

## CABINET ITEM COVERING SHEET PROFORMA

**AGENDA ITEM**

**REPORT TO CABINET**

**12 OCTOBER 2017**

**REPORT OF SENIOR  
MANAGEMENT TEAM**

### **CABINET DECISION**

**Cabinet Member for Environment & Transport – Cllr M Smith**

#### **TRANSPORT FOR THE NORTH – INCORPORATION AS A SUB-NATIONAL TRANSPORT BODY**

##### **1. SUMMARY**

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.

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. RECOMMENDATIONS**

It is recommended that Cabinet:-

- (a) Consent to the incorporation of Transport for the North as a Sub–National Transport Body.
- (b) Agree a delegation to the Director of Economic Growth & Development to confirm to the Secretary of State the giving of consent by the Council and to take such other steps that are required to bring the creation of Transport for the North as a Sub–National Transport Body into being.

##### **3. REASONS FOR THE RECOMMENDATION(S)/DECISION(S)**

- (a) To support the creation of Transport for the North as a Sub –National Transport Body.
- (b) To ensure the Tees Valley authorities via the Tees Valley Combined Authority maximise their potential to influence and positively shape the future transport services across Northern England.

##### **4. MEMBERS' INTERESTS** (the text below is fixed and should not be altered by the author).

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

#### **DISCLOSABLE PECUNIARY INTERESTS**

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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**SUMMARY**

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.

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.

**RECOMMENDATIONS**

It is recommended that Cabinet:-

- (a) Consent to the incorporation of Transport for the North as a Sub–National Transport Body.
- (b) Agree a delegation to the Director of Economic Growth & Development to confirm to the Secretary of State the giving of consent by the Council and to take such other steps that are required to bring the creation of Transport for the North as a Sub–National Transport Body into being.

**BACKGROUND TO TFN**

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. 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.

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 London<sup>1</sup>. Having been on a downward trend since the early 2000s, the gap has widened since the 2008/09 recession.
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.
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 North<sup>2</sup>.
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.
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.
8. Since the development of the Tees Valley Combined Authority (TVCA) the lead role on TfN for the Tees Valley has been through the TVCA. The TVCA is one of the member authorities (both local authorities and combined authorities) that are represented on the TfN Partnership Board. The Board also has representation from the Department of Transport, Network Rail, Highways England and HS2 Ltd.
9. On the 27 July 2017 the TVCA Cabinet gave consideration to the incorporation of TfN as a sub-national transport body and agreed to give its consent for regulations to be laid before Parliament to enable this to happen.
10. 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.
11. 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.
12. The 19 Constituent Authorities of TfN are:
- Tees Valley Combined Authority
  - 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
  - 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
13. 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
- n. 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 coordinating role in relation to specified transport functions

14. 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.

## **THE SECRETARY OF STATE'S RESPONSE**

15. 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.:

## REGULATIONS

16. 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.

## HIGHWAY FUNCTIONS

17. 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:
  - a. Section 6(5) Highways Act 1980 ( power to enter into agreements for works relating to trunk roads)
  - b. Sections 105A – 105C Highways Act 1980 (functions relating to environmental impact assessments)
  - c. Sections 239 to 240 and 246 Highways Act 1980 (powers to acquire land in connection with highways)
  - d. Section 250 Highways Act 1980 (powers relating to the acquisition of powers over land)
18. Secondly 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
19. 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.
20. 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.
21. 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.

## **THE HIGHWAYS NORTH BOARD**

22. 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.

## **CONSENT TO THE REGULATIONS**

23. Regulations have now been drafted to create TfN as a Sub-National Transport Body. 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. It is anticipated that the Secretary of State will send a letter to each of these Highway Authorities requesting formal consent to the making of the Regulations. It is understood that the letter will request a response before the end of October 2017

## **FINANCIAL IMPLICATIONS**

24. Funding for TfN will be provided by the Secretary of State. No decision to require financial contributions from the constituent authorities (in our case TVCA) can be made without the agreement of each member authority.

## **LEGAL IMPLICATIONS**

25. The Local Transport Act 2008 (section 102) enables the creation of a sub-national transport body for a particular area, providing that the constituent authorities have consented to the making of regulations to create such a body.
26. This is an urgent decision given the Parliamentary timetable and lead in time for laying of regulations before Parliament. Consent is required by mid-October.

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Education related: No

Background Papers: TVCA Cabinet Report, 27.7.17, Transport for the North, Incorporation as a Sub-National Transport Authority

Ward(s) and Ward Councillors: All