of this report).
- 2.l The proposed corporate governance model is intended to ensure a fair and transparent vetting process for business cases whilst providing sufficient procedural mechanisms to permit only the strongest of business cases to be successful in receiving funding.
- 2.m A combination of the WMCA, the 3 LEPs and other local partners in the area need to match the £25 million funding being provided by DCMS.

2.1. West Midlands UCC Joint Venture (the JV)

- 2.1.a *The following paragraphs outline the proposed joint-venture that will govern the WM5G Programme.*
- 2.1.b WMCA and DCMS will both be equal members in the JV. The JV will act as the highest level of governance within the proposed model where WMCA, representatives from the local authorities (including non-constituent representation), LEPs and DCMS will have the final comment on each business case.
- 2.1.c Incorporating companies limited by guarantee is the preferred corporate form for both the JV and Delivery Entity. This structure ring fences risk for the parties whilst allowing appropriate flexibility and the companies not to be on 'balance sheet' for DCMS. A Members' Agreement will be entered into between WMCA and DCMS which will set out how the relationship will be governed in more detail. This agreement is currently being developed by DCMS. It is anticipated that the Members' Agreement will contain the mechanics of how the parties will interact with each other, enact decisions, quorum for meetings, notice periods and exit arrangements.

- 2.1.d The JV board will be appointed by agreement between WMCA and DCMS, comprising representatives from each of the 7 constituent authorities, non-constituent representation, local enterprise partnerships, DCMS and other governmental departments, who are involved in the 5G Project. This allows for all the public sector partners to have visibility on the progress of the Project. The board will meet on a quarterly basis, and will act as the highest authority and final sign-off for each business case wishing to draw funding from the Project. The board will be chaired by the Mayor of the West Midlands.
- 2.1.e Once established, the JV will enter into an Overarching Grant Agreement with DCMS to receive the necessary funding in relation to the Project.

2.2. WM5G Limited (the Delivery Entity)

- 2.2.a The Delivery Entity will be set up as a wholly-owned subsidiary of the JV. The general role of the Delivery Entity will be to govern the delivery and associated operational aspects of the Project by obtaining private sector investment to match the public sector contributions, reviewing business cases before grant of funding and guiding funded business cases.
- 2.2.b The Delivery Entity board will consist of the following members:
- a non-executive chairman;
 - an employee representative from within the Delivery Entity;
 - 6 independent non-executives; and
 - 2 representatives from the JV (1 appointed each by DCMS and WMCA).
- 2.2.c The Delivery Entity board will meet on a monthly basis to approve each business case prior to progression to the JV board. The use of the Delivery Entity is to allow for the adoption of a more business focus at the delivery level, granting a greater degree of flexibility to react to market changes, especially in light of the dynamic nature of the telecoms and technology sectors. It is intended that the Delivery Entity will not be subject to local government accounting procedures. Advice on the taxation implications of the structure has been sought.
- 2.2.d Before business cases reach the Delivery Entity board, an internal Investment Sub-committee will review each submission. Investment Sub-committee meetings will also be convened on a monthly basis. These meetings will be interspersed with the Delivery Entity board meetings meaning that there will be a meeting of some capacity every 2 weeks at this level of governance. The membership of such Investment Sub-committee is yet to be agreed although it will be on a transparent basis with the view to appointing the right skills set.
- 2.2.e A number of Advisory Taskforces will scrutinise and provide feedback on each business case in order that well-reasoned recommendations may be made to the Investment Sub-committee. The Advisory Taskforces will comprise of representatives from regional, national and international stakeholders and collaborators allowing an input in the governance process from any interested parties (subject to any confidentiality and conflict restrictions).

- 2.2.f The role of the various Advisory Taskforces and the Investment Sub-committee will be to provide a more technical and in-depth review of the business cases. Therefore the variety of organisations involved at this level will be broader. This will lend to an inclusive governance structure, encouraging ideas and involvement in the Project. Proposed Advisory Taskforces currently anticipates a technical taskforce, a citizen taskforce and a funding and financial taskforce. These Advisory Taskforces will be more informal and therefore flexible.
- 2.2.g Subject to the nature and scope of the Project as time progresses, further subsidiaries may be formed, wholly owned by the Delivery Entity, to provide further involvement from sector specific experts where necessary. The key here is the flexible nature of the governance structure which may be adapted to meet the needs and requirements of the Project.
- 2.2.h For ease of reference, please see appended a diagram illustrating the proposed governance structure.

3. Timescales

- 3.a The WM5G UCC funding has a finite timescale which concludes on 31 March 2021.
- 3.b From inception of a business case to final approval by the JV board, the process is envisaged to last between 6 to 12 months.

4. Financial Implications

- 4.a The local partners are required to contribute £25 million to the project to match DCMS's initial investment. Of this £25 million, £5 million in total is required from the WMCA. £250,000 has already been allocated to the mobilisation phase of the project and therefore £4.75 million is required to be ring-fenced for the Overarching Grant Phase.
- 4.b The project team will revert to the Investment Board in January 2019 with an Outline Business Case that will be informed by the work they are currently doing to prepare for the Overarching Grant Agreement. This is intended to pave the way for the flexible draw-down of the ring-fenced cash allocation to meet the projects aims.

5. Legal Implications

- 5.a The WMCA has authority and would be acting within its powers by creating this governance structure. The legal authority for such a conclusion is as follows:
Article 10 of the West Midlands Combined Authority Order 2016 (the Order) states that:
- a) the functions of the constituent councils set out in Schedule 3 are exercisable by the Combined Authority in relation to its area;
 - b) the functions are exercisable concurrently with the constituent councils; and
 - c) any requirement in any enactment for a constituent council to exercise such a function may be fulfilled by the exercise of that function by the Combined Authority.

Paragraph 1 of Schedule 3 of the Order goes on to state that 'the functions of the constituent councils under section 1 of the Localism Act 2011 to the extent that those functions are exercisable for the purpose of economic development and regeneration.'

Section 1 of the Localism Act 2011 (the Act) states that a local authority has power to do anything that individuals generally may do; this is regarded as the general power of competence. However, under Section 4 of the Act where, in exercise of the general power, a local authority (and therefore the Combined Authority pursuant to Article 10 of the Order) does things for a commercial purpose, the authority must do them through a company.

Additional powers are also granted to the Combined Authority under the West Midlands Combined Authority (Functions and Amendment) Order 2017 which refers further to the powers granted in Local Democracy, Economic Development and Construction Act 2009.

- 5.b Therefore, WMCA may legally approve and grant authority to create this governance structure if it is satisfied that it is appropriate.

6. Equalities Implications

- 6.a The equalities implications will be considered on a business case by business case basis.

7. Inclusive Growth Implications

- 7.a The WMCA Board has asked for the inclusive growth implications of each board paper to be outlined in this section. We are developing a set of materials that will allow officers and partners to do this robustly, which will be reflected in WMCA Board reports from January onwards.

8. Geographical Area of Report's Implications

- 8.a Ultimately the entire WMCA region and surrounding non-constituents areas will benefit from the investment that will be accelerated as a result of the WM5G UCC project. This will happen through a combination of underlying infrastructure development and geographical test-beds which will give each area of the West Midlands an opportunity to benefit (focused initially on constituent WMCA geography). The long term benefit to all (constituent and non-constituent authorities) is a rapidly growing 5G market across the region as a whole.

9. Other Implications

None

10. Schedule of Background Papers

Governance Structure Diagram

Governance Structure Diagram

