

# North Tyneside Council Report to Cabinet Date: 9 October 2017

## ITEM 6(e)

Title: Transport for the  
North

Portfolio(s): Elected Mayor

Cabinet Member(s): Mrs N Redfearn

Report from Service Area: Environment, Housing and Leisure

Responsible Officer: Phil Scott, Head of Environment, Housing and Leisure (Tel: (0191) 643 7295)

Wards affected: All

### PART 1

#### 1.1 Executive Summary:

The purpose of this report is to seek consent from Cabinet 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 the Authority as the Highway Authority for North Tyneside is required because the Regulations contain provisions giving TfN highway powers to be exercised concurrently with the Authority.

#### 1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) agree to the making of Regulations under section 102J of the Local Transport Act 2008 by the Secretary of State to establish Transport for the North as a Sub-National Transport Body which provides Transport for the North with concurrent highway powers and functions within the Borough of North Tyneside, and
- (2) authorise the Chief Executive to write to the Secretary of State to formally consent to the making of the Regulations referred to in recommendation (1) above.

#### 1.3 Forward Plan:

It has not been practicable to give twenty eight days notice of this report. However, it is required to be considered without the twenty eight days notice being given because of the legislative timescales to which the Department for Transport and Parliament are working. The legislative timescales mean that the consent of the Authority is required no later than 20 October 2017 otherwise the Regulations will not have application within the Borough when the Regulations come into force.

## 1.4 Council Plan and Policy Framework

This report relates to the following priority(ies) in Our North Tyneside, the Council Plan 2016 to 2019:

- The Borough will have an effective transport and physical infrastructure - including roads, cycleways, pavements, street lighting, drainage and public transport.
- The Borough will have the right skills and conditions to support investment.
- Businesses and manufacturers will be assisted to develop and expand.

## 1.5 Information:

### Background

- 1.5.1 To address concerns about transport connectivity across the North of England, 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.
- 1.5.2 Getting transport right is central to implementing a UK industrial strategy impacting positively on the north of England. 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.
- 1.5.3 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. Having been on a downward trend since the early 2000s, the gap has widened since the 2008/09 recession.
- 1.5.4 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.
- 1.5.5 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.

- 1.5.6 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.
- 1.5.7 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.
- 1.5.8 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.
- 1.5.9 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.
- 1.5.10 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

1.5.11 The approach is consistent with the North Tyneside Transport Strategy, which provides the framework for the delivery of transport in the borough, and in particular to its theme iii) Improve connectivity, under which the Strategy states that “our aim is to ensure people are connected to a wide range of opportunities and are able to access them by the most sustainable means, and to ensure our national and international transport links remain competitive with other areas”.

1.5.12 A notable benefit to the North East being a part of TfN is the added influence which a Sub-National Transport Body can have with the Department for Transport and the national delivery agencies of Network Rail and Highways England when setting and allocating national infrastructure delivery spending

## **1.6 The Submission Proposal**

1.6.1 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

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.

1.6.2 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.

## **1.7 The Secretary of State's Response**

1.7.1 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.

## **1.8 Regulations**

1.8.1 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.

## **1.9 Highway Functions**

1.9.1 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)

1.9.2 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

1.9.3 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.

1.9.4 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.

1.9.5 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.

## **1.10 The Highways North Board**

1.10.1 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.

## **1.11 Consent to the Regulations**

1.11.1 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.

## **1.12 Decision options:**

The following decision options are available for consideration by Cabinet:

### Option 1

To 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 Transport for the North concurrent highway functions within the Borough of North Tyneside.

### Option 2

Not to 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 Transport for the North concurrent highway functions within the Borough of North Tyneside.

## **1.13 Reasons for recommended option:**

Option 1 is recommended for the following reasons:

- Consent by the Authority, as the Highway Authority for the borough, to the making of the regulations will enable the completion of the process of establishing TfN as a Sub-National Transport Body within the legislative timescales.

## **1.14 Appendices:**

None.

## **1.15 Contact officers:**

Colin MacDonald, Senior Manager Technical and Regulatory Services, 0191 643 6620  
John Barton, Lawyer, 0191 643 5354  
Andrew Flynn, Integrated Transport Manager, 0191 643 6083  
John Cram, Integrated Transport Officer, 0191 643 6122  
Janice Gillespie, Head of Finance, 0191 643 5701  
Alison Campbell, Senior Business Partner, 0191 643 7038

## **1.16 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- The Local Transport Act 2008  
<https://www.legislation.gov.uk/ukpga/2008/26/contents>
- Letter dated 21 September 2017 from the Department for Transport to the Chief Executive inviting the Authority's consent to the draft Sub-National Transport Body (Transport for the North) Regulations 2017. [N Tyneside Consent Letter.pdf](#)

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

At this stage there is no indication of the anticipated budget requirements to operate TfN. Any contribution relating to the incurred costs of TfN would come from the Constituent Authorities of TfN including NECA. The fact that a contribution may be made by NECA towards the cost of TfN in the future, may ultimately have financial implications for this Authority. However, as the Authority is a Constituent Authority of NECA it is involved in the development and approval of the NECA annual budget and therefore has the opportunity to have an input into that process and can plan for any potential financial impact as part of the normal budget and financial planning process.

Any contribution to TfN in relation to incurred costs by the Constituent Authorities of TfN, including NECA, can only be made with the agreement of all of the Constituent Authorities both in relation to the need for a contribution and the amount of the contribution.

### **2.2 Legal**

By indicating willingness to make the Regulations establishing TfN, the Secretary of State is satisfied that the TfN, as a Sub-National Transport Body, will facilitate the development and implementation of transport strategies in the TfN area that will further economic growth in the area.

Section 102J of the Local Transport Act 2008 enables the Secretary of State to make Regulations that provide for functions exercisable by a Local Transport Authority (highway functions) to be exercisable by a Sub-National Transport Body either instead of the Local Transport Authority or concurrently with the Local Transport Authority. The Secretary of State in the draft Regulations proposes that the highway functions exercisable by TfN will be exercised concurrently with the local Highway Authorities in the TfN area, including North Tyneside.

The draft Regulations are clear that TfN may not exercise any of the functions that it would hold concurrently with the local Highway Authorities without first seeking the approval of the local Highway Authority in whose area any proposed highway work is to be undertaken. This provides substantial safeguards against any action being taken by TfN using such concurrent powers in a manner which is not supported by the Authority.

The power to consider and determine whether to consent to the making of the proposed regulations rests with Cabinet under the default provisions set out in the Local Government Act 2000.

### **2.3 Consultation/community engagement**

#### **2.3.1 Internal Consultation**

Internal consultation on the proposal to establish TfN as a Sub-National Transport Body has included the Deputy Mayor, the Cabinet Member for Housing and Transport, the Chief Executive and senior officers.

#### **2.3.2 External Consultation/Engagement**



The North East Combined Authority, in conjunction with the other proposed “constituent authorities” of TfN has undertaken a region-wide consultation exercise in relation to the establishment of TfN.

**2.4 Human rights**

There are no human rights implications arising from this report.

**2.5 Equalities and diversity**

There are no equalities and diversity implications arising from this report.

When exercising any specific local Highway Authority function due regard will be given to the requirements of the public sector equality duty of the 2010 Equality Act.

**2.6 Risk management**

There are no risk management implications arising directly from this report. When exercising any specific local Highway Authority function, risk management will be duly considered.

**2.7 Crime and disorder**

There are no crime and disorder implications arising from this report.

**2.8 Environment and sustainability**

There are potential positive implications for the environment and sustainability in that the establishment of TfN as a Sub-National Transport Body may assist in the delivery of initiatives which support the use of more sustainable modes of transport and minimise carbon emissions from transport.

**PART 3 - SIGN OFF**

- Deputy Chief Executive
  
- Head(s) of Service
  
- Mayor/Cabinet Member(s)
  
- Chief Finance Officer
  
- Monitoring Officer
  
- Head of Corporate Strategy