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Report of: Executive Director Place

Report to: Individual Cabinet Member Decision

Date of Decision: 19 October 2017

Subject: Regulations to establish Transport for the North as a Sub-National Transport Body

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
- Expenditure and/or savings over £500,000	<input type="checkbox"/>	
- Affects 2 or more Wards	<input type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? Place		
Which Scrutiny and Policy Development Committee does this relate to? Economic and Environmental Wellbeing Scrutiny and Policy Development Committee		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		

Purpose of Report:

The purpose of this report is for the Council as a 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 Highways Authorities.

Recommendations:

It is recommended to 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.

Background Papers:

N/A

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: Paul Foster 16/10/2017
	Legal: Nadine Wynter 13/10/2017
	Equalities: Annemarie Johnston 12/10/2017
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	EMT member who approved submission: Laraine Manley
3	Cabinet Member consulted: Councillor Jack Scott
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.
	Lead Officer Name: Gemma Carl
	Job Title: Senior Transport Planner
Date: 19 October 2017	

1.	PROPOSAL
1.1	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.
1.2	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.
1.3	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 ¹ . Having been on a downward trend since the early 2000s, the gap has widened since the 2008/09 recession. 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.
1.4	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. 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	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

	<p>speak with one clearly evidenced voice to Government on its transport priorities in Spending Rounds or rail and road investment plans.</p>
1.6	<p>The ambition of TfN over time is to achieve significant devolution of transport responsibilities for the North of England and specifically to:</p> <ul style="list-style-type: none"> 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.
1.7	<p>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.</p>
1.8	<p>The 19 Constituent Authorities of TfN are:</p> <ul style="list-style-type: none"> 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
1.9	<p>The Proposal submitted by the Constituent Authorities requested the following powers and functions:</p> <ul style="list-style-type: none"> 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

	<p>rail investment processes and to be responsible for setting the objectives and priorities for strategic road and rail investments in the Combined Area;</p> <ul style="list-style-type: none"> 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. <p>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.</p>
1.10	<p>The Proposal also contained the following key provisions:</p> <ul style="list-style-type: none"> 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.
1.11	<p>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</p>

	<p>first Sub-National Transport Body with the following functions:</p> <ul style="list-style-type: none"> 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.
1.12	<p><u>Regulations</u></p> <p>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.</p>
1.13	<p><u>Highway Functions</u></p> <p>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:</p> <ul style="list-style-type: none"> • Section 6(5) Highways Act 1980 (power to enter into agreements for works relating to trunk roads) • Sections 105A – 105C Highways Act 1980 (functions relating to environmental impact assessments) • Sections 239 to 240 and 246 Highways Act 1980 (powers to acquire land in connection with highways) • section 250 Highways Act 1980 (powers relating to the acquisition of powers over land) <p>Secondly the following powers under the Highways Act 1980 are conferred on TfN concurrently with the local Highway Authority.</p> <ul style="list-style-type: none"> 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
1.14	<p>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</p>

	Highway Authorities through whose area the highway will pass.
1.15	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.
1.16	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.
1.17	<u>The Highways North Board</u> TfN will participate in the Highways North Board which will consist of the Members of TN 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.
1.18	Regulations have now been drafted to create TfN as a Sub-National Transport Body. The Combined Authority has consented to the proposal. 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. The Secretary of State has sent a letter to each of these Highway Authorities requesting formal consent to the making of the Regulations, by 20 October 2017.
2.	HOW DOES THIS DECISION CONTRIBUTE ?
2.1	This proposal will enable TfN 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. This will contribute to the Council's ambitions for a Strong Economy where the importance of being well-connected is key to achieving the city's economic potential. It will also contribute to Thriving neighbourhoods and communities, not only by supporting economic growth, but by enabling improvements to regional connectivity and helping people to access jobs, training and services.
3.	HAS THERE BEEN ANY CONSULTATION?
3.1	This is a proposal for legislative changes rather than changes to policy statements. There are no specific schemes or proposals to consult on at this time. Should TfN wish to exercise these powers, they will be required

	to provide details of proposals to Highway Authorities, at which time further reporting and consultation will be undertaken where people will be affected by any proposed changes to the highway.
1.15	These Powers would relate to a defined Major Route Network to be agreed with TfN. Consultation on the extent of that network is expected early in 2018.
4.	RISK ANALYSIS AND IMPLICATIONS OF THE DECISION
4.1	<u>Equality of Opportunity Implications</u>
4.1.1	There are no significant differential equality impacts, positive or negative, arising from this proposal. By enabling TfN to plan and deliver the improvements needed, there should be a positive impact on all citizens in the region, as better connectivity supports economic growth, which helps people to access jobs, training and services.
4.2	<u>Financial and Commercial Implications</u>
4.2.1	There are no immediate financial implications arising from a decision to consent to the establishment of TfN as a Sub-National Transport Body. The Secretary of State will provide funding for the proposal and no future decision to require financial contribution from Constituent Authorities could be made without an agreement from each Authority.
4.3	<u>Legal Implications</u>
4.3.1	The Council has been asked to give formal consent under the Local Transport Act 2008 to the inclusion in the Regulations establishing TfN as a Sub-National Transport Body of certain highway powers exercisable concurrently with the local Highway Authority. However before the Secretary of State may make these Regulations, the Council's consent is required. If the Council is satisfied that sufficient information have been provided to enable the Council to give its formal consent to the inclusion in the Regulations of local highway authority powers, then it is acting lawfully and within its powers as provided for in the Council's Leader's Scheme of Delegation of Executive Functions.
4.4	<u>Other Implications</u>
4.4.1	There are no other implications at this time arising from a decision to consent to the establishment of TfN as a Sub-National Transport Body.
5.	ALTERNATIVE OPTIONS CONSIDERED
5.1	The only other option is not to consent to the making of the Regulations. However, there would be no benefit to doing this. The SCR Combined Authority have consented to the creation of TfN as a Sub-National

	<p>Transport Body, but the Regulations can only be made with consent of all Highway Authorities. The Regulations do not provide TfN with any automatic powers over the Highway. There are provisions within the Regulations to ensure 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 exercised in circumstances where all the local Highways Authorities consider that there would be a benefit in TfN carrying out the work. Therefore, any further consent affecting our highways would be subject to further decision making by Sheffield City Council.</p>
6.	REASONS FOR RECOMMENDATIONS
6.1	To enable TfN to operate as a Sub-regional Transport Body.
6.2	To support a co-ordinated approach to delivering regional transport and connectivity improvements, which will support economic growth.