

Cabinet

11 May 2016

North East Combined Authority: Decision on proposed Devolution Agreement



Report of Corporate Management Team Councillor Simon Henig, Leader Terry Collins, Chief Executive

Purpose of the Report

- 1 This report summarises the proposed devolution agreement, outlines the developments since the report to Cabinet in March and considers the pros and cons of the agreement, in the light of what we now know about the consequences of opting-in or opting-out of the North East Combined Authority (NECA) and makes recommendations on next steps.

Background

- 2 As reported to County Council on 24 February 2016 and Cabinet on 23 March 2016, a proposed devolution agreement between government and the North East Combined Authority was signed by the Chancellor of the Exchequer and the constituent authorities of NECA on 23 October 2015. It was agreed that progression to a final agreement would be subject to a number of conditions:
 - a) The outcome of the spending review on 25 November 2015.
 - b) Legislative processes.
 - c) Further public consultation (in Durham's case including the results of a poll of electors).
 - d) Formal consideration by councils, the NECA Leadership Board and government ministers.
- 3 In addition, in Durham, it was accepted that consideration would need to be given to a number of Durham-specific issues that relate in the main to the administration of public services, such as health, policing and fire and rescue services, which work to a different geography to that of the NECA.

Proposed agreement overview

- 4 The proposed agreement was appended in full to the report to County Council on 24 February 2016. In summary, the main provisions included:

- a) giving the North East new opportunities to support businesses and create more jobs. This includes giving the North East an additional £30 million revenue funding a year to set up an investment fund;
- b) letting the North East develop its own plans to improve post 16 education and training so that people have better skills and better prospects;
- c) letting the North East take more decisions about transport investment particularly public transport;
- d) enabling the North East to identify opportunities for investment in new housing;
- e) giving the North East more say over how money from the European Union is spent in the North East;
- f) enabling the North East to review health and social care provision and develop plans to improve and integrate services so that people receive better care;
- g) establishing a directly-elected mayor for the North East, as a condition for the implementation of all other provisions.

5 The directly-elected mayor would have:

- a) responsibility for a devolved and consolidated transport budget;
- b) responsibility for franchised bus services and through Rail North, franchised rail services;
- c) powers over strategic planning;
- d) powers to place a supplement on business rates to fund infrastructure following approval of business ratepayers.

6 The mayor would work with the NECA Leadership Board, which will be made up of the leaders of the constituent local authorities. The board would be renamed as the cabinet of NECA and working with the mayor, would have the following powers:

- a) To create a NECA Investment Fund;
- b) Control over a new revenue funding allocation of £30 million a year over 30 years;
- c) Joint responsibility for an Employment and Skills Board; Responsibility for a devolved approach to business support from 2017;

- d) Joint responsibility for the rollout of broadband across the North East;
 - e) Increased devolved responsibility for rural growth.
- 7 Whilst the creation of a directly elected mayor is a condition of the proposed agreement, unlike other areas it is proposed that the mayor would be 'embedded' within the cabinet of the combined authority, as opposed to having the power of veto over it.

Conditions and Durham-specific issues

Spending review and fair funding

- 8 The outcome of the government's spending review and specifically the implementation of a commitment to fair funding was a condition for progressing the proposed agreement, when initially signed last October.
- 9 In particular, the proposed agreement was subject to confirmation or reassurance around the following conditions:
- a) That NECA would not suffer disproportionately from future reductions in government funding;
 - b) That NECA should be able to bid for any new funding over the next 15 years on a fair and equitable basis;
 - c) That NECA should not be disadvantaged in relation to any fiscal freedoms granted to Scotland, for example airport passenger duty;
 - d) The creation of a North East investment fund to deliver a 15 year programme worth up to £1.5 billion, part funded by £30 million a year revenue funding, subject to five-yearly gateway reviews;
 - e) The mayor would be able to levy a business rate supplement worth up to £30 million a year, to fund investment following approval of business ratepayers;
 - f) A single allocation of Local Growth Fund monies over a five-year period, providing financial security for longer term investment.
- 10 Given the multi-faceted and complicated nature of this issue, it is difficult to come to a definitive view as to whether these conditions have been met at this time.
- 11 Further detail has been provided around the make-up of the investment funding and the funding streams involved which provides some reassurance. However, the picture around 'fair funding' and how NECA authorities will fare is more mixed.

- 12 The spending review in November 2015 confirmed that austerity is set to continue through to 2019/20. Indeed the Chancellor had to revise his spending targets in the March Budget in the light of lower than expected economic growth and slower growth forecasts for the years ahead.
- 13 However, the provisional financial settlement for local government announced in December 2015 was not as bad as in previous years, and the government subsequently confirmed that it was not looking towards local government to increase its savings targets in order to contribute to the additional £3.5 billion of public spending reductions required by 2020.
- 14 Better care funding was increased in recognition of the spending pressures arising from adult social care and local authorities were allowed to add a two percent social care precept to the council tax in order to meet adult social care costs.
- 15 Where budget reductions had to be made, these were based on 'total core spend' as opposed to solely Revenue Support Grant, in recognition of the low council tax yield in some areas, such as those in the North East, when compared with more affluent areas.
- 16 Overall, the provisional settlement therefore appeared to be 'fairer' than in previous years.
- 17 The final financial settlement announced in January 2016, provided local authorities with a guarantee of Revenue Support Grant funding over the next four years subject to the production of an efficiency plan.
- 18 However, following extensive lobbying by shire county councils which felt disadvantaged by the provisional settlement, the government introduced £150 million of transitional funding and £61 million of rural funding for 2016/17 and 2017/18.
- 19 Only one authority in the North East received additional funding. Durham did not receive anything in spite of its rural issues, whereas many other less needy and more affluent rural authorities received significant amounts of support.
- 20 In that sense, the final settlement can be regarded as a step back from the provisional settlement and the principle of fair funding which the council and other NECA authorities are seeking.
- 21 However, since the final settlement, NECA has made further representations to government and there has been further, more positive dialogue with ministers regarding the concept of fair funding.
- 22 The government has confirmed that it sees the initial devolution agreement as the start of an ongoing process of dialogue between the region and central government, which will lead to better and fairer deals in the future.

- 23 It also confirmed its commitment to work with local authorities on health and social care integration, the co-design of employment support for hard-to-reach claimants and the transfer of Adult Education Budget funding in 2018/19.
- 24 Active dialogue is still taking place and work is being progressed at the highest levels in the Civil Service and The Treasury. The overall 'direction of travel' could therefore be viewed as positive, but given that we have yet to see the outcomes of the negotiations, it is difficult to come to a judgement yet on whether the council and its partner local authorities will receive a fairer settlement through the devolution agreement. While there is no guarantee that signing up to the agreement will deliver fair funding, it would ensure Durham would be involved on-going dialogue with government on the issue, whereas not signing up would do little to advance the issue with ministers and senior civil servants.
- 25 One issue of significant concern is the very recent proposal for Devolved Transport Grant (this includes highways maintenance monies, integrated transport and devolved bus service grants) to be part of the Single Pot under control of the Mayor. This could disadvantage Durham and other constituent authorities and therefore NECA is seeking to have this issue resolved. This could involve potential solutions regarding the governance arrangements for this issue.

Legislative processes

- 26 Since the proposed agreement was signed in October 2015, further detail has been provided on the proposed legislative arrangements and orders, which would put the agreement and new governance arrangements in place. The first step would be to consent to an order creating a mayoral authority. A second, more detailed order would be informed by a governance review which would be the subject of consultation in July.
- 27 Whilst government has confirmed that it would accept the concept of an 'embedded' mayor with no veto, with checks and balances over mayoral powers, this is still to be developed into secondary legislation.
- 28 It is however proposed that the NECA Leadership Board, which would become a cabinet for NECA, would be chaired by the mayor, with each of the constituent local authority leaders holding a portfolio, along the lines of the recognised local authority 'leader with cabinet' political management model.
- 29 Whereas some functions currently require a unanimous decision across the Leadership Board, for example the power to impose or set a levy, this would be changed to majority decision-making by two thirds of the Cabinet.
- 30 While the mayor would not have a veto or the casting vote over the rest of the cabinet, he or she would still have significant powers relating to:
- a) a devolved transport budget;

- b) franchised bus services and through Network Rail, franchised rail services and integrated ticketing;
 - c) strategic planning and the planning development framework;
 - d) a new North East Land Commission, releasing land for development. The mayor would chair the commission;
 - e) the ability to raise business rates supplements following approval of business ratepayers;
 - f) compulsory purchase order powers, exercisable with the consent of the relevant cabinet member (local authority leader) for the area concerned;
 - g) the ability to do things incidental to his or her primary functions (this does not extend to a 'general power of competence' as granted to local authorities under the Localism Act 2011);
 - h) setting a precept for mayoral functions. This would form part of the combined authority budget but could be amended by a two-thirds majority decision of the cabinet, excluding the mayor.
- 31 Subject to any other legislative requirements, the cabinet would have responsibility for all functions which are not specifically allocated to the mayor.
- 32 The government has also outlined the arrangements for scenarios where a local authority does not agree to the devolution agreement and mayoral order.
- 33 In such a situation, the Secretary of State would remove the 'non-consenting authority' from the combined authority and the combined authority functions and funding would only apply to the combined authority area.
- 34 As a consequence, the non-consenting authority would become the local transport authority for their area, unless they were already the local transport authority, as Durham and Northumberland are, separate to NECA.
- 35 The non-consenting authority could seek to influence strategy and planning through other arrangements or fora, but would not have a vote on the NECA cabinet.
- 36 A non-consenting authority does not automatically have the right to join the combined authority at a later date.
- 37 An authority can be admitted after the next mayoral election and subject to:
- a) consultation on the proposed admittance, including the proposed scheme of governance;

- b) approval by Secretary of State, who must be satisfied that certain conditions are met relating to the admittance being conducive to the effectiveness of the combined authority;
- c) approval by the combined authority itself (and by implication the constituent authorities);
- d) approval by the mayor.

Consultation

38 As Members will be aware, the constituent authorities of NECA have undertaken their own consultation on the proposed agreement. In Durham, the council undertook a comprehensive programme of community and stakeholder consultation which included a poll of all electors. The findings of the consultation were detailed in the report to County Council on 24 February 2016.

39 In summary, the main findings from the consultation events were:

- there was general support voiced for the concept of devolution amongst partners, businesses, the general public and the voluntary sector;
- the issues covered by the proposed agreement were thought to be appropriate;
- suggestions of areas for future devolution included culture, tourism, housing and the environment;
- there were concerns expressed as to how issues such as the rural nature of County Durham, and the non-co-terminous boundaries of Durham's police and fire services would be accommodated within the proposed devolution arrangements;
- there was interest expressed as to how Durham could continue to work with areas beyond the combined authority area, particularly for businesses and regarding health and social care services.

40 The main findings from the poll of electors were that:

- a clear majority (59.5%) of the 81,964 electors responding thought that devolving some power and resources to the North East would be a step in the right direction. A minority (14.9%) thought that it would be the wrong thing to do. A quarter of respondents thought that devolving some power and resources would make little difference or didn't know (19.9% and 5.7% respectively);

- respondents' views on the powers of an elected mayor were more mixed. 47.8% thought that the mayor should have limited power and influence i.e. someone who chairs the combined authority but does not have a major role representing the area. 40.3% of respondents took the view that the mayor should have quite a lot of power and influence – perhaps coming to be seen as someone who represents the voice of the North East area. 11.9% of respondents were unsure of their views on this topic. At 1,088 this issue had the most invalid responses of the four questions;
- the most popular response to the question as to whether if the agreement goes ahead, people would like to try to get additional powers and resources devolved to the north east was “not sure – it depends, let’s wait and see” (42.9%). Clear views of “no, I wouldn’t want to see more devolution” were expressed by 22.4% and “yes, I would like to see more devolution” by 28.3% on this issue; 6.4% were unsure of their views;
- on being asked their views as to whether if the agreement goes ahead, it would bring more prosperity and jobs to County Durham, 40.5% thought it would, 9.1% thought it would not, and 36.2% thought it would make little or no impact to jobs and prosperity. More people (14.2%) answered “I don’t know” to this question than any of the others.

Consideration by constituent authorities, NECA Leadership Board and government

- 41 Since the last report to Members, Newcastle, North Tyneside and Northumberland councils decided in March to sign-up to the proposed agreement, albeit that North Tyneside and Northumberland’s decisions were contingent on further clarification around a number of funding, transport and housing issues.
- 42 Gateshead Council has decided to opt-out.
- 43 South Tyneside and Sunderland councils, like Durham are still to decide.
- 44 The NECA Leadership Board is due to come to a view at its meeting on 17 May 2016, by which time its constituent local authorities need to have come to a view.
- 45 In addition, there has been further dialogue with government to clarify various issues relating to the proposed agreement and the implications of the decision by Gateshead not to sign-up. This is covered above and in more detail below.

Durham-specific issues

- 46 There were three issues specific to Durham which needed to be clarified or resolved to enable the council Durham to come to a view on the proposed agreement.

- 47 In relation to **transport**, Durham (along with Northumberland) was never part of the Tyne and Wear Integrated Transport Authority (ITA) and has rural transport issues that are unique to rural counties and quite different to the more urban authorities in NECA.
- 48 Government has since confirmed that special arrangements for Durham (and Northumberland) would be built into the mayoral combined authority, as per the current NECA arrangements. Separate precepts would remain and Durham would be separate from ITA liabilities.
- 49 In relation to **health**, the geography for health services for County Durham residents involves significant provision and patient flows in Tees Valley as opposed to the NECA area. The council is also part of an NHS unit of planning which comprises, Durham, Darlington and Tees.
- 50 It has since been confirmed that the decision to devolve health and social care services to the combined authority would require the agreement of each constituent council, including Durham.
- 51 In relation to **police and fire**, while the policing arrangements for six of the seven NECA authorities are shared (via Northumbria Police and the Northumbria Police and Crime Commissioner) and those for fire and rescue are coterminous with the NECA area (via the Northumberland and Tyne and Wear fire and rescue services/authorities), Durham is different. Its police service and police and crime commissioner, and its fire and rescue service and associated authority 'look south' as opposed to north, covering County Durham and Darlington.
- 52 As with health, it has since been confirmed that any decision to devolve police and or fire services to the combined authority would require the agreement of each constituent council, including Durham.

North East Local Enterprise Partnership

- 53 The North East Local Enterprise Partnership (LEP) is a business-led organisation which works in partnership with the seven local authorities in the north east LEP/combined authority area.
- 54 Irrespective of local authority decisions to opt in or out of the mayoral combined authority, the LEP will continue to cover the seven local authority areas, as it does now.
- 55 However, whereas the LEP is currently responsible for the delivery of the North East Strategic Economic Plan and coordinates bids on behalf of the region to the national Local Growth Fund including approximately £550 million secured as part of the North East Growth Deal, responsibility for strategic economic planning, funding and investment would transfer to the mayoral combined authority.

- 56 The expectation is that in the event of a mayoral combined authority being established, the LEP would evolve into a business board for NECA.
- 57 The Local Growth Fund would continue as now – a national scheme with funding allocated on a competitive basis – but there are indications from government that areas with mayoral combined authorities would have an advantage in the bidding process (given the government’s preference for directly-elected mayors).
- 58 The government has indicated that in addition to the £30 million a year to be paid to the combined authority under the devolution agreement, NECA could also receive four years of confirmed programme funding via the Local Growth Fund. It is understood that NECA would look to combine the various funds into a ‘single pot’ to improve and facilitate longer term investment.
- 59 Where a council opts out of the combined authority, it would still be able to access Local Growth Fund support but would need bid on a scheme-by-scheme basis, as part of the national competition.

National developments

- 60 The Greater Manchester, Merseyside, South Yorkshire and Tees Valley areas have all proceeded with mayoral deals and are now drawing down funding.
- 61 On 20 April 2016, the National Audit Office (NAO) published its report, *English Devolution Deals*.
- 62 It noted that the government has set aside £246.5 million for devolution deals to date. To put this into context, this compares with £461.5 million allocated to local enterprise partnerships (LEPs) in the same areas and £4.4 billion total capital expenditure in the same constituent local authorities in 2014/15.
- 63 Over time, the government intends to combine a number of funding streams into a ‘single pot’ with no ring fences to enable more local autonomy over investment decisions.
- 64 The NAO also noted that in the March 2016 Budget, the government announced that these allocations would total £2.86 billion over five years for the first six mayoral deals (including the proposed agreement with NECA).
- 65 In this regard, the Treasury has committed to a 30-year funding stream, subject to five-yearly assessments to confirm whether the spending has contributed to national economic growth. The £30 million a year contribution to an investment fund for NECA over 30 years would therefore be subject to this five-yearly review.
- 66 Both central and local government expect the funding stream and single pot to be ‘fiscally neutral’ in that they represent a fair share of what could previously have been departmental spending.
- 67 As such, the approach reflects the government’s policy principles of localism and decentralisation as opposed to increasing the quantum of local public spending.

Consideration

- 68 In the light of the NECA Leadership Board meeting taking place on 17 May 2016, the council now needs to come to a view on whether it should proceed to the next stage of devolution.
- 69 This is not a straight-forward decision and requires very fine and balanced judgements around a wide range of factors and issues concerning the future prospects for the county and region.
- 70 What has become apparent over recent months, as further clarification has been obtained around the devolution proposal, is that the decision is not a simple one of a future within the mayoral combined authority, compared with the current situation or status quo.
- 71 The advent of the devolution proposals, negotiations with authorities in the North East and in other parts of the country, and the stance the government will take towards areas where it is able to agree deals, all together mean that the public governance landscape is changing quite fundamentally.
- 72 The decision Members need to make therefore, is whether to decide to accept the proposed agreement and remain within a reformed combined authority chaired by an elected mayor; or to reject the deal and become a non-consenting authority within a post-devolution North East, with reformed combined authority and local enterprise partnership arrangements. Either way, the council's relationship with government, its local authority partners and wider regional stakeholders will change and both options will have financial, reputational and strategic planning consequences for the county, the council and the wider region.
- 73 To help Members to come to a view, a comparison of each option is outlined below.

Accepting the deal and remaining within a reformed combined authority with an elected mayor

- 74 This option involves agreeing to the devolution deal as proposed and remaining within the North East Combined Authority which would have additional powers and functions, access to funds and would be chaired by a directly-elected mayor. This option offers:
- a) the creation of a single investment fund worth up to £1.5 billion controlled in the North East rather than from Whitehall and funded by the government from a new revenue stream of £30 million a year over the next 30 years, which would be able to help realise opportunities in Durham;
 - b) the prospect of beneficial access to the Local Growth Fund for Durham applications with assured longer term funding as opposed to having to bid on a case-by-case basis;
 - c) a stronger voice for Durham via NECA on strategic national and sub-national agendas;

- d) continuing influence on the LEP, if it were to become the business board for NECA. The council would be represented on both bodies;
- e) broad community and business support, as evidenced by the consultations and soundings undertaken by the council;
- f) a seat around the table with government, on discussions concerning fair funding, 100% business rates retention, devolution and public service reform, with the prospect of negotiating further devolution;
- g) the prospect of progress, if this is the only approach the government is prepared to entertain.

75 Whilst this option involves accepting a directly-elected regional mayor, it should be noted that there would be checks and balances over the elected mayor's powers, via the proposed 'embedded' mayoral model, which is a better option than that negotiated on other combined authority areas.

76 This option will require the ongoing investment of senior member and officer time to manage the relationships between constituent authorities and between NECA and government. It would also involve negotiating, through the NECA governance on Durham's behalf, with the potential to be out-voted on some issues. Safeguards have been put in place to prevent the authority being out-voted on issues such as the transport levy, and the extension of devolution to areas such as health and social care and the police services.

77 As noted above, this option would carry risks for the council's highways budgets.

Not accepting the deal and leaving the combined authority as a non-consenting authority

78 This option involves not accepting the devolution agreement as proposed and leaving NECA to become a non-consenting authority. The council would still be involved in the LEP and would be able to negotiate and liaise with the combined authority on regional issues. However, it would not benefit from the additional investment funding offered to the combined authority, which would be the government's preferred governance model.

79 This option would free up senior member and officer time on regional relationship management, would remove the identified risk to our highways budget and would not require Durham residents to take part in electing a regional mayor. However, it would reduce the single pot resources available to the North East which would mean that such investment could not be spent in the county. It is also expected that opportunities under LGF would be lessened in this option. The authority would not be at the discussion table with government on future devolution developments.

80 Consultation findings, including the poll of all electors do not support this option.

81 It is understood at this time that the government would not be receptive to alternative devolution geographies.

Recommendations

82 Members are recommended to:

- a) Agree to move to the next stage of the process by agreeing to the making of an order creating a mayoral authority.
- b) Delegate to the Chief Executive, in consultation with the Leader of the Council, to consent to the order creating the combined authority and all other relevant matters to enable the formal establishment of the mayoral authority to proceed up to the approval of the required governance review and scheme detailing the devolution of functions, responsibilities and powers sought by the new mayoral combined authority.
- c) Note that the following conditions will need to be fulfilled before Cabinet could agree to devolution of powers and the laying of a second, more detailed order:
 - i. That the second, more detailed order will enable embedded mayoral governance such that there will not be a mayoral veto.
 - ii. That governance arrangements are established which ensure that constituent authorities are not disadvantaged by provisions for majority voting.
 - iii. That County Durham is not disadvantaged by the government's proposals on transport and highways funding, thus mitigating the risk identified in the report.
 - iv. That continued commitment to devolution is based on a commitment to fair funding being achieved through ongoing dialogue with Government.

Background papers

[Cabinet, 23 March 2016, North East Combined Authority: Devolution Decision](#)

[County Council, 24 February 2016, North East Combined Authority: Devolution Deal Update and Poll Result](#)

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Appendix 1: Implications

Finance – The proposed agreement involves devolving responsibility for certain funds to the region and the provision of £30 million a year over 30 years as an incentive and contribution to the establishment of a regional investment fund. If the council agrees to join the mayoral combined authority, the elected mayor would have the ability to levy an additional precept on business rates to fund investment further. Some assurances have also been provided about the prospects of securing longer term funding from the Local Growth Fund. The assurances around fair funding have yet to be met, but there is evidence of willingness and a positive direction of travel from government in this regard.

Staffing – No specific implications have been identified other than the time involved in participating and supporting the proposed governance arrangements and wider stakeholder relations.

Risk – The decision carries a variety of financial and reputational risks as outlined in the options appraisal.

Equality and Diversity – No specific implications have been identified.

Accommodation – No specific implications have been identified.

Crime and Disorder – No specific implications have been identified.

Human Rights – No specific implications have been identified.

Consultation – The council has undertaken extensive consultation on the devolution proposals.

Procurement – No specific implications have been identified.

Disability Discrimination Act – No specific implications have been identified.

Legal Implications – The decision has implications for the exercise of statutory functions and responsibilities exercised by the council or through the combined authority.