



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

IMPROVEMENT AND SCRUTINY COMMITTEE - RESOURCES

11 May 2023

Report of the Director - Legal and Democratic Services

Call in: Approval of Allocation from the Feasibility Reserve for the Setting Up Costs for the East Midlands County Combined Authority

1. Purpose

- 1.1 To consider a call-in in respect of the decision taken by Cabinet Member for Corporate Services and Budget to approve the allocation of £0.480m from the Feasibility Reserve to support development on the next stages of the East Midlands County Combined Authority (EMCCA).

2. Information and Analysis

- 2.1 The Council's Constitution provides for decisions to be called-in where Members consider that the decision-making principles set out in Article 7 (Decision-Making), which are set out at Appendix 2 to this report, have been breached. The Improvement and Scrutiny Procedure Rules set out in the Constitution require a call in to be requested by at least 4 councillors, from a minimum of 2 political groups
- 2.2 On 18 April 2023 the Cabinet Member for Corporate Services and Budget considered a report of the Executive Director Place and agreed:
- a) To approve an allocation of £0.480m from the Feasibility Reserve in order to support the development of the next stage of the EMCCA.
 - b) To delegate to the Managing Director, in consultation with the S151 officer, approvals and management of expenditure within this amount.

A copy of the report considered by the Cabinet Member is attached at Appendix 3 to this report.

- 2.3 In accordance with the provisions of the County Council's Constitution, Councillors Joan Dixon, Ruth George, Philip Rose, and Alex Stevenson have asked that the decision be called-in and considered by this Committee.
- 2.4 The call in has been requested on the basis that the decision breaches Articles:
- 7.2 (c) proportionality (i.e. the action must be proportionate to the desired outcome);
 - 7.2 (f) a presumption in favour of openness;
 - 7.2 (g) clarity of aims and desired outcomes.
- 2.5 The principal objections, as given in the call-in notice, were stated as follows:

"On 22nd March 2023, a report went to Full Council (Agenda item 8) with regards to the proposed Devolution Deal for the EMCCA. In Appendix 1, the financial implications of the decision are addressed (page 48.) It states that "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." There is mention of government capacity funding for enabling activities and also that the investment funding of £38m can be used to meet the costs of enabling activities, if the capacity funding is insufficient to meet such costs.

At no point in the report is there any reference to any monies required from the County Council - so elected members would not think the decision would place a financial burden on the County Council.

The decision taken on 18th April 2023 comes less than a month after that meeting and the majority of elected members were not sighted that the decision they had made previously would now mean there were £0.480m worth of financial implications for the county council as a result of the decision made on 22nd March. The amount of approval at £0.480m comes just below the level of funding needed for this decision to be made at Cabinet and in public. It was not done in an open and transparent way.

The report is not clear how much of the burden of the costs for enabling activities falls on DCC in comparison with the other three Unitary authorities, so the proportionality of the level of financial input between the four authorities is not clear."

- 2.6 The procedure to be adopted when a decision is called in is set out in the Call-in procedure set out in the Improvement and Scrutiny Procedure Rules at Appendix 5 to the Constitution. This is attached at Appendix 4 to this report.
- 2.7 The Committee will need to determine whether or not the decision-making principles set out in Article 7.2 (c), (f) and (g) have been breached in relation to the decision of Cabinet set out in paragraph 2.2 above.
- 2.8 If, having considered the matter, the Committee is satisfied that the principles have been followed, the decision of Cabinet can be implemented. If, however, the Committee concludes that the decision making principles have been breached, it may:
- refer the decision back to Cabinet for reconsideration; or
 - refer the matter to Full Council.

The Committee must state in writing the nature of the concerns regarding the decision.

- 2.9 As with all Improvement and Scrutiny Committee meetings, the call-in process should be inquisitorial not adversarial.

3. Consultation

- 3.1 Not applicable.

4. Alternative Options Considered

- 4.1 To not consider the call-in request, however this would result in the Council failing to comply with the Constitution.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

6.1 None identified.

7. Appendices

7.1 Appendix 1 – Implications

7.2 Appendix 2 – Extract from Article 7 of the Constitution

7.3 Appendix 3 – Report to the Cabinet Member dated 18 April 2023

7.4 Appendix 4 – Call in procedure set out in the Improvement and Scrutiny Procedure Rules

8. Recommendation

That the Committee consider the call-in of the decision made by the Cabinet Member for Corporate Services and Budget on 18 April 2023 and determine whether or not the decision-making principles set out in Article 7.2 (c), (f) and (g) have been breached.

9. Reasons for Recommendation

9.1 To comply with the Council's Constitution.

Report Author: Alec Dubberley **Contact details:** alec.dubberley@derbyshire.gov.uk

Implications

Financial

1.1 None directly arising from the report.

Legal

2.1 The Council's Constitution sets out the procedures for 'call in' which must be followed and is based upon relevant paragraphs of the Local Government Act 2000 as follows:

- a) s9F(2) provides the general power for overview and scrutiny committees to review or scrutinise executive decisions;
- b) s9F(4) provides a specific power to review or scrutinise a decision made, but not implemented.

Human Resources

3.1 None directly arising from the report.

Information Technology

4.1 None directly arising from the report.

Equalities Impact

5.1 None directly arising from the report.

Corporate objectives and priorities for change

6.1 None directly arising from the report.

Other (for example, Health and Safety, Environmental, Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None directly arising from the report.

7.2 Principles of decision-making

All decisions of the Council will be made in accordance with the following principles:

- (a) due regard to all relevant and material considerations and without regard to any irrelevant considerations;
- (b) where appropriate, the realistic evaluation of alternatives;
- (c) proportionality (i.e. the action must be proportionate to the desired outcome);
- (d) due consultation and the taking of professional advice from officers;
- (e) respect for human rights and equalities;
- (f) a presumption in favour of openness;
- (g) clarity of aims and desired outcomes; and
- (h) reasons being given for the decision, as appropriate.



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

**REPORT TO CABINET MEMBER FOR CORPORATE SERVICES &
BUDGET**

18 April 2023

Report of the Executive Director - Place

**Approval of Allocation from the Feasibility Reserve for the Setting Up
Costs for the East Midlands County Combined Authority**
(Cabinet Member for Corporate Services & Budget)

1. Divisions Affected

1.1 County-wide.

2. Key Decision

2.1 This is not a Key Decision.

3. Purpose

3.1 To request Cabinet Member approval to allocate £0.480m from the Feasibility Reserve (with approvals within this amount delegated to the Managing Director in consultation with the S151 Officer), to support development of the East Midlands Combined County Authority (EMCCA).

4. Information and Analysis

4.1 On 7 April 2022, Cabinet approved the establishment of a Feasibility Reserve to enable assessment and viability work to be undertaken on a

number of Corporate, Investment and Regeneration initiatives (Minute No. 88/22 refers).

- 4.2 In order to allow schemes to progress in a timely manner, a set of procedures have been developed to allow schemes to gain access to the funding. This includes responsibility to allocate resources up to £0.100m from the Feasibility Reserve being delegated to the Executive Director – Corporate Services and Transformation, amounts in excess of this to be approved by the Deputy Leader and Cabinet Member for Corporate Service and Budget.
- 4.3 As this bid is in excess of £0.100mm, Cabinet member approval is sought in line with the approved process.
- 4.4 This Council, in parallel with Derby City, Nottingham City and Nottinghamshire County Councils, is in the process of taking a decision on whether to submit a proposal to Government to bring forward the EMCCA. If this decision is approved by all four Councils, then the proposal will be submitted to Government in April 2023. In this case funds will be required to support the implementation of this decision.
- 4.5 This bid is to request approval for £0.480m to cover the costs of progressing the development of the EMCCA until autumn 2023 when Full Council will be asked to take a decision on approving the creation of the EMCCA through Statutory Instrument. Without these feasibility funds, the Council will not be in a position to develop work to that point.
- 4.6 Costs identified in this period include:
 - Consultancy support (a contract has been procured with Deloitte LLP for advisory services,
 - Individuals recruited through agencies to fill temporary, development roles
 - Backfill costs for Council staff working on the project
 - Further legal support (being provided via Browne Jacobson to advise on a complex legal and governance process)
 - Events, marketing, communications and publications
- 4.7 Some of these costs are split equally amongst the 4 Upper Tier Authorities, approval is sought for the Council's element. Inevitably, in a fast evolving situation, it is difficult to pin down costs precisely, so the funding sought contains contingency.

5. Consultation

5.1 Not applicable.

6. Alternative Options Considered

6.1 **Not fund the development work on the EMCCA** – this would leave the Council in a position where it did not contribute its share to the development of the Combined County Authority to reach the stage where the Council can take an informed, democratic decision on whether to proceed to establish the organisation.

6.2 **To support the work from within current staff resources** – while Council staff are working on the EMCCA development as part of their core functions, the Council does not have the full capacity or capability to do this work from within its existing resources.

7. Implications

7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8. Background Papers

8.1 Report to Cabinet, Establishment of a Feasibility Reserve, dated 7 April 2022 (Minute No. 88/22 refers).

9. Appendices

9.1 Appendix 1 – Implications.

10. Recommendations

That the Cabinet Member:

- a) Approves an allocation of £0.480m from the Feasibility Reserve in order to support the development of the next stage of the EMCCA.
- b) Delegates to the Managing Director, in consultation with the S151 officer, approvals and management of expenditure within this amount.

11. Reason for Recommendations

11.1 To provide resources to support the next stage of the development and setting up of the EMCCA in the period until autumn 2023.

12. Is it necessary to waive the call in period?

12.1 No.

Report Author: Chris Henning

Contact details: Chris.Henning@derbyshire.gov.uk

Implications

Financial

- 1.1 The Feasibility Reserve was established in order to allocate revenue budget and allow projects to be implemented which will support the delivery of the outcomes identified in the Council Plan 2021-2025. A Cabinet Report from 7 April 2022, approved the use of this reserve for these costs.
- 1.2 If this proposal is approved, the £0.480m will be used to progress the proposal that will be submitted to Government. If the proposal is not approved the funding will remain in the feasibility reserve to be used to take forward other future projects.
- 1.3 The requested funding is essential to enable the proposal to be progressed to the next stage, if approval of this bid is not granted this Council will not be able to progress further and would not contribute its share towards the development of the Combined Council Authority.
- 1.4 A breakdown of estimated costs is as follows:

	£
Consultancy work for advisory services	77,255
Consultation work	27,186
Development roles	119,269
Further legal work	93,051
Events, marketing, coms and publications	5,000
Other, backfill costs, contingency	158,239
Total	480,000

Legal

- 2.1 Following a consultation exercise, Derbyshire County Council, Nottinghamshire County Council, Derby City Council and Nottingham City Council are due to consider reports and determine whether to submit their final Proposal to Government. In the event that all four councils do not agree to the submission of the Proposal, the Levelling Up and Regeneration Bill does not receive Royal Assent or the Secretary of State does not approve the Proposal, further work to progress the creation of the EMCCA will no longer be required.

Human Resources

3.1 None.

Information Technology

4.1 None.

Equalities Impact

5.1 For this decision there is no impact on equalities however, a full equalities impact assessment will take place if the decision to develop the Combined authority further goes ahead.

Corporate objectives and priorities for change

6.1 The proposal demonstrates “Strategic fit” by supporting the Council Plan objective and headline initiative of ‘delivering devolution and the levelling up agenda across Derbyshire as one of nine early County Deal pathfinder areas, helping to boost economic performance and improve opportunities and outcomes for people and places’.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 There are no other implications at this stage of the proposal; however, if a future recommendation to proceed to establish the organisation is made a full Business Case will be produced which will consider the wider implications of the proposal.

CALL-IN PROCEDURES

Procedure to be Adopted when a Decision is Called-In

1. The Director of Legal & Democratic Services on receiving a request for the call-in will check that the call-in notice is signed by the requisite number of Members. The call-in notice must identify which principle(s) of decision making in Article 7 of the constitution have allegedly been breached and give reasons. This requirement will be checked by the Director of Legal & Democratic Services.
2. The Director of Legal & Democratic Services will arrange a meeting of the appropriate Committee, in consultation with the Chairman of that committee.
3. The Director of Legal & Democratic Services will acknowledge the call-in notice and notify the appropriate Cabinet member.
4. The Scrutiny Officer will invite the signatories to the call-in notice, the relevant Council Cabinet member(s) and the relevant Strategic Director to attend the call-in meeting. The call-in signatories and the relevant Council Cabinet member or a Cabinet member nominee would be expected to attend. The relevant Strategic Director may nominate a second or third tier officer to attend in his/her place. If none of the call-in signatories attend, the Committee will decide whether to proceed. If the Committee decides not to proceed, then the call-in will be decided on the basis that the Committee does not have any concerns it wishes to refer to the Council Cabinet, and the Council Cabinet will not be required to reconsider the decision.
5. The Scrutiny Officer will send copies of the call-in notice, minute of Cabinet/record of the Cabinet Member decision and any associated reports to members of the Committee with the agenda for the meeting.
6. The Scrutiny Officer will liaise with the Chairman and the Vice Chairman of the Committee over any other appropriate arrangements for the call-in, e.g. additional information, witnesses etc. If the Chairman or Vice Chairman have signed the call-in notice, the SO will liaise with another member of the Committee nominated by the Chairman or Vice Chairmen.
7. The aim of the Committee meeting when the call-in is considered should be inquisitorial not adversarial. The Meeting Procedure for a call-in of a Council Cabinet decision will be adopted.

Meeting Procedure for a Call-in of a Council Cabinet Decision The role of the Chair

1. This procedure shall be implemented at the meeting by the Chairman and any deviation from this procedure will be at the discretion of the Chairman. The Chairman will advise attendees at a Call-in meeting of any reasonable intention to deviate from the procedure at the start of the meeting where possible.

2. In the absence of the Chairman, the meeting will be led by the Vice Chairman. In the absence of both, the Monitoring Officer or their representative shall facilitate a vote of Members so that a Chairman shall be appointed. The appointed Member will chair for the duration of the meeting or until the Chairman or Vice Chairman is present.

3. Where the Chairman is in attendance, the Vice Chairman shall be treated in the same way as every other Member of the Board.

Role of signatories to the Call-in notice and the Council Cabinet member

4. Signatories to the Call-in notice and the Council Cabinet Member will be invited to provide evidence to the Committee, both in terms of a presentation and by answering questions put to them by the Committee.

5. There is no provision for either the signatories to the Call-in or the Cabinet Member to question each other, either directly or through the Chairman.

Role of officers in attendance

6. Supporting Officers will be present from Democratic Services (providing procedural advice to the Chairman and Committee as required and recording decisions) and Improvement and Scrutiny (advising the Chairman and the Committee as required on relevant scrutiny of the decision under consideration). The Monitoring Officer or their representative may also be present and may undertake any of these duties in addition to providing any legal advice if required.

7. The Managing Director, Executive Directors or Assistant Directors or Heads of Service may provide support to the Council Cabinet Member and contribute to the meeting as required by advising the Committee on the strategic, technical or operational basis of decisions taken or considerations given relevant to the Call-in, or by responding to questions referred by the Council Cabinet Member to them.

Procedure at the meeting

8. The signatories to the Call-in notice will be invited to address the Committee on the Call-in and will be required to focus on justifying why they considered the council's decision-making principles to have been breached as raised in the signed Call-in Notice lodged with the Monitoring Officer. The order in which signatories are invited to speak will be at the discretion of the Chair. Signatories shall limit their contributions to the reasons for the call-in

9. After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions.

10. The Council Cabinet Member will then be invited to address the Committee on the call-in by the Chairman and will be required to respond to the assertions relating to the council's decision-making principles as set out in the Call-in notice.

11. Members of the Committee to make any contributions they may wish prior to the vote being taken. Each member of the Committee shall be permitted to make one speech lasting no more than ten minutes.

Voting on whether decision-making principles have or have not been breached

12. The Chairman shall then ask each Member in turn to state whether they consider the decision-making principles identified in the Call-in Notice were, or were not, breached giving reasons. Where a Member considers that a principle has been breached, they will be required, at this stage, to state which principles they consider to have been breached. This information shall be recorded by the Monitoring Officer or their representatives.

13. The Chairman may, at their discretion, state whether they believe the decision-making principles identified in the Call-in Notice were or were not breached, giving reasons.

Finding of no breach

14. In the event that a majority of Members consider that there was not a breach, the Chairman will state that the Committee has resolved that the Council Cabinet Decision identified in the Call-in Notice did not breach the decision-making principles and close the meeting.

Finding of a breach

15. In the event that a majority of Members consider that there was a breach in the decision-making procedure, the Chairman will invite the Monitoring Officer or their representative to address the Committee. The Monitoring Officer or their representative will state which decision-making principles were individually identified by Committee members as having been breached, and which of those principles were identified by a majority of Members present as having been breached.

16. The Chairman will declare the outcome of the vote and the resultant resolution and close the meeting referring the decision back to the next meeting of the Council Cabinet.

Consideration of multiple Call-in notices in relation to the one decision of Council Cabinet

17. In the event that more than one Call-in notice is received in relation to a single matter, the Chairman will use their discretion to vary the procedure accordingly to afford signatories to all Call-in notices equal opportunity to state their case.