

NORTH LINCOLNSHIRE COUNCIL

**LEADER OF THE COUNCIL
PLACE SHAPING
CABINET MEMBER**

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

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To update the Leader on the current position regarding the establishment of Transport for the North as a Sub-national Transport Body.
- 1.2 This report seeks to determine whether to consent on behalf of North Lincolnshire Council to the creation of Transport for the North as a Sub-national Transport Body and if so the basis on which to do so.

2. BACKGROUND INFORMATION

- 2.1 In 2014 Local Transport Authorities and Local Enterprise Partnerships across the North of England came together in partnership with the Department for Transport and the National Transport Agencies to form Transport for the North (TfN). Together they have developed a pan-northern transport strategy to drive economic growth in the North. The purpose, as set out by TfN, is to transform the transport system of the North of England and the aim articulated by TfN is to plan and deliver the improvements needed to connect the region with fast, frequent and reliable transport links, driving economic growth and creating a Northern Powerhouse.
- 2.2 As part of this programme of improvements and devolution of transport strategy to a more local level these Local Transport Authorities came together to form Rail North Limited a company whose objects include the management of the TransPennine Express and Northern Rail Franchises on behalf of the Secretary of State for Transport.
- 2.3 In October 2016 with the in principle agreement of all the Constituent Authorities, 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.

2.4 The 19 Constituent Authorities of TfN are:

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

2.5 The Submission Proposal

The Proposal submitted by the Constituent Authorities included 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 or Leader;
- 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.

2.6 The Secretary of State's Response

2.6.1 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:

- i. The preparation of a Northern Transport Strategy;
- ii. The provision of advice on the North's priorities, as a Statutory Partner in the Department's investment processes;
- iii. 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.

2.7 The Draft Regulations

2.7.1 Regulations are currently being drafted which will reflect the terms of the Proposal in so far as they have been agreed by the Secretary of State and will give TfN the statutory powers to carry out these functions. Before the Secretary of State may make these Regulations each of the Constituent Authorities must consent to the making of the Regulations. The council have received a working draft of the Regulations however these are incomplete and so subject to change, some of which may be substantial.

2.7.2 Each local authority has been asked to respond to TfN with their letters of consent by 1 September 2017. There are no further briefings to Cabinet or the Cabinet Member prior to this date. Therefore, the Leader is asked to delegate to the Executive Director (Commercial), in consultation with the Leader of the Council, authority to approve the giving of consent once the terms of the Regulations are known.

2.8 The Draft Constitution

2.8.1 A Draft Constitution has been drawn up which includes provision which reflect the Submission Proposal. The Constitution contains the following Provisions:

2.8.2 Articles

The Articles sets out the statutory basis for TfN and its membership. TfN is made up of representatives from the 19 Constituent Authorities who are the Transport Authorities for the North of England. TfN will operate through a delegation to its Chief Officers of all its functions other than those specifically reserved to TfN.

The Articles contains an overview of the functions of TfN and the major partnerships through which it will exercise these functions in particular its role as Statutory Partner in determining priorities for road and rail investment and its role in managing the TransPennine Express and Northern Rail Franchises.

TfN will establish a Partnership Board with representatives of all the Constituent Authorities, representatives of the other Authorities who were members of Rail North Limited, representatives of the 11 LEPs and representatives of the Department for Transport and of other Government Agencies. This Board will be responsible for setting the strategic agenda for transport in the North of England.

TfN will also engage with its partners in the Rail North Partnership Board setting the strategic priorities for rail investment and in the Highways North Board setting the strategic priorities for road investment.

TfN will co-manage the TransPennine Express and Northern Rail Franchises through a Committee which will include representatives of all the other Authorities who were members of Rail North Limited.

2.8.3 Voting

The Articles provide for weighted voting in accordance with a matrix which gives the representative of each Constituent Authority a vote which is weighted to reflect the population of the area of the Constituent Authority.

A decision to approve the Budget, to approve the Constitution or to adopt the Transport Strategy will require an increased majority of 75% of the weighted votes and a simple majority of the Members of TfN.

It is proposed that TfN should be entitled to co-opt Members and that such co-opted Members should have voting rights. It is further proposed that those Authorities which are members of Rail North Limited but which will not be a Constituent Authority of TfN (the Rail North Authorities) should each be entitled to appoint a representative to be a co-opted Member of TfN with a right to speak and vote on rail franchise matters. The voting in relation to rail franchise matters shall be weighted in accordance with a voting matrix which reflects the voting arrangements for Rail North Limited.

2.8.4 Financial Contributions

TfN is funded through government grant and although future funding decisions will remain the responsibility of the government at the time, establishing TfN in statute ensures it has the stability and permanence to be confident of long term central Government support.

At present the Constituent Authorities and the Rail North Authorities make the Rail North Support Payment and the Authorities in receipt of rail administrative grant make the Rail North Supplemental Payment to support Rail North Limited Upon TfN assuming the responsibilities and functions of Rail North Limited these payments will continue to be made to TfN to enable it to continue to support rail franchise management.

The Submission Proposal provides that the Constituent Authorities may all agree to contribute to the costs of TfN in the future. However a decision to raise such contributions and the amount would require a unanimous decision of the Constituent Authorities and could only be taken after written consent to the proposal has been received from each of the Constituent Authorities.

Unless unanimously agreed otherwise, the apportionment of any financial contributions would be determined on the basis of the Resident Populations of each of the Constituent Authorities.

TfN would be entitled to accept voluntary contributions towards its costs from any of the Constituent Authorities.

2.8.5 Powers and Functions

This section sets out the powers and functions which will be given to TfN through the Regulations and by legislation.

These are as follows:

- (i) To prepare a Transport Strategy for the Combined Area in accordance with section 102I of the Local Transport Act 2008;
- (ii) To provide advice to the Secretary of State about the exercise of the transport functions in the Combined Area;
- (iii) 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;
- (iv) To be consulted in relation to rail franchise agreements for services to and from or within its area;
- (v) To co-manage with the Secretary of State the TransPennine Express and Northern Rail Franchises;
- (vi) 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;
- (vii) To promote and co-ordinate road transport schemes;
- (viii) To make proposals to the Secretary of State for the transfer of transport functions to TfN;

- (ix) To make other proposals to the Secretary of State about the role and functions of TfN;
To undertake Smart Ticketing within the Combined Area;
- (x) To promote and oppose local or personal bills in Parliament;
- (xi) To pay Capital Grants to support the funding and delivery of joint projects;
- (xii) To exercise the powers of a highway authority to acquire land and to construct highways under sections Section 24.

2.8.6 Concurrent Functions

Before exercising any transport powers or functions it holds concurrently with any of the Constituent Authorities or Highways Authorities within the TfN area, TfN will consult those Authorities and enter into a Protocol covering the way in which those functions will be exercised.

2.8.7 Responsibility for Functions

The Membership of TfN will together be responsible for approving the Budget, the Constitution and the Transport Strategy.

Officers of TfN will have delegated responsibility to carry out all of TfN's day to day functions and to implement the strategic decisions made by TfN.

In carrying out these functions TfN and its officers will have due regard to the views and advice of the Partnership Board, DfT and other Statutory Agencies.

2.8.8 Audit and Governance Committee

TfN will appoint an Audit and Governance Committee to provide independent review and assurance to Members on governance, risk management and control frameworks. It oversees financial reporting, the Annual Governance Statement process and internal and external audit, to ensure efficient and effective assurance arrangements are in place.

2.8.9 Scrutiny Committee

Each of the Constituent Authorities will be entitled to appoint a representative (and a substitute) to the Scrutiny Committee.

The role of the Scrutiny Committee will include:-

- I. reviewing the decisions of TfN and of officers of TfN under the scheme of delegations;

- II. making reports or recommendations to TfN with respect to the discharge of the functions of TfN and on transport matters that affect the TfN area.

2.8.10 The Rail North Committee

TfN will establish a Rail North Committee which will advise on TfN's statutory Partner role in relation to rail investment and will have oversight of the management of the TransPennine Express and Northern Rail Franchises.

2.8.11 Officers

TfN will appoint its 3 Statutory Officers, the Chief Executive as the Head of Paid Service, the Monitoring Officer and the Finance Director as its Chief Officers to whom it will delegate day to day operations of TfN.

Chief Officers will have due regard to the recommendations of the Partnership Board, the Rail Partnership Board and Highways North in carrying out their functions.

2.8.12 Procedure Rules

This section sets out the procedures which shall apply to meetings of TfN. The Rules of Debate reflect the nature of the business of TfN and that most decisions are expected to be consensual without the need for formal debating procedures.

2.8.13 Scrutiny Procedure Rules

These set out the role of Scrutiny within TfN.

The Scrutiny Procedure Rules provide for Scrutiny Committee to set up smaller Scrutiny Panels to review discreet topics and to allow these Panels to invite representatives of outside bodies to attend to inform their Reviews.

2.8.14 Financial Procedures

This section sets out the financial rules and controls which will govern all expenditure by TfN. It also contains the Contract Procurement Rules which will govern how TfN tenders and awards contracts.

It is expected that more detailed financial controls in relation to individual projects will be set out in the Funding Letter from the Secretary of State.

2.8.15 Codes and Protocols

It is not intended that TfN should have its own Code of Conduct for Members but Members will be expected to adhere to the Code of Conduct of their appointing Authority in the conduct of TfN's business and any Standards issue would be referred back to the appointing Authority by the Monitoring Officer.

The section includes the Codes of Conduct for Officers of TfN, the Protocol on Member/Officer Relations, the Code of Corporate Governance, the Anti-Fraud and Corruption Policy and the Whistleblowing Policy.

Although TfN is not required to adopt its own Code of Conduct for Members it will need to have a separate Disclosure of Interests by each Member in respect of their interests within the whole of the TfN geographical area.

The Code of Conduct for Officers sets out the standards of behaviour expected from TfN's officers.

The Protocol on Member/Officer Relations sets out guidance on the mutual respect which should exist between officers and Members and the way in which they should interact with each other.

The Code of Corporate Governance sets out the core principles and values which will govern the way in which TfN operates.

The Anti-Fraud and Corruption Policy sets out the measures that TfN will put in place to avoid and address fraud and corruption in any of its dealings.

The Whistle blowing Policy sets out the ways in which whistle-blowers may bring their concerns to management and the protections that are in place to ensure that whistle-blowers are not victimised or discriminated against.

2.8.16 Role of the Partnership Board

TfN has evolved over the years from the inception of Transport for the North as a partnership representing all those with an interest in the improvement of transport in the North of England to the creation of TfN as the first Sub-Nation Transport Body. Although TfN as a corporate body will consist of the representatives of the 19 Constituent Authorities there is an aspiration that it will continue to operate through the Partnership Board taking decisions in partnership with the representatives of the 11 LEPs as representatives of the business community and with representatives of the

Department for Transport and other Government Agencies and will continue to have an independent chair.

The Draft Constitution reflects the legal requirements for decision making within TfN as a corporate body but it will be open to TfN to operate these constitutional arrangements in a way that is consistent with continuing the present arrangements of the Partnership Board if Members so agree.

2.8.17 Rail North Limited

One of the drivers for the creation of TfN as a Sub-National Transport Body was to create a body which could speak with one voice on all transport matters affecting the North of England. To achieve that, it is proposed that TfN should take over ownership of Rail North Limited and subsume all of its functions directly into TfN.

Rail North Limited would be replaced by a Committee of TfN on which the former Rail North Member Authorities would be represented and have the same voting rights as under the Memorandum and Articles of the Company.

Before this can be achieved all the current members of Rail North Limited will need to formally agree to the proposals for the transfer of Rail North Limited to TfN

2.8.18 The Rail Partnership Board

A Rail Partnership Board will be set up which will include representatives of the Department for Transport. This Board will make recommendations in relation to strategic priorities for rail investment and in relation to existing and future rail franchises.

2.8.19 The Highways North Board

TfN will participate in the Highways North Board 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.

2.8.20 The Chief Executives Meeting

The Chief Executives or their representatives will continue to meet to provide oversight of the activities of TfN and review

draft Board papers and advise on policy and strategy proposals.

3. OPTIONS FOR CONSIDERATION

- 3.1 Option 1 – The Leader gives full consent to the Making of the Regulations by the Secretary of State.
- 3.2 Option 2 – The Leader does not give his consent to the making of the Regulations and a further report is brought back at a later date once the terms of the Regulations and the Constitution are known.
- 3.3 Option 3 – The Leader does not give his consent to the making of the Regulations
- 3.4 Option 4 – The Leader gives in principle consent to the Making of the Regulations by the Secretary of State and delegates to the Executive Director (Commercial) in consultation with the Leader of the Council, authority to approve the giving of consent once the terms of the Regulations and the Constitution are known.

4. ANALYSIS OF OPTIONS

- 4.1 Option 1 – The Leader gives full consent to the Making of the Regulations by the Secretary of State without conditions

At present, officers have had sight of a working draft of the Regulations and therefore cannot provide full advice regarding the implications for the council. It is anticipated that the Regulations will reflect the Submission Proposal, however, without seeing a final or further drafts it is not possible to know the full implications for the council. Therefore, this option is not recommended.

- 4.2 Option 2 – The Leader does not give his consent to the making of the Regulations at this time and a further report is brought back at a later date once the terms of the Regulations and the Constitution are known.

The timescale set by TfN and Government requires each of the Constituent Authorities to provide a letter of support for the proposal by early September 2017. Due to the Cabinet and Cabinet Member timetabling over the summer months, there are no further briefings prior to the beginning of September 2017. It is for this reason that the Leader is asked to consent to delegated authority for the Executive Director (Commercial), in consultation with the Leader of the Council, to make further decisions regarding the council's response to further iterations of the draft Regulations and Constitution.

- 4.3 Option 3 – The Leader does not give his consent to the making of the Regulations

The council are a member of both TfN and Rail North and has therefore made a commitment to working with partners in the North. All of the Constituent Authorities must consent to the making of the Regulations, therefore if the council decide not to consent to the making of the Regulations, this will have implications for the establishment of the Sub-national Transport Body and the council's role within TfN. The implications of this decision would require further consideration.

- 4.4 Option 4 – The Leader gives in principle consent to the Making of the Regulations by the Secretary of State and delegates to the Executive Director (Commercial), in consultation with the Leader of the Council, authority to approve the giving of consent once the terms of the Regulations and the Constitution are known.

This is the preferred option as it would enable the final consent to be based on a more informed decision as further drafts of the Regulations and Constitution become available. This option would re-inforce the council's commitment to the submission proposal for TfN to establish a Sub-national Transport Body but would enable officers to assess the implications for the council and be comfortable with the commitments being made by the Local Authority.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

(Include in here paragraphs relating to the resource implications of the preferred option as appropriate)

5.1 Financial

The Draft Constitution contains the following information regarding financial contributions.

5.1.1 TfN is funded through government grant and although future funding decisions will remain the responsibility of the government at the time, establishing TfN in statute ensures it has the stability and permanence to be confident of long term central Government support.

5.1.2 At present the Constituent Authorities and the Rail North Authorities make the Rail North Support Payment and the Authorities in receipt of rail administrative grant make the Rail North Supplemental Payment to support Rail North Limited Upon TfN assuming the responsibilities and functions of Rail North Limited these payments will continue to be made to TfN to enable it to continue to support rail franchise management.

5.1.3 The Submission Proposal provides that the Constituent Authorities may all agree to contribute to the costs of TfN in the future. However a decision to raise such contributions and the amount would require a unanimous decision of the Constituent

Authorities and could only be taken after written consent to the proposal has been received from each of the Constituent Authorities.

5.1.4 Unless unanimously agreed otherwise, the apportionment of any financial contributions would be determined on the basis of the Resident Populations of each of the Constituent Authorities.

5.1.5 TfN would be entitled to accept voluntary contributions towards its costs from any of the Constituent Authorities.

Officers will need to assess the final version of the Regulations in order to assess the financial aspects that are contained within it. It is for these reasons that delegated authority is requested.

5.2 Staffing

5.2.1 All Constituent Authorities will be entitled to appoint a representative to TfN. The Leader of the Council will be the representative for North Lincolnshire Council.

6. **OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)**

6.1 TfN has done detailed analysis on the strategic and economic benefits of partners working across the North. The argument has been put forward that there has been long term underperformance of the Northern economy when compared with other parts of the UK. The Independent Economic Review of the Northern Powerhouse pointed to the scale of the benefits to the UK of closing the productivity gap and TfN are aiming to develop an ambitious, transformational, pan-northern transport strategy and investment programme that seeks to drive and support economic growth in the North, adding £97 billion in annual GVA and 850,000 jobs by 2050.

7. **OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED**

7.1 TfN has consulted with the 19 constituent member authorities and each member agreed in principle to become members of TfN and to submit the proposal to Government to establish TfN as the first Sub-national Transport Body. Discussions have taken place as part of TfN Partnership Board of which North Lincolnshire Council is represented through Hull City Council.

7.2 TfN has also consulted with the Association of Rail North Authorities of which North Lincolnshire Council is a member.

7.3 TfN has begun a series of consultation events as part of their development of a Strategic Transport Plan and accompanying TfN

Investment Programme. A drop in event will be held in North Lincolnshire on 19th July 2017, 3pm – 7pm at Forest Pines.

8. RECOMMENDATIONS

- 8.1 That the Leader supports, in principle, the giving of consent on behalf of North Lincolnshire Council, as a constituent council of the proposed TfN Sub-national Transport Body, and delegates to the Executive Director (Commercial), in consultation with the Leader of the Council, authority to approve the giving of consent once the terms of the Regulations and the Constitution are known, in respect of the following:
- a. the making by the Secretary of State of Regulations under section 102E of the Local Transport Act 2008 to establish Transport for the North as a Sub-National Transport Body.
 - b. the transfer of Rail North Limited to TfN so that it can be subsumed within TfN.
 - c. the signing of a new Rail Franchise Management Agreement with TfN replicating as far as possible the current Rail North Limited Members Agreement
 - d. Continuation of the payment of the current funding for Rail North Limited to TfN after its inauguration.

EXECUTIVE DIRECTOR COMMERCIAL

Civic Centre
Ashby Road
SCUNTHORPE
North Lincolnshire
DN16 1AB
Author: Lesley Potts
Date: 13 July 2017

Background Papers used in the preparation of this report :

- Transport for the North – Incorporation as a Sub-national Transport Body, *Transport for the North*
- Transport for the North: Establishing the First Sub-national Transport Body, *Transport for the North*
- Transport for the North: Constitution (Draft)