

# City Council (Extraordinary) – 30 September 2024

## Report of the Leader of the Council

### Corporate Director

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## East Midlands Combined County Authority (EMCCA) – Approval of Draft Borrowing and Amendment Regulations

### Does the report form part of the Budget or Policy Framework?

Yes  No

### Commissioner Consideration

Has this report been shared with the Commissioners' Office?  Yes  No  
Any comments the Commissioners wish to provide are listed below.

### Does this report contain any information that is exempt from publication? No

#### Relevant Council Plan Key Outcome:

Green, Clean and Connected Communities	<input checked="" type="checkbox"/>
Keeping Nottingham Working	<input checked="" type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Living Well in our Communities	<input type="checkbox"/>
Keeping Nottingham Moving	<input checked="" type="checkbox"/>
Improve the City Centre	<input checked="" type="checkbox"/>
Better Housing	<input checked="" type="checkbox"/>
Serving People Well	<input checked="" type="checkbox"/>

## 1. Summary

- 1.1 To seek Full Council consent to making the Combined Authorities (Borrowing) and East Midlands Combined County Authority (Borrowing Functions) (Amendment) Regulations 2024 (the Draft Regulations) that will confer certain additional powers (including the general power of competence for economic development and regeneration and power to borrow) on the East Midlands County Combined Authority (EMCCA). The general power of competence for economic development and regeneration will enable the EMCCA to undertake a range of economic development and regeneration activities such as supporting local business as well as promoting tourism in the area. The power to borrow will enable the EMCCA to operate in a consistent way as other local authorities and Combined Authorities in respect of borrowing, including the controls placed upon such authorities.
- 1.2 The Ministry of Homes, Communities and Local Government (MHCLG) have advised that in order to meet required Parliamentary timeframes, the consent of the EMCCA

and the four constituent councils needs to be provided by the middle of October 2024, before the next scheduled meeting of Full Council.

- 1.3 At the time of publication of this report clearance had not been received from the MHCLG for the draft text of the Statutory Instrument (SI) to be included as an appendix to this report. However, civil servants from MHCLG have shared the draft text with Monitoring/Deputy Monitoring Officers of each of the constituent councils and of the East Midlands Combined County Authority, whom they have been working with to draft the SI.
- 1.4 This report sets out details of each element within the draft SI so Council is aware of what they are providing consent for. The EMCCA took a report to their Board Meeting on 16 September 2024 and other constituent councils are also seeking approval of the principles contained within the draft Regulations and are set out in this report. The final approval of the Regulations will be delegated to the Chief Executive in consultation with the Leader of the Council, subject to agreement with the Chief Executives of each of the 4 Constituent Councils and the Mayor of the EMCCA.

## **2. Recommendations**

That Council:

- 2.1 Consents to the proposed content of the Combined Authorities (Borrowing) and East Midlands Combined County Authority (Borrowing Functions) (Amendment) Regulations 2024 as described in the report, including the conferral of a general power of competence in respect of economic development and regeneration functions, as required by relevant enabling legislation, including the Levelling Up and Regeneration Act 2023, and
- 2.2 Delegates to the Chief Executive authority to consent on behalf of Nottingham City Council to the making of the Combined Authorities (Borrowing) and East Midlands Combined County Authority (Borrowing Functions) (Amendment) Regulations 2024 including the approval of any additional technical amendments, which the Chief Executives of the other three Constituent Councils and the Mayor of EMCCA also agree to. This delegation is to be exercised in consultation with the Leader of the Council and in light of further legal advice from the Director of Legal and Governance.

## **3. Reasons for recommendations**

- 3.1 To make appropriate technical amendments to bring the EMCCA Regulations and the powers and functions of the EMCCA in line with the expectations of the original Proposal, including borrowing powers and the general power of competence in respect of economic development and regeneration.
- 3.2 The delegation to the Chief Executive is necessary for the reasons given above and in case of any further technical amendments which may be required between this point in time and when the final version has been through the parliamentary counsel process and is laid before Parliament. This is consistent with the delegation which was given to the Chief Executives in connection with the EMCCA Regulations.

## **4. Other options considered in making recommendations**

4.1 Council could decide not to consent to the matters contained within the SI but this would mean that the Regulations are not passed and would be likely to prevent the EMCCA operating to its optimal extent for the benefit of the inhabitants of the Area. The changes are largely technical in nature and conform to the original expectations within the Proposal approved by Council and submitted to Government.

4.2 The conferral of the general power of competence in respect of economic development and regeneration was not specifically referenced in the Proposal, however other Combined Authorities have this power and the Proposal did clearly anticipate that economic development and regeneration functions were central to the aims of the EMCCA. Furthermore, it is considered necessary to provide sufficient flexibility to enable the EMCCA to carry out its functions in those areas effectively for the benefit of residents and businesses in the Area. Ministers have confirmed the relevant statutory tests have been met and therefore no further consultation is necessary.

## 5. **Consideration of Risk**

5.1 If Council decide not to consent to the matters contained within the SI the Regulations cannot be passed and this would be likely to prevent the EMCCA operating to its optimal extent for the benefit of the inhabitants of the Area.

## 6. **Best Value Considerations**

6.1 The Council agreed to the creation of EMCCA and the Regulations are intended to regularise and confer on EMCCA the powers consulted on at the point of its inception. As such there are no direct Best Value Considerations arising from this report as the EMCCA has already been established.

## 7. **Background Information (including outcomes of consultation)**

7.1 Members will recall that at its meeting on 7 December 2023, Full Council agreed to the creation of the EMCCA with the Council as a Constituent Member and consented to the making of the "The East Midlands Combined County Authority Regulations 2023" (the EMCCA Regulations), which later established EMCCA in February 2024. The creation of the EMCCA was made under powers introduced by the Levelling Up and Regeneration Act 2023 (the LURA).

7.2 In the period between the passing of the EMCCA Regulations and other regulations relevant to the creation of EMCCA, colleagues in government have been working on the necessary draft regulations relating to the borrowing and other powers of EMCCA. The Draft Regulations would:

- a) allow the Combined County Authority to borrow against income for investment like other public bodies; and
- b) address issues that have been picked up from the Combined County Authority Regulations which, aim to place the Combined County Authority on a similar footing as other Combined Authorities with respect to its available legal powers.

7.3 The Draft Regulations aim to address both by making amendments to the existing EMCCA Regulations. The Council will need to consent to the making of these regulations.

## **Proposed regulations**

- 7.4 One of the issues identified relates to the conferral of the “general power of competence” in respect of economic development and regeneration (GPOC). As this is the conferral of an additional power on EMCCA which was not included within the original powers table of the Appendices approved by Full Council in December 2023, it is necessary to seek a further Council consent to that power from each of the four Constituent Councils, under relevant enabling legislation.
- 7.5 The Council must also provide consent to all of the other elements of the Proposed Regulations. This report sets out a brief explanation of each issue and how it is dealt with in the draft SI.

### **GPOC in respect of functions relating to economic development and regeneration**

- 7.6 The GPOC is sought only in respect of functions relating to economic development and regeneration for the area of the EMCCA. For clarity, the conferral does not remove the GPOC from Constituent Councils. Each Constituent Council will continue to hold the full GPOC as outlined in Part 1 of the Localism Act 2011 and may continue to exercise that power in line with applicable law.
- 7.7 The GPOC for economic development and regeneration is a function which all existing Combined Authorities have. The East Midlands County Devolution Deal made clear that the EMCCA would be given powers in relation to Economic Development and regeneration functions so this sort of activity was always envisaged. The function was not included as part of the EMCCA Regulations as, at the time, it was believed that the functional power of competence held by the EMCCA would be adequate to undertake activity associated with economic development and regeneration. It has subsequently been identified that this is not the case and by conferring this power it will provide the EMCCA with the same tools and flexibility in respect of economic development regeneration as its Constituent Councils in order to deliver on their shared priorities.
- 7.8 The GPOC for economic development and regeneration will enable the EMCCA to undertake a range of economic development and regeneration activities such as supporting local business as well as promoting tourism in the area. This is pertinent as reference is made in the EMCCA Proposal to how the EMCCA will ensure workers, business and local areas are supported, where possible, by schemes like the UK Shared Prosperity Fund (“UKSPF”) in delivering key aspirations to meet the challenges faced by the East Midlands Area.
- 7.9 At the request of the Governance Group (Monitoring Officer/ Governance Leads from each constituent council and EMCCA) an additional line has been inserted to the draft SI to clarify that the GPOC is exercisable concurrently with the constituent councils.

### **Borrowing powers**

- 7.10 As always anticipated, EMCCA will have the power to borrow and this was made clear in the Proposal approved by the four Constituent Councils in March 2023. All functions of the EMCCA are specified for the purposes of section 23(8A) of the Local Government Act 2003 – this provides that the section 1 power to borrow money under the 2003 Act applies for all EMCCA functions, including mayoral functions. This will enable the EMCCA to operate in a consistent way as other local authorities

and Combined Authorities in respect of borrowing, including the controls placed upon such authorities.

- 7.11 In exercising these powers the EMCCA will be required to have regard to the Prudential Code in the same way as other authorities and maximum annual borrowing limit will be subject to the agreement of a specific debt cap with His Majesty's Treasury (HMT), which cannot be exceeded.

### **Other changes and issues**

- 7.12 The following technical amendments to the EMCCA Regulations have been confirmed within the draft SI to address omissions and issues identified in the period since the Constituent Councils approved them back in December 2023.
- 7.13 Mayoral budget voting - Schedule 1, Paragraph 3(1) and Paragraph 7(a) have been amended to ensure that the 2/3 majority for the approval of the mayoral budget applies, which had not originally been included. The 2/3 majority was referred to in the Proposal for the EMCCA approved by the four Constituent Councils in March 2023 and this amendment regularises the position.
- 7.14 Other voting arrangements – The draft regulations outline the functions which have separate voting arrangements to Schedule 1, Paragraph 3(1)(a) – (b), these are the mayoral budget and the unanimous voting required in relation to the Transport Act 2000.
- 7.15 Non-Constituent Voting – The current legislative framework does not allow for non-constituent members of the EMCCA to have the ability to vote at EMCCA Committees and Sub-Committees. The Combined County Authority committed to work with Government to ensure legislation was developed that would enable non-constituent members to vote at committees of EMCCA in the future if the Combined County Authority decided to provide such voting powers.
- 7.16 Regulation 35(b) has therefore been updated to enable non-constituent members to be voting members of committees or sub-committees subject to a resolution of the EMCCA under s11(4) of the LURA 2023. This was also envisaged as part of the Proposal submitted to government in which it was made clear there was a commitment to the right to vote being available on some topics at least to District and Borough Council Non-Constituent Members, although it will be a matter for the EMCCA to determine how such voting may be applied.
- 7.17 Ability of the Mayor to establish committees and sub-committees to delegate the exercise of Mayoral functions - Regulation 26 has a new sub-paragraph (9A) enabling a mayor to arrange for mayoral functions to be exercised “by a committee of the CCA, consisting of members appointed by the mayor (whether or not members of the CCA)”. This is consistent with the original expectations as set out in the Proposal and with the powers conferred on other Combined Authority mayors.
- 7.18 Cross referencing error - Regulation 10(3) of the EMCCA Regulations will be rectified so the EMCCA is to be treated as a local authority for the Area in respect to sections 17 and 18 of the Housing Act 1985. These sections relate to the acquisition of land and buildings for housing purposes which is a key aspect of the EMCCA remit as envisaged in the Proposal.

### **Providing Consent**

- 7.19 Government will be making a decision to progress the Draft Regulations in the near future and in order to ensure swift progress of the necessary parliamentary process the necessary consents have been requested at the earliest opportunity. Officers have been advised that the available parliamentary timetable means that the most prudent action is for the East Midlands elements and borrowing regulations to be contained in a single statutory instrument and laid in Parliament in October. Due to Parliamentary schedules colleagues in the Ministry of Housing Communities and Local Government (MHCLG) cannot confirm when the next opportunity for Regulations to be laid before Parliament would be if this scheduled opportunity is lost.
- 7.20 MHCLG have made clear that in order to meet required Parliamentary timeframes, the consent of EMCCA and the four constituent councils will need to be provided by the middle of October 2024, before the next meeting of the Council. As a result Council is being asked to approve the principles contained within the draft Regulations as explained in this report and to delegate authority to the Chief Executive of the Council to consent to the final wording of the regulations subject to the agreement of the Chief Executives of each of the 4 Constituent Councils and the Mayor of EMCCA.
- 7.21 It is important to note that it is possible that the content of the draft regulations may be subject to change between now and when the final version is to be laid before Parliament. Changes may be required to address some technical legal points raised by the Constituent Councils or due to the Parliamentary process. The delegation to the Chief Executive will enable any such technical changes to be addressed and to avoid any delay in the final version of the Regulations being laid.
- 7.22 This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below and the majority remain unchanged since the report to Council in December 2023. Appropriate consultation was undertaken at the time of the Proposal and advice sought on these issues as required.
- 7.23 A statutory consultation was undertaken at the time of the Proposal and the issues within the draft SI are in line with the expectations set out in the Proposal approved by Council and submitted to Government. Ministers have confirmed the relevant statutory tests have been met and therefore no further consultation is necessary.

## **8. Commissioner comments**

- 8.1 Commissioners have noted the content of the report and have no further comments.

## **9. Finance colleague comments (including implications and value for money)**

- 9.1 There are no further financial implications arising for the Council as a result of these changes beyond those already identified and set out in the reports to City Council meeting in May 2024 and City Council extraordinary meeting in December 2023.

Shabana Kausar, Director of Finance, 18 September 2024

## 10. **Legal colleague comments**

- 10.1 The regulations are required to make appropriate technical amendments to bring the EMCCA Regulations and the powers and functions of the Combined County Authority in line with the expectations of the original Proposals. For the regulations to be passed all four Constituent Councils and EMCCA must consent. Should one or more of the Constituent Councils not consent the Regulations would not be passed and EMCCA would have to operate without the full range of powers originally envisaged which may impact its ability to deliver some of its functions effectively.
- 10.2 The delegation to the Chief Executive is necessary as the final wording of the draft regulations must be consented to and in case of any further technical amendments which may be required between this point in time and when the final version has been through the parliamentary counsel process and is laid before Parliament.
- 10.3 A statutory consultation was undertaken at the time of the Proposal for an East Midlands Combined County Authority, the issues within the draft SI are in line with the expectations set out in the Proposal approved by the Constituent Councils and submitted to Government.
- 10.4 Part 1 of the Local Government Act 2003 ("the 2003 Act") makes provision in respect of capital finance and accounts of local authorities. Section 1 of the 2003 Act provides for local authorities to be able to borrow for purposes relevant to their statutory functions and for the prudent management of their affairs. The Combined County Authority's powers to borrow will be specified in the regulations.
- 10.5 There are some technical legal issues relating to the draft regulations which remain outstanding at the time of publication and on which dialogue is continuing with government colleagues. The delegation will give time to seek any additional assurances and/or resolution to these issues to enable the delegation to the Chief Executive to be exercised in consultation with the Leader and taking into account further legal advice on these issues.

Beth Brown, Director of Legal and Governance, 18 September 2024

## 11. **Equality Impact Assessment (EIA)**

- 11.1 In coming to a decision, the Council should also have regard to the Public Sector Equality Duty (PSED) under the Equality Act 2010. The PSED requires public authorities to have "due regard" to:
- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 (section 149(1a)).
  - The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1b)). This involves having due regard to the need to:
    - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic (section 149(3)(a));
    - or take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(3)(b)); and
    - or encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low (section 149(3)(c))

11.2 An Equalities impact assessment was carried out at the different stages of decision making in respect of the Proposal and consent to the making of the EMCCA Regulations. No additional impacts have been identified as a result of these technical changes and as the SI is an enabling piece of legislation and does not significantly change the Proposal it is not considered necessary to either amend the existing EIA or carry out further Equality Analysis.

**12. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

12.1 None

**13. Published documents referred to in this report**

13.1 Report to and Council minutes of meetings held on;

- 31 October 2022
- 23 March 2023
- 7 December 2023
- 20 May 2024

13.2 East Midlands Combined County Authority Regulations 2024

13.3 Levelling Up and Regeneration Act 2023

**Councillor Neghat Khan**  
**Leader of the Council**