

# REPORT FOR DECISION



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| <b>DECISION OF:</b>   | <b>CABINET</b>  |
| <b>DATE:</b>  | <b>18<sup>TH</sup> OCTOBER 2017</b>   |
| <b>SUBJECT:</b>   | <b>TRANSPORT FOR THE NORTH: INCORPORATION AS A SUB-NATIONAL TRANSPORT BODY</b>  |
| <b>REPORT FROM:</b>   | <b>The Leader</b>   |
| <b>CONTACT OFFICER:</b>   | <b>JAYNE HAMMOND – ASSISTANT DIRECTOR – LEGAL AND DEMOCRATIC SERVICES</b>   |
| <b>TYPE OF DECISION:</b>  | <b>KEY DECISION</b>   |
| <b>FREEDOM OF INFORMATION/STATUS:</b>                                 | This paper is within the public domain  |
| <b>SUMMARY:</b>   | <p>Transport for the North (TfN) is an evolving partnership of Local Transport Authorities and Local Enterprise Partnerships across the North of England acting collectively and working with the Government, Highways England, HS2 and Network Rail to develop a Northern Transport Strategy.</p> <p>The purpose of the report is for the Cabinet to consent to the making of Regulations by the Secretary of State to establish TfN as a Sub-Regional Transport Body under Section 102(E) of the Local Transport Act 2008. The consent of each constituent authority is required.</p> |
| <b>OPTIONS &amp; RECOMMENDED OPTION</b>                               | <p>That Cabinet approves:</p> <p>(i) The making by the Secretary of State of Regulations under Section 102(E) of the Local Transport Act 2008 to establish Transport for the North as a Sub-National Transport Body;</p> <p>(ii) That where the regulations propose to confer on TfN local transport functions, consent to include such concurrent powers be agreed subject to the consent of the Council, as set out in section 2 of the report.</p>   |
| <b>IMPLICATIONS:</b>  |   |
| <b>Corporate Aims/Policy Framework:</b>                               | Do the proposals accord with the Policy Framework? Yes  |
| <b>Statement by the S151 Officer: Financial Implications and Risk</b> | There are no financial implications. The Submission Proposal provides that the  |

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| <b>Considerations:</b>   | Constituent Authorities may all agree to contribute to the costs of TfN in the future. However, a decision to raise such contributions and the amount would require a unanimous decision of the Constituent Authorities.  |
| <b>Health and Safety Implications</b>  | There are no impacts in terms of Health, Safety and Welfare.  |
| <b>Statement by Executive Director of Resources (including Health and Safety Implications)</b> | No wider resource issues arising from this proposal. Operation of the new framework will be monitored, with reports to Cabinet as required.   |
| <b>Equality/Diversity implications:</b>  | None  |
| <b>Considered by Monitoring Officer:</b>   | Yes<br>The legal powers to make the Regulations are set out in this report and consent is sought to the making of these by the Secretary of State to establish a Sub Regional Transport Body. Other legal issues regarding functions and powers are detailed in this report (at paragraph 2) for members attention. |
| <b>Wards Affected:</b>   |   |
| <b>Scrutiny Interest:</b>  |   |

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**TRACKING/PROCESS**

**DIRECTOR:**

| Chief Executive/<br>Strategic Leadership<br>Team | Cabinet<br>Member/Chair | Ward Members | Partners |
|--|-------------------------|--------------|----------|
|  | The Leader              |              |          |
| Scrutiny Committee                               | Cabinet/Committee       | Council      |          |
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**1.0 INTRODUCTION**

1.1 In 2014, Local Transport Authorities and Local Enterprise Partnerships across the North of England came together in partnership with the Department for Transport and the National Transport Agencies to form Transport for the North (TfN). TfN is an evolving partnership looking to develop a pan-northern transport strategy to drive economic growth in the North and to plan and deliver the improvements needed to connect the region with fast, frequent and reliable transport links.

- 1.2 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”.
- 1.3 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.
- 1.4 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 London. Having been on a downward trend since the early 2000s, the gap has widened since the 2008/09 recession.
- 1.5 In October 2016, with the agreement of all Constituent Authorities (including the Greater Manchester Combined Authority), TfN submitted a proposal to the Secretary of State for Transport, that TfN should be established as the first Sub-national Transport Body under the provisions of Section 102(E) of the Local Transport Act 2008 (as amended by the Cities and Local Government Devolution Act 2016).
- 1.6 The proposal submitted by the Constituent Authorities included 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 or Leader;
  - 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; and
  - g) A wider Partnership Board including representatives of government bodies and the Local Enterprise Board will be set up to inform TfN’s decision making.
- 1.7 TfN, with its partners, is developing a Strategic Transport Plan and accompanying long term Investment Programme, so that people and businesses can see a firm commitment to create a stronger, more diverse and resilient economy. Informed by important evidence, including Major Roads and Integrated Rail Reports, the plan will inform the Investment Programme required to transform economic performance.

- 1.8 Key dates for this process are as follows:
- June 2017: TfN publishes its Strategic Transport Plan “position statement” along with the evidence base, initial integrated rail and initial major roads reports;
  - Summer 2017: TfN to undertake initial engagement around the evidence base, which will then be used to produce the Strategic Transport Plan and long term, sequenced investment programme;
  - Autumn 2017: Publication of the Strategic Transport Plan and Integrated Sustainability Appraisal for public consultation;
  - Winter 2017/Spring 2018: Public consultation on the Strategic Transport Plan and Integrated Sustainability Appraisal. Publication of the Single Integrated Rail Plan;
  - Summer 2018: Publication of the final Strategic Transport Plan and Integrated Sustainability Appraisal. Adoption of the Strategic Transport Plan as the plan of the statutory body.

## **2.0 POWERS AND FUNCTIONS**

### **Powers and Functions**

- 2.1 This section sets out the powers and functions, which will be given to TfN through the Regulations and by legislation. These will be as follows:
- a) To prepare a Transport Strategy for the Combined Area in accordance with section 102(l) 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; and
  - m) To exercise the powers of a highway authority to acquire land and to construct highways under Section 24.

### **Concurrent Functions**

- 2.2 It should be noted, however, that some of the concurrent local transport functions included in the draft regulations are highway functions and that in the GMCA area, the CA, (although the Local Transport Authority), is not the local highway authority. As a result, the Department for Transport (DfT) is seeking the consent of GMCA's constituent councils (which are the local highway authorities) to TfN having certain concurrent highway functions.
- 2.3 The functions concerned which are set out in Regulation 11 of the draft Regulations are the following functions in the Highways Act 1980:

- Section 8(1) (power to enter agreements with local highways authorities etc for doing certain works)
- Section 24(2) (power of local highway authority to construct new highways)
- Section 25(i) (powers to enter into agreement for the creation of footpaths etc)
- Section 26 (i) (compulsory powers for creation of footpaths etc)
- Various functions (in sections 239, 240, 246 and 250) relating to the acquisition of land for highway purposes.

2.4 It should be stressed that functions are to be exercisable by TfN **concurrently** with the local highway authority - **no powers are being taken away from the local highway authority**. Moreover, regulations 14 and 15 provide additional safeguards for local highway authorities:

- TfN may not exercise the function in Section 24(2), unless the manner in which it proposes to exercise the function has been approved by:
  - a) each council through whose area the highway is to pass,
  - b) the person who is proposed to be highway authority for the highway
  - c) the highway authority for any highway with which the new highway will communicate, and
  - d) the Secretary of State
- TfN may not exercise the remaining highway functions in Regulation 11 in relation to an area of a local authority, unless the manner in which it proposes to exercise the function has been approved by the local authority.

2.5 The Secretary of State is requesting that the consent of all relevant authorities is provided by no later than Friday 20 October 2017.

2.6 Before exercising any transport powers or functions it holds concurrently with any of the Constituent Authorities or Highways Authorities within the TfN area, TfN will consult those Authorities and enter into a Protocol covering the way in which those functions will be exercised.

### **3.0 TRANSPORT FOR THE NORTH GOVERNANCE ARRANGEMENTS**

3.1 The Secretary of State has responded to the proposals 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 of the North's priorities, as a Statutory Partner in the Department's investment processes; and
- c) The co-ordination of the TransPennine Express and Northern rail franchises through the acquisition of Rail North Limited.

3.2 Regulations are being drafted which will reflect the terms of the proposals in so far as they have been agreed by the Secretary of State and will give TfN the statutory powers to carry out these functions.

3.3 A draft Constitution has been drawn up which includes provisions which reflect and implement the Submission Proposals. The Constitution contains the following provisions:

#### **Articles**

3.4 The Articles set out the statutory basis for TFN and its membership. TfN is proposed to be made up of representatives from the 19 Constituent Authorities (including GMCA) who are the Transport Authorities who are the Transport

Authorities for the North of England. TfN will operate through a delegation to its Chief Officers of all its functions other than those specifically reserved to TfN.

- 3.5 The Articles contain an overview of the functions of TfN and the major partnerships through which it will exercise these functions, in particular its roles as Statutory Partner in determining priorities for road and rail and investment; and its role in managing the Transpennine Express and Northern Rail franchises.
- 3.6 TfN will establish a Partnership Board with representatives of all the Constituent Authorities, representatives of other authorities who were members of Rail North Limited, representatives of the 11 Local Enterprise Partnerships and representatives of the Department for Transport and of other Government Agencies. The Board will be responsible for setting the strategic agenda for transport in the North of England.
- 3.7 TfN will also engage with partners in the Rail North Partnership Board setting the strategic priorities for rail investment and in the Highways North Board setting the strategic priorities for road investment.
- 3.8 TfN will co-manage the TransPennine Express and Northern Rail Franchises through a Committee, which will include representatives of all other Authorities who were members of Rail North Limited.

### **Voting**

- 3.9 The Articles provide for weighted voting in accordance with a metric, which will give the representative of each Constituent Authority a vote which is weighted to reflect the population of the area of the constituent authority.
- 3.10 A decision to approve the Budget, to approve the constitution or to adopt the Transport Strategy will require 75% of the weighted vote and a simple majority of the Members.
- 3.11 It is proposed that TfN should be entitled to co-opt Members and that such co-opted Members should have voting rights. It is further proposed that those authorities, which are members of Rail North Limited, but which will not be a constituent authority of TfN, should each be entitled to appoint a representative to be a co-opted members of TfN with a right to speak and vote on rail franchise matters. The voting in relation to rail franchises shall be weighted in accordance with a voting matrix which reflects the voting arrangements for Rail North Limited.

### **Responsibility for Functions**

- 3.12 The Membership of TfN will together be responsible for approving the Budget, the Constitution and the Transport Strategy. Officers of TfN will have delegated responsibility to carry out all of TfN's day-to-day functions and to implement the strategic decisions made by TfN. In carrying out these functions TfN and its officers will have due regard to the views and advice of the Partnership Board, the Department for Transport and other Statutory Agencies.

### **Audit and Governance Committee**

- 3.13 TfN will appoint an Audit and Governance Committee to provide independent review and assurance to Members on governance, risk management and control frameworks. It oversees financial reporting, the Annual Governance

Statement process and internal and external audit, to ensure efficient and effective assurance arrangements are in place.

### **Scrutiny Committee**

- 3.14 Each of the Constituent Authorities will be entitled to appoint a representative (and a substitute) to the Scrutiny Committee.
- 3.15 The role of the Scrutiny Committee will include:
- a) reviewing the decisions of TfN and of officers of TfN under the scheme of delegations;
  - b) making reports or recommendations to TfN with respect to the discharge of the functions of TfN and on transport matters that affect the TfN area.

### **The Rail North Committee**

- 3.16 TfN will establish a Rail North Committee, which will advise on TfN's statutory Partner role in relation to rail investment and will have oversight of the management of the TransPennine Express and Northern Rail Franchises.

### **Procedure Rules**

- 3.17 This section sets out the procedures, which shall apply to meetings of TfN. The Rules of Debate reflect the nature of the business of TfN and that most decisions are expected to be consensual without the need for formal debating procedures.

### **Scrutiny Procedure Rules**

- 3.18 The Scrutiny Procedure Rules provide for Scrutiny Committee to set up smaller Scrutiny Panels to review discreet topics and to allow these Panels to invite representatives of outside bodies to attend to inform their Reviews.

### **Financial Procedures**

- 3.19 CIPFA provisions set out the financial rules and controls, which will govern all expenditure by TfN. It is expected that more detailed financial controls in relation to individual projects will be set out in the Funding Letter from the Secretary of State.

### **Codes and Protocols**

- 3.20 It is not intended that TfN should have its own Code of Conduct for Members, but Members will be expected to adhere to the Code of Conduct of their appointing Authority in the conduct of TfN's business and any Standards issue would be referred back to the appointing Authority by the Monitoring Officer.
- 3.21 Although TfN is not required to adopt its own Code of Conduct for Members, it will need to have a separate Disclosure of Interests by each Member in respect of their interests within the whole of the TfN geographical area.
- 3.22 The Code of Conduct for Officers sets out the standards of behaviour expected from TfN's officers.
- 3.23 The Protocol on Member/ Officer Relations sets out guidance on the mutual respect, which should exist between officers and Members and the way in which they should interact with each other.
- 3.24 The Code of Corporate Governance sets out the core principles and values which will govern the way in which TfN operates.

- 3.25 The Anti-Fraud and Corruption Policy sets out the measures that TfN will put in place to avoid and address fraud and corruption in any of its dealings.
- 3.26 The Whistle blowing Policy sets out the ways in which whistle-blowers may bring their concerns to management and the protections that are in place to ensure that whistle-blowers are not victimised or discriminated against.

#### **Role of the Partnership Board**

- 3.27 TfN has evolved over the years, from the inception of TfN as a partnership representing all those with an interest in the improvement of transport in the North of England to the creation of TfN as the first Sub-Nation Transport Body. Although TfN as a corporate body will consist of the representatives of the 19 Constituent Authorities, there is an aspiration that it will continue to operate through the Partnership Board taking decisions in partnership with the representatives of the 11 Local Enterprise Partnerships as representatives of the business community and with representatives of the Department for Transport and other Government Agencies and will continue to have an independent chair.
- 3.28 The draft Constitution reflects the legal requirements for decision making within TfN as a corporate body, but it will be open to TfN to operate these constitutional arrangements in a way that is consistent with continuing the present arrangements of the Partnership Board if Members so agree.

#### **Consent to the Regulations**

- 3.29 Draft Regulations are being drawn up to create TfN as a Sub-National Transport Body. Before the Secretary of State may make these Regulations each of the Constituent Authorities, including the Council, must consent to the making of the Regulations. The Secretary of State is requesting formal consent to the making of the Regulations by the Constituent Authorities. The consent is requested by 20 October 2017.

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#### **List of Background Papers:**

Transport for the North Report

#### **Contact Details:**

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