COUNCIL
21 March 2023

ITEM 4

Report sponsor: Chief Executive
Report author: Director of Policy, Insight and Communications

Devolution deal - Consideration of consultation responses and submission of the East Midlands Combined County Authority Proposal to Government

Purpose

1.1 Following approval from Full Council in October 2022, Derby City Council, Derbyshire County Council, Nottingham City Council and Nottinghamshire County Council (the 'Constituent Councils') undertook statutory consultation on a Proposal to establish the East Midlands Combined County Authority ('EMCCA') across Derby, Derbyshire, Nottingham and Nottinghamshire. This consultation ran from 14 November 2022 to 9 January 2023.

1.2 In order to progress the area's devolution deal, under the draft legislation (and subject to the passage of, and Royal Assent to, the Levelling-up and Regeneration Bill and relevant approvals), the four Constituent Councils must submit to the Government a final EMCCA Proposal ('the Proposal') that has regard to the results of the consultation and thereby the views of residents and other key stakeholders. It is important to note that the obligation on the Constituent Councils under clause 43 of the Levelling-up and Regeneration Bill is to carry out a consultation "across the proposed area" and consider the results of that consultation. This is a requirement for each Constituent Council to consider the consultation responses provided across the whole area – not just those provided in their own area.

1.3 A summary of the key points raised in the consultation is set out at 4.18 to 4.22 inclusive, and a full consideration of the consultation responses is set out at Appendix 2.

1.4 The Proposal has now been amended to take account of the outcomes of that consultation. The final Proposal is attached at Appendix 1.

1.5 Council is asked to approve the Proposal for submission to the Secretary of State. It is not yet clear when the Levelling-up and Regeneration Bill will be enacted. The Bill must become law before we are able to submit the Proposal, and accordingly Council is also asked to delegate to the Chief Executive the authority to submit the Proposal at the appropriate time in consultation with the Chief Executives of the other Constituent Councils.

1.6 Should the Secretary of State accept the submitted Proposal, a further meeting of Council will, in due course, be asked to consent to the terms of the relevant Statutory Instrument that will formally establish the EMCCA. It will not be until this later point that Council will be asked to finally commit to the establishment of the EMCCA.

Recommendations

That Council agrees to:

2.1 approve the final Proposal attached at Appendix 1 to this report, having due regard to the consultation responses and the public sector equality duty, to create the East Midlands Combined County Authority (EMCCA) for the areas of Derby City, Derbyshire County, Nottingham City and Nottinghamshire County;

2.2 note how the Proposal has been amended to take account of the results of the Consultation, other engagement activity, and recent developments as set out in this report and in more detail within Appendix 2 (the Summary of the Consultation and the Constituent Councils' Response), Appendix 3 (the Consultation Report), and Appendix 4 (the Engagement Report);

2.3 delegate authority to the Chief Executive to submit the Proposal to the Secretary of State in consultation with the Chief Executives of the other Constituent Councils once the Levelling-up and Regeneration Bill has received Royal Assent and the relevant provisions come into force; and

2.4 delegate authority to the Chief Executive to approve any typographical or technical amendments to the final Proposal which the Chief Executives of the other three Councils also agree on, on behalf of Derby City Council, prior to submission.

2.5 note that a further report will be brought back to Council to consent to the relevant Statutory Instrument that will formally establish the EMCCA in due course.

Reasons

3.1 In order to further progress the creation of a Mayoral Combined County Authority covering Derby, Derbyshire, Nottingham, and Nottinghamshire in accordance with the Levelling-up and Regeneration Bill.

3.2 To ensure that the Proposal has regard to the results of the Consultation.

3.3 To enable expeditious submission of the Proposal to the Government when the Levelling-up and Regeneration Bill has become law.

3.4 To enable any necessary amendments to be made to the Proposal and avoid any delay in submitting the Proposal.

3.5 To ensure awareness of the subsequent stages of the process.

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 – would (subject to its passage through Parliament and Royal Assent) allow for the creation of new Combined County Authorities.

4.3 Securing a devolution deal has been a long-standing ambition for leaders in Derby, Derbyshire, Nottingham, and Nottinghamshire, 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 Derby, Derbyshire, Nottingham, and Nottinghamshire agreed to cooperate at pace on the negotiation of a new devolution deal that would cover the D2N2 Local Enterprise Partnership area and was proposed to be delivered through establishment of a Mayoral Combined County Authority.

4.5 A devolution deal was agreed between the four Constituent Councils, and the Government, on 30 August 2022.

4.6 The establishment of a Mayoral Combined County Authority 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 Mayoral Combined County Authority and its Constituent Councils, and more widely with other public service providers including District and Borough Councils.

4.7 On 2 November 2022, Council approved the then draft Proposal and agreed to formally consult upon the draft Proposal with the residents and other stakeholders of Derby and the wider D2N2 area.

4.8 The Constituent Councils subsequently undertook statutory consultation on the Proposal to establish the East Midlands Combined County Authority (EMCCA) across Derby, Derbyshire, Nottingham and Nottinghamshire. This consultation ran from 14 November 2022 to 9 January 2023. Ipsos UK were appointed to support the Constituent Councils in undertaking the consultation.

4.9 An online consultation portal was established by the Constituent Councils. It included a summary of the deal, what it would mean, the benefits and an explanation about how the proposed deal would build on the pre-existing strengths of the area. The website included a number of other pages, including a copy of the draft Proposal, associated background information and a detailed FAQ section. It also included an online response form for people to respond to the devolution deal draft Proposals. Other formal channels through which individuals and stakeholder organisations could give their views on the draft Proposal were via hard copy response forms, written letters, and by email. Hard copies of the response forms were made available at various locations across the area and the Constituent Councils ran a communications campaign prior to and during the consultation period, details of which can be found in Appendix 6.

4.10 In addition, a programme of engagement activities and events was undertaken in order to promote public awareness of the proposals, encourage participation in the survey, and ensure key stakeholder groups and communities of interest and identity were engaged in the consultation process. Appendix 4 (the Engagement Report) sets out the engagement activity that took place and resultant recommendation. This recommendation has been addressed in Appendix 2 (Summary of the feedback and the Constituent Councils response), and in the Equalities Impact Assessment.

4.11 Overall, there were 4,869 participants in the consultation which was open to residents, businesses, community and voluntary groups, and other organisations in the region. The majority (4,751) participated online via the official response form. Full details on the results of the consultation are included within the Consultation Report at Appendix 3 and a Summary of the feedback together with the Constituent Councils' Response is at Appendix 2.

4.12 Responses to the consultation came from residents from all areas in Derby, Derbyshire, Nottingham and Nottinghamshire. The consultation survey was self-selecting, therefore no area was specifically targeted, however there is a good split of responses from all areas of the four Constituent Councils and no one area is over represented. The overall number of responses achieved was greater than expected (targeted at around 4,000) and higher than other devolution consultations, for example, West Yorkshire received 4,114 responses, and York & North Yorkshire received over 2,200.

4.13 The overall response to the consultation shows that there was a majority in favour of the proposals relating to:

- Homes (agree: 2,239; disagree 1,913)
- Skills (agree: 2,504; disagree 1,534)
- Transport (agree: 2,561; disagree 1,711)
- Reducing carbon/Net Zero (agree: 2,484; disagree 1,580); and
- Public Health (agree: 2,490; disagree 1,580).

4.14 There were fewer respondents in favour of the proposals relating to Governance (agree: 2,032; disagree: 2,206). The majority of comments indicated that the main concern with the proposed governance arrangements was in relation to the proposal to have an elected Mayor (which is required to secure a level three devolution deal).

4.15 Full details of the demographics of respondents is available at Appendix 5. In summary:

- 59% of respondents were Male and 40% Female, with a small number reporting their sex as Other.
- Those aged 55 to 74 had a higher response rate to the consultation when compared to the resident population. Those aged 34 and below had a lower response rate when compared to the resident population.
- In terms of the ethnic group of respondents, the White: English, Welsh, Scottish, Northern Irish or British group had a higher response rate (+7.5% points) than the BAME group (-7.5% points) when both groups were compared to the resident population.
- 49.7% of respondents listed their religion as None. 45.5% listed their religion as Christian, and 0.7% of respondents listing their religion as Muslim.

4.16 Analysis undertaken as part of the Equality Impact Assessment attached at Appendix 5 to the report provides a summary of findings from the protected characteristic groups. In addition to the consideration of Protected Characteristics and/or Groups within the EIA, as required by the Equality Act 2010, the Council has also considered the impact of the Proposals on other groups and individuals, in certain cases in line with other statutory duties. These are outlined in the EIA section of this report, along with the actual or potential positive and/or negative outcomes and impacts on those groups and/or individuals.

Feedback on the consultation process

4.17 Paragraph 1.8 of the Ipsos UK East Midlands Combined Authority Devolution Deal Consultation Report ("Ipsos Consultation Report") sets out that 199 participants raised issues about aspects of the consultation process. The Constituent Councils are content that the consultation was undertaken lawfully, and in line with the Gunning principles articulated in R v London Borough of Brent ex parte Gunning [1985] 84 LGR 168.

4.18 Dealing with each of the points raised in turn:

a. Respondents raised issues about the consultation questionnaire being too lengthy and complex – The Councils' response to this issue is that the Proposal, which was the subject of the consultation, is complex and multi-faceted. The law on consultation envisages giving sufficient information for intelligent consideration, and an opportunity for comment on the range of issues. If the level of detail contained in the consultation had not been provided, then there was a danger that people would not have had sufficient information for them to give intelligent consideration to the range of issues;

b. Respondents expressed their views that some of the questions on the consultation were closed and/or contained leading questions – The Constituent Councils' response to this issue is that the approach of using a consultation questionnaire with fixed questions was to ensure that clear answers could be obtained on support or otherwise for the proposals; however, there was a free text option at the end of the questionnaire where

any comments could be provided. Accordingly, those responding were not limited to commenting on the specific questions asked;

c. Respondents raised issues about the consultation being biased in favour of the Proposal and that there was a lack of a counter argument – The Councils' response to this is that the Bill requires production of a Proposal which must then be consulted on. Accordingly, it was not appropriate to produce multiple options for commentary. Case law provides that it is lawful for a consulting body to support the subject matter of the consultation and that counter arguments need not be provided if to do so is inappropriate provided that proper consideration of any counter arguments advanced takes place;

d. Respondents expressed their views that there was a lack of publicity of the consultation – the Council's response to this is that the four Constituent Councils ensured that the consultation was well publicised as detailed in this report. A summary of the communications and publicity that took place throughout the consultation period is attached at Appendix 6;

e. Finally, respondents expressed their views that the outcome of the consultation was a 'done deal' – the Constituent Councils' response is that the consultation was conducted in line with the Gunning principles, specifically at the formative stage of the process, and all responses have been conscientiously considered by the Councils as is also required. No decision has yet been made in respect of submitting a Proposal to Government and accordingly there has been no pre-determination of the decision as to whether or not a Proposal should be submitted to Government under the Bill.

Consultation consideration

4.19 Overall, consultation findings outlined in the Ipsos Consultation Report at Appendix 3 are largely positive, indicating broad support for the Proposal. In taking forward any proposals, due regard to all responses across the proposed EMCCA Area is required. Details of supportive responses for each of the identified areas forming part of the consultation are firstly set out below:

a. Governance - Whilst there were fewer in favour of the proposed governance arrangements for the EMCCA, those who were supportive of proposals outlined a number of reasons why this was the case. Respondents largely focused on the need for a mayor who they felt would provide a much needed voice and raise the profile of the East Midlands region. Stakeholders also pointed to the mayor's role in stimulating productivity and therefore economic growth.

b. Homes - With a majority in favour of homes proposals, those who were supportive of proposals outlined a wide range of reasons, predominantly focusing on the provision of better housing, the improvement of the housing stock and the provision of more affordable housing, which was recognised as being much needed in the region. A number of non-stakeholders expressed general support for the principle of constructing additional homes

in the EMCCA area, however outlining that such support was conditional on the basis of additional and supportive infrastructure being delivered and the greenbelt being protected.

c. **Skills** – With a proportionally greater number of people in favour of skills proposals, across both stakeholders and non-stakeholders, those who were supportive outlined their belief that proposals would ultimately stimulate productivity, benefit the regional economy and lead to job creation. Respondents also made supportive comments in respect of adult education and, the Adult Education Budget, with others recognising the opportunities which would be provided for people to refresh and/or learn new skills. There was also support for proposals relating to green growth.

d. **Transport** – With a larger number of respondents in favour of transport proposals, those who were supportive predominantly felt that plans would deliver a joined up and integrated network across the EMCCA area. Proposals in respect of smart ticketing and the Key Route Network were also supported, as was the additional funding allocated for transport.

e. **Reducing carbon/Net Zero** – With a greater number of respondents favouring reducing carbon/net zero proposals, support from both stakeholders and non-stakeholders primarily centred around stated objectives set out in the Proposal, whilst others referred to energy/power renewables being supported by a renewable energy agenda.

f. **Public health** – With a majority of people in favour of public health proposals, those in support made general supportive comments, with others expressing views that proposals would deliver a joined up and integrated healthcare system.

4.20 Secondly, in having due regard to the consultation findings, consideration of the key issues and views raised by respondents has also taken place. Appendix 2 sets out the Constituent Councils detailed consideration of the consultation responses. This consideration has sought to identify the key issues and views raised, outline a detailed response where appropriate and make a recommendation on whether any resulting change to the Proposal should take place.

4.21 The following are key issues that were raised during the consultation – these changes have been considered but have not resulted in changes to the Proposal.

a. **The need for a Mayor** – A Mayor is a requirement of the Government to access a level 3 devolution deal. A level 3 deal is the highest level of devolution deal available and provides access to the highest levels of funding from Government, and to the widest range of powers and functions. When the balance of consultation responses are considered, broad support is given for the other benefits of the deal, and accordingly, whilst there is concern about an elected Mayor, the consultation responses indicate a desire for the benefits which are linked to the requirement for an elected Mayor. In addition, the Constituent Councils consider that the opportunities which a level 3 deal will offer are what are needed in the proposed EMCCA Area to achieve our objectives as set out in the Proposal document;

b. **Diversity of the area** – There were views raised that the diversity of the proposed EMCCA area is such that the proposed EMCCA will not be able to represent all areas, and that particularly, rural areas may lose out. The proposed governance arrangements will ensure that the interests of all areas of the proposed EMCCA are adequately represented. The role of all members of the proposed EMCCA would be to make decisions in the best interests of the whole of the EMCCA Area;

c. **Potential for increased/additional layer of bureaucracy** – The Proposal sets out that the proposed EMMCA, though a new organisation, will bring governance that currently sits at national government level down into the proposed EMCCA Area, much closer to local businesses and communities;

d. **Potential for increased cost/concern about underfunding** – The Constituent Councils expect the proposed EMCCA to be funded from the committed central Government funding associated with the EMCCA (if approved), which amounts to £38m a year. The Proposal sets out the Constituent Councils' intention to create a fully developed long term transformational funding programme for the proposed EMCCA, covering all budgets for devolved functions. As well as the committed Government funding, the proposed EMCCA would have the flexibility to lever in additional private and public sector funding. Accordingly, although the Mayor does have precepting powers, and the Constituent Councils are required to fund the proposed EMCCA if required, this is not anticipated to be likely to be necessary for at least the period of the committed Government spending;

e. **Greater focus on social mobility** – The Proposal recognises the socio-economic challenges to be addressed and one of the stated outcomes of the EMCCA is to reduce inequality and promote social mobility to allow people to achieve their potential. Beyond the deal, the EMCCA will work collaboratively with Government and partners to improve key outcomes (for example through a mayoral social mobility strategy);

f. **Geography** – Respondents expressed their views that the proposed EMCCA does not encompass the right geography. Although Leicester City, Leicestershire County and Rutland County Councils are not currently part of the proposed EMCCA, there is scope for them to join in the future if that is supported by all relevant bodies. The areas of Derby, Derbyshire, Nottingham and Nottinghamshire are a functional economic area, where 92% of workers live in the area and 87% of residents work in the area;

g. **Democratically unaccountable given lack of involvement as Constituent Councils of District and Borough Councils, and Parish Councils** – Respondents expressed views that decision making would be removed, or made more remote from, Parish and District and Borough Councils. All existing District Borough and Parish Councils will be retained, and no powers and functions are being removed from them. The proposed EMCCA could concurrently exercise some powers with other Councils, but in the case of the majority of District and Borough Council powers that would be affected (mainly relating to planning and housing), consent would be required from the District and Borough Councils before the EMCCA could exercise those powers. The Proposal also sets out a number of mechanisms by which the District and Borough Councils will contribute to the governance

of the proposed EMCCA, including having four members of the EMCCA appointed by District and Borough Councils. The Proposal does not impact on the role of Parish Councils;

h. **Political influence in proposed EMCCA** – Views were expressed that as the Mayor will be elected, and other elected members will be members of the proposed EMCCA, there will be too high a level of political influence on the EMCCA. It is right that elected politicians will have a key role in the decision making of the proposed EMCCA. However, there will also be members of the EMCCA, and others involved in the wider governance, who will not be elected and will represent different interests (for example, business). The proposed EMCCA would take on some functions from central Government, or exercise other functions concurrently with other Councils.

i. **Membership of/involvement in the proposed EMCCA** – A number of organisations expressed the view that they should be members of the EMCCA, or otherwise be involved in the governance and decision making of the EMCCA. The Proposal sets out the memberships of the proposed EMCCA which the Constituent Councils are committed to, leaving four additional memberships which may be appointed to. If the Proposal is approved to be submitted, the Constituent Councils intend to start considering the possible governance models for the EMCCA and will consider at that time the identity of the interests which might fill the remaining available EMCCA memberships, and also what advisory boards may be created and who should be appointed to those. This detail is not required to be settled prior to submission of the Proposal;

j. **Freeport** – A number of responses provided were directly related to the functions and operation of the Freeport. Clarification has been provided that East Midlands Freeport is a separate entity to the proposed EMCCA and not subject to this consultation;

k. **Concerns around planning functions** – A number of respondents expressed their views around the potential exercise by the Mayor of planning functions, in particular, in respect of the impact on greenbelt policies. The Mayor will have some planning functions, but these do all require the consent of the local planning authority for the area in question before they can be exercised. National planning policies on greenbelt and other matters will also continue to apply;

l. Suggestions as to the proposed EMCCA's policy focus – A number of consultation responses made suggestions that the proposed EMCCA should go further in its policy proposals than the Proposal suggests might be the case. All of these points will be considered by the Constituent Councils, and if approved, the EMCCA, when setting out the priorities of the EMCCA, and in setting its policy objectives.

4.22 Whilst the Proposal has not been amended to reflect these issues, understanding and recognising the views of all respondents is important and the responses will be used to inform future thinking.

4.23 Following detailed consideration of all views and issues, the Proposal as shown at Appendix 1 has been amended to take account of the consultation. A brief summary of the resulting changes made to the Proposal are set out below, alongside references to the full response and changes as outlined in Appendix 2:

a. **Members allowances** – Clarification has been provided on the allowances which will be available to Members, and the controls which they will be subject to. (Further detail in Appendix 2 Section 2.9);

b. **Police and Crime Commissioner** – Clarification has been provided that the EMCCA will work closely with the two PCCs. (Further detail in Appendix 2 Section 2.10);

c. **Innovation and R&D** – Greater emphasis on the importance of innovation and research and development (R&D) and collaboration on future strategies. (Further detail in Appendix 2 Section 1.13);

d. **Business Voice** – Greater emphasis to the critical nature of the business voice in the development of the EMCCA. (Further detail in Appendix 2 Section 1.15);

e. **Adult Education Budget** – Clarification has been made to the effect that the education functions which the proposed EMCCA will take on are adult education functions. (Further detail in Appendix 2 Section 4.1);

f. **Local Transport Plan (LTP)** – Changes to references for date of new Government guidance on production of LTPs as the guidance has been delayed, and to emphasise the funding associated with creation of a LTP for the EMCCA. (Further detail in Appendix 2 Section 5.1);

g. **Bus franchising** – Greater emphasis added to the Proposal to bus franchising to recognise the importance of this issue to consultees. (Further detail in Appendix 2 Section 5.3);

h. **Key route network (KRN)** – Change to emphasise the role of Mayor in co-ordinating and managing the KRN. (Further detail in Appendix 2 Section 5.4);

i. **HS2** – Changes made to reflect the changes to HS2 phase 2b planning and to reflect the fact of the new emerging HS2 Growth Strategy. (Further detail in Appendix 2 Section 5.6);

j. **Public health** – Changes to strengthen the wording demonstrating public health benefits of the Proposal in each of the theme areas. (Further detail in Appendix 2 Section 7.2).

4.24 The following key changes have been made to the Proposal document as a result of recent developments, such as changes in Government policy or technical amendments:

a. **Links to NHS** – Changes to emphasise the intentions of the Constituent Councils that the proposed EMCCA will work closely with the NHS;

b. **Changes to transitional provisions** – Changes to reflect the timing of the implementation of the Levelling-up and Regeneration Bill, and the impact on any proposed transitional arrangements;

c. **Technical changes to the powers table** – Technical changes to the detail in the powers table in respect of some powers.

Public/stakeholder engagement

5.1 As set out in other sections of the report.

Other Options

6.1 To agree not to submit a Proposal to the Secretary of State to establish a Mayoral Combined County Authority. This is not recommended as the process would end, the Combined County Authority could not be established and no powers or funding would be devolved. In order 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 To agree to submit the original draft Proposal to the Secretary of State without amendment. This option is not recommended as the Proposal submitted to the Secretary of State will not take account of the views expressed in the consultation and recent developments. The Levelling-up and Regeneration Bill requires that authorities must have regard to the results of the consultation in preparing the proposal for submission to the Secretary of State.

6.3 To agree to submit an alternative version of the Proposal to the Secretary of State. For the reasons set out in the report it is considered that the final Proposal contains the necessary amendments to take account of the consultation and recent developments and additional amendments are not considered appropriate

Financial and value for money issues

7.1 The legislative framework linked to the Levelling-up and Regeneration Bill is still to be enacted with associated powers and funding. Subject to all four Constituent Councils agreeing to submit the proposal there will be an ongoing need for enabling activities from the Constituent Councils to continue pending Government approval and receipt of capacity and other funding. The Government will provide capacity funding of £0.5m in 2023-24 once the establishing legislation is made and a further £1m in 2024-25 to meet the costs of enabling activities. In addition, the investment funding of £38m can be utilised to meet the costs of enabling activities, if the capacity funding is insufficient to meet such costs.

7.2 The deal includes:

- £38m per year allocation of investment funding over 30 years (50% capital, 50% revenue), to be invested by EMCCA to drive growth and take forward its priorities over the longer term

- £17m for the building of new homes on brownfield land in 2024/25, subject to sufficient eligible projects for funding being identified

- £18m capital funding in this Spending Review period 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.

7.3 The table below summarises the key funding available through the deal subject to the Levelling-up and Regeneration Bill being passed.

	2023/24 £m	**2024/25 £m**
Mayoral Capacity Funding	0.5	1.0
East Midlands Investment Fund * £38.0m per annum for 30 years		38.0 (50% capital/ 50% revenue)
New homes on brownfield land		16.8
Capacity funding for pipeline of housing sites *Across 2023-24 and 2024-25	0.918	
Delivery of housing priorities *****Across 2023-24 and 2024-25	9.0	
Provisional area-wide local transport plan funding	0.5	0.5
Net Zero *****Across 2023-24 and 2024-25 subject to a business case	9.0	

Legal implications

8.1 The Levelling-up and Regeneration 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 Constituent Councils 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, and the consent of the Constituent Councils affected to submit a formal Proposal to Government and approval of secondary legislation.

Consultation

8.2 It was not necessary for the Council to wait for the Bill to receive Royal Assent prior to commencing consultation; clause 43(5) of the Bill makes it clear that consultation requirements may be satisfied by things done before that clause comes into force1. However, the Constituent Councils are unable to submit the final Proposal to Government until the Bill receives Royal Assent and the relevant provisions come into force.

8.3 The Gunning principles set out the common law principles to be observed when undertaking consultation. The case of (R v London Borough of Brent ex parte Gunning) established these principles, and set out that a consultation is only lawful when these four principles are met:

a) Consultation takes place while the 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 was sufficient in this case. The adequacy of the length of time given for consultees to respond can vary depending on the subject.
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 The consultation was carried out lawfully and in compliance with the Gunning principles for the reasons set out in the body of the report.

8.5 Clause 43(4) of the Bill provides that:

> "Before submitting a proposal under this section to the Secretary of State, the authority or authorities preparing the proposal must:
>
> (a) carry out a public consultation across the proposed area on the proposal, and
> (b) have regard to the results of the consultation in preparing the proposal for submission to the Secretary of State."

[1] Cl.43(5) states "The requirements in subsection (4) may be satisfied by things done before 15 the coming into force of this section". See paragraph 8.4 below for the requirements of subsection (4).

8.6 If the Constituent Councils agree to the submission of the final Proposal to Government, the Secretary of State will consider whether further consultation is necessary or whether to proceed to make Regulations formally establishing the EMCCA. The formal consent to the making of the Regulations will be required from the Constituent Councils.

Consultation "across the proposed area"

8.7 It is important to note that the obligation on the Constituent Councils under clause 43 of the Levelling-up and Regeneration Bill is to carry out a consultation "across the proposed area" and consider the results of that consultation. This is a requirement for each Constituent Council to consider the consultation responses provided across the whole area – not just those provided in their own area.

8.8 Information as to the consultation responses provided for Derby City Council based respondents has been provided, but this is for background information only and may not lawfully be considered by the Council in considering the outcome of the consultation, and reaching the decision about whether or not to submit the Proposal to Government.

Weight to be given to responses

8.9 The law relating to consultation requires proper consideration of the consultation responses. Whilst there may be some occasions where it is appropriate to give certain categories of response more weight than others, generally speaking, if a point is made in a consultation response, it should be reasonably considered whatever the origin of the point. The question for the decision maker should be whether the point causes them to change their view.

8.10 In this case, different weight should not be given to responses made by stakeholders (as defined by IPSOS), and non-stakeholders (as defined by IPSOS). The question for the Council remains whether the point made causes it to change its view, and it is entirely lawful for the decision maker to take a view different than even an expert body on a question in a consultation.

Equality Impact Assessment

8.11 In coming to a decision, the Council is required to 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)).

8.12 An Equality Impact Assessment (EIA) has been prepared and is appended to this report. The Council must have due regard to this report to ensure that it is satisfied that any adverse impact and the proposed mitigation allows it to meet the legal obligations set out above.

Climate Implications

9.1 The decision to submit the Proposal about 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.

A climate impact assessment will be completed when the Report seeking confirmation of the Statutory Instrument that will formally establish the EMCCA is brought to Council.

Socio-Economic Implications

10.1 Feedback from the consultation with regards to socio-economic implications have been identified as part of the Constituent Authorities response. The Proposal recognises the socio-economic challenges to be addressed, and one of the stated outcomes of the EMCCA is to reduce inequality and promote social mobility to allow people to achieve their potential.

Other significant implications

Risk

11.1 The passage of the Levelling-up and Regeneration Bill through Parliament is not subject to the control of the Constituent Councils. Significant delay to the enacting of the Bill may affect timescales or even make a Mayoral election in May 2024 impossible. Holding a Mayoral election at another time would mean increased costs

for the Constituent Councils and would delay the benefits that devolution to the area would bring.

11.2 It is possible that the Levelling-up and Regeneration Bill may not receive Royal Assent, or that the provisions upon which the Proposal relies are amended. The Proposal cannot be progressed unless the Bill passes with substantially similar provisions. The four Constituent Councils will remain in close dialogue with Government to understand any potential impacts and to ensure that the Councils are in the best position to respond to them as the Bill progresses.

11.3 In addition, another potential risk merits highlighting in respect of the proposed East Midlands Development Corporation, and the proposed Freeport. All of these entities, as well as the EMCCA, 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 EMCCA) will engage with the organisations involved in each of the Development Corporation and Freeport 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.

Equality

11.4 An initial draft equality impact assessment (EIA) was completed in respect of the Proposal prior to Consultation. An updated EIA is attached as Appendix 5. In addition to the consideration of Protected Characteristics and/or Groups within the EIA, as required by the Equality Act 2010, the Council has also considered the impact of the Proposals on other groups and individuals, in certain cases in line with other statutory duties. These are set out below, along with the actual or potential positive and/or negative outcomes and impacts on those groups and/or individuals.

The Council must have due regard to the principles of the Armed Forces Covenant Duty in respect of armed forces personnel.

Given the commitment of the constituent councils to the Armed Forces Covenant and the recent introduction of the Armed Forces Public Duties, it is anticipated the proposed EMCCA should consider how it can both engage this community and ensure that within its functions it takes account of the duties, especially those relating to employment and housing. There are no actual or potential negative outcomes or impacts envisaged for Armed Forces/ex-Armed Forces personnel if detailed projects and programmes properly consider the Armed Forces duties and make provision for them.

11.5 The EIA recognises that the Proposal has the potential to provide significant benefits to all communities, but specifically for people from the protected characteristic groups and deprived communities. However, this will be dependent on: the implementation of the Proposal and the systems and processes that the Constituent Councils put in place; and how the EMCCA will look to address inequality as an integral part of everything it does and every decision it makes. As the new EMCCA will become subject to the Public Sector Equality Duty under the Equality Act 2010 this will require the authority to set equality objectives, publish annual equalities information and have due regard for equality matters when carrying out its functions, making decisions and delivering projects and programmes.

11.6 The EIA action plan sets out that the EMCCA should give early thought to how it can begin to meet these and other duties, especially as it further develops its priorities, becomes established and finalises its workstreams and Board composition.

Human Resources

11.7 Should Full Council agree to formally submit the final Proposal to Government, and subject to the approval of the Proposal by the Secretary of State, each of the affected Councils will identify any potential future workforce implications and ensure that these are dealt with in accordance with agreed HR policies and procedures. In addition, the appropriate workforce communications will be considered and enacted as needed.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Monitoring Officer	10 March 2023
Finance	Director of Finance and S151	10 March 2023
Service Director(s)	Director of Planning & Transport	10 March 2023
Report sponsor	Chief Executive	10 March 2023
Other(s)	Head of HR	10 March 2023
	Equality Lead	10 March 2023

Background papers:	White Paper on Levelling Up Levelling-up and Regeneration Bill East Midlands Devolution Deal October Full Council Report - Devolution Deal – Draft Proposal for an East Midlands Combined County Authority
List of appendices:	Appendix 1 – EMCCA Proposal Appendix 2 – Response to Consultation by Constituent Authorities Appendix 3 – Ipsos Consultation Report Appendix 4 – Engagement Summary Appendix 5 – Equality Impact Assessment Appendix 6 – Communications and Publicity Summary