



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**COUNCIL**

**THURSDAY, 7 DECEMBER 2023**

**Report of the Managing Director**

**Consent to the East Midlands Combined County Authority Regulations  
2023**

**1. Purpose**

- 1.1 To seek Full Council agreement to the creation of the East Midlands Combined County Authority, with the Council as a constituent member.
- 1.2 To seek Full Council consent to the making of the “The East Midlands Combined County Authority Regulations 2023” (Regulations), which Regulations will establish the East Midlands Combined County Authority (EMCCA).
- 1.3 To note the holding of the inaugural mayoral election for the EMCCA on 2 May 2024, subject to the passage of relevant secondary elections legislation.
- 1.4 To seek approvals relating to the appointment of the Combined County Authority Returning Officer (CCARO).

**2. Information and Analysis**

**Background Information**

- 2.1 Following the Government’s publication of the [Levelling Up](#) White Paper in February 2022, Derbyshire, Nottinghamshire, Derby and Nottingham agreed to cooperate at pace on the creation of a new devolution deal. This would include the areas covered by Derbyshire County Council,

Nottinghamshire County Council, Derby City Council and Nottingham City Council (the 'Constituent Councils'), delivered through the establishment of a Mayoral Combined County Authority (the East Midlands Combined County Authority, EMCCA).

- 2.2. Securing a devolution deal has been a long-standing ambition for leaders in the area, in order to address the lasting impact caused by decades of under-funding when compared to other areas, improve living standards and deliver better opportunities and outcomes for residents, businesses and communities. Alongside this, the establishment of the EMCCA will bring the governance that currently sits at national level down to the CCA area, so that decision-making is much closer to communities and businesses. Further detail about the lack of parity in investment in the East Midlands region is set out in the Proposal [here](#).
- 2.3. As a result of joint collaboration, a [devolution deal](#) was agreed between the four Constituent Councils and the Government, on 30 August 2022. The deal envisaged a significant uplift in the powers and funding available to Derbyshire, Nottinghamshire, Nottingham, and Derby, and an unleashing of the area's full economic potential.
- 2.4. The vision outlined in the deal, and subsequently published in the Proposal for creation of the EMCCA, is for the 2.2 million people who live and work in the area to enjoy better health, greater prosperity, and an increased sense of wellbeing, through the opportunities available to them within an inclusive and competitive CCA Area, at the heart of the country. Alongside this, the shared objectives of the Constituent Councils are:
  - a. Boosting productivity, pay, jobs and living standards
  - b. Spreading opportunities and improving public services
  - c. Restoring a sense of community, local pride and belonging
  - d. Empowering local leaders and communities.

### Statutory Consultation

- 2.5 Following approval from each Constituent Council in November 2022, a statutory consultation was conducted on the draft Proposal to establish the EMCCA. The Constituent Councils jointly undertook this statutory consultation, which ran from 14 November 2022 to 9 January 2023. Overall, a total of 4,869 people took part in the consultation, which was open to residents, businesses, community and voluntary groups, as well as other organisations in the region.

- 2.6 Following consideration of the consultation responses, the Constituent Councils approved a final version of the Proposal in March 2023 for submission to the Secretary of State and delegated the authority to their respective Chief Executive/Managing Director to submit the Proposal, jointly and in consultation with each other once the Levelling Up and Regeneration Bill received Royal Assent. Following that, some minor typographical amendments were made by the Council's Managing Director under delegated powers. The Proposal was formally submitted to the Secretary of State on 1 November 2023 following the coming into force of the relevant provisions of the Levelling Up and Regeneration Act 2023 (LURA). The Secretary of State has now confirmed that the requisite statutory tests for the establishment of the East Midlands Combined County Authority have been met and provided a draft of the Regulations for consideration by the Constituent Councils.
- 2.7 Further details on the consultation results and the East Midlands CCA Proposal can be found in the March 2023 report to Full Council and its accompanying appendices [here](#).

#### Benefits to be realised

- 2.8 Progressing with the establishment of the EMCCA is a landmark, once-in-a-generation opportunity to secure more powers and funding that will be used to build on our strengths as a region, by boosting economic growth, creating new local jobs, more provision for training and skills tailored for our labour market, better public transport, new investment in housing, and action to protect the environment.
- 2.9 This is an historic opportunity, following years of under-investment compared to other English regions. Devolution will bring more money into the region, resulting in a stronger local economy and better services for our residents.
- 2.10 The investment package for the deal is worth more than £4 billion, including the £1.14 billion investment fund and a new City Region Sustainable Transport Settlement of £1.5 billion.
- 2.11 Figure 1 provides an indication of the scale of funding committed, or indicated to flow through the EMCCA, in its first few years. There will be a significant increase in funding in the early years across different domains.

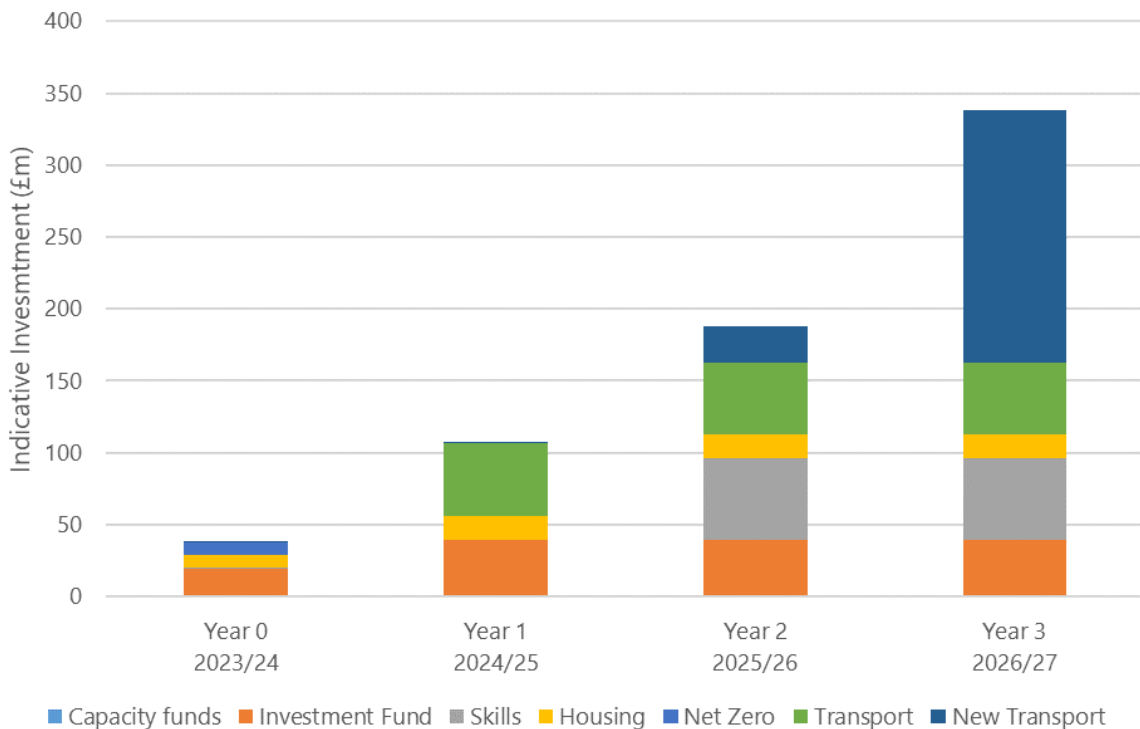


Figure 1. Indicative investment into EMCCA

- 2.12 Devolution will create the first ever Combined County Authority, with Constituent Council membership of the upper-tier local authorities in the region, provided for in the LURA. The East Midlands will pioneer this type of governance, with other areas in the region to follow, including partners in the proposed [Greater Lincolnshire deal](#), recently announced in the Chancellor’s Autumn Statement.
- 2.13 The inaugural mayoral election is planned for 2 May 2024. A new Mayor, working with an electoral mandate from 1.6m people across the region eligible to vote, will give the region a bigger voice, more influence and a higher profile to make a strong case to the Government for more investment in the region.
- 2.14 Creating the first ever directly-elected mayor of the East Midlands will provide a platform to champion the interests of the region nationally and internationally, deliver on local priorities and provide greater local accountability and decision-making power, working in partnership with the EMCCA and its Constituent Councils, and more widely with other public service providers, including District and Borough Councils.
- 2.15 The Mayor and the EMCCA will be focused on the strategic issues which affect our whole region – including transport, net-zero and

housing – and will use the extra money to improve residents’ lives. They will champion major infrastructure projects in the region, lobbying the government to ensure promises are kept from a position of national prominence.

- 2.16 A Mayoral Combined County Authority also provides the chance to take advantage of strategic opportunities, such as the East Midlands Freeport, the East Midlands DevCo and the East Midlands Investment Zone. It also provides additional opportunities to tackle persistent and systemic deprivation, which drives significant inequalities in some parts of the region, and to raise levels of social mobility, for which the East Midlands is the poorest performing region in the country.
- 2.17 The 2022 deal is also just the starting point. The true benefits and economic value of devolution are still to come, through potential further settlements and investment. The region has already seen the significant commitment of £1.5 billion of new investment into local transport announced by the Government in October 2023, for example. This is early evidence of another benefit of devolution, which is, that it gives the region the voice it deserves and places it in the national spotlight.
- 2.18 The Proposal sets out longer term aspirations to seek further powers from Westminster, placing more decisions at local level, as devolution has done with other areas like the West Midlands and Greater Manchester. The Autumn Statement 2023 confirmed that the proposed EMCCA will be in consideration for deepening the current devolution deal in the future once the Mayor is in place. This could result in even more new powers and funding for the region in addition to the current deal in areas like skills, transport and housing, bringing EMCCA closer to the ‘trailblazer’ deals recently awarded to Greater Manchester and the West Midlands. Alongside this, further opportunities for public service reform at a local level that would help councils and their partners deliver the best possible services for local residents and businesses will be explored.

#### What we’ve achieved so far

- 2.19 Even prior to the coming into force of the LURA; millions of pounds in funding, made possible because of plans for devolution in the East Midlands, has already been agreed and is to be spent on improving housing, transport and the skills of local people. Some of the initiatives that are already underway or completed, include but are not limited to:
  - a. **£2m** for the purchase of properties in Nottingham City and Derby City to address homelessness by reducing the use of bed and

- breakfast accommodation. Properties have been purchased and some let, and to date £1.624m has been spent.
- b. **£9.92m** for Retrofit across the whole area to deliver domestic energy efficiency and low carbon retrofit activities. Grant offer letters have been issued to each council and the first payment of £1.984m has been released.
  - c. **£1.22m for more affordable housing** in Derby, where there is currently a shortage, to provide 15 extra social units to be let at an affordable rent. It will mean less reliance on temporary bed and breakfast placements and shorter waiting times for longer-term accommodation. The full grant allocation will be used to purchase 5 houses.
  - d. **£1.2m for new gigabit broadband** for Derbyshire, Nottinghamshire, Derby and Nottingham. It will mean that an extra 118 rural public sector schools and libraries will be connected to gigabit broadband. Work at the first sites is expected to start imminently.
  - e. **£750,000 for a new cycling and walking route** in Derbyshire – a 1¼ mile link connecting Markham Vale to the existing cycle route in Staveley. Work on the cycling lane has commenced, with a spend to date of £386k.
  - f. **£1.5m for the new roundabout on the A6** at Fairfield in Buxton, Derbyshire, that has provided access to sites for 461 new homes, including 30% affordable homes. This work has been completed, with the funding which has just been approved going towards the cost.
  - g. **£1.5m for a new growth through green skills**. The investment will enable the creation of a new £5.4m flagship skills centre and low carbon demonstrator in the region, to be operated by West Nottinghamshire College, as well as two electric minibuses for getting students to and from the site, to support the growth of a future low carbon economy as we work towards net zero. £981k has been spent to date, which includes the purchase of electric minibuses and IT Equipment.

### **Proposed next steps**

- 2.20 Appended to the Report is a draft of the proposed East Midlands Combined County Authority Regulations 2023 (Appendix 2). These draft Regulations represent the near final drafting of the proposed Regulations to establish the EMCCA and provide it with its necessary powers.
- 2.21 If the Council, and the other three Constituent Councils, consent to the making of the Regulations the Department for Levelling Up, Housing and Communities (DLUHC) have confirmed that they intend to lay the

Regulations prior to the Christmas recess. If passed, this will mean that the Regulations are expected to come into force in approximately February/March 2024. Once the Regulations come into force, the EMCCA will immediately come into existence. It is proposed that the first elections for Mayor of the CCA will take place on 2 May 2024 (the same date as the Police and Crime Commissioner elections taking place across the CCA area), with notice of election being required to be published by no later than 26 March 2024.

- 2.22 As part of the parliamentary process, in parallel to the consents sought from the Constituent Councils in this report, the Regulations are being considered by parliament's Joint Committee on Statutory Instruments (JCSI). Their role is to focus on the technical quality of the draft Regulations as opposed to the policy content, and any amendments at this point would be those required to ensure the Regulations are well drafted. The JCSI process may therefore lead to technical amendments being made to the Regulations. These will be non-negotiable.
- 2.23 To facilitate any technical amendments to the draft Regulations, following the consent of each constituent council, it is proposed that authority is delegated to the Managing Director of the Council, in consultation with the Chief Executive of all other Constituent Councils to finalise and consent to the Regulations, further to any technical amendments which may arise. This delegation will be exercised following consultation with the Leader of the Council. Provision of a delegation will enable such amendments required by the JCSI to be agreed swiftly, to avoid any delays in laying the Regulations prior to the Christmas recess.
- 2.24 The Combined Authorities (Mayoral Elections) Order 2017 (Amendment) Regulations 2023 (the Elections Regulations) are proposed to be laid and come into force prior to the coming into force of the East Midlands Combined County Authority Regulations 2023. The Elections Regulations permit the appointment by the Constituent Councils of a combined county authority returning officer (CCARO) for the mayoral election ahead of the creation of the EMCCA. This is in order that preparations for the election can be commenced prior to the creation of the EMCCA. It is proposed that, subject to the passing of the Elections Regulations, Melbourne Barrett, Returning Officer of Nottingham City Council, is appointed as the first CCARO and Council is asked to make a resolution to that effect. The CCARO will be required to print and post a mayoral election booklet to every elector in the combined county authority area, 1.6m individuals in total. The booklet will include information from the CCARO about the election and an election address from each candidate. The costs of this will be

incorporated in the overall costs of running the election, which are to be borne by the EMCCA.

- 2.25 In County areas, the Elections Regulations also make provision for the CCARO to direct district/borough council local returning officers to discharge the CCARO's functions at the election. This means that the usual arrangements where district/borough councils deliver the election for county areas will apply, where the election is a mayoral election for EMCCA.
- 2.26 Once elected, the term of office of the Mayor returned at the election usually begins with the fourth day after the day of the poll. However, as the 6th May 2024 is a bank holiday, the Mayor will take office on Tuesday 7th May 2024. The Mayor's term of office is four years.

### **Provision of Powers within the East Midlands Combined County Authority Regulations 2023**

- 2.27 In their Proposal, the Constituent Councils requested powers from Government for the EMCCA, focussed on finance and governance, planning, housing and regeneration, education and skills, and public health.
- 2.28 The majority of the powers outlined in the powers table, which was appended to the Proposal, are provided to the EMCCA through the Regulations, so they reflect to a large extent the powers that the Proposal was seeking. However, powers outlined in the powers table relating to education and skills are not included in the Regulations, because they are due to be provided by a subsequent specific statutory instrument (SI). In addition, powers relating to net zero are provided to the EMCCA through consequential amendment to the Environment Act 1995, by the introduction of a new section 86(c).
- 2.29 There are some relatively significant changes in the draft Regulations in respect of the phasing of transport powers (but not to the substantive powers conferred), providing that most powers are subject to a transitional phase where powers are retained by the Constituent Councils before transfer to the EMCCA, at the end of the transitional phase. There are also some more minor technical changes from what was set out in the powers table. The changes are set out in Appendix 3 to this Report.
- 2.30 In addition, in the review of the draft regulations, four technical matters were identified which require correction. These have been raised with DLUHC and it has been confirmed that these will be addressed as part



of updates to the final draft Regulations following the conclusion of JCSI's review. The attached Appendix 3 setting out changes from the powers table included in the proposal has been produced on the assumption that these corrections will be made.

### Funding provisions within the East Midlands Combined County Authority Regulations 2023

- 2.31 As set out in the Proposal, the Regulations provide that the Constituent Councils must ensure the costs of the EMCCA reasonably attributable to the exercise of CCA functions are met. It is not anticipated that there will be a call on the Constituent Councils in this regard. However, if there is such a call, then the proportions will be by agreement between the Constituent Councils or on an equal basis if not agreed.
- 2.32 There are safeguards for the Constituent Councils, in that they will be constituent members voting on EMCCA decisions in respect of CCA functions and the extent to which they are discharged. In addition, approval or amendment of the CCA budget requires the majority to vote in favour and that majority must include each Constituent Council's lead member, or a substitute for that lead member acting in place of that member.
- 2.33 The Regulations also provide that the Constituent Councils must meet the costs of expenditure reasonably incurred by the Mayor, to the extent that the Mayor has decided not to meet the costs from other resources available to the EMCCA. There is an inbuilt safeguard in relation to this requirement in that the Mayor must agree the level of expenditure with the CCA ahead of it being incurred and in the absence of the agreement, no such expenditure may be incurred.
- 2.34 The costs of the EMCCA attributable to the exercise of its functions relating to transport may be met by means of a levy issued by the CCA under section 74 of the Local Government Finance Act 1988, and in accordance with the Transport Levying Bodies Regulations 1992. The proportion of such levy payable by each Constituent Council is determined by agreement between the Constituent Councils and, if not agreed, based on the council tax base for the financial year in which the levy is issued for the area of each council concerned, or, as the case may be, the part of that area in respect of which the levy is issued.
- 2.35 More information on the anticipated use of transport levies is set out in the "Financial Implications" section below and in more detail in Part 9 of the draft Regulations. The above safeguard regarding the discharge of

CCA functions and approval of the budget will apply in respect of the transport levy.

### **Plans to establish the EMCCA**

2.36 The Constituent Councils have established a programme of work to provide for the establishment of the EMCCA and the inaugural mayoral election in May 2024. The Executive Leaders Group, comprising the eight leaders and deputies from the constituent councils and four representatives from district and borough councils, oversees this programme under a clear governance structure. A Programme Board made up of senior officers from each of the Constituent Councils and local partners manages a series of workstreams to operationalise the new powers and funding. Dedicated programme capacity is in place to work alongside partners to deliver the plans that are in place, subject to the passing of the Regulations.

### **Shadow Authority**

2.37 Should the Constituent Councils consent to the passing of the Regulations, the current transitional phase will move into a phase of operating as a Shadow Authority to support a smooth transition to the fully established EMCCA (which will come into existence the day after the coming into force of the Regulations, which is likely to be in February/March 2024).

2.38 The Shadow Authority will oversee the planning and implementation of establishing the EMCCA. It will not be a legal entity but will continue to operate as currently: collaboratively from within the Constituent Councils and in an advisory capacity until the EMCCA can be formally established in early 2024. It will prepare for and put in place capacity for operational day one capability. District and borough councils remain critical partners and will continue to be actively engaged in the programme, including through continued representation in the shadow governance arrangements.

2.39 Until the EMCCA is formally established, the basis of decision-making will continue to be advisory, and there will be no separate commissioning or service delivery. The first meeting of the Shadow Board is planned for as soon as possible after approval of the making of the Regulations by the Constituent Councils.

### **Investment and functions**

#### *Regional strategic focus and investment*

- 2.40 The EMCCA will focus initially on five broad priority areas that will drive long-term, targeted, and strategic investment. These have been chosen to give a shared focus on driving fairer economic outcomes across the region for all our residents, businesses, and partners. These investment priorities will provide better access to new and more affordable homes, improve the region's skills and access to employment, provide improved access to public transport, support business & innovation, and move the region toward Net Zero carbon.
- 2.41 To deliver this change, the EMCCA will create a fully developed, long-term transformational funding programme, covering all budgets for devolved functions (the "East Midlands Investment Fund"). This includes a grant of £38 million per year (half revenue and half capital) fixed for 30 years, totalling £1.14bn. Subject to government agreement on the Assurance Framework submitted in October 2023, it is anticipated that early access to £19m of this total fund will be released in the 2023/24 financial year; annual payments of £38m will then start from the 2024/25 financial year. This is a devolved, highly flexible grant, subject to five-year gateway reviews that (currently) involve independent evaluation commissioned by DLUHC.
- 2.42 The investment package worth more than £4 billion will enable the EMCCA to unlock significant amounts of investment over and above this amount, from private capital.
- 2.43 The Shadow Authority will develop an investment framework for decisions that will be made from the start of the 2024/25 year, with input from partners and stakeholders where necessary. In the short-term, the aim will be to maximise early opportunities to make progress, while laying the foundations for further transformational change, which goes beyond the current deal in future years. Therefore, while EMCCA will deliver a range of early investments that can demonstrate impact in its first year of operation, the investment framework will also form a broader and longer-term strategy stretching years into the future.
- 2.44 EMCCA has already been provided with a clear and early opportunity to underscore its strategic leadership role for the region, attracting business and creating new jobs to the area with the East Midlands Investment Zone (EMIZ). The Shadow Authority (and then the EMCCA once established) will oversee the implementation of the EMIZ focussed on the key growth sectors of advanced manufacturing and green industries. Work is ongoing with Government, the constituent councils and other local partners, and regional partners such as the East Midlands Freeport to align initiatives in the region to maximise their

impact and confirm the governance and delivery model. The Government has committed £160 million by extending the programme and associated tax reliefs from five to ten years. Further work is also underway with the East Midlands Development Company to consider how best to proceed with plans to fully realise the opportunities for the area in the sites they have in scope.

### *Net zero/green economy*

- 2.45 The EMCCA will put the shift towards reducing carbon emissions and creating a green economy at the heart of its approach to economic growth. The region is well placed to lead the move away from fossil to fusion and play its part in achieving the national ambition to achieve net zero by 2050. EMCCA will work with partners in the area to become a leader in pioneering new forms of clean energy generation and will act as an exemplar for climate change adaptation.
- 2.46 Devolution has already brought new investment of £9 million capital funding in 2022/23 and 2023/24 for investment in projects that will drive these net zero ambitions. This includes the provision of a new retrofit construction skills centre to support the delivery of the wider, retrofit programme.
- 2.47 Additional investment monies are also increasing access to digital connectivity in the EMCCA area, by connecting public service buildings, such as rural schools, doctors' surgeries and libraries, to gigabit broadband and widening the range of locations, adding up to 118 additional premises to the original 235.

### *Transport*

- 2.48 The majority of transport functions and powers will not be discharged by the EMCCA from day one, but will instead be held concurrently with the Constituent Councils to enable a period of transition. The manner in which those powers will transition, will be dealt with by way of an Inter-Authority Agreement ('IAA'). As the EMCCA is established it will take on greater responsibility for transport functions with associated changes to how transport is planned, delivered and operated across the region. The announcement of £1.5bn for transport investment for the EMCCA area as part of the Government's Network North proposals, along with commitments to longer term funding certainty for the EMCCA, will enable a transformational improvement in local transport.
- 2.49 Working with the constituent councils, the EMCCA will, once established, lead the development of a draft area-wide Local Transport

Plan for public consultation, intended to be ready for stakeholder engagement around Spring 2024, public consultation in Autumn 2024 and publication in Spring 2025. Preliminary work has already started within each of the Constituent Councils, with support from the devolution programme. The LTP will provide a clear and visionary policy framework that will underpin an ambitious programme of local transport investment, thereby taking full advantage of the £1.5bn of new transport funding announced by government in early October, which is expected to be awarded to the EMCCA through the second round of City Region Sustainable Transport Settlement (CRSTS2) funding. This programme will be constructed from a combination of current proposals, stated ambitions locally and from Government, and new initiatives emerging from the broad evidence base.

- 2.50 The EMCCA will work with Constituent Councils to coordinate a joint approach to highways asset management and define the Key Route Network. This is an opportunity for the Constituent Councils to collaborate and standardise approaches on key roads.
- 2.51 As part of its responsibility for transport strategy, the EMCCA will work closely with strategic partners such as the East Midlands DevCo and the East Midlands Freeport, pan-regional partnerships such as Midlands Connect, and form long-term relationships with Great British Railways and train, tram and bus operators.
- 2.52 The scale of the transport investment programme will ultimately require the EMCCA to establish a substantial operating capability to manage the range of different projects. Options to deliver this capability are being considered at present for decision in Spring-Summer 2024 and could include working with partner organisations with particular programme management expertise.
- 2.53 Transition planning is underway to consolidate the public transport powers into the EMCCA, including for supported bus services, smart ticketing, and passenger information. Due to the complexities of the various functions currently managed by the Constituent Councils, it is expected that the transition will take place at an appropriate point during the two-year Transition Period agreed with Government, rather than at the start. It is intended that the IAA will be the mechanism under which the transition will be governed.
- 2.54 The Nottingham tram network is currently operated under a PFI contract, which was let by Nottingham City Council and which runs until 2034. The contract includes a number of obligations that are the responsibility of Nottingham City Council, which would need to be

unconditionally and irrevocably guaranteed by the Council (or a Minister of the Crown) in the event of transfer. This would bring very significant risks to Nottingham City Council that it is not in a position to accept, and so it has been agreed, in discussion with Government, that the tram will not form part of the Devolution Deal whilst the PFI contract is in place. However, this will not preclude strategic planning for extending the tram as part of strategic transport planning for the region.

- 2.55 The Devolution Deal and Proposal to Government sets out the Constituent Councils' long-term aims for the tram network, including the possibility of its extension, and it is anticipated that at the end of the PFI contract, responsibility for the tram will transfer to the EMCCA to be consistent with other public transport functions and to ensure it is fully integrated into policy and project decisions that are taken. This long-term aim will be subject to financial appraisal and Government making suitable amendments to the Greater Nottingham Light Rapid Transit Act 1994 and Nottingham Express Transit System Order 2009.

### *Land and Housing*

- 2.56 The EMCCA will work with local authorities, landowners, developers, and the full range of housing providers, to create affordable, good quality housing options and to retrofit existing homes to be more environmentally sustainable. The relevant housing authorities in the area have set out in their Local Plans and Housing Strategy documents, their local housing priorities around brownfield remediation, housing quality and decarbonisation, and systems improvement to support local supported and specialised housing needs. To support those aims, the EMCCA will invest devolved housing capital to support the building of new homes on brownfield land, worth £16.8 million in 2024/25 – supported by the provision of £918,000 capacity funding over 2023/24 and 2024/25 for development of a pipeline of housing sites. Allocations for locally led brownfield development beyond that year is subject to future spending reviews. Through devolution, however, the area is on the list of areas that is eligible to secure these allocations from Government. Additionally, through devolution, the region has already benefited from £9 million of additional housing capital to support the delivery of housing priorities across 2022/23 and 2023/24.
- 2.57 The EMCCA and Mayor specifically will also secure a range of broad new housing and land powers to: acquire and dispose of land to build houses, commercial space and infrastructure, for growth and regeneration; land assembly and compulsory purchase powers, subject to the agreement of the Constituent Councils and, where applicable, the district/borough council(s) where the relevant land is located; power to

designate Mayoral Development Areas and to create Mayoral Development Corporations to support delivery on strategic sites across the area, again subject to the agreement of local partners. Over time, the EMCCA will work with partners on a plan to tackle homelessness and support people who are at risk of homelessness.

### *Adult Education and Skills*

- 2.58 Subject to meeting the government's readiness conditions and Parliamentary approval, which is expected to be met in the first year following its establishment, the EMCCA will take on the fully devolved adult education budget (AEB) from the academic year 2025/26. The devolution of the relevant powers from the Department for Education to the EMCCA will be subject to separate secondary legislation, anticipated to be laid in early 2025. The Constituent Councils understand the value of this budget is approximately £53 million per year on current values. These arrangements do not cover apprenticeships or traineeships, even though the latter is funded through the AEB. The government has provided support for local preparations for taking on these relevant functions, including providing £0.738m revenue over 2023/24, 2024/25 and 2025/26 of implementation funding that has been provided on a 'matched-funded' basis, following the submission and agreement of a business case.
- 2.59 Devolution of the AEB and associated functions will enable the EMCCA, working with partners, to make allocations to providers and target spend to tackle the needs of people, businesses and our communities – consistent with statutory entitlements. This will support all types of businesses, including small and medium enterprises (SMEs), to stimulate productivity create new local jobs, whilst simultaneously benefiting the regional economy. It is understood that the Government will set proportionate requirements about outcome information to be collected, in order to enable local discretion about when funds are to be targeted, whilst also allowing students to make informed choices about the courses they wish to undertake.
- 2.60 The EMCCA is also expected to take responsibility for the regional design and delivery of the Free Courses for Jobs (FCFJ) programme, with a value of approximately £24m per year. The programme is focussed on people without a level 3 qualification who earn below the National Minimum Wage annually. Managing the FCFJ alongside AEB will enable EMCCA to take a strategically aligned approach in commissioning appropriate skills provision across the region.

2.61 The work of the D2N2 LEP People & Skills Advisory Board provides a foundation for future thinking about how the skills system should operate in the region, and will feed into further work to build on the evidence base and development of future EMCCA strategies and policies.

### *Business and innovation*

2.62 Devolution provides the opportunity for the EMCCA to develop a strategic approach to enabling business growth across the region. A focus on digital connectivity and supporting region-wide innovation will enable increased productivity of both individual businesses and the sector as a whole. Working in partnership, EMCCA will be able to develop an aligned approach to inward investment, presenting a unified prospect to potential investors. As the region evolves towards a clean energy production future over the next 10-20 years, there will be significant opportunities for innovation growth in the advanced engineering and energy technology clusters. This will drive the need to evolve and grow the wider business supply chain and support SMEs. Accessing skills learning and development through our learning providers will help to support local businesses innovate product development and generate access to high value jobs.

### EMCCA Operating Model

2.63 The operating structure of the EMCCA will be designed in way that maximises the opportunities presented by devolution, the added value of its investment and commissioning, and in a way that delivers value for money for taxpayers. Detailed work is underway to define its operating model and put the new organisation in place, subject to the passing and coming into force of the Regulations. This work aims to enable the new institution to deliver significant new functions and investment in its first year of operations, with the capacity to exploit new opportunities and the potential to scale up at speed. The costs of any operating structure are to be met by the EMCCA.

2.64 Whilst the governance model for EMCCA as a Combined County Authority will be implemented in the region for the first time in the country, the combined authority model is well understood and has been used for years in places including Greater Manchester and the West Midlands. The programme is drawing on lessons learned from others' experiences, so that the EMCCA is rightly sized for its remit and context.



- 2.65 A programme team working across the four Constituent Councils will continue to support the work that paves the way for EMCCA being fully established in May 2024. Nottinghamshire County Council is hosting new appointments to the programme and Derbyshire County Council is acting as the Accountable Body. The programme is funded by government capacity funding.
- 2.66 In line with Government policy, the deal confirmed the D2N2 Local Enterprise Partnership will be integrated into the EMCCA once established. Government has confirmed some revenue funding will be provided to the EMCCA in 2024/25 to support the delivery of functions currently delivered by the LEP. Subject to the completion of due diligence and agreement by Constituent Councils and the Government of the Integration Plan in early 2024, the integration of appropriate LEP functions into EMCCA should proceed in a timely manner so that it is complete as early as possible in 2024/25, to provide certainty to business and its current staff.

### **Governance of the EMCCA**

- 2.67 The LURA sets out general provisions which apply to all combined county authorities and the Regulations set out the governance arrangements for the EMCCA, comprising up to 17 members in total as follows:
- (a) The directly elected Mayor;
  - (b) 8 Constituent Members (each Constituent Council appointing 2 members);
  - (c) No more than 8 non-constituent members and associate members in total.

The Mayor is required to appoint one of the members of the EMCCA from the Constituent Councils as a deputy mayor.

- 2.68 As set out in the Proposal, 4 non-constituent members will represent the District and Borough Councils within the Area (2 Non-Constituent Members nominated by Derbyshire District and Borough Councils and 2 Non-Constituent Members nominated by Nottinghamshire District and Borough Councils) and an associate Member will represent the business voice. It will be for the EMCCA to determine whether the remaining three additional Memberships will be used, and if so, what interests those Memberships should seek to represent on the EMCCA. These arrangements are not specified in the Regulations as the appointment of non-constituent and associate members is a matter for the EMCCA.

- 2.69 The Proposal also provided that the nomination of non-constituent members of the EMCCA appointed by Districts and Boroughs will be via two joint committees (one for Derbyshire and one for Nottinghamshire). These non-constituent members will sit on the EMCCA board as representatives of all Districts and Boroughs and not solely of the District or Borough for which they are a Councillor.
- 2.70 Prior to establishment of the EMCCA, the two existing joint committees have been asked to nominate two representatives to the shadow authority together with two substitutes on an informal basis. This is so that the composition of the shadow authority can mirror, as closely as possible, the EMCCA.
- 2.71 Following establishment of the EMCCA, decisions of the EMCCA will be required to formalise the arrangements. The following steps will need to be taken:
- a. The new joint committee across Derby and Derbyshire to replace Vision Derbyshire Joint Committee and the D2 Economic Prosperity Joint Committee, the Strategic Leadership Board, will need to be established.
  - b. Following the establishment of the EMCCA, it needs to formally designate the D2 Strategic Leadership Board and the City of Nottingham and Nottinghamshire Economic Prosperity Committee as nominating bodies.
  - c. Each joint committee must consent to the designation as a nominating body.
  - d. The terms of reference of the 2 joint committees will need to be amended to include the function of nominating non-constituent representatives to the EMCCA and other associated committee/advisory group representatives as and when requested.
- 2.72 The voice of business will be a critical component in the future EMCCA, given that a key area of focus will be economy, industry, and business. The EMCCA will appoint an Associate Member to the CCA who can represent the views of business moving forward and establish a business-focused Advisory Board, which will be inclusive of the diverse range of businesses operating in the area. This includes SMEs within both urban and rural localities, and from all parts of the region. Whilst the Advisory Board would not be a formal committee of the EMCCA, it is intended it would be part of the formal governance arrangements and would exist to provide advice to the EMCCA on all issues of business and economy relevant to the EMCCA. The EMCCA would then appoint the Chair of that Advisory Group to the EMCCA as an Associate

Member, representing the views of business. There is also consideration of if and how business, Higher Education, Further Education and third sector partners could also sit on other boards and groups within the proposed CCA governance structure. This is to be defined in the detail of the EMCCA's governance and constitution once established but is not required for consent to the Regulations.

- 2.73 The LURA requires the EMCCA to have at least one Overview and Scrutiny Committee whose role will be to review and scrutinise the decision-making of the EMCCA and the Mayor, to ensure that the decision-making is appropriately focussed on community needs, and that high quality delivery is taking place for the benefit of the Area. It will also have an Audit and Governance Committee to review and assess the authority in the areas of corporate governance, risk management, internal controls, external audit, internal audit, financial reporting, and other related areas to ensure that the financial and governance decision-making position of the EMCCA, and the Mayor is sound. It will also review and assess the economy, efficiency and effectiveness with which resources have been used in discharging the EMCCA's functions. In addition, key statutory officer roles will include a Head of Paid Service (usually called a Chief Executive Officer); a Section 73 Officer (Finance Director) and a Monitoring Officer. Details will be included in the EMCCA's governance and constitution in due course but are not required for consent to the Regulations.
- 2.74 Whilst there is limited reference to overview and scrutiny within the Regulations, Schedule 1 of the LURA does contain provisions relevant to overview and scrutiny and audit committees of CCAs. In addition, new overview and scrutiny and audit regulations are anticipated for combined county authorities, which it is anticipated will provide for the inclusion for CCAs within the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

#### Decision-taking post establishment of the EMCCA and pre-mayoral election

- 2.75 Following the establishment of the EMCCA, there will be a period of time during which the EMCCA will be operational, but a mayoral election will not yet have taken place. During this period, the EMCCA will operate without a Mayor.
- 2.76 In such circumstances section 29(6) of the LURA would apply. It provides that if for any reason the mayor is unable to act or the office of mayor is vacant, the other members of the CCA must act together in place of the mayor, taking decisions by a simple majority. It is

envisaged that, chairing of meetings will be rotated during this phase and there will be no casting vote.

### Assurance Framework

- 2.77 As set out in the Devolution Deal, paragraph 12, the Constituent Councils committed to developing a Constitution and Assurance Framework to confirm, clarify and formalise the intention of institutions and local leaders to continue to be transparent and accountable, work closely with local businesses, seek the best value for taxpayers' money and maintain strong ethical standards.
- 2.78 The Constitution has not yet been drafted, but the Assurance Framework was submitted to Government by the Constituent Councils on 31 October 2023, and it is only once this is confirmed, and the Regulations are made to establish the EMCCA, that it will have access to the Investment Fund.

### **3. Consultation**

- 3.1 As set out in the previous report to Council, it was not necessary for the Council to wait for the Bill to receive Royal Assent prior to commencing consultation; section 45(5) of the Act confirms that consultation requirements may be satisfied by things done before that section comes into force.
- 3.2 On receipt of the final Proposal submitted by the Constituent Councils to Government, it is a matter for the Secretary of State to consider whether further consultation is necessary or whether to proceed to make Regulations formally establishing the EMCCA. The Secretary of State has not stated that further consultation is required. The formal consent to the making of the Regulations will be required from the Constituent Councils which is the subject of this report.

### **4. Alternative Options Considered**

- 4.1 Not to consent to the making of the East Midlands Combined County Authority Regulations 2023. This is not recommended as the process would end, the East Midlands Combined County Authority could not be established, and no powers or funding would be devolved. In order to allow for the maximum amount of devolved powers and funding (a "Level 3" deal), the Government's policy requires that a Mayoral Combined County Authority must be established in the area.

### **5. Implications**

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

## **6. Background Papers**

6.1 Devolution Deal: Consideration of Consultation Responses and Submission of the East Midlands Combined County Authority Proposal to Government, Council Report 22 March 2023

## **7. Appendices**

7.1 Appendix 1 – Implications

7.2 Appendix 2 – Draft of the proposed East Midlands Combined County Authority Regulations 2023

7.3 Appendix 3 - Differences to note between powers listed in proposal and the draft East Midlands Combined County Authority Regulations 2023

## **8. Recommendation(s)**

That Council:

- a) Agrees to the creation of the East Midlands Combined County Authority with the Council as a constituent member
- b) Consents to the making of the East Midlands Combined County Authority Regulations 2023 as required by section 46(1)(d) of the Levelling Up and Regeneration Act 2023
- c) Delegates authority to the Managing Director to approve any technical amendments to the East Midlands Combined County Authority Regulations 2023, which the Chief Executives of the other three Councils also agree to, on behalf of Derbyshire County Council. This delegation is to be exercised in consultation with the Leader of the Council; and,
- d) Approves the appointment of Melbourne Barrett, Returning Officer of Nottingham City Council as the first combined county authority returning officer for the proposed East Midlands Combined County Authority, subject to the passing of the amendments to article 6A(1) of the Combined Authorities (Mayoral Elections) Order 2017 as applied by article 12 of the Combined Authorities (Mayoral Elections) Order 2017 (Amendment) Regulations 2023.

## **9. Reasons for Recommendation(s)**

- 9.1 The creation of a new mayoral combined county authority for the East Midlands would unlock the benefits of the agreed East Midlands devolution deal including a range of new powers and funding as set out in this report. Constituent councils are required to consent to the making of the Regulations before Government can progress the legislation any further.
- 9.2 A delegation is sought to enable any necessary technical amendments to be made to the Regulations and avoid any delay in them being laid.
- 9.3 The Constituent Councils need to make appropriate preparations for the Mayoral election on 2 May 2024 and appoint the Combined County Authority Returning Officer (CCARO).

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## Implications

### Financial

- 1.1 The devolution deal confirms that the costs of establishing the EMCCA will be met from its overall resources. For 2023/24, the government has committed £0.5m in mayoral capacity, £0.5m in transport capacity, £0.459m for housing development, and £0.245m of adult education implementation funding. Unless additional resources are allocated in this financial year, costs incurred over these grants are subject to a four-way risk share agreement, but it is not anticipated that this will be used.
- 1.2 The Regulations provides for the cost of the EMCCA once established to be met from the general resources available to it. There is no separate funding for the cost of combined authorities provided by Government, other than the provision of mayoral capacity funding (confirmed in 2024/25 but thereafter subject to spending reviews) and the ability to utilise supporting revenue funding alongside capital allocations for core operational costs. The Regulations, therefore, provides that the Constituent Councils must meet any reasonably incurred costs of the EMCCA. In practice, however, and other than the funding arrangements for the transport levy (described below), the vast majority of the costs for running EMCCA are to be met from grant funding and associated revenue or capacity funding. This is the experience of MCAs in other areas and is what is currently expected for the EMCCA. However, Full Council are requested to note the above theoretical funding risk.
- 1.3 If in future a mayoral precept is applied, it will result in an additional cost to the council taxpayer.
- 1.4 There are no planned additional contributions to be made to the EMCCA in 2024/25 (or future years) from the Constituent Councils. Where funding lines are transferred to the EMCCA this will be done on a 'no net costs' basis and confirmed each year as part of the Council's usual budget setting process. Should another decision on funding be considered that would be in addition to this 'no net cost' principle, for example a contribution of all or some of the Constituent Councils for a particular project or investment, this would require a further decision of the Council.
- 1.5 The Regulations provide for a transport levy. It is normal practice for combined authorities like EMCCA to be provided with a legal power

(under section 74 of the Transport Levying Bodies Regulations 1992) to issue a levy from their members to meet the costs of carrying out their transport functions that are provided on behalf of the region and to improve joint working between those local authorities. The implementation of any levy for the 2024/25 financial year and subsequent years will be set out in the Transport Transition Plan to be agreed between the Constituent Councils. The levy will be issued to the Constituent Councils. The level of the levy will be for the EMCCA to determine and will be apportioned to the Constituent Councils as agreed; should they not agree, the proportions are provided for in legislation as namely by reference to the council tax base for the financial year in which the levy is issued. By design, the levy shall be no more than the cost of the functions to be transferred to the EMCCA. The levy will not include a contribution to the general cost of running EMCCA, because it is intended for funding of transport services that are currently delivered by the Constituent Councils. The Constituent Councils will need to determine how to fund the levy as part of their budget process – it can be funded from Council Tax, use of Government grants, or other sources.

- 1.6 In line with Local Authorities, EMCCA will be required to set a balanced budget annually which will be approved by the agreed governance process including representatives of the four Constituent Councils. Should EMCCA require further funding beyond the agreed budget levels, additional funding will be split as agreed between the four Constituent Councils and in the absence of agreement, in equal shares.
- 1.7 The costs of running a mayoral election are to be met by the EMCCA. The cost of the inaugural mayoral election is provisionally estimated to be between £3-4 million. Wherever possible, efficiencies will be delivered through sharing infrastructure with Police and Crime Commissioner elections happening on the same day. The operational costs of the mayoral election will not fall to the Constituent Councils, as it has been agreed with government that funding for set up the new combined county authority and the early release of investment funds in 2023/24 can be used for this purpose. Anticipated amendments to the Combined Authority (Mayoral Elections) Order 2017 make provision for expenditure properly incurred by a CCARO in relation to the holding of a mayoral election to be paid by the constituent councils, should this be necessary, and subsequently recovered from the CCA when established.

## **Legal**



- 2.1 The Levelling Up and Regeneration Act 2023, which received royal assent on 26 October 2023, establishes a new type of combined county authority. This is distinct from a combined authority that can be created under the Local Democracy, Economic Development and Construction Act 2009.
- 2.2 Whilst the Constituent Councils agreed a devolution deal with Government, the creation of a new East Midlands Combined County Authority is subject to the approval of the East Midlands Combined County Authority Regulations 2023. Consent must be given by all four Constituent Councils to the making of the Regulations. In the event that all four Constituent Councils do not consent to the Regulations as provided by the Secretary of State, the process would end.
- 2.3 The Act sets out a governance framework for membership of combined county authorities (constituent, non-constituent, and associate members) and provides powers to the Secretary of State to make regulations setting out the constitutional arrangements of the EMCCA. These are described in the body of the report.
- 2.4 Following approval of the Regulations, work will need be undertaken at the earliest available opportunity to understand and assess what data needs to be shared between the parties to establish the new authority, in order to ensure compliance during the period of development, establishment and transition. Processes and appropriate documentation will need to be in place for the transfer of staff data as part of the initial set-up. It is for the EMCCA to consider appointment of its own Data Protection Officer but in advance of that the work on establishing the EMCCA will need to allocate responsibilities to an appropriate officer to facilitate relevant documentation to be prepared in advance of services going live.

## **Human Resources**

- 3.1 At this stage of the development of the EMCCA there are no direct HR implications arising from this report. Any future HR impacts will be managed in accordance with established HR policies and procedures at each of the affected Councils and at the Local Enterprise Partnership. Current and future activity includes appropriate internal communication and engagement activity and where required formal consultation if there are TUPE (Transfers of Undertakings (Protection of Employment) Regulations) implications.
- 3.2 Nottinghamshire County Council has taken on the role of the appointing body for the short-term contracts for the interim senior team and for the

appointments to enable the CCA to prepare for taking on Adult Education Budget responsibilities in 2025. The latter appointments are expected to transfer to the EMCCA once established whilst the interim team contracts were short term, pending permanent appointments to be made by the EMCCA once established. All interims who are currently in place to make preparations for the shadow authority and EMCCA, are contracted directly with Nottinghamshire County Council's recruitment partner Tile Hill. Their contractual position will remain as such while the preparations continue. When the EMCCA becomes a legal entity, structures and roles will be created within that body and appointed to following standard recruitment policies and processes.

## **Information Technology**

- 4.1 There are no direct Information Technology implications resulting from the Council consenting to the creation of the East Midlands Combined County Authority, with the Council as a constituent member.

## **Equalities Impact**

- 5.1 In coming to a decision, the Council should also have regard to the Public Sector Equality Duty (PSED) under the Equality Act 2010. The PSED requires public authorities to have "due regard" to:
- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 (section 149(1a)).
  - The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1b)). This involves having due regard to the need to:
    - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic (section 149(3)(a));
    - or take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(3)(b)); and
    - or encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low (section 149(3)(c)).
- 5.2 An Equality Impact Assessment (EIA) was completed on the final Proposal approved by the Council on 22 March 2023 [here](#). The EIA examined the possible equalities impacts arising from the Proposal. The EIA recognised that the Proposal has the potential to provide significant

benefits to all communities, but specifically for people from the protected characteristic groups and deprived communities.

- 5.3 In proceeding with the next stage of the process to establish the EMCCA a key consideration is that the new EMCCA will become subject to the Public Sector Equality Duty under the Equality Act 2010 this will require the EMCCA to set equality objectives, publish annual equalities information and have due regard for equality matters when carrying out its functions, making decisions and delivering projects and programmes.
- 5.4 The EIA action plan set out that the EMCCA should give early thought to how it can begin to meet these and other duties, especially as it further develops its priorities, becomes established and finalises its workstreams and Board composition.
- 5.5 As the Regulations is an enabling piece of legislation and therefore does not significantly change the Proposal it is not considered necessary, at this stage, to either amend the existing EIA or carry out further Equality Analysis as the Action Plan and resulting mitigations remain unaltered.

### **Corporate objectives and priorities for change**

- 6.1 “Work with partners and central government to deliver an East Midlands Combined County Authority and devolution deal to create jobs opportunities for training, improve the local economy, transport, and housing, and accelerate our route to reduce emissions to net” is a key action included in the Council Plan Refresh 2023-25. Securing a Deal is vital in ensuring that much needed and long-awaited investment is available in Derbyshire to secure better outcome for local people and communities.

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

#### Environmental Sustainability

- 7.1 The decisions set out in the report to create the EMCCA and approve the Regulations will not directly affect carbon emissions in a material way. The EMCCA will develop its own plans and strategies to reduce carbon emissions which will be subject to its own approval processes and approaching the issues from a wider strategic and geographic position may beneficially impact the development of more consistent

and measurable carbon reduction measures. Climate and sustainability impact will be considered as part of specific proposals.

## Risk Management

- 7.2 The creation of the EMCCA is dependent on the laying and passage of the Regulations, passage of which is not subject to the control of the Constituent Councils. The Combined Authorities (Mayoral Elections) Order 2017 (Amendment) Regulations 2023 (the Elections Regulations) are proposed to be laid and come into force prior to the coming into force of the Regulations. A delay in these Regulations coming into force during February/March 2024 could prevent the EMCCA coming into existence in February/March and prevent the holding of the Mayoral election on 2 May 2024. Holding a Mayoral election at another time would mean increased costs for the Constituent Councils/EMCCA.
- 7.3 For the EMCCA to be established, all four Constituent Councils must consent to the making of the Regulations at each Full Council. Should one or more of the Constituent Councils not consent, the process would end, the Combined County Authority could not be established, and no powers or funding would be devolved. Each Constituent Council will weigh this decision and come to its own formal conclusion. Senior officers and lead Members have worked closely with their counterparts from the other Constituent Councils on the development of the Devolution Deal and the plans for the EMCCA. That process has included the drafting of this report to ensure parity in decision-making.
- 7.4 If the EMCCA does not come into existence as planned, there may either be a delay, a reduction or a prevention of the benefits that devolution to the area would bring. To mitigate this, and subject to the Constituent Councils' consent to the Regulations, the current transitional phase will move into an explicit phase of operating as a Shadow Authority to support a smooth transition to the fully established EMCCA. The Shadow Authority will oversee the planning and implementation of establishing the EMCCA. It will continue to operate as currently: collaboratively from within the Constituent Councils and in an advisory capacity until the EMCCA can be formally established in early 2024.
- 7.5 Potential financial risks are set out in the "Financial Implications" section of this report.

## Community Safety

- 7.6 The Constituent Councils are committed to close working with the Police and Crime Commissioners to ensure that there is no overlap, or additional bureaucracy added from the creation of the proposed EMCAA. The intention is for the CCA and the Area's Police and Crime Commissioners generally; and particularly, to develop productive and joint working on public safety; and to agree a protocol for working together.

### Health and Wellbeing

- 7.7 The proposed EMCCA will work closely with the NHS. The EMCCA will complement and support actions already being taken by Constituent Councils to improve people's health and well-being across the Area, using powers under the NHS Act 2006. The EMCCA will ensure that improving and protecting the public's health is a central consideration in everything it does, including in environmental considerations, planning, regeneration and transport activity.