

Report of the Director of City Development

Report to: Executive Board

Date: 18 October 2017

Subject: TRANSPORT FOR THE NORTH REGULATIONS: INCORPORATION AS A SUB-NATIONAL TRANSPORT BODY

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):	All Wards	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. To address concerns about transport connectivity across the North, Local Transport Authorities and Local Enterprise Partnerships across the North of England came together in 2014 in partnership with the Department for Transport and the National Transport Agencies to form Transport for the North (TfN). Together they have developed an ambitious pan-northern transport strategy to drive economic growth in the North.
2. In October 2016 with the agreement of 19 designated Constituent Authorities (including the West Yorkshire Combined Authority) Transport for the North submitted a proposal to the Secretary of State for Transport that TfN should be established as the first Sub-National Transport Body (STB) under the provisions of section 102E of the Local Transport Act 2008 as amended by the Cities and Local Government Devolution Act 2016.
3. Regulations have now been drafted, which once they are passed will confer on TfN the majority of the functions and powers requested in the Proposal. Before the Secretary of State can make the Regulations he must obtain consent to the making of the Regulations from each of the 19 Constituent Authorities and also consent to the granting of concurrent highway powers from each of the Highway Authorities within TfN's area. This includes Leeds City Council as a highway authority within the area of West Yorkshire.

Recommendations

4. Executive Board is requested to:

- i) formally consent under section 102J of the Local Transport Act 2008 to the making by the Secretary of State of Regulations to establish Transport for the North as a Sub-National Transport Body and giving TfN concurrent highway powers with Leeds City Council as the local highway authority;
- ii) declare that the decisions made in respect of this report be exempted from the Call In process, for the reasons as detailed within section 4.6.1 the 'Legal Implications, Access to Information and Call In'; and
- iii) instruct the City Solicitor to notify the Department for Transport of the decision.

1 Purpose of this report

- 1.1 The purpose of this report is for the Council as Local Highway Authority to consent to the making of Regulations by the Secretary of State to establish Transport for the North (TfN) as a Sub –National Transport Body under section 102J of the Local Transport Act 2008.
- 1.2 The consent of each Highway Authority within the area of each Combined Authority which is a Constituent Authority of TfN is required to the making of Regulations by the Secretary of State because the Regulations contain provisions giving TfN highway powers to be exercised concurrently with the Local Highway Authorities.

2 Background information

- 2.1 To address concerns about transport connectivity across the North, Local Transport Authorities and Local Enterprise Partnerships across the North of England came together in 2014 in partnership with the Department for Transport and the National Transport Agencies to form Transport for the North (TfN). Together they have developed an ambitious pan-northern transport strategy to drive economic growth in the North. The purpose of TfN is to transform the transport system of the North of England and the aim of TfN is to plan and deliver the improvements needed to truly connect the region with fast, frequent and reliable transport links, driving economic growth and creating a Northern Powerhouse.
- 2.2 Getting transport right is central to achieving the Northern Powerhouse ambition which is itself central to a successful UK industrial strategy. A world class transport system linking towns and cities across the North will create a unified economic area, attracting new business, improving productivity in the North and thereby rebalancing the UK economy.
- 2.3 There has been long term underperformance of the Northern economy when compared with other parts of the UK. There is a significant economic performance gap between the North and the rest of the UK economy – a difference in income of £4,800 per person in 2014, compared with the national average, and £22,500 compared with London¹. Having been on a downward trend since the early 2000s, the gap has widened since the 2008/09 recession.
- 2.4 Productivity accounts for the largest proportion of the ‘performance gap’, driven by underdeveloped skills base, under-investment by the private sector and low enterprise rates. This has worsened since the recession, in part due to out-migration of skilled workers to the southern regions where employment prospects are better.
- 2.5 Poor connectivity is central to understanding the economic challenges of the North. There is disproportionately low investment in the North compared with London and other city regions across Europe. A series of studies have shown how investing in transport infrastructure can unlock the economic potential of the North².

- 2.6 The Independent Economic Review of the Northern Powerhouse shows the scale of the benefits to the UK of closing the productivity gap. Advances in productivity, driven by key sectors of digital technologies, health innovation energy and advanced manufacturing have the potential to transform the North of England's economy adding £97 billion and 850,000 jobs by 2050.
- 2.7 The North has had no way of agreeing strategic priorities, with the responsibility for transport divided over many organisations at different geographical levels. This has made it hard to properly consider and prioritise the right strategic transport interventions to transform economic growth at the regional scale. As a result, the North has been unable to speak with one clearly evidenced voice to Government on its transport priorities in Spending Rounds or rail and road investment plans.
- 2.8 The ambition of TfN over time is to achieve significant devolution of transport responsibilities for the North of England and specifically to:
- a) Develop and deliver a multi-modal, integrated strategic transport plan that drives transformational economic growth in the North;
 - b) Set the strategic outcomes, outputs and priorities for the North of England's rail infrastructure and strategic road network; and
 - c) Determine specifications and contracts for future rail service franchises in the North of England.
- 2.9 In October 2016 with the agreement of the Constituent Authorities set out below TfN submitted a proposal to the Secretary of State for Transport that TfN should be established as the first Sub-National Transport Body (STB) under the provisions of section 102E of the Local Transport Act 2008 as amended by the Cities and Local Government Devolution Act 2016.

- 2.10 The 19 Constituent Authorities of TfN are:

Greater Manchester Combined Authority
Liverpool City Region Combined Authority
The Durham, Gateshead, Newcastle on Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority
Sheffield City Region Combined Authority
Tees Valley Combined Authority
West Yorkshire Combined Authority
Cumbria County Council
Lancashire County Council
North Yorkshire County Council
Blackburn with Darwen Borough Council
Blackpool Borough Council
Cheshire East Council
Cheshire West and Chester Council
Warrington Borough Council
The Council of the City of York
The East Riding of Yorkshire Council
Kingston upon Hull City Council
North Lincolnshire Borough Council
North East Lincolnshire Council

2.11 The Proposal submitted by the Constituent Authorities requested the following powers and functions:

- a) To prepare a Transport Strategy for the Combined Area in accordance with section 102I of the Local Transport Act 2008;
- b) To provide advice to the Secretary of State about the exercise of the transport functions in the Combined Area;
- c) To be a Statutory Partner with the Secretary of State in both road and rail investment processes and to be responsible for setting the objectives and priorities for strategic road and rail investments in the Combined Area;
- d) To be consulted in relation to rail franchise agreements for services to and from or within its area;
- e) To co-manage with the Secretary of State the TransPennine Express and Northern Rail Franchises;
- f) To co-ordinate the carrying out of specified transport functions that are exercisable by its different Constituent Authorities with a view to improving the effectiveness and efficiency of the carrying out of those functions;
- g) To promote and co-ordinate road transport schemes;
- h) To make proposals to the Secretary of State for the transfer of transport functions to TfN;
- i) To make other proposals to the Secretary of State about the role and functions of TfN;
- j) To undertake Smart Ticketing within the Combined Area;
- k) To promote and oppose local or personal bills in Parliament;
- l) To pay Capital Grants to support the funding and delivery of joint projects;
- m) To exercise powers to construct highways and to acquire land for that purpose under section 8(1), 24 and 239 of the Highways Act 1980 concurrently with local Highway Authorities

2.12 In carrying out these functions TfN will act as a Statutory Partner with the Secretary of State and will take devolved responsibilities from the Secretary of State. It will exercise a co-ordinating role in relation to specified transport functions.

2.13 The Proposal also contained the following key provisions:

- a) All Constituent Authorities will be entitled to appoint a representative to TfN, such representative to normally be the Elected Mayor, Chair, Leader or Member with delegated responsibility for transport;
- b) Decisions will be expected to be unanimous but where voting is required votes will be weighted in accordance with the populations of the Constituent Authorities;
- c) Decisions in relation to the Budget, the adoption of a Transport Strategy and the Constitution will require a Super Majority;
- d) Funding will be provided by the Secretary of State and no decision to require financial contributions from Constituent Authorities can be made without the agreement of each Authority;
- e) There will be appropriate mechanisms for Scrutiny of TfN's decisions;
- f) Rail North Limited will be wholly owned by TfN;

- g) A wider Partnership Board including representatives of government bodies and the LEPs will be set up to inform TfN's decision making.

3.0 Main Issues

- 3.1 Regulations have now been drafted which once they are passed will confer on TfN the majority of the functions and powers requested in the Proposal. Before the Secretary of State can make the Regulations he must obtain consent to the making of the Regulations from each of the 19 Constituent Authorities and also consent to the granting of concurrent highway powers from each of the Highway Authorities within TfN's area. The Authorities which are County Councils or Unitary Authorities are Highway Authorities but the Combined Authorities are not and in these areas the individual Highway Authorities are being asked to give their consent to the granting of highway powers within the Regulations.
- 3.2 The highway powers which are contained in the Regulations are firstly the following powers of the Secretary of State in relation to the construction of trunk roads which may be delegated down to TfN:
- 3.2.1 Section 6(5) Highways Act 1980 (power to enter into agreements for works relating to trunk roads).
- 3.2.2 Sections 105A – 105C Highways Act 1980 (functions relating to environmental impact assessments).
- 3.2.3 Sections 239 to 240 and 246 Highways Act 1980 (powers to acquire land in connection with highways).
- 3.2.4 Section 250 Highways Act 1980 (powers relating to the acquisition of powers over land).
- 3.3 Secondly, and pertinent to Leeds City Council and the subject of this report, the following powers under the Highways Act 1980 are conferred on TfN concurrently with the local Highway Authority.
- a) Section 8(1) (power to enter agreements with local highways authorities etc for doing certain works)
 - b) section 24(2) (power of local highway authority to construct new highways)
 - c) section 25(i) (powers to enter into agreement for creation of footpath etc)
 - d) section 26 (i) (compulsory powers for creation of footpaths etc)
 - e) various functions in sections 239, 240, 246 and 250 relating to the acquisition of land for highway purposes
- 3.4 Importantly Regulations 14 and 15 taken together provide that TfN will not be able to exercise any of the highway powers which they hold concurrently with the Highway Authorities unless the manner in which it proposes to exercise the function has been approved by each of the Highway Authorities through whose area the highway will pass.
- 3.5 There is no intention that TfN will itself become a Highway Authority and as set out above the Regulations make it clear that before these powers may be exercised TfN

will need to obtain the express consent of the relevant Highway Authority to the manner in which the powers would be exercised. These powers would therefore only be exercised in circumstances where all the local Highway Authorities consider that there would be a benefit in TfN carrying out the work.

- 3.6 It is intended that before TfN exercises any transport powers or functions it holds concurrently with any of the Constituent Authorities or Highways Authorities within the TfN area, TfN will enter into a written Protocol with the Constituent Authorities or the local Highway Authorities covering the way in which the functions will be exercised.
- 3.7 TfN will participate in the Highways North Board which will consist of the Members of TfN along with representatives of the Department for Transport and Highways England. The role of the Board will be to make recommendations in respect of the future Roads Investment Strategy and competitive major roads funding programmes.
- 3.8 Following the submission of the statutory proposal and engagement with the named constituent authorities, including the West Yorkshire Combined Authority, the Department for Transport has now confirmed that before the Secretary of State may make these Regulations each of the Highway Authorities within the areas of the Combined Authorities which are Constituent Authorities must consent to the making of the Regulations to enable the relevant highway authority functions to be included in the Regulation pursuant to S.102J Local Transport Act 2008.
- 3.9 At the present time TfN's forward programmes are in the early stages of development and as such there are no active projects in which the exercise of the proposed highway powers has been proposed in Leeds.

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Executive Member for Regeneration, Transport and Planning has been consulted and is supportive of the recommendation to support the proposed regulations to create Transport for the North contained in this report.
- 4.1.2 In formulating the proposal to create Transport for the North as Sub-National Transport Body the 19 Constituent Authorities have consulted with their local highway authorities. As a Member of the West Yorkshire Combined Authority, Leeds City Council has given in principle support to this proposal.
- 4.1.3 The Secretary of State has now formally responded to the Proposal and has indicated that he is minded to make Regulations creating TfN as the first Sub-National Transport Body with the following functions:
 - a) The preparation of a Northern Transport Strategy;
 - b) The provision of advice on the North's priorities, as a Statutory Partner in the Department's investment processes;
 - c) The coordination of regional transport activities, (such as smart ticketing), and the co-management of the TransPennine Express and Northern rail franchises through the acquisition of Rail North Ltd.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An EDCI is not required for this proposal which relates to consent to the making of Government regulations.

4.3 Council Policies and Best Council Plan

4.3.1 The creation of Transport for the North as a statutory body will complement and support the Council's wider objectives for the economy and transport in the city by providing a more effective and fit for purpose strategic body to lead and co-ordinate the planning and delivery of key pan-Northern and supra-regional transport strategy and investments.

4.4 Resources and value for money

4.4.1 This report does not have any specific resources and value for money implications.

4.5 Capital Funding and Cash Flow

4.5.1 There are no financial implications arising from this report.

4.6 Legal Implications, Access to Information and Call In

4.6.1 The decision requested in this report constitutes a key decision and should therefore be eligible for call-in. However, the Department of Transport (DfT) only confirmed on 21 September that the constituent highway authorities within those areas covered by a Combined Authority must also give their prior consent to the making of the regulations, as described in section 3.8. Furthermore DfT has requested that authorities confirm their decisions no later than the 20 October 2017. It is therefore proposed that in accordance with Executive and Decision Making procedure rule 5.1.3, the decisions within this report be exempt from call in order to comply with the government's request. The implication of not exempting this decision from call-in is that delayed response by the Council could prejudice the making of the Regulations and this the process for designating TfN as a statutory body.

4.6.2 As the report indicates the proposed Regulations will not make Transport for the North a highway authority. They will instead grant concurrent highway authority functions to TfN which can only be exercised in accordance with the procedure outlined at paragraph 3.4.

4.7 Risk Management

4.7.1 The proposals as detailed in this report are considered to provide appropriate safeguards regarding the exercise of concurrent highway powers by TfN in the Leeds District as provided by the consultation provisions with the proposed regulations.

4.7.2 It is understood that the legislative timetable requires the making of the proposed regulations before the end of 2017. The City Council as a local highway authority within the area defined for TfN has been requested to confirm its response to the Department for Transport as soon as possible and no later than the 20 October.

As a result this report has requested an exemption from the Council's Call-in process in order to allow compliance with the DfT's request.

- 4.7.3 Failure to proceed with the establishment of TfN as a statutory body could prejudice the timing and delivery of the strategic transport plans for the North, which are expected to form a key part of the future transport infrastructure of the city, as reflected in the Council's corporate risks for 'Keeping the City Moving' and 'Long Term Transport Vision'.

5 Conclusion

- 5.1 The City Council as a member of the West Yorkshire Combined Authority and the Transport for the North Board has given its support to the principle of establishing TfN as a statutory body. The proposed regulations provide for this and the future role of TfN as a promoter of strategic schemes across the North's transport system.
- 5.2 It is not the intention that TfN should become a highway authority and insofar as granting concurrent highway authority powers the purpose is to enable TfN to undertake its proposed strategic role as developer and promoter of agreed key strategic transport investments including major highways. The powers will therefore only be exercised in consultation and with the agreement of the local highway authority.

6 Recommendations

- 6.1 Executive Board is requested to:
- i) formally consent under section 102J of the Local Transport Act 2008 to the making by the Secretary of State of Regulations to establish Transport for the North as a Sub-National Transport Body and giving TfN concurrent highway powers with Leeds City Council as the local highway authority;
 - ii) declare that the decisions made in respect of this report be exempted from the Call In process, for the reasons as detailed within section 4.6.1 the 'Legal Implications, Access to Information and Call In'; and
 - iii) instruct the City Solicitor to notify the Department for Transport of the decision.

7 Background documents ¹

- 7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.
