

Cabinet

9<sup>th</sup> January 2018

**Name of Cabinet Member:**

Cabinet Member for Policy and Leadership - Councillor G Duggins

**Director Approving Submission of the report:**

Chief Executive

**Ward(s) affected:**

All

**Title:**

West Midlands Combined Authority Borrowing Powers and Amendments to Key Route Network

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**Is this a key decision?**

Yes - These decisions have an impact on more than one ward across the City and provide agreements to enable Government to amend existing statute relating to the West Midlands Combined Authority (WMCA).

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**Executive Summary:**

The report is required to ensure WMCA is able to enter into the necessary agreements with Government to amend existing statute, enabling WMCA to borrow for all of the functions attributable to it and also endorse the proposed changes to the Key Route Network.

**Recommendations:**

The Cabinet is requested to:

- 1) Confirm the transfer of borrowing powers to the Combined Authority and provide delegated authority to the Chief Executive, following consultation with the Director of Finance and Corporate Services and Monitoring Officer, to approve the amendment to statutory regulations authorising the WMCA borrowing powers as set out in this report, subject to:
  - a) The additional borrowing powers sought being fully aligned to the WMCA's statutory functions as detailed within the West Midlands Combined Authority Orders.
  - b) Approval of the WMCA borrowing cap suggested by HM Treasury as outlined within this report.
- 2) Give delegated authority to the Chief Executive, following consultation with the Leader of the Council, to approve the amendment to the Key Route Network as detailed within this report.

**List of Appendices included:**

Appendix 1 - Borrowing Cap Proposal

Appendix 2 - Key Road Network Amendments

**Background papers:**

None

**Other useful documents**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

Report title:

## **West Midlands Combined Authority Borrowing Powers and Amendments to Key Route Network**

### **1. Context (or background)**

- 1.1. West Midlands Combined Authority (WMCA) was established in June 2016 following a Parliamentary Order which effectively dissolved the West Midlands Passenger Transport Executive (WMPTE) and the West Midlands Integrated Transport Authority (WMITA), both of which were replaced by the newly established West Midlands Combined Authority.
- 1.2. The two statutory bodies which preceded the Combined Authority (WMPTE and WMITA) existed to promote and deliver public transport. As such, those entities held the necessary powers to undertake borrowing for transport related purposes (i.e. to fund the Metro expansion).
- 1.3. Following the establishment of the WMCA, the Council agreed a Scheme for the transfer by government of powers to the Combined Authority. This scheme then underwent a period of public consultation and was ultimately submitted to government. Whilst the Combined Authority were given most of the powers sought it was not possible to agree with HM Treasury the relevant borrowing powers at that time.
- 1.4. In short, whilst currently WMCA has powers across a broad range of areas, it only has the legal ability to borrow in relation to transport related expenditure.
- 1.5. Specifically, this issue manifests itself in a number of ways predominantly relating to the investment programme. These being:
  - WMCA are currently relying on Birmingham City Council to undertake the commercial borrowing for the Collective Investment Fund.
  - WMCA will need to rely on Wolverhampton County Council undertaking the borrowing for the Land Remediation Fund in advance of WMCA's powers being amended.
  - WMCA will be unable to borrow directly to grant fund the Coventry City Centre Regeneration scheme which WMCA Board have approved of c.£99m.
- 1.6. Amendments to WMCA Borrowing Powers
  - 1.6.1. The Cities and Devolution Act 2016 amends previous legislation so that in addition to borrowing for transport functions, a Combined Authority may borrow in relation to "any other functions of the authority that are specified for the purpose of [section 23(5)] in regulations made by the Secretary of State". Such functions include Mayoral and non-Mayoral functions. Such regulations may only provide borrowing powers for a particular function of the Mayoral WMCA if all the Constituent Councils consent.
  - 1.6.2. In light of the above, WMCA have been in dialogue with HM Treasury and DCLG with a view to commencing the process to obtain the necessary powers and consents WMCA needs to undertake all of its functions.

- 1.7. HMT, DCLG and WMCA agree an annual overall external debt ceiling for WMCA.
- 1.7.1. The purpose of the debt cap is to ensure HMT are safeguarded from any fiscal shocks relating to the management of the UK financial deficit.
- 1.7.2. WMCA have responded to HMT's request to design an annual cap for WMCA External Debt. The cap calculated by WMCA as presented to HMT was sufficient to:
- Cover the necessary borrowing to fund the investment programme based on recent Local Authority estimates.
  - Cover any requirement WMCA may have to manage its 'legacy' debt position including any refinancing of debt which may be required over the period.
  - Allow for £10m p.a. headroom to cover any acceleration of Investment Programme advancement.
- 1.7.3. The value of the borrowing cap proposal submitted to HMT is included as Appendix 1. HMT subsequently accepted the calculations provided by WMCA and provided written confirmation of the provisional deal together with some broad terms.
- 1.7.4. This written agreement aligns the cap to the 5 year gateway review which underpins the £36.5m gainshare grant and contains provisions regarding monitoring and review in the event of unforeseen, material events.
- 1.7.5. HMT now intend to recommend to the Chief Secretary that she approve the debt agreement and will send a letter to the Section 151 officer for West Midlands Combined Authority. The WMCA will be required to give consent to the debt agreement coming into effect and this report requests approval to this agreement and debt cap being entered into by the WMCA.
- 1.7.6. It should be noted that regardless of the borrowing ceiling / cap agreed with HMT, all borrowing ultimately undertaken by WMCA within this limit will be done with due regard to affordability, the WMCA Treasury Management Strategy and the CPIFA Code.
- 1.8. WMCA, HMT and DCLG agree the Borrowing Powers which would be applicable to WMCA
- 1.8.1. WMCA, HMT, DCLG and other representatives from the region have been in dialogue regarding the borrowing powers which should be applicable to WMCA. Agreement has been reached whereby WMCA will be able to borrow for all of its functions.
- 1.8.2. In essence, following approval of the regulation as proposed, the borrowing powers attributable to WMCA will exactly mirror the legal functions of the organisation as outlined within the West Midlands Combined Authority Orders. This is considered to be a sensible and logical approach and is consistent with borrowing powers given to other Local Authorities.
- 1.8.3. It is important to note that despite the broadening of WMCA borrowing powers, the revised powers will remain within the overall remit of WMCA based on its currently approved functions.

- 1.9. WMCA obtain consent to the delegation from the seven Constituent Local Authorities allowing WMCA to enter into the agreement with Government
- 1.9.1. Constituent Authorities approved the Mayoral Governance Review in May 2016 and this review made the following observations in relation to WMCA's ability to borrow:
- The Mayoral WMCA is prevented from borrowing for the purposes of its economic development and regeneration functions and as a result one of the Constituent Councils would in effect need to borrow on Mayoral WMCA's behalf.
  - The Greater Manchester Combined Authority has found this approach to be unsatisfactory, administratively burdensome and inconvenient. For the West Midlands to also proceed in this way would be extremely unsatisfactory.
  - The 2016 Act remedies this difficulty by amending previous legislation so that in addition to borrowing for transport functions, a Combined Authority may borrow in relation to "any other functions of the authority that are specified for the purpose of [section 23(5)] in regulations made by the Secretary of State". Such functions include Mayoral and non-Mayoral functions.
  - Such regulations may only provide borrowing powers for a particular function of the Mayoral WMCA if all the Constituent Councils consent. It is proposed that the regulations should provide for the Mayoral WMCA to have borrowing powers in respect of all of its functions.
- 1.9.2. The requirement for the approach to obtain a delegation is to ensure that the regulations can be laid before Parliament in early 2018 thereby avoiding a protracted process requiring the regulations to be approved individually by WMCA and the seven Constituent Authorities.
- 1.9.3. As detailed in the recommendations to this report, the delegation is expected to be strictly limited to the extension of WMCA Borrowing powers only within the boundaries of the existing functions of WMCA. Should the wording of the actual regulation differ from this principle, the necessary approvals will be requested through this Committee and the seven Constituent Local Authorities.
- 1.10. Key Route Network Amendments
- 1.10.1. For the purposes of efficiency in terms of the Parliamentary process, the amendment to the regulations as detailed above is also intended to cover some necessary amendments to the WMCA Key Route Network.
- 1.10.2. Following the adoption of the WMCA 2017 Order, discussions continued with Local Authorities about whether additional roads should be added into Key Route Network. During the initial development phase of this work in 2015 there was some uncertainty about powers and responsibility which has subsequently been clarified, hence the suggested amendments to the KRN.
- 1.10.3. In addition, WMCA and the relevant Constituent Authorities have jointly developed a network map outlining the agreed Key Route Network. The Key Route Network amendments attached as Appendix 2 highlight the changes required (being sought through the regulation) which will align the schedule with the map.

- 1.10.4. To clarify, the suggested amendments to the KRN:
- 1.10.4.1. Have been jointly developed and agreed between WMCA and the relevant Constituent Local Authority Highway Managers.
  - 1.10.4.2. Are required simply to address inconsistencies between the KRN as informally recognised by WMCA / Local Authorities and the strict definitions as contained within the WMCA Orders to date.
- 1.10.5. It is recommended that the delegation being sought should only be executed if the KRN adjustments in the final regulation are consistent with those included within Appendix 2.

## **2. Options considered and recommended proposal**

- 2.1. Cabinet could refuse to consent to the proposals to amend statute to enable the WMCA to extend its borrowing powers or amend the KRN. This option is not recommended as it will impact on the WMCA ability to undertake and develop some of the key priorities for the region.
- 2.2. Delegations are proposed to be given to the Councils chief executive so that the City Council retains oversight of the final amended orders produced from the Government.

## **3. Results of consultation undertaken**

- 3.1. The principle of the Combined Authority having borrowing powers was included in the Mayoral Powers approved by Council in May 2016. Following approval of the scheme a period of public consultation was carried out from 4th July – 21st August 2016 to seek views from the public and stakeholders on the additional functions proposed to be conferred on the WMCA.
- 3.2. The responses to the consultation were submitted to DCLG.

## **4. Timetable for implementing this decision**

- 4.1. Approval from the constituent authorities and WMCA is being sought by the end of January 2018 with a view to legislation being laid to enable the order to be made.

## **5. Comments from Deputy Chief Executive (Place)**

### **5.1. Financial implications**

The cost of borrowing will be met from Combined Authority resources.

### **5.2. Legal implications**

The Cities and Devolution Act 2016 provides the mechanism for Combined Authorities to undertake borrowing for non-transport functions

**6. Other implications**

**6.1. How will this contribute to the Council Plan ([www.coventry.gov.uk/councilplan/](http://www.coventry.gov.uk/councilplan/))?**

The ability of the Combined Authority to borrow for non-transport functions will support the delivery of a number of strategic projects (including City Centre South) which in turn will enable the delivery of the regional Strategic Economic Plan.

**6.2. How is risk being managed?**

The current borrowing arrangements are unsatisfactory and these amendments will improve the ability of the WMCA to deliver. The City Council retains oversight by delegations being made to the Chief Executive to oversee the final orders that are produced to affect the legislative changes.

**6.3. What is the impact on the organisation?**

None

**6.4. Equalities / EIA**

There are no direct equalities implications as a result of this report

**6.5. Implications for (or impact on) the environment**

None

**6.6. Implications for partner organisations?**

The Council has and will continue to engage with its public and third sector partner. Approval is required by the seven constituent authorities and the WMCA Board.

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