



WMCA Board

Date	8 December 2017
Report title	Midland Metro Wednesbury to Brierley Hill Extension - Submission of Transport and Works Act Order
Portfolio Lead	Councillor Roger Lawrence - Transport
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Report to be/has been considered by	<i>Previous Approvals</i> Wednesbury - Brierley Hill Project Board - 27 September 2017 Metro Board - 10 October 2017 WMCA Leadership Team - 25 October 2017 WMCA Investment Board - 30 October 2017 Strategic Transport Officers' Group - 13 November 2017 HS2 Local Delivery Team - 16 November 2017 WMCA Programme Board - 24 November 2017 HS2 Growth Delivery Board - 29 November 2017

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

1. Welcome the progress on business case and funding on the Wednesbury to Brierley Hill Metro Extension project since the report to WMCA Board on 21 April 2017. Note the £250 million of new Transforming Cities funding announced by Government on 20 November.
2. Approve the allocation of £207 million of the above funding to secure the delivery of the Wednesbury to Brierley Hill project.
3. Approve, subject to a confirmation by Government of funding for the scheme, the submission by the WMCA to the Secretary of State for Transport of an application under the Transport and Works Act 1992 for the Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order (“the Order”), in accordance with the approved project delivery schedule, to refresh powers of compulsory acquisition in respect of land and interests in land required to implement the scheme.
4. Approve the delegation of powers from the WMCA to the Metro Programme Director and the Head of Governance to:-
 - a. finalise the application documents for the Order;
 - b. negotiate with any affected parties or objectors to the Order with the aim of avoiding, or securing the withdrawal of, objections to the Order;
 - c. comply with the requirements of the relevant procedures for hearing and determining the application for the Order, including any public local inquiry;
 - d. progress negotiations with landowners and leaseholders and enter into any necessary arrangements to acquire the land within the proposed Order, conditional on funding being available; and
 - e. place orders to appoint the Midland Metro Alliance, consultants, legal advisors and others as necessary to undertake further design development work on the scheme and support the ongoing statutory process, in line with any existing agreements and in compliance with internal governance requirements and procurement best practice and in consultation with Head of Governance where appropriate.
5. Approve the delegation of powers from the WMCA to the Head of Governance or their nominated representative to negotiate, agree, enter into, execute, approve and serve (where appropriate) all relevant legal agreements, notices and other documentation necessary to facilitate and underpin the application for, and implementation of, the Order, and
6. Note that WMCA Investment Board has agreed to bring forward £1.6 million of capital expenditure into 2017/18, to maintain and accelerate progress on development and implementation of this important project.
7. Note that the WMCA Funding for Growth Board will be asked to look at how to maximise private sector investment in the scheme across the entirety of the route.

1.0 Purpose

- 1.1 To approve the allocation of £207 million of the £250 million Transforming Cities funding announced by Government on 20 November to the Wednesbury to Brierley Hill project,
- 1.2 To approve, under the provisions of section 239 of the Local Government Act 1972 (which applies in this case by virtue of section 20 of the Transport and Works Act 1992), the submission of an application for The Midland Metro Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order to the Secretary of State for Transport under the Transport and Works Act 1992, and
- 1.3 To authorise delegations from WMCA to the Metro Programme Director and the Head of Governance.

2.0 Background

- 2.1 The Wednesbury to Brierley Hill extension will connect with Midland Metro Line 1 at Wednesbury and run via Dudley town centre and Waterfront / Merry Hill to Brierley Hill. 6.7km of the route utilises the now abandoned South Staffordshire Railway corridor. A plan of the route is shown in Figure 1 (overleaf).
- 2.2 The Wednesbury to Brierley Hill extension comprises:
 - 10.7 km of new twin track (of which 6.7 km runs along the former South Staffordshire Railway corridor and 4.0 km runs on-street through Dudley, the Waterfront / Merry Hill and Brierley Hill).
 - 17 Metro stops (of which 4 are provisional).
 - 3 new Park and Ride sites
 - 11 road traffic junctions crossed at-grade.
 - 23 existing structures to be refurbished or rebuilt (road, railway and canal bridges, including the Parkhead Viaduct).
 - 4 new structures to be built (2 which connect with Metro Line 1 and 2 over Dudley Canal at Brierley Hill).
 - Connections with Metro Line 1, Dudley Port Railway Station, Dudley Bus Station, Waterfront and Merry Hill Shopping Centre.
- 2.3 In accordance with WMCA policies, the design of the scheme takes into account that Network Rail and the freight operating companies may require to run diesel hauled freight trains over the railway corridor in future, although this is not expected to occur before 2040 at the earliest. The scheme was originally based on a twin track alignment for Metro and a segregated single track alignment provision for Heavy Rail. At pinch points such as Parkhead Viaduct and Dudley Port the alignment reduced to a separate single track for each of the modes. The current design work is based on the optimisation of the scheme along the sections of the abandoned rail corridor on the basis of twin track Metro only, with passive provision for future conversion to tram and train (freight) shared running. The details of such track sharing arrangement and the exact nature of the passive provisions to be incorporated into the design are being discussed and developed with Network Rail and the Office of Rail and Road.

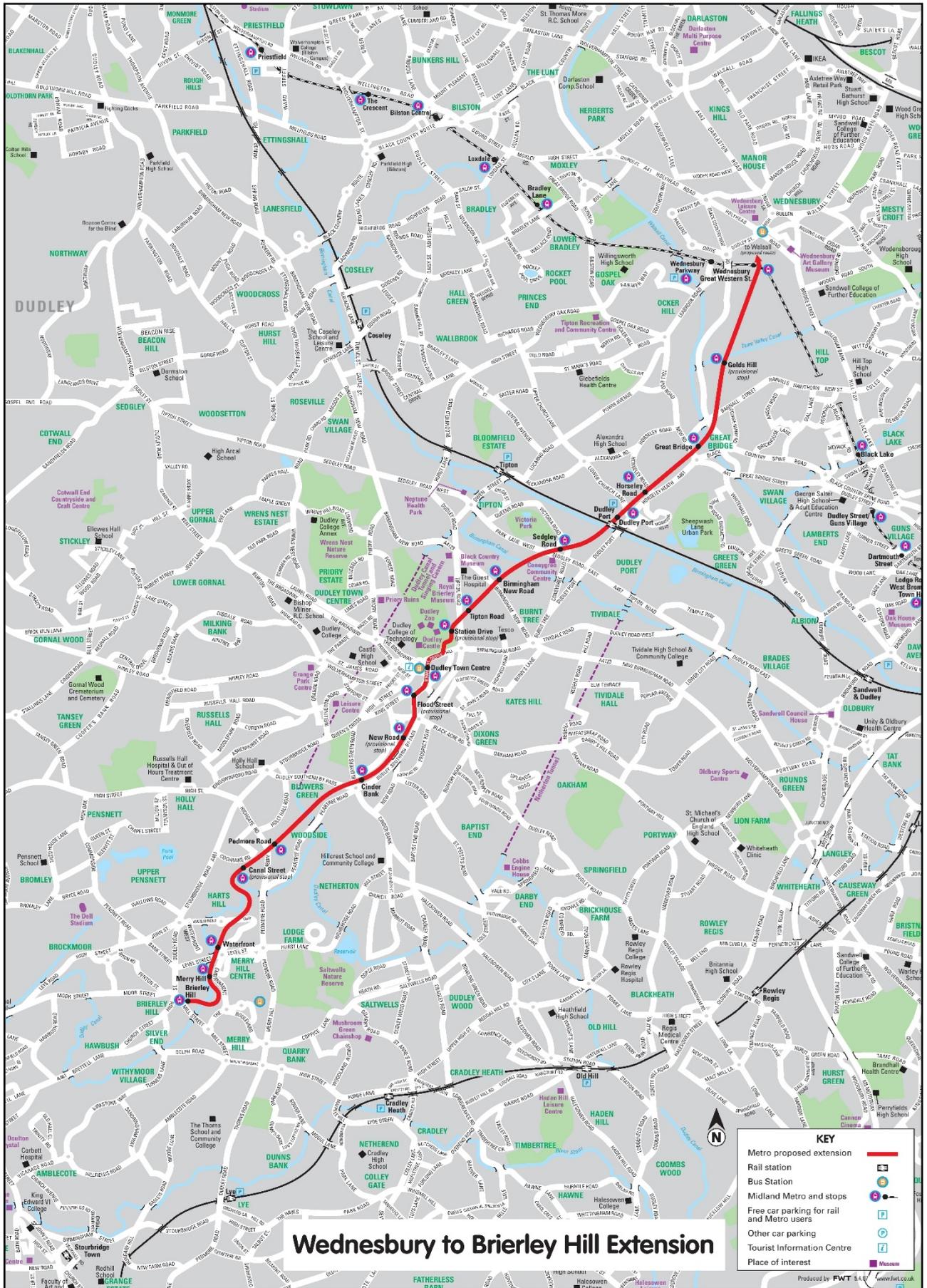


Figure 1: Wednesbury to Brierley Hill Route Plan

- 2.4 The following image is a photo montage of the Metro passing in front of Dudley Zoo and Castle.



- 2.5 The Wednesbury to Brierley Hill extension project was the subject of a report to WMCA Board on 21 April which approved the submission of a business case to Government with a Benefit to Cost Ratio (BCR) of 1.6:1.
- 2.6 Subsequent to that report, work continued to finalise and enhance the project business case and this work was completed in June, with an enhanced BCR of 2.5:1. The Outline Business Case was formally presented to the Secretary of State for Transport on 19 June by the Mayor for the West Midlands. A copy may be found on the Midland Metro Alliance website at <http://www.metroalliance.co.uk/wednesbury-brierley-hill/>. Further to the submission of the Outline Business Case, questions on it have been received from the Department of Transport and responded to. These have concerned clarifications and requests for additional information on the commercial and management cases, and (at the end of August) on the transport modelling, and further questions on both on 23 October. At the time of writing the clarifications have resulted in a slightly reduced BCR of 2.3:1
- 2.7 In addition to the above an Economic Impact Assessment report commissioned by Dudley and Sandwell Councils from Lichfield's has reported that the WBHE project will provide a potential increase in housing completions from the current 570 per annum to 2,000 per annum and a doubling in economic output from £14bn to £28bn.

- 2.8 The Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order (SI 2005/927) (“the 2005 Order”) came into force in 2005. However, a further Transport and Works Act Order (TWAO) is required to refresh compulsory purchase powers over the route within the limits of the original powers where, following negotiations with landowners, a commercial settlement for the acquisition of the necessary land cannot be achieved. In order to maintain the project schedule, this Order is being prepared for submission on 12 December 2017. The application includes about 600 separate land parcels in Sandwell and Dudley and includes some 58 Ha of land in total, including the rail corridor.
- 2.9 The 2005 Order outline planning permission and works powers for the scheme remain in place, due to the undertaking of works in Dudley Town centre in 2009, subject to the variations needed to reflect the change in alignment on the railway corridor, related to which a planning application, and environmental assessment, is being prepared for submission to Dudley and Sandwell Councils for a variation of the requirement in planning condition 2 for the running rails of the tramway not to encroach on the green-hatched land shown on the 2005 Order plans.
- 2.10 Government will need to approve the project funding contribution set out in the Devolution Deal within its firm future spending plans, to be drawn down subject to obtaining the necessary Order powers (or acquiring all land by agreement) and demonstrating value for money in a Final Business Case. Formal approval at this stage is desirable to enable WMCA to demonstrate a realistic prospect of funding the scheme to the Secretary of State for Transport in the Funding Statement required to accompany the Order application. Thus we are seeking £207 million of the Transforming Cities funding to be allocated to the Scheme.

3.0 Project Details/The Order

Description of the route

- 3.1 The route will extend the Midland Metro system from Midland Metro Line 1 adjacent to the Wednesbury Depot, running south west along the abandoned South Staffordshire rail corridor via Dudley Port, where there will be an interchange with National Rail services. At Tipton Road the route diverges from the rail corridor and runs on street through Dudley town centre, via Castle Hill, Birmingham Street, King Street and Flood Street, with an interchange stop at Dudley Bus Station. After running on the purpose-built over-widened section of Duncan Edwards Way, the route re-joins the disused rail corridor until reaching Round Oak Rail (in the vicinity of Pedmore Road), where it diverges again to serve The Waterfront and Merry Hill before terminating in Cottage Street Brierley Hill.

Aims of the project

- 3.2 The aims of the project support both national and local policies for growth and investment as described below:
- 3.2.1 Supports regeneration in areas of high deprivation through improved connectivity with areas of opportunity;
 - 3.2.2 Supports economic development by improving the accessibility of (major) employment and residential sites;
 - 3.2.3 Enhances the prosperity of Black Country residents and businesses through providing better access to employment and a wider workforce.

- 3.2.4 Improves the education and skill base of the residents of Sandwell and Dudley by providing wider access to universities and colleges throughout the West Midlands.
- 3.2.5 Encourages modal shift from private car by delivering a high quality and reliable public transport service;
- 3.2.6 Supports an integrated transport network through providing seamless interchange; and
- 3.2.7 Delivers a high quality public transport service in a manner that supports local environmental and safety benefits.

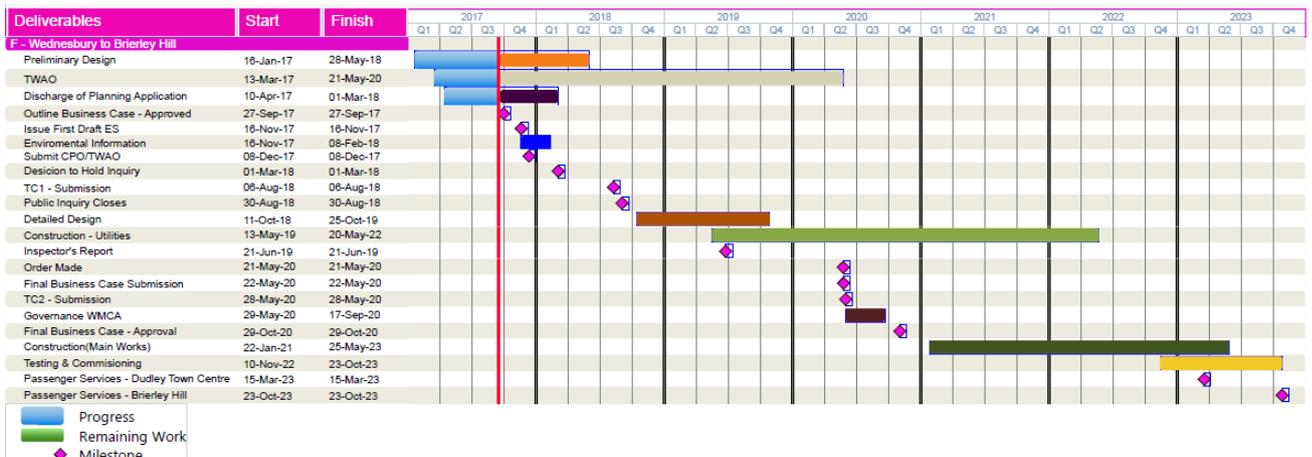
Land Acquisition

3.3 As shown on the draft plans for the Order, areas of land need to be acquired for the project within the limits of those from the 2005 Order for permanent or temporary use, or to afford permanent rights. Compulsory powers to acquire the necessary land were authorised by the 2005 Order but lapsed in 2010. Where land cannot be acquired through agreement, compulsory purchase powers will need to be refreshed. Although negotiations with relevant landowners have been commenced, there is a risk that they will not be successful or that they will not be completed in time to meet the planned delivery schedule. The application for the Order is therefore being prepared in a “belt and braces” approach. The submission of the application for compulsory powers to DfT requires WMCA Board approval. The land requirements for the current scheme compared to those within the 2005 Order have been reviewed by the Midland Metro Alliance, with minor reductions from the land included in the 2005 Order.

Schedule

3.4 The schedule for delivery of the project will be subject to the timescales and outcome of the land acquisition process and to securing funding approval from the DfT, which will be conditional on the Order being made. The overall schedule included in the business case submitted to DfT is illustrated below.

Project Schedule



3.5 Midland Metro Alliance has developed an early works package seeking to bring forward the opening of the first phase of the route. This will bring forward £1.6 million of expenditure from 2018/19 into this financial year, and will include:-

- Creation of gated accesses onto the abandoned rail corridor,
- Management, treatment and eradication of invasive weed species (Japanese Knotweed),
- Plans and approvals to recycle and remove ballast and maximise reuse of site materials,
- Track ballast testing, soils lab testing and mining investigations,
- Commence structures detailed design at key locations to progress detailed approvals with Network Rail to facilitate an early construction start,
- Order Utility C4 estimates to commence detailed utility service designs in Dudley Town Centre and at all affected structures,
- Ground Penetrating Radar Survey of Dudley Town Centre approximately 1.2km in length to inform utility diversion/protection,
- Trial Holes of existing utility apparatus to facilitate structural investigations,
- Detailed design for OLE and tramway and highway alignment to inform and progress C4 utility estimates in Dudley Town Centre, and
- Very Light Rail Innovation Centre – retaining wall and sub-station negotiations and detailed design on 3rd party complementary project.

3.6 This work will bring forward the planned completion of the first section of the route to Dudley town centre by four months to November 2022. Further work will be undertaken to develop the schedule in the coming months to investigate opportunities to bring opening to Dudley earlier, and will be reported back to WMCA in March 2018.

Dialogue with Stakeholders

3.7 Due to the lengthy history of this project there has been considerable and continuing dialogue with stakeholders along the whole route, including both statutory consultees for the purposes of Schedules 5 and 6 of the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 (the Applications Rules) and non-statutory groups.

3.8 In particular the consultation ahead of the application for the 2005 Order involved considerable public consultation, and the 2005 Order was the subject of a local public inquiry.

Consultation

3.9 In addition to the lengthy and detailed consultation exercises on the 2005 Order (over and above compliance with the Applications Rules) there has been more recent formal consultation with affected landowners and statutory consultees in anticipation of the submission of this Order.

Need for the Scheme, Impacts and Benefits

3.10 An assessment of the likely impacts and benefits of the scheme both during construction and operation was undertaken, and mitigation measures identified, as part of the Environmental Impact Assessment reported in the Environmental Statement which formed part of the 2005 Order application.

- 3.11 The 2005 Order scheme went through a local public inquiry. The independent inspector appointed by the Secretary of State concluded that the benefits of the scheme outweighed any impacts and that the 2005 Order should be made in the public interest. The Secretary of State agreed with this view in making the 2005 Order. The works powers of the 2005 Order remain extant. Therefore, there is no need to establish or further demonstrate the need for the scheme in the proposed TWAO application, which seeks to refresh only those compulsory purchase powers already deemed necessary and in the public interest.
- 3.12 However, clearly there is a greater need for the scheme now compared with in 2005 due to the linkages it provides with the enhanced opportunities for growth and regeneration associated with HS2.

Procurement

- 3.13 The design and construction of the project going forward will be undertaken by the Midland Metro Alliance. Advance utility diversions will be ordered via the relevant utility company but will be managed and co-ordinated by Midland Metro Alliance.
- 3.14 It will be necessary to procure a "third-generation" tram fleet to serve the Eastside, Wednesbury to Brierley Hill and East Birmingham projects. This procurement is planned as part of the schedule for the Metro programme, with tram supply options within an overall contract being timed to supply tested and commissioned trams in time to undertake testing and commissioning of this extension. The "second-generation" tram procurement documentation, incorporating lessons learned from that procurement, are being used to develop the contract, tender documents and specification for the new contract.

Costs

- 3.15 This project is well developed but detail design remains to be completed and at this stage a high-level cost estimate has been prepared to support the economic appraisal. This will continue to be refined, with a firm focus on driving the costs down. Unlike the East Birmingham "Devo Deal" project, however, the WBHE scheme has orders in place and the forthcoming design is supported by a wealth of previous information. In 2006 the DfT agreed a 20% level of "Optimism Bias" for use in appraisal and for definition of the maximum funding envelope; this level has therefore been assumed in this Outline Business Case, with 6% for the tram element in line with other scheme business cases. The current estimated costs used for the outline business case are:-

Estimated Outturn Cost	£343.6m
Optimism Bias (20%/6%)	£59.1m
Maximum Outturn Cost	£402.7m

- 3.16 As reported to WMCA Board on 30 April 2017, costs have increased from the £310m point estimate undertaken in 2015 to support the devolution deal negotiations due to a number of factors:-

- Increasing construction price inflation
- The devaluation of the pound impacting on tram and materials prices
- An increase in the number of trams estimated as necessary to provide the timetables service
- Higher allowances for risk for structures and drainage refurbishment due to the increasing dilapidation of the rail corridor.

Funding

- 3.17 Funding of £250 million from the new Transforming Cities Fund was allocated to WMCA by Government on 20 November, including the Government funding requested in the Outline Business Case. The Programme Board is recommended to endorse the formal approval the allocation of £207 million of this funding to the WBHE project.
- 3.18 A firm funding profile still needs to be agreed with Government via the formal business case submission. Although WMCA will be seeking to draw down Government funding in advance of any borrowing, this cannot be guaranteed. In continuing to develop the scheme, it is expected that WMCA will be required to cash-flow the early stage works until the Government funding is formally awarded at Final Approval, allowing the scheme promoters to potentially recover these sunk costs following the award of grant, however this requires to be clarified once the detail of the Transforming Cities Fund is clear.
- 3.19 The Devolution Deal and HS2 Growth Strategy Implementation Plan identified this scheme as a high priority and subsequently included it as a named scheme costing £310m within the £8bn package of investment to provisionally be funded from two sources; £103m from WMCA contribution as part of the HS2 Connectivity Package and £207m from a separate ask to Government. The funding for the outturn cost of £343.6m is summarised in the table below.

	Total
Estimated Capital Cost (QCE)	343.6
Funded By:	
BCLGF	0.4
DfT Funding	207.0
WMCA Contribution	103.0
Other Contribution	33.2
Total	343.6

- 3.20 For WMCA to fully meet the maximum £343.6m current estimated cost, other funding contributions will be required to cover any expenditure above the £310m referred to in paragraph 3.16 and therefore cover any risk expenditure incurred above that allowed for in the current cost estimate. Whilst the maximum cost outlined above exceeds this figure, further work to refine the scheme and the efficiencies to be developed within the Midland Metro Alliance give a good level of confidence that the project can be delivered closer to the originally identified funding envelope. Funding discussions need to be held with the Brierley Hill Enterprise Zone and contributions will be sought from third parties. Such contributions and the Mayor's Finance Commission will be asked to consider opportunities to maximise private sector contributions along the route in its entirety.

- 3.21 Should the remaining funding gap need to be met from additional resources, options may include the re-prioritisation of existing project commitments or additional developer/Enterprise Zone contributions.
- 3.22 An option of last resort would be WMCA prudential borrowing which would require an additional increase in the Levy to fund the costs of the interest and principal on the loan if the scheme is not able to make a positive contribution through operating or other revenues.
- 3.23 Where the WMCA prudentially borrows it is important to set out the implications of that borrowing on the Authority. For example, were WMCA required to fund the full £33.2m, the impact of the borrowing on the Authority would result in an £1.7m annuity loan payment over 40 years at an interest rate of 4%.
- 3.24 The Metro cash flows are a primary revenue source against which WMCA can secure borrowing, thus reducing any potential burden or impact on the WMCA budget. The borrowing will be funded from a combination of devolution grant and local taxation uplifts and it is anticipated by bringing operations in house the cost of this debt can be funded through the increase in operating revenue accruing to the authority after financing required capital renewals.

The Proposed Transport and Works Act Order

- 3.25 The proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order, if made, would confer on WMCA powers of compulsory acquisition both permanently and temporarily of the land and interests in land that are required to facilitate the construction, operation and maintenance of the scheme.
- 3.26 The Midland Metro Alliance has reviewed the land requirements to be included in the application for the Order and is content that they are adequate to construct, operate and maintain the scheme.
- 3.27 The WMCA Board is asked to approve the submission of the application to the Secretary of State for Transport under the Transport and Works Act 1992 for the Order. The powers sought within the Order will be based on the final Land Plans and the final Order, drafts of which are attached as Appendices to this report.

Delegations to Officers

- 3.28 In order to manage business effectively and efficiently WMCA is asked to delegate its powers in respect of this project to
- 3.28.1 the Metro Programme Director and the Head of Governance to:-
 - 3.28.1.1 finalise the application documents for the Order;
 - 3.28.1.2 negotiate with any affected parties or objectors to the Order with the aim of avoiding, or securing the withdrawal of, objections to the Order;
 - 3.28.1.3 comply with the requirements of the relevant procedures for hearing and determining the application for the Order, including any public local Inquiry;

3.28.1.4 progress negotiations with any landowners and leaseholders and make necessary arrangements to acquire the land within the proposed Order, conditional on the Order being made; and

3.28.1.5 place orders to appoint the Midland Metro Alliance, consultants, legal advisors and others as necessary to undertake further design development work on the scheme and support the ongoing statutory process, in line with any existing agreements and in compliance with internal governance requirements and procurement best practice and in consultation with Head of Governance where appropriate; and

3.28.2 the Head of Governance or their nominated representative to negotiate, agree, enter into, execute and serve (where appropriate) all relevant legal agreements, notices and other documentation necessary to facilitate and underpin the application for, and implementation of, the Order.

3.29 Under Section 239 (b) of the Local Government Act 1972 a second resolution of WMCA Board to submit the TWAO is required no less than 14 days after the submission of the proposed Order to the Secretary of State. It is proposed that this is processed at the next meeting of the WMCA Board by a formal resolution when the minutes of this meeting are approved.

Further Development Funding

3.30 The expenditure profile submitted to DfT in the Business Case is set out in the table below.

	2016/17 & Prior	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	Total
Estimated Capital Cost (QCE)	2.0	4.0	13.6	12.2	39.0	126.1	117.1	29.6	343.6
Funded By:									
BCLGF	0.4								0.4
Government Funding					70.4	126.1	10.5		207.0
WMCA Contribution	1.6	4.0	13.6	12.2	-31.4	0.0	103.0		103.0
Other Contribution							3.6	29.6	33.2
Total	2.0	4.0	13.6	12.2	39.0	126.1	117.1	29.6	343.6

3.31 The WMCA Board authorised the £4 million expenditure in 2017/18 at its meeting of 30 April 2017. In order to maintain progress on the scheme and to enable the bringing forward of work to secure an earlier completion of the first phase of the route to Dudley town centre the Programme Board is asked to note that WMCA Investment Board has agreed to bring forward £1.6 million of expenditure into 2017/18 to accelerate development and design, to cover the works set out in paragraph 3.5 of this report; a revised expenditure profile is shown below.

	2016/17 & Prior	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	Total
Estimated Capital Cost (QCE)	2.0	5.6	12.0	12.2	39.0	126.1	117.1	29.6	343.6
Funded By:									
BCLGF	0.4								0.4
Government Funding					70.4	126.1	10.5		207.0
WMCA Contribution	1.6	5.6	12.0	12.2	-31.4	0.0	103.0		103.0
Other Contribution							3.6	29.6	33.2
Total	2.0	5.6	12.0	12.2	39.0	126.1	117.1	29.6	343.6

- 3.32 A report is planned to be brought to the WMCA Board in March 2018 providing further detail on options to deliver the first phase of the scheme earlier, and this will include a revised overall scheme expenditure profile for approval.

4.0 Impact on the Delivery of the Strategic Transport Plan

- 4.1 The Wednesbury to Brierley Hill Extension is an important element in the expansion of Midland Metro, and in the development of the Strategic Transport Plan's Metropolitan Rail and Rapid Transit Network.

5.0 Wider WMCA Implications

- 5.1 The WBHE is a key part of the Midland Metro extensions programme. This expansion of Midland Metro, as part of an integrated Rail and Rapid Transit Network, will enable better connectivity of key centres and corridors in the Black Country with the wider Combined Authority area through effective interchange with suburban and regional rail services.

6.0 Financial implications

- 6.1 These are largely unchanged from the 21 April report and are covered in the main body of this report, with the Government agreement to the grant funding of the £207 million allocated from the Transforming Cities Fund.

7.0 Legal implications

- 7.1 Any legal issues are covered within the main body of this report.

8.0 Equalities implications

- 8.1 The Midland Metro extensions will facilitate fully accessible journeys and access to employment, leisure and education, and link to other transport modes (buses and rail services).

9.0 Other implications

- 9.1 None.

10.0 Schedule of background papers

- 10.1 WMCA report 30 September 2016 Midland Metro Update.
10.2 WMCA report 21 April 2017 Midland Metro Wednesbury to Brierley Hill Extension

11.0 Appendices

- 11.1 Draft Order