

DELEGATED DECISION

Corporate Management Team

July 2018



Entry into a Deed of Cooperation with the Constituent Councils of the North East Combined Authority

Report of Corporate Management Team

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Purpose of the Report

1. To authorise entry into a Deed of Cooperation recording an agreement between the constituent councils on the handling of the consequences of the formation of a new Mayoral Combined Authority for Newcastle, North Tyneside and Northumberland.

Background

On 26th April 2018, The Leadership Board of the North East Combined Authority ("NECA") consented in principle to the making of an Order by the Secretary of State which would have the following effects:

- a. amend the boundaries of NECA to remove the North of Tyne local authority areas (Newcastle upon Tyne, North Tyneside and Northumberland);
- b. create and give powers to a new Mayoral Combined Authority;
- c. provide for a Joint Transport Committee and a Proper Officer for Transport;
- d. transfer transport related assets into the joint ownership of the two Combined Authorities;
- e. make the Tyne and Wear Passenger Transport Executive (NEXUS) an executive body of each of the Combined Authorities and amend legislation to extend its duties to both Combined Authorities; and
- f. make consequential amendments including amendments to the NECA Order and relevant legislation to give effect to the above.

The Leadership Board agreed that NECA would enter into a Deed of Co-operation with each of the Councils for the Local Government areas of Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and

Sunderland reflecting the terms set out in the Heads of Terms attached in Appendix 2 to this report

Those decisions were expressly made subject to:

- a. all seven current constituent authorities of NECA and NECA itself entering into the Deed of Co-operation referred to in above; and
- b. the final Secretary of State's Order reflecting all principles agreed upon between the Ministry of Housing, Communities and Local Government and all constituent Authorities;

The Legal officers for the seven Councils and the Monitoring Officer for NECA have approved the wording of an agreement which reflects the Heads of Terms original produced and agreed on 26th April 2018.

Details of any alternative options considered and rejected when making the decision

1. Deciding not to accept the assurances provided by the draft Deed of Cooperation

Recommendations and reasons

2. The draft deed of cooperation sets out proposals for future decision making which protects the position of the constituent Councils of the two Combined Authorities and which is not detrimental to the interests of County Durham. It follows the principle that only the minimum changes should be made to the existing arrangements which would be necessary to reflect the consequences of operating as two separate Combined Authorities. The major area covered is the new Joint Committee which will make decisions on transport matters. The Agreement also deals with the consequences of reallocating responsibility to act as Accountable Bodies for Transport and the NELEP. It covers certain costs implications which may arise from transfer of staff.

Decision

3. Approval of entry into the finalised Deed of Cooperation requires an urgent decision which will not await the next scheduled meeting of Cabinet. It is therefore agreed to approve the Council's entry into the Deed of Cooperation and authorise sealing of the Deed.

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Appendix 1: Implications

Finance – The Agreement provides that the North of Tyne Authorities will pay the professional fees incurred due to the making of the Order and will meet additional pension related costs of transferring staff up until 31st March 2020

Staffing - No effect on DCC staff

Risk – The Agreement facilitates submission of consent to permit the Order to be made. It is a pre-condition of NECA approval to the granting of consent. Refusal would impede creation of the new mayoral combined Authority. The terms of the Agreement protect the council's position in maintaining so far as possible the arrangements since have prevailed since 2014.

Equality and Diversity / Public Sector Equality Duty - None

Accommodation - None

Crime and Disorder - None

Human Rights - None

Consultation – The council in common with the other constituent Councils of NECA consulted on the principle of the changes to NECA which would arise from the formation of a new Mayoral Combined Authority for Newcastle, North Tyneside and Northumberland.

Procurement – None

Disability Issues - None

Legal Implications – The agreement will supplement the provisions of the Order creating a new mayoral combined authority and revising arrangements for the operation of NECA in its reduced form.

Appendix 2

Heads of Terms

1. **Form:** Deed

2. **Parties:**

- a. The seven authorities for the Local Government areas of Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland ('**LA7**').
- b. The North East Combined Authority ('**NECA**').
- c. The three local authorities North of Tyne will procure that the North of Tyne Mayoral Combined Authority ('**NTMCA**') will become a party within 90 days of the commencement of an order creating the Combined Authority, and will procure that the terms of this agreement are honoured by the actions of the NTMCA until it becomes a party.

3. **Recitals/Preamble:**

- a. This agreement is made in anticipation of consent being given to the making of an order by the Secretary of State for the reduction in size of the NECA area and the creation of NTMCA.
- b. The purpose of the agreement is as a framework for collaborative working and continuing the strong working relationship of the LA7 and the overall commitment that the two Combined Authorities will work together constructively; will continue partnership arrangements at relevant geographies and will unequivocally support the work of the North East Local Enterprise Partnership and the North East Strategic Economic Plan.
- c. The intention that the new arrangements replicate, as far as possible, the governance already in place in relation to transport.
- d. The opportunity to strengthen Executive Officer support for transport, reflecting the strategic importance of transport across the North East and to ensure that all decision making is transparent.
- e. Maintaining a clear distinction between the Transport Joint Committee arrangements and those of individual local highway authorities.
- f. Noting that Local Transport Plan funding and Highways Maintenance funding will continue to be directed to each of the LA7 local authorities.

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4. **Commencement Date and Term:**

- a. The agreement will be signed by all parties on or before the date that consent is given to the making of the order.
- b. The agreement will come into force on the same date as the order comes into effect and will remain in force until varied or terminated by agreement of all parties or on the dissolution of either Combined Authority by order.
- c. The agreement will be effective in relation to the NTMCA from the date of execution and service of notice on the other parties.

5. **Executive Structures LA7:**

- a. Continuation of the Chief Executives group ('**CExG**') made up of the LA7 Chief Executives or their appointed deputies, the Heads of Paid Service of the two Combined Authorities (if separate post-holder) and the Executive Director of the North East Local Enterprise Partnership (if a separate post-holder) or their appointed deputies.

b. This group is responsible for the support and sponsorship of the effective strategic direction of executive activities across the LA7 area in relation to transport and economic development.

c. The Proper Officer appointed by the Transport Joint Committee will report into this group.

6. Governance Structure – Transport:

a. The Transport Joint Committee will have no authority in relation to the Local Transport Plan Integrated Transport block funding or the Highways Maintenance block funding which will, as present, continue to be paid to individual LA7 authorities or passported by the relevant Combined Authority to the LA7 authorities in the amounts specified by the Department for Transport.

b. The Transport Joint Committee will have all the powers and responsibilities in the NECA Constitution of the current NECA Transport North East Committee or the NECA Leadership Board, to the extent they relate to Transport (updated to reflect any recent changes in the law).

c. The Transport Joint Committee will create a Tyne and Wear Sub-Committee.

d. The Tyne and Wear Sub-Committee will have all the powers and responsibilities in the NECA Constitution for the TWSC (updated to reflect any recent changes in the law) and the inclusion of express reference to setting Tyne Tunnels tolls.

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e. Each Combined Authority will, in its standing orders (Constitution), delegate authority to the County Council in their area to the same effect as those currently included in the NECA Constitution.

f. Transport protocols:

i. The Combined Authorities will develop protocols covering the following areas:

1. The passporting of Local Transport Plan Integrated Transport block funding to Local Authorities (in the amount specified by the Department for Transport, minus any agreed top-slice to fund the Regional Transport Team). The agreement of constituent authorities will be required for any change in this arrangement. This protocol will also confirm that there will be no change in relation to the payment of highway maintenance block funding to individual local authorities and the Transport Joint Committee will have no authority in relation to these funding streams.

2. The practical management of funding swaps between the Combined Authorities.

3. The exercise of transport functions by Durham and Northumberland County Councils to the same effect as those already agreed.

7. Executive Structures – Transport

a. The Proper Officer for transport will be responsible for strategy, policy and operational alignment of the LA7 authorities including the role of NEXUS.

- b. The Proper Officer for transport will report to and take strategic direction from both the LA7 Chief Executives group and the Transport Joint Committee.
- c. Subject to the agreement of the Transport Joint Committee the parties agree that NECA will act as Accountable Body and hold and account for the finances in relation to transport.
- d. Transport Joint Committee will be free to determine its own rules and procedures which, to the extent necessary, will be incorporated into the Accountable Body's standing orders (Constitution).
- e. In discharging its Accountable Body responsibilities, the Accountable Body will accept responsibilities and obligations to implement Transport Joint Committee and sub-committee decisions in similar terms to those 4 currently set out in the Accountable Body Agreement (currently in place in relation to NECA's role in relation to the North East Local Enterprise Partnership (**North East LEP**)).
- f. Where assets are held jointly both Combined Authorities will agree to procure that the actions agreed by the Transport Joint Committee are promptly completed (e.g. the sale, purchase or development of property). A protocol will be developed if necessary to describe agreement on the operation of this.
- g. The regional transport team will report to the Proper Officer for transport.
- h. Provisions concerning, effectiveness reviews, the appointment and dismissal of the Proper Officer for transport and support standards from the Accountable Body will be included in the agreement.
- i. Additional capacity and expert support provided under SLA terms from any LA7 authority subject to agreeing recharging arrangements.
- j. Running costs and liabilities in relation to the Joint Transport functions will be shared by the LA7, in the manner that they currently are.

8. Governance and Executive Structures - North East Local Enterprise Partnership

- a. Whilst respecting the terms of the Accountable Body agreement, the North East LEP will agree which Combined Authority will act as its Accountable Body. The parties expect that the Accountable Body for transport will not also be the Accountable Body for the North East LEP.
- b. The North East LEP will be free to determine its own rules and procedures which, to the extent necessary, will be incorporated into the Accountable Body's standing orders (Constitution). It is however acknowledged that re-charging arrangements may need to be refreshed to take account of the fact that some services are being provided without charge or at less than full cost.
- c. In discharging its Accountable Body responsibilities, the Accountable Body will accept responsibilities and obligations to North East LEP decisions in similar terms to those currently set out in the Accountable Body Agreement.
- d. Provisions concerning, effectiveness reviews, the appointment and dismissal of the Executive Director of the North East LEP and support standards from the Accountable Body will be included in the agreement. Expressly, the North East LEP will suffer no detriment – operationally or financially – as a result in any change of Accountable

Body.

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e. The running costs and liabilities in relation to the North East LEP will be shared by the LA7 in current manner.

9. Indemnities by LA7 authorities

The agreement will include indemnities by which each of the LA7 local authorities indemnify the others in relation to liabilities arising out of:

a. All actions of current or predecessor accountable bodies for the North East LEP and the Regional Transport matters;

b. The transfer of accountable body contemplated by or pursuant to the agreement;

c. The future discharge of accountable body functions for transport and the North East LEP; and

d. Pensions matters – past and future liability (including an express provision that post-completion work should be shared between LA7 on current basis).

10. General

a. Review of arrangements – an annual review of the functioning of the relevant arrangements and procedural rules will be undertaken and reported respectively to the Transport Joint Committee and the North East Local Enterprise Partnership Board by the relevant accountable body Combined Authority.

b. Amendments to Deed – the Deed may be amended by agreement of all parties to it.

c. Dispute resolution – Proper Officer dispute resolution first between the two CA Heads of Paid Service escalating to 7CEs.

d. Termination – by agreement of all parties or automatically if a Secretary of State order is made dissolving or amending the boundary of either Combined Authority.

e. Notices – at the principle offices of each Combined Authority addressed to the Monitoring Officer and to the Monitoring Officers of each Combined Authority.