

AGENDA ITEM 8**REPORT TO THE TEES VALLEY
COMBINED AUTHORITY CABINET****17 MARCH 2023****REPORT OF THE GROUP CHIEF EXECUTIVE****VARIATION TO THE PLANNING POWERS OF HARTLEPOOL DEVELOPMENT
CORPORATION AND MIDDLESBROUGH DEVELOPMENT CORPORATION****SUMMARY**

This report requests approval to vary the planning powers of the Hartlepool Development Corporation (HDC) and Middlesbrough Development Corporation (MDC). It also provides a wider update on progress with HDC and MDC.

RECOMMENDATIONS

It is recommended that the Tees Valley Combined Authority Cabinet:

- i. approves the decision to vary the planning powers of HDC and MDC, as set out in paragraph 8, pursuant to section 202 of the Localism Act 2011;
- ii. notes the wider update on HDC and MDC.

DECISION TO DESIGNATE HDC AND MDC

1. The designation of Mayoral Development Areas is a mayoral power under Section 197 the Localism Act 2011. On 22 July 2022, the TVCA Cabinet supported the designation of two new Development Corporations (DC) in Hartlepool and Middlesbrough, subject to the outcome of a statutory consultation period. At this meeting an allocation of £10m was made to each Development Corporation from the Investment Plan.
2. The Combined Authority undertook a consultation with statutory consultees and other stakeholders for each DC area, in line with Section 197 Subsection 3 of the Localism Act 2011. It was published on the TVCA website on 23 June 2022 and closed on 4 August 2022. The consultation covered the general principles of a DC area, the proposed redline boundaries, and powers. A summary of the results and the formal response is published on the Combined Authority website.
3. Following consultation, and in line with Section 197 Subsection 6 of the Localism Act 2011, the HDC and MDC were designated to the Secretary of State (SoS) for Levelling Up, Housing and Communities in October 2022. The designation requested the full suite of powers available through the legislation be conferred on to HDC and MDC.

4. Alongside the consultation period and establishment of each DC area, a Masterplan has been developed. The purpose of the Masterplan is to build upon ongoing plans and investment and sets out a high-level framework which has been developed with key partners. It identifies a vision, principles, focus areas and indicative projects but allows flexibility to respond to emerging opportunities. The masterplans will be published in due course.

LEGISLATION FOR HDC AND MDC

5. Following designation, a Development Corporation becomes a legal entity through an Establishment Order. The orders for HDC and MDC were laid before Parliament on 6 February 2023 and came into force on 27 February 2023. The HDC and MDC are now legal entities.
6. As outlined above, the designation requested that all available powers be conferred on to HDC and MDC, including Town and Country Planning powers and the power to grant discretionary business rate relief. The legislation for these powers is currently being drafted by government, before being laid before Parliament. A more detailed update is provided below, including details of the request to vary the planning powers.

VARIATION TO THE TOWN AND COUNTRY PLANNING POWERS

7. The formal designation in October 2022 requested that all available planning powers be conferred on to HDC and MDC as follows:
 - The MDC for the area is to be the LPA, for the whole or any portion of the area, for the purposes of:
 - Part 3 of the TCPA 1990 (control over development);
 - Part 2 of the PCPA 2004 (local development);
 - Part 3 of the PCPA 2004 (development).
 - The MDC is to have, in the whole or any portion of the area, the functions conferred on the LPA by the provisions mentioned in Part 1 of Schedule 29 to the LGPLA 1990. These are functions related to enforcement and special controls under the TCPA 1990 and functions under the Planning (Listed Buildings and Conservation Areas) Act 1990.
 - The provisions specified in Part 2 of the Schedule are to have effect subject to modifications.
 - The MDC is to have, in the whole or any portion of the area, the functions conferred by Schedule 8 to the Electricity Act 1989 so far as applying to applications for consent under section 37 of that Act (overhead lines).
8. Since October 2022, several discussions have taken place with both Local Authorities on planning powers. Following these discussions, a variation to the planning powers in paragraph 7 is required and the revised powers are:
 - The MDC for the area is to be the LPA, for the whole or any portion of the area, for the purposes of:
 - Part 3 of the TCPA 1990 (control over development).
 - The MDC is to have, in the whole or any portion of the area, the functions conferred on the LPA by the provisions mentioned in Part 1 of Schedule 29 to the LGPLA 1990. These are functions related to enforcement and special controls under the

TCPA 1990 and functions under the Planning (Listed Buildings and Conservation Areas) Act 1990.

- The provisions specified in Part 2 of the Schedule are to have effect subject to modifications.
9. Consequently, the variation is that it is no longer proposed to take the following powers:
- Part 2 of the PCPA 2004 (local development).
 - Part 3 of the PCPA 2004 (development).
 - The MDC is to have, in the whole or any portion of the area, the functions conferred by Schedule 8 to the Electricity Act 1989 so far as applying to applications for consent under section 37 of that Act (overhead lines).
10. It should be noted that the variation to the planning powers above ensures that HDC and MDC do not have the responsibility for the Local Plan, this will remain with Hartlepool Borough Council and Middlesbrough Council.
11. In line with Section 202 Sub-section 7 (a) of the Localism Act 2011, the Tees Valley Mayor has written to Hartlepool Borough Council and Middlesbrough Council, and the two MPs whose constituency is within HDC and MDC, to consult them on the variation to the planning powers set out at paragraph 8 of this report. The consultation period closes on 15 March 2023.
12. Following the closure of the consultation period, the Mayor will have regard to any comments made, and where there are comments that are not accepted, the Mayor will publish a statement giving the reasons for the non-acceptance, in line with Section 202 Sub-section 7 (b) and (c) of the Localism Act 2011. The Cabinet will be provided with the statement in advance of the Cabinet meeting.
13. Subject to the Cabinet decision on the variation of planning powers, the Mayor will then formally write to the Secretary of State for the Department of Levelling Up, Housing and Communities to request the variation to the planning powers for HDC and MDC.

FURTHER INFORMATION ON TOWN AND COUNTRY PLANNING POWERS

14. Subject to the approval of the variation to the planning powers outlined above, government will draft the legislation and lay it before Parliament in the same way as the Establishment Orders.
15. The DCs will have powers conferred on to them in their entirety, for legislative purposes (as detailed at paragraph 8), however there may be certain functions within the powers that it is agreed will remain with each Council. Where this is the case, a separate agreement will be in place between the DC and the relevant Council, which will sit outside of the legislation and process outlined at paragraphs 8 - X and is still being worked up with each Council. For background purposes the current high-level position is as follows (this is applicable to both HDC and MDC and is subject to ongoing discussions):

- The DC will discharge planning powers for the purposes of planning applications and decisions on those applications within the redline boundary area. This will only be for those applications that fall within the attached “strategic definition” agreed with each Council. The consideration of and decisions on applications that do not fall within this will be dealt with by each Council.
- The DC will discharge the functions in relation to Listed Buildings within the redline boundary area.
- The DC does not propose to discharge the functions related to planning enforcement, this function will be delegated back to each Council.

16. In line with statutory requirements, a Supplementary Planning Document/Design Code will be developed for each DC area, which will sit alongside the Masterplan for each.

THE POWER TO GRANT DISCRETIONARY BUSINESS RATE RELIEF

17. HDC and MDC will have the power to grant discretionary rate relief to businesses within the redline boundary area. Government is currently drafting this legislation and it will be laid before Parliament in the same way as the Establishment Orders referred to above.

18. The application of this power in operational terms has been the subject of extensive discussions between the Combined Authority (CA) and Hartlepool and Middlesbrough Councils. The default position will be that the Tees Valley Mayor can grant business rate relief within the DC area, but the DC must compensate Middlesbrough Council for any resulting loss of business rates income.

19. Where this applies to new rates (for example, related to new investment) there would be an agreement between the DC and the Council that the Tees Valley Mayor could offer this without compensating the Council, but only if it is agreed by the DC Board, with agreement from the HDC or MDC Board Member. In the event this isn't granted it reverts to the above default position. Therefore, the Board Member for HDC or MDC will have a veto over any such scheme but having this agreement allows the DC the flexibility to move forward without involving the Council for new investment. Where there is an impact on Council finances, again it reverts to the default position.

THE TRANSFER OF PUBLICLY OWNED ASSETS

20. As part of the legislation for Development Corporation areas, the Tees Valley Mayor can request the transfer of publicly owned assets to the ownership of the Development Corporation. Asset transfer is a separate consultation process carried out by the Secretary of State (SoS) for Levelling Up, Housing and Communities. The final decision as to whether an asset is transferred sits with the SoS.

21. The assets requested for HDC and MDC have been the subject of extensive discussions between TVCA and the asset owner/s and have been included only where it has been agreed that their inclusion is crucial to the delivery of key projects in the Masterplan for each area.

22. Where these are assets owned by the respective councils, TVCA is working closely with legal and finance teams within the councils to agree appropriate terms and protections on an asset-by-asset basis. Similar discussions are taking place on government owned assets.
23. It is expected that the SoS will launch the consultation for both HDC and MDC shortly. The consultees will be the Tees Valley Mayor and the asset owner.
24. Full Council meetings of both Hartlepool Borough Council and Middlesbrough Council were held in February 2023, at which, each Council considered various information in relation to HDC and MDC respectively. Hartlepool Council voted in favour of the officer's recommendations at their full Council meeting. Middlesbrough Council voted against the officer's recommendation at their full Council meeting. The meeting was not attended by the Middlesbrough Mayor and a number of other Members. The Tees Valley Mayor has since had a letter from a majority of Middlesbrough Members supporting the recommendations.

FINANCIAL IMPLICATIONS

25. The TVCA Cabinet made an allocation from the Investment Plan of £10m to HDC and £10m to MDC, at its meeting on 22 July 2022, to support development. In addition, any costs arising from discharging planning powers, or other appropriate resource requirements, will be met from the allocations and any income received.

LEGAL IMPLICATIONS

26. The designation of Mayoral Development Areas is a mayoral power under the Localism Act 2011 (section 197) and applies to the Combined Authority through the Combined Authority (Functions) Order 2017. Once an area has been designated to the SoS, legislation is drawn up by government, and laid before Parliament, to establish the DC and give it powers. Progress on legislation is provided in detail above.
27. It should be noted that if Cabinet does not approve the variation to the planning powers outlined at paragraph 8 of this report, the more extensive and less targeted powers at paragraph 7, which have already been approved, will be conferred on to HDC and MDC.
28. HDC and MDC will each have a constitution. The constitutions will be agreed at the first formal Board meetings for each DC.

RISK ASSESSMENT

29. Tees Valley Combined Authority has adopted a group approach to managing risk which is aligned to ISO and Orange Book standards. This approach has been used to successfully identify, manage and monitor risks across the Group risk portfolios.
30. The risk management framework uses a suite of standard tools and techniques which deliver the effective and efficient management of risk, supported by the implementation of an automated platform, enabling real time reporting to be used in key decision making, driving accountability and delivery of action plans.

31. To date, a Risk Register has been documented to monitor the development and delivery of HDC and MDC.

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