

Devolution Deal – Draft Proposal for an East Midlands Combined County Authority

Purpose

- 1.1 On 30 August 2022, Derbyshire County Council, Derby City Council, Nottinghamshire County Council and Nottingham City Councils (“four upper tier authorities”) signed a £1.14 billion devolution deal with the Government. The signing of the deal, will, subject to relevant approvals, consultation, and primary and secondary legislation passing through Parliament, establish the first ever Mayoral Combined County Authority in the country. This would mark a significant step forward for the region, addressing years of historical low investment in the area whilst providing a platform for accelerated growth.
- 1.2 In order to progress the area’s devolution deal, under the Levelling-up and Regeneration Bill, a consultation is required on the draft East Midlands Combined County Authority (EMCCA) Proposal (‘the Proposal’).
- 1.3 Following consultation, the four upper tier councils will need to submit their final Proposal to Government, which will take account of the outcome of the consultation, and which, if appropriate, formally proposes the creation of the EMCCA.
- 1.4 Council is asked to approve the draft Proposal and agree to formally consult upon it with the residents and other stakeholders of Derby and the wider EMCCA area for a period of 8 weeks from November 2022 to January 2023.
- 1.5 It is anticipated that a further meeting of Council in or around March 2023 will consider the results of the consultation and agree whether or not to formally submit the final Proposal to Government.

Recommendations

That Council agrees to:

- 2.1 approve the draft Proposal attached at Appendix 1 to this report to create an East Midlands Combined County Authority (EMCCA) for the areas of Derbyshire County, Derby City, Nottinghamshire County and Nottingham City;
- 2.2 formally consult upon the draft Proposal with the residents and other stakeholders of Derby and the wider EMCCA area, in partnership with Derbyshire County Council, Nottinghamshire County Council and Nottingham City Council;

- 2.3 the approach to the consultation as set out in Appendix 2 to this report; and
- 2.4 delegate authority to the Chief Executive to approve any typographical or technical amendments to the draft Proposal which the Chief Executives of the other three Councils also agree on, on behalf of Derby City Council prior to the commencement of consultation. This delegation is to be exercised following consultation with the Leader of the Council and is conditional upon such amendments being agreed by all four upper tier Council Leaders.

Reasons

- 3.1 In order to commence the process for creation of a Mayoral Combined County Authority covering Derbyshire, Derby, Nottinghamshire and Nottingham in accordance with the Levelling-Up and Regeneration Bill.
- 3.2 To ensure that consultation is undertaken and comments are sought from stakeholders and are considered prior to approval of the final Proposal for submission to Government.
- 3.3 To enable any necessary amendments to be made to the Proposal and avoid any delay in commencing the consultation.
- 3.4 The Scheme of Delegations contained within the Council Constitution reserves approving any proposals relating to local government areas and the transfer, conferment or withdrawal of powers of local authorities to Council.

Supporting information

- 4.1 In February 2022, the Government published its White Paper on Levelling Up, a significant set of proposals which look to address geographical disparities in funding, productivity and growth across England.
- 4.2 The resulting draft legislation – the Levelling-up and Regeneration Bill – will (subject to its passage through Parliament and Royal Assent) allow for the creation of new Combined County Authorities that require the agreement of upper-tier Local Authorities.
- 4.3 Securing a devolution deal has been a long-standing ambition for leaders in Derbyshire, Derby, Nottinghamshire and Nottingham, in order to address the lasting impact caused through decades of under-funding (when compared to other areas). The deal also provides the chance to exploit strategic opportunities such as the East Midlands Freeport and Development Corporation as well as tackle persistent and systemic deprivation which drive significant inequalities in some parts.
- 4.4 The four upper tier councils agreed to cooperate at pace on the creation of a new devolution deal that would cover the D2N2 LEP area by establishing a Mayoral Combined County Authority.

- 4.5 A devolution deal was agreed between the four upper tier councils in the area, and the Government, on 30 August 2022.
- 4.6 A Proposal for consultation has been developed, as shown in Appendix 1, which sets out the context, vision and priorities for the new EMCCA - “Our vision is for the 2.2 million people who live and work here to enjoy better health, greater prosperity, and an increased sense of wellbeing through the opportunities available to them within an inclusive and competitive CCA Area at the heart of the country”. Four priority areas have been put forward to support delivery of the vision – homes, skills, transport and net zero (reducing carbon emissions).
- 4.7 If a consultation on the Proposal is agreed by all four upper-tier councils, then the results of the consultation will be considered when the Councils are asked to agree the final Proposal for submission to government in the first quarter of 2023.
- 4.8 The establishment of an EMCCA would result in a significant uplift in the powers and funding available to the area. It would mean at least an additional £1.1 billion of investment in the area’s economy over the next 30 years. It would create a directly elected mayor across the East Midlands area to champion its interests, deliver on local priorities and provide greater local accountability and decision-making power, working in partnership with the CCA and its Constituent Councils, and more widely with other public service providers including district and borough councils.
- 4.9 With a population of 2.2 million residents and a GVA of over £50.5 billion, the East Midlands area offers enormous potential. It has over 88,000 businesses providing over 930,000 jobs. It is a coherent economic area and has a number of significant sectors with potential for growth, including advanced manufacturing, engineering, clean energy, logistics, creative and digital, health and pharmaceuticals, education, wholesale and retail trade.
- 4.10 The devolution deal and the EMCCA (if established) will provide the area with:
- Control of a £38 million per year allocation of investment funding over 30 years (50% capital, 50% revenue), to be invested by East Midlands CCA to drive growth and take forward its priorities over the longer term.
 - New powers to improve and better integrate local transport, including the ability to introduce bus franchising, control of appropriate local transport functions, e.g. local transport plans, and control of a Key Route Network.
 - An integrated transport settlement starting in 2024/25.
 - A commitment to explore a local partnership with Great British Railways so that the EMCCA mayor can help to shape and improve the local rail offer.
 - New powers to better shape local skills provision to meet the needs of the local economy, including devolution of the core Adult Education Budget, as well as input into the new Local Skills Improvement Plans.
 - New powers to drive the regeneration of the area and to build more affordable homes including compulsory purchase powers and the ability to establish Mayoral Development Corporations.
 - Over £17 million for the building of new homes on brownfield land in 2024/25, (at the time of writing subject to sufficient eligible projects for funding being identified).

- £18 million capital funding in this Spending Review period (up to 2024/25) to support the delivery of housing priorities and drive Net Zero ambitions in the East Midlands area. This investment is subject to agreement of the relevant business cases.
 - A key role in planning and delivering the East Midlands area allocation of the UK Shared Prosperity Fund (UKSPF) from 2025/26.
 - The integration of D2N2 Local Enterprise Partnership into the East Midlands CCA. This will ensure there continues to be a strong and independent local business voice which informs local decision making and strategic economic planning. In absorbing the role and functions of D2N2 LEP, the East Midlands CCA will deliver a number of functions on behalf of central government departments.
 - A commitment to developing, in partnership with the Government, an arrangement which ensures close cooperation with the Police and Crime Commissioners (PCCs).
 - A commitment from the Government to work with the region to explore initiatives that improve delivery of public services jointly with Constituent Councils such as how best to support residents with multiple, complex needs.
 - A key leadership role for the Mayor in local resilience and civil contingency planning, preparation and delivery.
- 4.11 It is proposed that the Combined County Authority (CCA) will be known as the East Midlands Combined County Authority. It would cover the geographical areas of the Derbyshire County, Derby City, Nottinghamshire County and Nottingham City Councils, which together form the Constituent Councils of the CCA.
- 4.12 The CCA will have up to 17 Members in total, comprising:
- The directly elected Mayor;
 - 8 Constituent Members (Members appointed by the Constituent Councils, with each Constituent Council appointing 2 Members);
 - 4 Non-Constituent Members nominated by the District and Borough Councils within the Area (with 2 Non-Constituent Members to be nominated by Derbyshire District and Borough Councils, and 2 Non-Constituent Members to be nominated by Nottinghamshire District and Borough Councils);
 - A key area of focus for the CCA will be economy, industry and business, where Government are clear that the independent business voice for the Area must be given sufficient prominence in governance arrangements. As a result consideration is being given to appointing either a Non-Constituent or Associate Member who can represent the views of business on the CCA.
 - Up to three further Non-Constituent or Associate Members. These three further Memberships will not be nominated/appointed to initially. It will be for the CCA to determine whether the three additional Memberships will be used, and if so, what interests those Memberships should seek to represent on the CCA.
- 4.13 The CCA will have a directly elected Mayor who will be elected by the voters within the CCA Area. The Mayor will be a Member of the CCA, as well as having a number of powers and functions which may be exercised exclusively by the Mayor.

- 4.14 In order to deliver the ambitions for the area, the constituent councils will seek to organise the resources of the CCA in the best possible way. Work is currently underway to define the 'Operating Model' for the EMCCA which will describe how it will work, the functions, people, processes, systems and organisational structure.

Public/stakeholder engagement

- 5.1 Councillors from each of the four upper tier councils and the District and Borough Councils across the area and key partners have been engaged during the early phases of deal development. The consultation will enable wider consultation with businesses, voluntary and community sector, other stakeholders and residents.
- 5.2 Active steps will be taken to encourage participation and to ensure that the consultation is accessible to all (including, for example, the digitally disadvantaged and those with protected characteristics).

Other options

- 6.1 Not to approve the draft Proposal, however this is not proposed because to allow for the maximum amount of devolved powers and funding (a “Level 3” deal), the Government’s policy requires that a Mayoral Combined County Authority must be established in the area.
- 6.2 Not agreeing to consult upon the Proposal or delaying consultation. Both these options have been rejected as failure to consult would mean that a key requirement of the Levelling up and Regeneration Bill was not met and that the Proposal could not be put forward to Government, preventing the delivery of the significant additional funding and powers that devolution and the creation of an EMCCA would bring.
- 6.3 The timeline to create a Mayoral Combined County Authority by Mayoral elections in May 2024 requires a consultation on the Proposal to be completed by early January 2023. Any delay would not allow for the area to meet this timeline.
- 6.4 There is no guarantee that a devolution deal and the associated funding would be available to the area in the same way in the future.

Financial and value for money issues

- 7.1 The creation of the EMCCA will lead to substantial additional funding being made available to be spent within the combined county authority area on a range of different projects and schemes that will help promote economic growth and improve outcomes for residents.

- 7.2 In order to fund the creation and operation of the mayor and combined county authority structures, funding has been secured as part of the deal from central Government to cover the financial years 2023/4 and 2024/5. In addition, the Mayor has powers to issue a precept and impose a levy, and the CCA has powers to borrow. In practice it is expected that the running costs of the CCA will be met by either continued central Government support or with funding from the Constituent Councils. It is difficult to estimate whether any government funding will be sufficient and that will partly depend on the design of the operating model for the combined county authority which will not be completed until the outcome of the consultation is known. When there is greater clarity on any potential contribution required there will be a need to recognise this additional cost and individual council approval will be sought, if necessary, at that time.

Legal implications

- 8.1 The Levelling Up and Regeneration Bill (“the Bill”) seeks to establish a new type of combined county authority. This is distinct from a combined authority that can be created under the Local Democracy, Economic Development and Construction Act 2009. Whilst the Council agreed a devolution deal with Government, the creation of a new combined county authority is subject to public consultation, the passage and coming into force of the combined county authority provisions in the Bill, the consent of the Constituent Councils affected to submit a formal Proposal to Government and approval of secondary legislation.
- 8.2 It is not necessary for the Council to wait for the Bill to receive Royal Assent prior to commencing consultation; clause 42 makes it clear that consultation requirements may be satisfied by things done before that clause comes into force.
- 8.3 The Gunning principles set out the common law principles to be observed when undertaking consultation. *R v London Borough of Brent ex parte Gunning* [1985] 84 LGR 168 established these principles, which set out that a consultation is only lawful when these four principles are met:
- a) proposals are still at a formative stage - a final decision has not yet been made, or predetermined, by the decision makers;
 - b) there is sufficient information to give ‘intelligent consideration’ - the information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response;
 - c) there is adequate time for consideration and response - there must be sufficient opportunity for consultees to participate in the consultation. In the absence of a prescribed statutory period, there is no set timeframe for consultation, though it is considered that an eight week consultation period is sufficient in this case. The adequacy of the length of time given for consultees to respond can vary depending on the subject and extent of impact of the consultation; and
 - d) ‘conscientious consideration’ must be given to the consultation responses before a decision is made. Decision-makers should be able to provide evidence that they took consultation responses into account.

- 8.4 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));
 - 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
 - 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)).
- 8.5 An initial draft equality impact assessment (EIA) has been completed in respect of the Proposal. It is attached as Appendix 3 and due regard must be given to any implications identified in it. The EIA will continue to be evaluated and updated as necessary throughout and following conclusion of the public consultation.

Climate implications

- 9.1 The establishment of an EMCCA will not in itself directly affect carbon emissions in a material way. If subsequently established, it is anticipated that the EMCCA will develop its own plans and strategies to reduce carbon emissions which will be subject to its own approval processes and approaching the issues from a wider strategic and geographic position may beneficially impact the development of more consistent and measurable carbon reduction measures.

Socio-Economic implications

- 10.1 The Proposal includes contextual insight regarding the opportunities that EMCCA is expected to bring in terms of parity of investment with other areas, boosting productivity and employment, and tackling inequalities.

Other significant implications

- 11.1 There is the usual risk that the relevant provisions of the Bill may be subject to change prior to Royal Assent. However, the four upper tier Councils will remain in close dialogue with Government to understand any impacts this may have and ensure that the Councils are in the best position to respond to them as the Bill progresses.
- 11.2 In addition, there are two potential risks which merit highlighting at this point:

- (i) that the precise range and scope of transport powers to be devolved or how they may be exercised by the CCA and/or the Mayor, may not have been fully determined by the date of this report. At the time of publication, work is ongoing to resolve this issue but in the event that by the date of the first of the upper tier Council meetings, there remain any outstanding issues a delegation is sought to enable the Chief Executive to make any technical amendments required after the date of the Council meetings in consultation with the Leader of their Council and subject to all four upper tier council Leaders being in agreement. However, it should be recognised that the general scope and remit of the powers will remain limited by reference to the areas set out in the deal document signed between the Councils and Government in August 2022 and will not seek to confer powers outside those general areas, and
 - (ii) in respect of the proposed East Midlands Development Corporation, and the proposed Freeport, and possibly the new Investment Zones; that all of these entities, as well as the CCA, are focussed at least to an extent on improving inward investment into the East Midlands, and on regeneration. This means that they have the potential to have overlapping areas of competence and interest. At the moment it is unclear how the relationship between them all will operate but Government are clear that there will need to be streamlined and integrated governance arrangements in place, and accordingly the Constituent Councils (and in time the Mayor and CCA) will engage with the organisations involved in each of the Development Corporation, Freeport and emerging Investment Zones to ensure that agreement can be reached which will best benefit the areas in question using the most appropriate powers and organisation to do so.
- 11.3 At this stage of the proposal to develop a Combined County Authority there are no direct HR implications arising from this report and the consultation exercise for which approval is sought. Staff and Trades Unions are two of the stakeholder groups which will be invited to participate in the consultation process and their views will be taken into account along with all of the consultation responses at the next stage. Any potential future HR impacts will be managed in accordance with established HR policies and procedures at each of the affected Councils and at the LEP in the event that integration of the LEP into the EMCCA proceeds in accordance with Government expectations, draft guidance and the emerging Bill.
- 11.4 The consultation on the draft Proposal to create the EMCCA does not in itself require a DPIA to be carried out. However, a DPIA has been conducted in respect of the commissioning of external consultants to assist with the consultation exercise and how any data associated with that exercise may be held, processed, stored and destroyed. It is anticipated that a privacy notice will be published along with the consultation documents to provide further information for consultees about this. If a decision is taken to submit a proposal to Government next Spring, work is likely to be required to consider what sort of data may need to be shared with or transferred to the new EMCCA body in order for it to fulfil its future functions.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Director of Legal, Procurement and Democratic Services	20 October 2022
Finance	Director of Financial Services (Deputy S151 Officer)	21 October 2022
Service Director(s)	Director of Policy, Insight and Communications	20 October 2022
Report sponsor	Strategic Director of Communities and Place	20 October 2022
Other(s)		

Background papers:	
List of appendices:	Appendix 1 – Draft Proposal Appendix 2 – Consultation Approach Appendix 3 – Equality Impact Assessment