

# Meeting of the City Council

## 16 January 2018

<b>Report title</b>	West Midlands Combined Authority (WMCA) Borrowing Powers and Amendments to Key Route Network		
<b>Decision designation</b>	AMBER		
<b>Cabinet Member with lead responsibility</b>	Councillor Roger Lawrence, Leader of the Council		
<b>Corporate priority</b>	Confident Capable Council		
<b>Key decision</b>	Yes		
<b>In forward plan</b>	Yes		
<b>Wards affected</b>	All (All Wards)		
<b>Accountable director</b>	Keith Ireland, Managing Director		
<b>Originating service</b>	Governance		
<b>Accountable employee</b>	Keith Ireland	Managing Director	
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<b>Report to be/has been considered by</b>	West Midlands Combined Authority Board		12 January 2018

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### Recommendations for action:

The Cabinet (Resources) Panel is recommended to:

1. Delegate authority to the WMCA to approve the amendment to statutory regulations which amend 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 (Functions and Amendment) Order 2017.
  - b. Equivalent authority / approval allowing the WMCA to enter into the delegation, being received by the other Constituent Local Authorities.

2. Approve the WMCA borrowing cap suggested by HM Treasury as outlined within this report.
3. Delegate authority to the Leader of the Council, in consultation with the Managing Director to approve the amendment to the Key Route Network as detailed within this report.

## **1.0 Purpose**

1.1 To ensure that the West Midlands Combined Authority 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. Subject to the approval of the West Midlands Constituent Councils, WMCA Board will consider a report at its meeting on 12 January 2018.

## **2.0 Background**

2.1 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.

2.2 Upon establishing the WMCA, specific powers were granted to this new organisation, which include but are not limited to Housing, Economic Regeneration, Public Sector Reform and Air Quality.

2.3 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).

2.4 When WMCA was established (and subsequently acquired the broader range of powers / functions), the borrowing powers were not extended to align with the newly acquired functions.

2.5 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.

2.6 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 City of Wolverhampton Council undertaking the borrowing for the Land Remediation Fund in advance of WMCA's powers being amended.

## **3.0 Amendments to WMCA Borrowing Powers**

3.1 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.

3.2 In light of the above, WMCA have been in dialogue with HM Treasury (HMT) and Department for Communities and Local Government (DCLG) with a view to commencing the process to obtain the necessary powers and consents WMCA needs to undertake all of its functions; the process for which is broadly as follows:

**HMT, DCLG and WMCA agree an annual overall external debt ceiling for WMCA**

3.3 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.

3.4 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 £10 million p.a. headroom to cover any acceleration of Investment Programme advancement.

3.5 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.

3.6 This written agreement aligns the cap to the five-year gateway review which underpins the £36.5 million gainshare grant and contains provisions regarding monitoring and review in the event of unforeseen, material events.

3.7 The borrowing cap is subject to approval of the WMCA Section 151 Officer who will be required to give consent to the debt agreement coming into effect.

3.8 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 CIPFA Code.

**WMCA, HMT and DCLG agree the Borrowing Powers which would be applicable to WMCA**

3.9 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.

3.10 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 (Functions and Amendment) Order 2017. This is considered to be a sensible and logical approach and is consistent with borrowing powers given to other Local Authorities.

3.11 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.

### **WMCA obtain consent to the delegation from the seven Constituent Local Authorities allowing WMCA to enter into the agreement with Government**

3.12 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 2016 Act 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. It is proposed that the regulations should provide for the Mayoral WMCA to have borrowing powers in respect of all of its functions.

3.13 The requirement for the approach to obtain a delegation is to ensure that the regulations can be laid before Parliament in early 2018 thereby.

3.14 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 the WMCA Board and the seven Constituent Local Authorities.

## **4.0 Key Route Network (KRN) Amendments**

4.1 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.

4.2 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.

4.3 In addition, WMCA and the relevant Constituent Authorities have jointly developed a network map outlining the agreed Key Route Network. The Key Route Network schedule attached as Appendix 2 highlights the additions required (being sought through the regulation) which will align the schedule with the map.

4.4 To clarify, the suggested amendments to the KRN:

- Have been jointly developed and agreed between WMCA and the relevant Constituent Local Authority Highway Managers.
- 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.

4.5 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.

## **5.0 Evaluation of alternative options**

5.1 The alternative option could be to 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.

## **6.0 Reasons for decision**

6.1 In accepting the recommendations made in this report, the WMCA will be able to enter into the necessary agreements with Government to amend existing statute, enabling the WMCA to borrow for all of the functions attributable to it and make the proposed changes to the Key Route Network.

6.2 Delegations are proposed to be given to the Councils Leader and the Managing Director so that the City Council retains oversight of the final amended orders produced from the Government.

## **7.0 Financial implications**

7.1 The financial implications relating to the amendments to WMCA Borrowing Powers are set out in the background details of the report. The West Midlands Combined Authority (Functions and Amendment) Order 2017 requires the constituent councils to meet any reasonably incurred costs of the Combined Authority, to the extent these costs are not to be met by other resources.

[CN/05122017/K]

## **8.0 Legal implications**

8.1 The approval of the proposals in this report will ensure that WMCA is able to enter into the necessary agreements with Government to amend the existing statutory requirements, enabling WMCA to borrow for all of the functions attributable to it and also endorse the proposed changes to the Key Route Network. Specific legal implications are dealt with in the background details of this report.

[TC/05122017/C]

## **9.0 Equalities implications**

9.1 There are no direct equalities implications related to this report.

## **10.0 Environmental implications**

10.1 There are no direct equalities implications related to this report.

## **11.0 Human resources implications**

11.1 This report has no direct human resources implications related to this report. The wider activities of WMCA present significant opportunities for the transformation of public services.

## **12.0 Corporate Landlord implications**

12.1 There are no direct corporate landlord implications related to this report.

## **13.0 Schedule of background papers**

13.1 None

## **14.0 Appendices**

14.1 Appendix 1 – WMCA borrowing cap provisionally agreed with HMT

14.2 Appendix 2 – KRN (including amendments as highlighted)