

Executive

25 August 2016

**Report to the Director of City and Environmental Services and
Portfolio of the Executive Member for Transport and Planning**

Transport for the North Governance

Purpose of Report

1. The purpose of the report is to seek Executive approval to authorise Transport for the North (TfN) to submit a draft governance proposal to Government.

Recommendations

2. It is recommended that:
 - i) The Executive agree to the submission to Government of the draft proposal for TfN to become a Sub-National Transport Body.
 - ii) The Executive inform Transport for the North of its requirements for full and final agreements and further clarification, as set out in paragraph 21 below, prior to any final and binding agreement to become a constituent authority of Transport for the North.
 - iii) The Director of City and Environmental Services be instructed to engage with Transport for the North to seek the agreements and clarification as set out in ii) above.

Reason: To enable the authority to have influence over the key industry stakeholders and the development and implementation of transport services across the North of England.

Background

3. Transport for the North (TfN) was created in 2014 to allow the North to identify how best to drive economic growth through strategic investment in transport and allows the North to speak with one voice on key infrastructure decisions which benefit the region as a whole.
4. The Northern Transport Strategy prepared by TfN identifies the key objectives to improving transport in the areas of:
 - railways
 - roads
 - smart ticketing
 - freight
 - local and international connectivityacross the whole of the North.
5. Members will be aware that TfN is currently in the process of seeking to become a statutory body building on the current non-statutory partnership arrangements. TfN are seeking to become the first Sub-National Transport Body (STB) as set out in the Cities and Local Government Devolution Act 2016. See Annex 1.
6. The Cities and Devolution Act 2016 amended Part 5 of the Local Transport Act 2008, and provides for the power to establish Sub-National Transport Bodies (STBs). The Secretary of State may make regulations establishing a STB only if it is considered that -
 - (a) its establishment would facilitate the development and implementation of transport strategies for the area, and
 - (b) the objective of economic growth in the area would be furthered by the development and implementation of such strategiesAnd only if –
 - (a) the constituent authorities have together made a proposal to the Secretary of State for there to be a STB for the area, and
 - (b) those authorities consent to the making of the regulations.
7. The process for TfN to become a STB includes a requirement to submit a draft proposal to the Department of Transport (DfT) for discussion and for the DfT to prepare a draft Order (Statutory Instrument) that would ultimately create TfN as a Sub-National Transport Body. As set out in paragraph 4 above this process requires the consent of ALL prospective constituent authorities to submit the draft Proposal to Government. Constituent authorities

will then have a further opportunity to review the draft Order and ratify their consent and to being a member of TfN.

8. At the current time TfN are seeking the Authority's agreement in principle to become a constituent authority of TfN and approval to submit the draft proposal to Government. Whilst at this stage any decision by the Council does not irrevocably commit us to becoming a constituent authority, the final agreement to become a constituent authority of TfN is binding and there is no mechanism in the Cities and Local Government Devolution Act 2016 which would allow any constituent authority to leave the STB at a later date.

Draft Proposal

9. The Draft Proposal to Government is attached at Annex 1 for your information together with a copy of the detailed briefing produced by TfN at Annex 2.
10. Officers have directly engaged with TfN on the draft proposal and the associated governance proposals. Additionally, the Leader and Executive Member for Transport and Planning have attended a briefing session with TfN on the proposals. Notwithstanding this, there remains a number of significant concerns about the governance arrangements as set out in the draft proposal. Brief details of these are set out below.
11. **Voting** – The Council has expressed concerns on a number of occasions about the proposals to adopt a simple population based system of weighted voting for the member of TfN. In essence this suggestion was that each member of TfN would have voting rights in direct proportion to the population of the constituent authority they represent. TfN have also suggested that for important decisions a 'super majority' of votes will be required.
12. Such a system could potentially be problematic and could lead to dominance by a small number of populous urban authorities. For example the four Combined Authorities (Greater Manchester, West Yorkshire, Liverpool and Sheffield) in the south Trans Pennine (M62) corridor could out vote all the other TfN constituent authorities together. This could lead to an inappropriate concentration of investment in this corridor.
13. Voting arrangements were discussed at a meeting of the TfN Partnership Board on 9 June 2016 and the Board agreed that:

- TfN should continue to operate on the principle of ‘decision by consensus’ where appropriate:
- Specific arrangements should be in place where unanimity cannot be reached;
- Arrangements based on weighted population metrics were acceptable provided that officers worked up the appropriate checks and balances to ensure a balanced approach that embraced all of the North’s authorities;
- Certain issues such as the transport strategy and budget would require enhanced/super majority arrangements; and Decisions on statutory contributions would require unanimous agreement.

A Governance/Legal Officers Group was to be convened and tasked with considering the population banding and enhanced/supermajority arrangements.

14. **Voting** – The Governance/Legal Officers Group met on 29 June. The Group considered a range of population banding options and the advantages/disadvantages of the various ranges. The Group concurred that Voting rights should be awarded on a basis of one vote for every 200,000 of the population or part thereof. (Table 1 below shows the population and suggested weighted vote for each prospective constituent authority). Further, it was agreed that the proposal would include wording to allow for a review of the ONS population data for each area at a determined time.

Authority	Population	Suggested Weighted Vote
Greater Manchester CA	2,732,854	14
West Yorkshire CA	2,264,329	12
North East CA	1,952,473	10
Liverpool CR CA	1,517,463	8
Sheffield CR CA	1,365,847	7
Lancashire CC	1,184,735	6
Tees Valley CA	666,237	4
North Yorkshire CC	601,536	4
Cumbria CC	497,874	3
Cheshire East	374,179	2
East Riding of Yorkshire	337,115	2
Cheshire W. and Chester	332,210	2
Hull City	257,710	2
Warrington	206,428	2
City of York	204,439	2
North Lincolnshire	169,247	1

NE Lincolnshire	159,804	1
Blackburn with Darwen	146,743	1
Blackpool	140,501	1

Table 1 – TfN Weighted Voting

15. Officers consider that this is a suitable population based voting metric providing a suitable level of difference between the smaller authorities limiting the number of potential revisions to the weighted vote as a result of population change.
16. The Group then considered the options for enhanced (super) majority metrics in light of consensus on population banding of 200,000 or part thereof and concurred that a majority of 75% of the weighted vote, together with a simple majority of the 19 voting member areas, should be required to pass decisions.
17. Officers' initial view of this super-majority proposal is that it represents good safety net in that it prevents the potential dominance of a small number of populous urban authorities whilst not allowing a small number of smaller authorities to block important decisions.
18. However, it is recommended that the Council require that, regardless of the adopted voting metric and the full and final details of the suggested 'super-majority' that once the proposals set out above have been considered by each constituent authority, this should be further reviewed and agreed prior to any final approval by the Council to become a constituent authority.
19. **Funding via a Statutory Contribution** – At its meeting on 9th June the Partnership Board also agreed to include a proposal for seeking 'statutory contributions' from the constituent authorities in the draft proposal. Currently TfN are funded from direct Government grants, however this funding is only allocated until the end of the current parliament in 2020. To establish TfN as a longer term sustainable body long term funding mechanisms are required. Whilst the details of this proposal for statutory contributions may be difficult to agree it is considered by officers that it should be included at this early stage rather than after authorities have committed to joining TfN.
20. The Council needs to take a view if it is opposed in principle to the funding of the costs of TfN through statutory contributions from constituent authorities. Prior to any final approval to become a constituent authority, it is suggested that the Council require TfN to

provide further clarification and agreement of both the apportionment arrangements and likely amount of statutory contributions in the future. TfN have initially proposed that each individual decision to make a statutory contribution would require the agreement of all constituent authorities. Should a unanimous decision not be reached, authorities who wished to do so could still agree to a voluntary contribution.

The Way Forward

21. At this stage it is recommended that the Council agree to the submission of the draft proposal to Government. However, as set out above it is also recommended that prior to any final agreement to become a constituent authority of TfN the following requirements should be met:
 1. Full and final agreement of the voting arrangements for Members of TfN including the mechanisms and terms of reference for the suggested 'super majority'
 2. Full and final agreement of the mechanism and quantum of the proposal for raising statutory contributions from constituent authorities of TfN.
 3. Further clarification of the financial and other liabilities on both TfN and its individual constituent authorities of the proposed powers that TfN propose to take on.
 4. Further clarification of the other matters of concern.

Consultation

22. Discussions have taken place with the relevant officers and other authorities.

Council Plan

23. The potential benefits for the priorities in the Council Plan are:-
 - A Prosperous City for All.

Financial Implications

24. As set out in paragraph 7 above there are a significant number of financial implications associated with becoming a member of TfN that are not yet fully understood. However, at this stage the

recommendations of the report do not bind the Council to becoming a Member of TfN and the Council will be seeking further clarification of the financial implications prior to making a binding decision to join TfN.

Human Resources implications

25. There are no Human Resources implications.

Equalities Implications

26. Consideration has been given to the potential for any adverse equalities impacts arising from the recommendations of this report. It is the view of officers that the recommendations included in this report do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010. However further consideration will be given to the equalities implications of any final decision to become a constituent member of TfN.

Legal Implications

27. At this stage in the development of the TfN proposal the legal issues associated with the proposal are referred to in the body of this report. The requirements set out in paragraph 21 will need to be addressed via a legally binding operating agreement and a suite of protocols between TfN and each constituent authority.

Crime and Disorder

28. There are no crime and disorder implications to this report.

Information Technology (ICT)

29. There are no information technology implications to this report.

Property

30. There are no property implications to this report.

Risk Management

31. There is an acceptable level of risk associated with the recommended options outlined above.

Contact Details

Authors:

Neil Ferris
Director of City and
Environmental services

**Chief Officer Responsible for the
report:**

**Report
Approved**



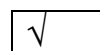
Date 15 August 2016

Specialist Implications Officer(s)

There are no specialist implications.

Wards Affected:

All



For further information please contact the author of the report.

Background Papers:

None

Glossary of Abbreviations

TfN – Transport for the North

STB - Sub-National Transport Body

DfT – Department of Transport

Annexes

Annex 1 – Draft Proposal to Government

Annex 2 – Detailed briefing produced by TfN.

TRANSPORT FOR THE NORTH (TfN)

PROPOSAL TO ESTABLISH A SUB-NATIONAL TRANSPORT BODY (STB)

This proposal is made by the constituent authorities set out below pursuant to section 102F of the LTA 2008 for the establishment of a sub-national transport body (STB) covering the area of the constituent authorities. In making the proposal the constituent authorities have consulted the appropriate authorities and other persons set out in Schedule A to this proposal.

The proposal provides as follows:

1. **Constituent Authorities**

The constituent authorities making these proposals are the local transport authorities situated wholly or partly in the North East, North West and Yorkshire and the Humber regions of England, namely:-

Greater Manchester Combined Authority
Liverpool City Region Combined Authority
North East 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 Unitary Authority
Blackpool Unitary Authority
Cheshire East Unitary Authority
Cheshire West and Chester Unitary Authority
Warrington Unitary Authority
City of York Unitary Authority
East Riding of Yorkshire Unitary Authority
Hull Unitary Authority
North Lincolnshire Unitary Authority
North East Lincolnshire Unitary Authority

2. **Area of the STB**

The area of the STB will be the area of the constituent authorities

3. **Name of the STB**

The name of the STB will be **Transport for the North (TfN)**

4. **Membership**

- 4.1 Each constituent authority will appoint one of their councillors/members or their elected mayor as a member of TfN. It is expected that the person appointed will be that authority's elected mayor, chair, leader or cabinet member for transport.

- 4.2 Each constituent authority will appoint another of their councillors / members or their elected mayor as a substitute member to act as a member of the TfN in the absence of the person appointed under paragraph 4.1.
- 4.3 There will be a presumption that decisions are normally taken by consensus. But in the absence of consensus, and subject to paragraphs 4.4 and 13.1, decisions will be taken on the basis of a system of weighted voting to reflect differences in the populations of the constituent authorities. The weighted voting entitlement of the constituent authorities will be determined on the basis of one vote for each 200,000 or part thereof of the resident population of its area as estimated annually by the Office of National Statistics (Resident Population).
- 4.4 Certain decisions will require both a super-majority consisting of 75% of the weighted vote and a simple majority of the members appointed by the constituent authorities to be carried. Such decisions will be :
- The approval and revision of TfN's transport strategy
 - The approval of TfN's annual budget
 - Any changes to TfN's constitution

. [DN: consideration should be given to the minimum number of times that TfN is required to meet each year]

5. Co-opted Members

- 5.1 The regulation should provide for the appointment of persons who are not elected members of the constituent authorities to be co-opted members of TfN
- 5.2 *Persons to be appointed as co-opted members will include:*
- (a) the person appointed by TfN as "independent chair of the Partnership Board" for the purposes of paragraph 6.3 below and
 - (b) one elected member appointed by each of the local transport authorities which are members of Rail North Ltd, but not constituent authorities of TfN, namely:-

Derbyshire County Council
Lincolnshire County Council
Nottinghamshire County Council
Nottingham City Council
Staffordshire County Council
Stoke-on-Trent City Council

[DN: Consideration should be given as to whether any representatives of the LEPs should be included as co-opted members]

- 5.3 Co-opted members will be non-voting members of TfN, except to the extent that the voting members of TfN resolve that such members should have voting rights.

6. Partnership with Business

- 6.1 A business *body* will be established consisting of representatives of Local Enterprise Partnerships in the areas covered by TfN.
- 6.2 The functions of this body will be to advise TfN on its policies and priorities, to conduct its own reviews on matters relating to transport and the economic well-being of the North and to make representations to TfN

- 6.3 TfN and *the business body will* establish a Partnership Board which will hold regular partnership meetings to be chaired by the person appointed by TfN as the “independent chair”.

7. Executive Arrangements

- 7.1 TfN will not operate formal statutory executive arrangements
- 7.2 TfN is a “local authority” for the purpose of section 101 of the Local Government Act 1972 and may delegate the discharge of its functions to a committee, sub-committee or officer, or to another local authority. As such, TfN may establish a committee(s) to discharge any functions as are delegated to it.
- 7.3 The functions of agreeing a budget and the transport strategy of TfN will **not** be delegated functions and will only be determined by a meeting of the full TfN.

8. Executive Body

TfN will not establish an executive officer body, but will delegate the discharge of agreed functions to its officers in accordance with a scheme of delegation or on an ad hoc basis.

9. Functions

The functions of TfN will include:

- General functions provided for in section 102H of the Local Transport Act 2008, including the preparation of a transport strategy.
- Local transport functions to be exercised by TfN concurrently with local transport authorities and PTEs
- Other public authority functions (including functions of the Secretary of State) to be exercised by TfN instead of by, or jointly with, the public authority
- The functional power of competence in **section 102M of the Local Transport Act 2008**

10. General Functions

The general functions of TfN should be:

- 10.1 to prepare a transport strategy for its area in accordance with **section 102 I of the Local Transport Act 2008**
- 10.2 to provide advice to the Secretary of State (SoS) about the exercise of transport functions in its area (whether exercisable by the SoS or others)
- 10.3 to co-ordinate the carrying out of transport functions that are exercisable by its different constituent authorities
- 10.4 to make proposals to the SoS for the transfer of transport functions to TfN
- 10.5 to make other proposals to the SoS about the role and functions of TfN

11. Exercise of local transport functions

- 11.1 It is **not** proposed that any transport functions exercisable by a local authority (or PTE) should be exercisable by TfN instead of by the local authority (or PTE), but it is proposed that various transport functions should be exercisable by TfN concurrently with the local authority or PTE as set out below.
- 11.2 TfN should have the same power of an ITA or CA under **sections 99 and 102 of the Local Transport Act 2008** to promote the economic, social and environment well-being of its area.
- 11.3 TfN should have the general powers of a PTE under **section 10 of the Transport Act 1968** (with the omission of the words “with the approval of the Authority” where they appear), including the power to carry passengers by railway between places in Great Britain.
- 11.4 TfN should have the same powers of a local transport authority under **sections 135-138 of the Transport Act 2000** in relation to making joint and through ticket schemes.
- 11.5 TfN should have the same powers of a local authority under **section 239 of the Local Government Act 1972** to promote and oppose local or personal Bills in Parliament (which bring in rights to apply for orders under the Transport and Works Act 1992).
- 11.6 TfN should have the same powers and rights of a PTE under **section 13 of the Railways Act 2005** including rights to be consulted in relation to franchise agreements for services to, form or within its area, and to enter into agreements with the SoS or franchisees in relation to such services.
- 11.7 TfN Should have the same power of a local authority under **section 56(2) of the Transport Act 1968** to give capital grants to persons for purpose of the provision of facilities for public passenger transport.
- 11.8 TfN should have the power of county councils and unitary districts under **section 24 of the Highways Act 1980** to construct highways (subject to the consent of the highway authority) and their powers under **Part XII of the Highways Act 1980** to acquire land etc.
- 11.9 There will be an operating agreement between TfN and the constituent authorities providing, inter alia, for the drawing up of agreed protocols in relation to the exercise of concurrent functions. Such protocols would be kept under regular review.

12. Other Public Authority Functions

- 12.1 TfN should have the function of the SoS under **section 3 and Schedule 2 of the Infrastructure Act 2015** to set and vary the Road Investment Strategy (RIS) insofar as the RIS relates to TfN’s area. This function would be exercised jointly with the SoS.
- 12.2 TfN should have the function of the SoS under **Schedule 4A, paragraph 1D, of the Railways Act 1993**. In relation to the High Level Output Specification (HLOS) insofar as it relates to railway activity in TfN’s area. This function should be exercised jointly with the SoS.

12.3 *Devolution of Rail Franchising*

Under section 23 and 26 to 30 of the Railways Act 1993, the SoS is responsible for the rail franchising. RNL jointly manage with the SoS the Northern and Transpennine franchises and have various rights under a contractual agreement. At the end of the recently let franchises in 2023/25, it is envisaged that the function would be devolved to TfN. The preferred legal route is that there should be an exemption order under section 24 enabling TfN to let concessions in the same way as TfL and Merseyside PTE do with exempted services in their area. *[An alternative route would be to devolve the franchising functions of the SoS under the Railways Act 1993 to TfN as in Scotland and Wales]*

- 12.4 **Section 6(5) of the Highways Act 1980** enables the SoS or Highways England to enter into agreements with a county council or metropolitan district council for the construction or improvement of trunk roads. It is proposed that this section be modified to include TfN as an authority having power to enter into such agreements.
- 12.5 **Section 8 of the Highways Act 1980** enables local highways authorities or Highways England to enter into agreements with other such authorities in relation to the construction, improvement or maintenance of a highway for which any party to the agreement is the highway authority. It is proposed that this section be modified to enable TfN to be a party to such agreements as if they were a highway authority.

13. Financial

- 13.1 The Regulations should provide for the constituent authorities to make statutory contributions as determined by TfN towards the costs of TfN, provided only that a decision to require such contributions and the overall amount of such contributions is unanimously agreed by all TfN members appointed by the constituent authorities. The apportionment of such contributions should be determined on the basis of Resident Population, unless unanimously agreed to the contrary.
- 13.2 TfN should be able to accept voluntary contributions to its costs from constituent authorities.
- 13.3 An order should be made by the Treasury specifying TfN (or STBs generally) as a body to which **section 33 of the Value Added Tax Act 1994** applies. This would enable TfN to claim refunds of VAT paid by it in certain cases.

14. Scrutiny

- 14.1 It is proposed that TfN arrange for the appointment of a scrutiny committee including at least one member of each constituent authority nominated by the constituent authority.
- 14.2 The scrutiny committee appointed by TfN may not include a member, substitute member or co-opted member of TfN, but may include co-opted persons representative of non-constituent authorities and non-councillor representatives of passengers, road users, employers and employees.
- 14.3 *[The arrangements should ensure that the membership of the scrutiny committee reasonably reflects the political balance of elected members on the constituent authorities (or, in the case of combined authorities, their constituent councils) taken together.]*

14.4 The arrangements should ensure that the scrutiny committee has power:-

- (a) to review and scrutinise decisions made, or other action taken, by TfN
- (b) to make reports or recommendations with respect to the discharge of the functions of TfN
- (c) to make reports or recommendations on transport matters that affect the area of TfN or inhabitants of the area
- (d) to require members or officers of TfN to attend meetings of the committee to answer questions.
- (e) to invite other persons to attend meetings of the committee

15. Rail North Ltd (RNL)

15.1 It is proposed that TfN should become the sole owner of RNL, provided that any changes to RNL's constitutional arrangements ensure:

- That the rights and interests of those RNL member authorities which are not constituent authorities of TfN are protected
- That RNL member authorities which are TfN constituent authorities are able to retain rights similar to their existing rights through TfN's constitutional arrangements

15.2 Such protection would include:

- Existing geographical sub-groups continuing to nominate directors of RNL
- RNL authorities which are not TfN constituent authorities becoming co-opted members of TfN with a right to vote on "Rail North matters"

16. Miscellaneous

It may be necessary that certain additional local authority enactments are applied to TfN as if TfN were a local authority, including staffing arrangements, pensions etc. In this respect, it is also proposed that TfN should be a "local authority" for the purposes of **section 1 of the Local Authorities (Goods and Services) Act 1970**, to enable constituent authorities to provide services to TfN.