



## Special Cabinet

**Date** Wednesday 1 November 2023  
**Time** 9.30 am  
**Venue** Council Chamber, County Hall, Durham

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### Business

#### Part A

##### Items which are open to the public and press

1. Declarations of interest

##### **Key Decision:**

2. North East Devolution - Report of the Chief Executive [**Key Decision: CORP/R/23/07**] (Pages 3 - 20)
3. Such other business as, in the opinion of the Chair of the meeting, is of sufficient urgency to warrant consideration.
4. Any resolution relating to the exclusion of the public during the discussion of items containing exempt information.

#### Part B

##### **Items during which it is considered the meeting will not be open to the public (consideration of exempt or confidential information)**

5. Such other business as, in the opinion of the Chair of the meeting, is of sufficient urgency to warrant consideration.

**Helen Bradley**

Head of Legal and Democratic Services

County Hall  
Durham  
24 October 2023

To: **The Members of the Cabinet**

Councillors A Hopgood and R Bell (Leader and Deputy Leader of the Council) together with Councillors T Henderson, C Hood, S McDonnell, J Rowlandson, E Scott, A Shield, J Shuttleworth and M Wilkes

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**Cabinet**

**1 November 2023**

**North East Devolution**

**Key Decision No: CORP/R/23/07**



## **Report of Corporate Management Team**

**John Hewitt, Chief Executive**

**Councillor Amanda Hopgood, Leader of the Council**

### **Electoral division(s) affected:**

Countywide

### **Purpose of the Report**

- 1 To seek consent to the making of the statutory order to abolish the existing combined authorities in the region (i.e. NECA and NTCA) and replace them with a single mayoral combined authority which encompasses the areas of the seven councils, which is to be known legally as the North East Mayoral Combined Authority (NEMCA).

### **Executive summary**

- 2 On 28 December 2022 HM Government announced a “minded to” devolution deal with the seven councils across the North East (i.e. Durham, Gateshead, Newcastle, North Tyneside, Northumberland, South Tyneside and Sunderland).
- 3 To implement the deal, it will be necessary to establish a new mayoral combined authority which covers the area of the seven councils and replaces the two existing combined authorities in the region, i.e. NECA (which includes the areas of Durham, Gateshead, South Tyneside and Sunderland) and NTCA (which includes the areas of Newcastle, North Tyneside and Northumberland).
- 4 The councils have consulted on these changes and the Secretary of State has prepared a draft of the statutory order which is required to implement these proposals. This report requests authority to provide the Council’s consent to the making of that statutory order.

## **Recommendation(s)**

5 Cabinet is recommended to:

- (a) consider the content of this report;
- (b) agree in principle that the Council should consent to the making of the order;
- (c) authorise the Chief Executive, in consultation with the Leader of the Council, to issue the Council's formal consent when requested by the Secretary of State;
- (d) authorise the Chief Executive, in consultation with the Leader of the Council, to finalise the terms of the side agreement regarding the support arrangements associated with these proposals; and
- (e) authorise the Chief Executive to take all other steps necessary to implement these proposals.

## Background

- 6 The “minded to” devolution deal would see a significant shift of powers, funding and responsibility which would enable the Councils to pursue their ambitions for inclusive growth. In total, it is expected to provide £4.2 billion of additional investment to the region over 30 years, including a £1.4bn investment fund alongside significant funding for transport, education and skills, housing and regeneration. This would enable investment into projects which reflect local needs and opportunities, making a real difference for our residents, communities, and the local economy. It would support every aspect of the delivery of the Council’s priorities through the devolution of increased funding and powers.
- 7 The deal requires the councils to establish a new mayoral combined authority. This will be dependent on the Secretary of State making a statutory order under the Local Democracy, Economic Development and Construction Act 2009 to deliver the following proposals:
  - (a) the abolition of the two existing combined authorities, i.e. NTCA and NECA;
  - (b) the creation of a new mayoral combined authority which covers the area of all 7 councils, which will be called the North East Mayoral Combined Authority (NEMCA); and
  - (c) the changes above would also entail the abolition of the Joint Transport Committee as NEMCA would be responsible for the exercise of transport functions across the regions in the future.
- 8 As the first stage of the statutory process, the Councils undertook a governance review regarding the proposals set out in para 1.2 above. The results of the governance review were reported to Cabinet on 18 January 2023. On the basis of the governance review, Cabinet concluded that the proposals were likely to improve the exercise of statutory functions in accordance with sections 108 and 111 of the 2009 Act. Cabinet therefore agreed that the Councils should progress to the next stage of the statutory process by publishing a scheme relating to the proposals and then carrying out a public consultation exercise.
- 9 The public consultation began on 26 January 2023 and closed on 23 March 2023. A report on the consultation process was considered by Cabinet at its meeting on 31 May 2023. As set out in that report, the public consultation was considered to be extensive, and overall the responses to the consultation were supportive. On this basis, Cabinet was satisfied that the consultation had been sufficient for the purposes of the legislation and that the statutory criteria above had been met. Cabinet therefore agreed to submit to the Secretary of State a summary

of consultation responses together with a formal request that the Secretary of State make the necessary statutory order to abolish NECA and NTCA and establish the new mayoral combined authority, NEMCA.

- 10 Similar decisions were made by the other councils in the area and so on 23 June 2023 all 7 councils jointly submitted the consultation summary and formal request to the Secretary of State to make the order.

### **The draft Statutory Order**

- 11 Discussions have taken place with DLUHC officials over a number of months regarding the content of the statutory order. The order will provide for the election of a mayor for the new combined authority in May 2024 and for the new combined authority to come into existence when the mayor is due to take office on 7 May 2024 (with the existing combined authorities being abolished at that point). The statutory order will also identify the powers and duties that the new mayoral combined authority will have. It will set out how the new combined authority will operate and make decisions, including where decisions are to be made by the Cabinet or the Mayor. It also deals with the transitional arrangements which are required to ensure continuity when the existing combined authorities are abolished and the new combined authority comes into being. This will include the transfer of existing staff from the affected organisations to the new combined authority, so protecting their employment rights.
- 12 Whilst the order is still a draft at present and subject to some finalisation, the content of the order reflects what was agreed in the “minded to” devolution deal and the scheme which was agreed by the seven councils and included as part of the public consultation documents. A brief overview of the content of the order is attached as Appendix 2 and the scheme is listed as a background paper to this report.
- 13 As set out in previous reports to Cabinet, the Secretary of State must be satisfied that the relevant statutory criteria in the Local Democracy Economic Development and Construction Act 2009 are met before making the statutory order. Furthermore, the Secretary of State can only make the order if the seven councils (as well as NECA and NTCA, including its Mayor) consent to the order. This report seeks Cabinet’s approval to confirm that the Council consents to the making of the order and authorises the Chief Executive to issue the Council’s formal consent to the final order when requested to do by the Secretary of State.
- 14 As was the case in 2018 when NTCA was created, it is also proposed that a side agreement is put in place between the seven councils to address certain operational arrangements. It is therefore recommended

that the Chief Executive, in consultation with the Leader of Council, is authorised to finalise these operational arrangements and the terms of the side agreement.

- 15 It is anticipated that the Secretary of State will issue his request for the councils and combined authorities to consent to the making of the order in December or January. This will allow the Secretary of State to lay the order before Parliament and for it be made (i.e. take effect) by March 2024. This will then allow for the mayoral election to be held in May 2024 and NEMCA to come into existence on 7 May 2024.
- 16 If the recommendations in this report are accepted, then success will be measured in terms of the willingness of the Secretary of State to make the necessary order to establish the new mayoral combined authority. Subsequently, success will be measured through the evaluation and appraisal frameworks to be agreed by NEMCA before new powers or funding are used.

## **Conclusion**

- 17 It is considered that the creation of a new mayoral combined authority for the North East would unlock the benefits of the minded to devolution deal and improve the exercise of statutory functions across the region.
- 18 The provision of the necessary consents to the making of the order will enable it to be laid before Parliament so that it can be made and thereby establish the mayoral combined authority for the region, which will in turn provide access to the benefits of devolution across the region.

## **Background papers**

- Scheme setting out proposals for the creation of a new mayoral combined authority for the North East area

## **Other useful documents**

- None

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## **Author(s)**

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## **Appendix 1: Implications**

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### **Legal Implications**

The establishment of a combined authority is governed by the Local Democracy Economic Development and Construction Act 2009. The minded to deal, consultation and process followed to date is consistent with the provisions of the Act.

### **Finance**

Implementing the devolution deal would enable the region to access over £4bn of funding over a 30 year deal cycle, together with new powers to better shape local skills provisions to ensure these meet the needs of the local economy. This would include devolution of adult education functions and the core adult education budget, as well as input into the new local skills improvement plans. Over time the region would also expect to benefit from access to additional funding streams reserved for mayoral combined authorities. Detailed discussions will be progressed with the existing combined authorities and the other councils regarding the financial arrangements associated with the transition to the new arrangements.

### **Consultation**

As set out at paragraph 9 to the report, the Council consulted on the draft scheme between 26 January and 23 March 2023. The Cabinet considered the outcome of that consultation at its meeting on 31 May 2023.

### **Equality and Diversity / Public Sector Equality Duty**

In developing these proposals, the councils have taken account of their obligations under section 149 of the Equality Act 2010 (i.e. the public sector equality duty). It is not expected that the proposals described in this report will have any adverse impacts on people with protected characteristics. Indeed, the aim of promoting inclusive growth within the region is expected to boost the efforts of the councils to advance equality of opportunity and foster good relations between different groups. Throughout the public consultation referred to in paragraph 9 above the councils collected data on those who responded including those who identified as having a protected characteristic and an Equality Impact Assessment was undertaken.



## **Climate Change**

The green agenda is a critical element of the minded to devolution deal and therefore the governance changes proposed in this report, if implemented, would help to deliver those initiatives identified in the minded to deal

## **Human Rights**

None

## **Crime and Disorder**

None

## **Staffing**

There are no staffing implications impacting on Durham County Council arising out of this report. However, a new Mayoral Combined Authority would require some staffing resource to deliver on the functions devolved to it, but all such costs would be borne by the MCA.

## **Accommodation**

There are no implications impacting on Durham County Council arising from this report.

## **Risk**

As reported to Cabinet in January, it is considered that failure to establish the mayoral combined authority would risk the region falling behind other major city regions such as Greater Manchester, Liverpool City Region and Tees Valley, which have received new powers and funding.

It is a matter for the Secretary of State to decide whether to make the necessary statutory order but, for the reasons set out above, it is considered that the evidence demonstrates that the relevant statutory criteria have been met.

## **Procurement**

None

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## **Appendix 2 - Overview of the current draft statutory order**

The following is a summary of the current draft of the statutory order. The order will be subject to further revision before it is finalised.

The order follows the content of the scheme which was agreed by the seven councils and published as part of the statutory consultation which took place from January to March 2023.

The content of the order reflects those arrangements which were set out in the scheme which need to have a legislative basis. Therefore, it does not include those arrangements which are referred to in the scheme and which do not need to be set out in legislation.

### **Part 1 – general**

#### Article 1

This provides for the majority of the order to take effect on 7 May 2024 (ie when the mayor of the new MCA takes office), except that Part 3 (ie the provisions relating to the election of the new mayor – see below) takes effect the day after the order is made.

The article also provides that the 2014 and 2018 orders creating and amending NECA and creating NTCA are revoked from 7 May 2024.

#### Article 2

This defines a number of terms used throughout the order.

### **Part 2 – establishment**

#### Articles 3 to 5

These articles abolish the existing CAs and the Joint Transport Committee, and establish the new combined authority which has the legal name of the North East Mayoral Combined Authority.

#### Article 6

This provides that the constitutional arrangements for NEMCA are set out in Schedule 1.

## **Part 2a – transfer of functions, property, rights, assets and liabilities and associated provision**

### Article 7

This provides for all property, rights, assets and liabilities of NECA and NTCA to transfer to NEMCA when it comes into existence.

### Article 8

This provides that any functions which either NECA or NTCA have are transferred to NEMCA if they are not otherwise conferred on NEMCA by the order.

### Article 9

This makes clear that the order coming into force does not affect the validity of any previous act of NECA, NTCA, the former Tyne and Wear Integrated Transport Authority or the county councils. It also makes clear that anything which is being done by either NECA or NTCA at the time the order comes into force is to be treated as being done by NEMCA and that NEMCA is to be substituted for NECA/NTCA in any instruments, contracts or legal proceedings.

### Article 10

This provides that the staff of NECA and NTCA are to be treated as being subject to a TUPE transfer to NEMCA when it comes into existence.

### Article 11

Similarly, this provides for NEMCA to be the scheme employer for pension purposes in place of NECA and NTCA and also to retain the pension liabilities for TWITA.

## **Part 3 – election of mayor**

### Articles 12 and 14

These remove the need to prepare for and hold an election for the NTCA mayor which would otherwise take place in May 2024 (and the need to hold a by-election if there were a vacancy in the position of the NTCA mayor before then).

### Article 13

This creates the position of the new mayor who is to be referred to as the North East Mayor, with elections every four years from 2024.

#### Article 15

This makes amendments to electoral legislation to allow the election for the position of the Mayor before it and NEMCA have been established. It provides that the returning officer for that first election is to be the Sunderland returning officer.

#### Article 16

This allows the Mayor to appoint one person as a political adviser under the terms of the Local Government and Housing Act 1989. It replicates the provision which applies to NTCA and other mayoral combined authorities.

### **Part 4 – Transport**

(NB: by virtue of NEMCA being a mayoral combined authority, this means that the Mayor will have powers under the Transport Act 2000 in relation to making, varying or revoking bus franchising schemes. Also, as set out later (see Part 8), the Mayor is responsible for NEMCA's Local Transport Plan.)

#### Article 17

This replicates the provision in the 2018 order and provides that Nexus (ie the T&W Passenger Transport Executive) is an executive body for NEMCA and is also to be treated as an officer of NEMCA which means it can operate across the NEMCA area.

#### Articles 18 and 19

Article 18 is similar to Article 8 above in that it provides that any transport functions which either NECA or NTCA have are transferred to NEMCA if they are not otherwise conferred on NEMCA by the order. Article 19 also make clear that any reference in legislation to an ITA (Integrated Transport Authority) or its area or the local transport functions of a county council are to be construed as applying to NEMCA.

#### Articles 20, 21, 22 and 24

These provide NEMCA with the following functions:

- (under sections 6 and 8 of the Highways Act 1980) to enter into agreements for the carrying out of highways works,

- (under sections 33, 33A and 36 of the Traffic management Act 2004) to operate permit schemes for the carrying out of specified works in specified streets;
- (under section 39 of the Road Traffic Act 1988) to promote road safety;
- (under the Bus Lane Contraventions etc Regulations 2005) to operate a bus lane contravention scheme

In each case, the exercise of any of the above functions is subject to the consent of those members of NEMCA appointed by the constituent councils directly affected.

### Article 23

This provides NEMCA with the power to pay grants to bus service operators under section 154 of the Transport Act 2000.

### Article 25

This provides that NEMCA shall issue 3 separate transport levies to (1) the Tyne and Wear councils, (2) Durham County Council and (3) Northumberland County Council.

### Article 26

This provides the Mayor with the power to pay grants to the constituent councils under section 31 of the Highways Act 1980 for the exercise of transport functions.

### Article 27

This extends to the county councils the duty which currently applies to the Tyne and Wear authorities (under section 113 of the Transport Act 2000) to implement NEMCA's Local Transport Plan.

## **Part 5 – Education, skills and training**

Articles 28 to 32 provide NEMCA with the same statutory functions currently held by NTCA to allow it (NEMCA) to administer the Adult Education Budget across the whole of its area.

## **Part 6 – Housing, regeneration and planning**

### Articles 33 to 35

These provide NEMCA with a number of powers under the Housing and Regeneration Act 2008 which are held by Homes England. These include the power to provide housing, the power to acquire land and to acquire land compulsorily.

These articles also provide NEMCA with powers under the Town and Country Planning Act 1990 to acquire and appropriate land for planning and public purposes and also powers under the Housing Act 1985 to acquire land.

The above articles include compulsory purchase powers which are exercisable by the Mayor.

The exercise of these powers is subject to the consent of those members of NEMCA appointed by the constituent council(s) directly affected.

This set of functions is equivalent to those which were conferred on NTCA under the 2018 Order.

### Articles 36 and 37

These articles provide the Mayor with the power to prepare a Spatial Development Strategy (which is based upon the power of the Mayor of London under the Greater London Authority Act 1999). However, as set out in Schedule 1 of the order, the Mayor will only be able to exercise this power if the members of NEMCA appointed by the constituent councils unanimously agree. Furthermore, the inclusion of any area in a spatial development strategy is also subject to the consent of those members of NEMCA appointed by the constituent council(s) directly affected.

### **Part 7 – mayoral development corporations**

Articles 38 to 40 provide the Mayor with powers under the Localism Act 2011 to establish mayoral development corporations subject to the consent of those members of NEMCA appointed by the constituent council(s) directly affected.

This set of functions is equivalent to those which were conferred on NTCA under the 2018 Order.

### **Part 8 -Mayoral functions and funding**

(NB: by virtue of NEMCA being a mayoral combined authority, the Mayor - as is this case with NTCA currently - will also have the power under section 40 of the Local Government Finance Act 1992 to issue a council tax precept on behalf of NEMCA to provide for the costs of the Mayor relating to the exercise of mayoral functions.)

### Article 41

This identifies the functions which are exercisable by the Mayor as being

- the compulsory purchase powers for housing, regeneration and planning purposes (see comments above re articles 33 and 35)

- the spatial development strategy powers (see comments above re articles 36 and 37)
- the powers under the Transport Act 2000 to prepare the Local Transport Plan for NEMCA's area and the power to pay grants to bus service operators (see comments above re Part 4 and article 23)
- the power to pay grants to constituent councils for highway functions (see comments above re article 26)
- the powers relating to mayoral development corporations (see comments above re Part 7)
- a power of competence under section 113A of the Local Democracy Economic Development and Construction Act 2009 for the purposes of the above functions.

#### Article 42

This provides that the Mayor may enter into arrangements jointly (joint committee) with the Combined Authority, constituent councils and other councils relating to the exercise of the above functions.

#### Article 43

This provides that the constituent councils must ensure that those costs of NEMCA which are reasonably attributable to the exercise of its functions must be met.

It also provides that the constituent councils must meet the costs of the expenditure reasonably incurred by the Mayor to the extent that the Mayor has not decided to meet these costs from other resources available to the Combined Authority.

The costs identified in this Article are to be shared equally between the constituent councils unless they decide a different apportionment.

#### Article 44

This allows NEMCA to borrow for both mayoral and non-mayoral functions.

#### Articles 45 to 47

These provisions enable the Mayor to levy a supplement on business rates to raise monies for expenditure on projects which will promote economic development in the NEMCA area.

### **Part 9 – additional functions**



Articles 48 to 55 set out a range of largely operational/administrative functions which replicate what was provided to NTCA together with a number of legislative amendments relating to the transport arrangements set out earlier in the order, as well as making clear that NEMCA will replace NECA and NTCA as a constituent authority of Transport for the North, the subnational regional transport body.

### **Schedule 1 – Constitution**

This schedule set out the fundamental principles of how NEMCA will operate but NEMCA will adopt its own constitution to supplement these principles.

#### **Paragraph 1**

This provides that there are 10 Members of NEMCA are as follows:

- i. the Mayor
- ii. a member appointed by each of the 7 constituent councils;
- iii. a member appointed by NEMCA as a representative of the business community who will chair the (non-statutory) business board; and
- iv. a member appointed by NEMCA as a representative of the community and voluntary sector (CVS)

It also provides that each constituent council can appoint 2 substitute members and that NEMCA can appoint a substitute for the business representative and the CVS representative respectively.

The Mayor must appoint one of the constituent council members to act in their absence as the Deputy Mayor. Where a constituent council member acts as the Deputy Mayor, then one of that constituent council's substitute members will act as the representative of the constituent council for the purposes of decision-making.

#### **Paragraph 2 and 3**

This provides that the quorum for a meeting of NEMCA is the Mayor (or Deputy Mayor) and at least 5 constituent council members.

The Mayor and the constituent council members each have a vote. The business representative and the CVS representative do not have votes (unless the voting members agree to give them voting rights).

Most decisions on the use of non-mayoral functions are decided by a simple majority vote but any decision which would lead to a financial liability falling directly on a constituent council will only be passed if the member appointed by that constituent council forms part of that majority.

Furthermore, where a decision is to be made by a simple majority on the exercise of a non-mayoral function, that majority must include the Mayor if it relates to a "new"

function conferred by the order (which means a function which was not held previously by either NECA or NTCA). Otherwise, where a decision is made by a simple majority on a non-mayoral function, the Mayor may ask the authority to reconsider that decision if the mayor did not vote in favour of the decision.

The following decisions on non-mayoral functions require a unanimous vote from the Mayor and all 7 constituent council members:

- approval of, and any amendment to, the combined authority's annual budget excluding those elements of the annual budget which relate to Mayoral functions;
- approval of, and any amendment to, the setting of any levy which the combined authority shall apply to any constituent council;
- agreement to confer upon the Mayor a duty to produce a Spatial Development Strategy;
- approval or amendment of the combined authority's constitution or standing orders.

The Mayor's exercise of mayoral functions is also subject to the following:

- the adoption of a spatial development strategy requires the support of at least four constituent council members;
- the authority may amend the Local Transport Plan by a simple majority of the constituent council members present at a meeting;
- the authority may amend the Mayor's budget if at least 5 constituent council members agree.

This is in addition to the requirements set out earlier in the order which provide that the exercise of the Mayor's functions require the consent of the member appointed by the constituent council whose area is affected.

#### Paragraph 4

This allows NEMCA to delegate decisions on the exercise of non-mayoral functions to a committee or subcommittee or to an officer or to another local authority.

#### Paragraph 5

This provides that NEMCA cannot pay remuneration (other than travel and subsistence) to its members but its constituent councils may pay such remuneration. However, NEMCA can pay an allowance to the Mayor having considered the report of an Independent Remuneration Panel established by NEMCA or by one or more of the constituent councils.

#### Paragraphs 6 and 7

These provide that NEMCA shall appoint an overview and scrutiny committee (OSC) and an audit committee respectively. Each shall comprise an equal number of members from each constituent council.

The OSC is to be chaired by an “appropriate” person, which means an elected member who is from a different political party to that of the Mayor. The audit committee is to be chaired by an independent person (ie co-opted member) appointed by NEMCA.

### Paragraphs 8 and 9

These are standard provisions about the keeping of records and NEMCA being able to make its own standing orders to regulate its business.

### Schedules 2 to 6

These set out detailed amendments to other legislation to give effect to the provisions in the body of the order. Schedule 2 deals with the changes relating to the spatial development strategy; schedule 3 deals with the changes relating to the permit schemes under the Traffic Management Act 2004; schedule 4 deals which changes relating to the housing, regeneration and planning powers at Part 6 of the order; schedule 5 deals with the changes relating to mayoral development corporations and schedule 6 deals with the adult education functions.

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