

REPORT: Council

DATE: 18 October 2017

REPORTING OFFICER: Chief Executive

PORTFOLIO: Resources

SUBJECT: Transport for the North – Consideration of draft Regulations

WARD: Boroughwide

1.0 PURPOSE OF REPORT

1.1 The purpose of this report is for the Council as Local Highway Authority to consider consenting 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.

2.0 **RECOMMENDATION: The Council be 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 as set out in the draft regulations supplied to the Council entitled ‘Sub-national Transport Body (Transport for the North) Regulations 2017’.**

3.0 BACKGROUND

3.1 General

Members will be aware of the role of TfN. It comprises a number of constituent authorities. The Council’s involvement with TfN is indirect since its role is via the Liverpool City Region Combined Authority. To date TfN has been reported as being principally involved with rail transport. However, it will have a role in respect of highways and this involves working with highways authorities which are not necessarily constituent bodies of TfN. In promoting legislation which impinges on the functions of highways authorities the consent of those authorities is required. Further back ground is given below:

3.2 **The proposal submitted by TfN by its the Constituent Authorities**

3.2.1 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 would act as a Statutory Partner with the Secretary of State and take devolved responsibilities from the Secretary of State. It would exercise a co-ordinating role in relation to specified transport functions

3.2.2 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.

3.3 The Secretary of State's Response to the proposal

3.3.1 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.

3.4 Regulations

3.4.1 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.

3.5 Highway Functions

3.5.1 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)

3.5.2 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

3.6 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.

3.7 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.

3.8 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.

4.0 **POLICY IMPLICATIONS**

4.1 The promoting or opposing new legislation is a policy consideration for the Council and reserved to full Council under the Constitution (as Council matter number 36).

5.0 **LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

None.