

North Yorkshire Council

Executive

15 October 2024

Granting consent for York and North Yorkshire Combined Authority Borrowing Powers

Report of the Assistant Chief Executive Legal and Democratic Services

1.0 PURPOSE OF REPORT

- 1.1 To seek consent to the making of regulations by Central Government to provide the York and North Yorkshire Mayoral Combined Authority with borrowing powers in line with the Devolution Deal and Scheme which were subject to public consultation.

2.0 BACKGROUND SUMMARY

- 2.1 The Government created the Mayoral Combined Authority through the passing of the York and North Yorkshire Combined Authority Order 2023. In order for the Mayoral Combined Authority to be ambitious with its functions, it was envisaged that the Combined Authority would have borrowing powers. Currently the MCA has borrowing powers for transport and the previous Police, Fire and Crime Commissioner's functions. However borrowing powers for other functions must be dealt with by separate Regulations.
- 2.2 This report seeks agreement to consent to the making of the Regulations by Government and delegated authority for the Chief Executive to provide that consent when requested to do so by the Secretary of State. Consent from the three constituent authorities is required before the Department of Housing, Communities and Local Government can lay the relevant Regulations before Parliament.

3.0 FURTHER DETAILS

- 3.1 On 1 August 2022 the Secretary of State for Levelling Up, Housing and Communities announced that the Government was minded to enter into a Devolution Deal with York and North Yorkshire under which the region would benefit from £540 million of new Government investment to spend on local priorities to produce growth, together with a range of devolved powers. This Devolution Deal was dependent upon the York and North Yorkshire Authorities establishing a Combined Authority for the area with an elected Mayor. The full detail of the Deal can be found here: <https://www.gov.uk/government/publications/york-and-north-yorkshire-devolution-deal/york-and-north-yorkshire-devolution-deal#summary-of-the-devolution-deal-between-the-government-and-the-local-authorities-of-york-and-north-yorkshire-comprising-city-of-york-council-and-north-yorkshire-council>
- 3.2 In September and October 2022, the two Councils agreed to publish a Scheme to describe the governance of a new Combined Authority and to consult upon the Scheme. The consultation was held for 8 weeks from October to December. Within the consultation documents it was proposed that the Mayoral Combined Authority would have additional borrowing powers, which is the subject of this report. Both Councils considered the responses to the consultation and agreed to submit the Scheme for Devolution and a summary of responses to Government to allow the Secretary of State to consider putting in place the legislation needed to enable the creation of the Combined Authority.

- 3.3 Following the Executive approval on 14 February 2023 and the subsequent full Council decision on 22 February 2023, North Yorkshire Council agreed to implement the proposed Devolution Deal for the region. Subsequently the Combined Authority was created the Mayoral elections proceeded in May 2024.
- 3.4 Whilst legislation is in place to create the MCA, Central Government's legislative procedures mean that the borrowing powers for other functions must be conferred on the MCA by a separate Statutory Instrument. Prior to Government making these Regulations, the consent of the MCA and North Yorkshire Council and the City of York Council must be obtained.
- 3.5 Securing borrowing powers for the other functions will allow the MCA to borrow in promoting its functions, policies and priorities.
- 3.6 The provision of borrowing powers to the MCA will provide a mechanism to allow it to deliver its priorities across the region. Therefore consent is being requested from the constituent authorities and the MCA to provide consent so that the Regulations can be progressed. It is therefore recommended that the Chief Executive, in consultation with the Leader of the Council, is authorised to give formal consent to the making of the Regulations when requested by Central Government.
- 3.7 At the time of drafting this report it is anticipated that the Secretary of State will issue a request for this consent to the making of the Regulations in week commencing 21st October 2024 so that they can be laid in Parliament. This date may be subject to change depending upon Parliamentary time. The Regulations will state the date on which they come into effect.
- 3.8 If Government grant borrowing powers to the Mayoral Combined Authority, the decision to borrow will be made at the Mayoral Combined Authority level and the impact of the borrowing will need to be considered at that stage. This report seeks approval to allow Government to make the Regulations and then it will be up to the Mayoral Combined Authority to determine whether it wishes to borrow and how much it wishes to borrow each year as a separate decision.

4.0 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could refuse to give its consent and therefore the Government would not be able to confer borrowing powers to the MCA for functions outside transport and Police, Fire and Crime Commissioner functions. Alternatively the Council could give consent only to specific powers of the MCA and not all of them. However both of these alternative options may limit the ambition for regeneration and growth within the region and therefore it is recommended for consent to be granted.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The MCA is its own legal entity and will need to make its own prudent decisions with regard to how much it can borrow. The maximum amount of borrowing will be subject to a "borrowing cap" that will be negotiated with Central Government by the MCA. The responsibility for the repayment of any borrowing will rest directly with the MCA. The MCA will need to comply with the Prudential Code which applies to local authorities in addition to the borrowing cap agreed with HM Treasury. After initial agreement the borrowing cap level will be reviewed annually in April. The decision being requested today is to allow Government to make the relevant Regulations and therefore there is no immediate financial impact on the constituent councils.
- 5.2 However the financial impact of any decisions by the Mayoral Combined Authority to borrow in the future will need to be carefully considered by the Mayoral Combined Authority. The

responsibility for the repayment of any borrowing will rest directly with the MCA. Under the provisions of Paragraph 29 of the 2023 Order, the constituent councils must ensure that the costs of the Mayoral Combined Authority reasonably attributable to the exercise of its functions are met.

- 5.3 This potential liability currently exists for both CYC and NYC, and covers the MCA's current areas of responsibility (excluding expenditure regarding Police and Crime Commissioner functions). However the MCA has fiduciary duty to ensure it sets a balanced budget. If expanded borrowing powers are granted to the MCA, the potential liability will be expanded to encompass any borrowing authorised under the proposed Regulations.
- 5.4 However, the MCA, like other authorities, is required to submit a balanced budget each year, and must borrow in line with the Prudential Code. As with current borrowing and the ongoing operational costs of the MCA, budget and spending decisions are subject to decisions of the MCA, in line with. It is therefore expected that risk mitigation measures, together with details of any increased risk to the constituent authorities, would be clearly outlined in both the MCA budget report and any borrowing decision report, in order that the constituent authorities may consider those potential impacts as part of the decision-making process.
- 5.5 Conversely, however, there are risks should NYC decide not to grant unconditional consent for the Regulations to be laid. In particular, the MCA would then be unable to exercise any borrowing powers beyond those already in existence (ie for transport and Police, Fire and Crime Commissioner) and will therefore be unable to deliver on some of its key priorities; this will, in turn, impact on NYC's future pipeline of projects for which MCA funding is to be sought.

6.0 LEGAL IMPLICATIONS

- 6.1 Section 23(5) of the Local Government Act 2003 provides that Part I of the Local Government Act 2003 applies to a Combined Authority with regard to financial matters. Section 1 of the 2003 Act provides that local authorities are able to borrow for purposes relevant to their statutory functions and for the prudent management of their affairs. Currently the MCA can borrow for its transport and Police, Fire and Crime Commissioner functions. For the MCA to be able to borrow for other functions such as regeneration, the Government would need to pass a Statutory Instrument to allow this to happen. Section 23(6) of the 2003 Act, provides that these regulations can only be passed if the Councils and the Mayoral Combined Authority in the area give their consent.
- 6.2 If consent is granted then it will be up to Government to make the relevant Regulations under Section 23(6) of the Local Government Act 2003. The legislation requires the consent of each Council and the Combined Authority in the area to give consent before Government can approve the Regulations to allow borrowing for the relevant functions. The Regulations will confer additional borrowing powers on the Mayoral Combined Authority and the Mayoral Combined Authority will agree a debt agreement also known as a "debt cap" with HM Treasury to allow the Mayoral Combined Authority to borrow in respect of all of its functions.
- 6.3 In 2016 the Government gave a commitment that "the Government will give Mayoral Combined Authority powers to borrow for their new functions, which will allow them to invest in economically productive infrastructure, subject to agreeing a borrowing cap with HM Treasury." These proposed Regulations will deliver on that commitment. HM Treasury will agree a debt cap with the Mayoral Combined Authority which brings into effect an annual maximum limit on its long term external debt. "External debt" refers to the closing balance for actual gross borrowing plus other long term liabilities as defined in "the

Prudential Code for Capital Finance in Local Authorities”. Short term external debt (ie less than 12 months) does not count towards the agreed limit.

- 6.4 As part of the original consultation on the Scheme to implement the Devolution Deal prior to the creation of the Mayoral Combined Authority, it was specifically mentioned that there was a desire to have a power to borrow up to an agreed cap for non-transport functions. Specifically paragraph 4.2.3 of the Scheme provided:

“It is proposed that Regulations will be made pursuant to Section 23(5) of the Local Government Act 2003 to extend the Combined Authority borrowing powers (for transport functions and policing functions) to other priority infrastructure projects, included but not limited to: transport, highways, housing, investment and economic regeneration, as relevant to the exercise of its functions, both Mayoral and non-Mayoral, with an agreed debt cap with HM Treasury.”

- 6.5 As the Devolution Deal was accepted by Government and was subject to previous consultation, this report seeks the granting of consent to cap the relevant Regulations to allow the MCA to borrow in accordance with the Devolution Deal. The previous decision to accept the Devolution Deal was classed as a Key Decision and put on the Forward Plan accordingly. This decision seeks to allow Government to pass the relevant Regulations to enable the relevant part of the Deal which allowed additional borrowing.

7.0 EQUALITIES IMPLICATIONS

- 7.1 The equality implications for the Devolution Deal were considered at the full Council decision on 22 February 2023. This report seeks to give consent to allow Government to pass Regulations to confer borrowing powers to the Mayoral Combined Authority. In developing the proposals for the Mayoral Combined Authority, the Council had regard to its obligations under Section 149 of the Equality Act 2010. The granting of borrowing powers will assist the MCA to deliver on its vision.

8.0 CLIMATE CHANGE IMPLICATIONS

- 8.1 The climate change implications have already been considered by NYC and part of the Devolution Deal was to attract investment “to enable York and North Yorkshire to drive green economic growth towards their ambition to a carbon negative region.” The creation of the Mayoral Combined Authority has created a platform for future decisions to be made that will have climate change implications and those impacts will be considered as each project is developed. This report purely seeks to provide the administrative step in granting consent for the Order to give additional borrowing powers to be laid. Any project that will be progressed by the Mayoral Combined Authority will be subject to individual climate change impact assessments.

9.0 REASONS FOR RECOMMENDATIONS

- 9.1 It is recommended to grant approval to give consent to Government to be able to make the relevant Regulations to extend the borrowing powers for all functions to the Mayoral Combined Authority. It will be for the Government to make the final decision as to whether the borrowing powers will actually be granted to the MCA.

10.0 RECOMMENDATIONS

- 10.1 The Chief Executive Officer, in consultation with the Leader of the Council, is recommended to give consent to the making of regulations by Central Government to provide the York and North Yorkshire Mayoral Combined Authority with borrowing powers.

BACKGROUND DOCUMENTS:

Executive Report – 6 September – Agree the Devolution Deal and commence consultation
[Agenda for Executive on Tuesday, 6th September, 2022, 11.00 am | North Yorkshire Council](#)

Executive Report – 14 February 2023 – York and North Yorkshire – Outcome of Consultation
[Agenda for Executive on Tuesday, 14th February, 2023, 11.00 am | North Yorkshire Council](#)

Executive Report to Council – 22 February 2023 - York and North Yorkshire Devolution – Outcome of Consultation
[Executive Report to Council.pdf \(northyorks.gov.uk\)](#)

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4 October 2024

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Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.