

**REPORT TO:** Cabinet  
**LEAD OFFICER:** Executive Director, Corporate Services

1 March 2018

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## **PROPOSAL TO PROVIDE CONSENT FOR CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY TO BORROW FOR ITS NEW FUNCTIONS**

### **Purpose**

1. For Cabinet to provide consent for the Combined Authority to borrow for any of its functions in accordance with section 23(5) of the Local Government Act 2003. Consent is being sought from each of the Combined Authority's constituent councils.
2. This is a key decision.

### **Recommendations**

3. That Cabinet determine that this decision be taken within the urgency provisions of the Constitution and note that the Call-in provisions will not therefore apply in this regard for the reasons outlined in **Appendix 1**
4. That Cabinet give consent to the specification and making of the regulations in relation to the Cambridgeshire and Peterborough Combined Authority, as set out in the draft at **Appendix 2**.

### **Background**

5. In the Autumn Statement 2016, the Government announced that it would give mayoral combined authorities powers to borrow for their new functions and to invest in economically productive infrastructure, subject to agreeing a borrowing cap with HM Treasury.
6. This was planned to align the combined authorities' financial powers with their new responsibilities, and give them the freedom to invest in important priorities such as economic development and regeneration. Each combined authority's new powers to borrow will be specified in regulations under section 23(5) of the Local Government Act 2003.
7. The limits on combined authority borrowing will be expressed in terms of annual caps on external debt. Capping external debt, rather than prudential borrowing, will give the combined authorities greater flexibility to manage capital programmes across financial years.

8. Whilst the Combined Authority has no existing debt or any immediate borrowing requirement, significant investment will be needed for major infrastructure works from financial year 2020/21.
9. The Combined Authority is considering what the optimal funding structure will look like for these programmes as part of its investment strategy. Whatever the ultimate funding mechanism, the Combined Authority needs to have the facility to borrow the full amounts of these investments in place at that time.
10. There are two strands to the process of putting in place the borrowing powers:
  - (a) The setting of the Borrowing Cap through an agreement with HM Treasury (HMT), and
  - (b) The drafting and laying before parliament of the relevant Statutory Instrument (Ministry of Housing, Communities and Local Government (MHCLG))

### **The setting of the Borrowing Cap**

11. The Director Public Services, HM Treasury wrote to the Combined Authority's Section 151 Officer expressing her formal approval of the Cambridgeshire and Peterborough Combined Authority Agreement and Debt Cap to 2019-20, which was based on the Combined Authority's submitted financial plans, and asked the S151 Officer to reply with consent to the agreement coming into effect.
12. The Section 151 Officer has replied to the Director, confirming consent to the debt agreement on behalf of the Combined Authority.
13. It is the intention of HMT for the Combined Authority's new borrowing powers to be in place for the next financial year.
14. The debt cap agreement will be reviewed before the end of 2019-20 and discussions will continue about an agreement beyond 2019-20.

### **The making of the Statutory Instrument**

15. The Ministry of Housing, Communities and Local Government (MHCLG) have now drafted the relevant Statutory Instrument to allow borrowing to be made under S23(5) of the Local Government Act 2003 and have formally requested (**Appendix 3**) the consent of this Council to the moving of that order.
16. S23(5 and 6) of the Local Government Act 2003 state that powers will be conferred on a combined authority to borrow money for a purpose relevant to its transport functions or in relation to any other functions of the authority that are specified, only with the consent of its constituent councils.
17. The draft Combined Authorities Borrowing Regulations 2018 (**Appendix 2**) extend the ability of combined authorities to borrow. This is currently limited to borrowing which relates to a combined authorities transport function. The proposal would see an extension of the ability to borrow to all functions (other than transport which already has coverage).

### **Considerations**

18. In seeking to clarify the position in respect of liability for borrowing the Monitoring Officer has liaised with Luke Scofield from the Governance, Democracy and Reform Unit at the Ministry of Housing, Communities and Local Government.
19. The proposed draft legislation imposes no liability for constituent authorities for borrowing of the Combined Authority and does not extend provision for the Combined Authority to levy constituent councils. This remains applicable only in relation to the discharge of the Combined Authority's transport functions.
20. The legislative position therefore remains the same as was the case when borrowing for the transport function was the only permitted borrowing. With the exception of provisions regarding precept, constituent authorities must agree to provide contributions to the Combined Authority. If they do not there can be no compulsion to do so. This would include liability for any borrowing under the proposed regulations.
21. MHCLG have made clear that the making of the borrowing Regulations in respect of CPCA has been conditional on the agreement of HM Treasury to that borrowing plan, which HMT will review and reach further agreement on at end 2019-20. CPCA will report to HMT on its debt on a quarterly basis
22. It is proposed that the draft regulations be laid before Parliament on 5<sup>th</sup> March. If this window is missed then Brexit legislation/demand on Parliamentary time will be such that a further opportunity will not be possible in the foreseeable future.
23. The Constitution provides that an urgent decision can be taken subject to the urgency provisions providing the agreement of the Chairman of the Scrutiny and Overview Committee that the taking of the decision cannot be reasonably deferred. The Chairman has now given the relevant consent for the decision to be made at this time.
24. The call-in procedure shall not apply where the decision being taken by the executive decision taker is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public, shall state whether in the opinion of the decision-making person or body, the decision is an urgent one, and therefore not subject to call-in. Given the

### **Options**

20. Cabinet is recommended to give consent to the regulations for the reasons set out in the report or otherwise, provide reasons for not granting that support.

### **Implications**

21. The report sets out the financial and legal implications in relation to the granting of the Council's consent to the draft order being enacted.

### **Legal**

22. The Statutory Instrument to allow borrowing is to be made under Part 1 of the Local Government Act 2003

## **Background Papers**

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

S23 Local Government Act 2003:

<https://www.legislation.gov.uk/ukpga/2003/26/section/23>

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