

DATE: 9 October 2017

SUBJECT: Transport for the North (“TfN”) – incorporation as a sub-national transport body

REPORT TO: Head of Paid Service

EXECUTIVE SUMMARY

This report recommends that NECA issues its consent to the making of regulations by the Secretary of State for Transport under section 102E of the Local Transport Act 2008 to establish TfN as a Sub-national Transport Body.

RECOMMENDATION

The Head of Paid Service is recommended to issue formal consent on behalf of NECA to those matters set out in paragraph 1.2.

1. BACKGROUND

- 1.1 At its meeting on 7 August 2017 the Leadership Board considered a report regarding the creation of TfN as a Sub-national Transport Body. A copy of that report is included as Appendix 1. In order to create TfN the Secretary of State for Transport must make regulations under section 102E of the Local Transport Act 2008. The Secretary of State can only make such regulations if each of the transport authorities which are to be members of TfN consent to the making of the said regulations. The report also made clear that the Secretary of State would require such consent in early September so as to allow TfN to be created in 2018.
- 1.2 The Leadership Board agreed in principle to the participation of NECA in TfN. At the time of the meeting a draft version of the proposed regulations had been received but the final draft regulations were still awaited. The Leadership Board therefore delegated authority to the Head of Paid Service to issue the requisite consent to the following matters, subject to the condition set out in paragraph 1.3 below regarding the final draft regulations:
- i. the making by the Secretary of State of regulations under section 102E of the Local Transport Act 2008 to establish TfN as a Sub-national Transport Body;
 - ii. the transfer of Rail North Limited (“RNL”) to TfN so that it can be subsumed within TfN;

- iii. the signing of a new Rail Franchise Management Agreement with TfN replicating as far as possible the current RNL Members' Agreement; and
- iv. continuation of the payment of the current funding for RNL to TfN after its inauguration.

1.3 The Leadership Board stipulated that the Head of Paid Service should issue such consent if she was satisfied (in consultation with the Chair of the Leadership Board and the Monitoring Officer) that the final draft regulations served only to give TfN the statutory powers to carry out the functions which were set out in the report to the Leadership Board on 7 August 2017.

1.4 TfN have now received the final draft regulations and circulated these to the transport authorities who are to be the constituent members of TfN.

2. Content of the final draft regulations

2.1 The report to the Leadership Board on 7 August 2017 included as an appendix a summary prepared by TfN of its proposed objectives, powers and functions, and constitutional arrangements. With regard to those powers and functions, these were outlined at section 6.5.2 of that summary:

“The [powers and functions which will be given to TfN] are as follows

- 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 acquire land and to construct highways under sections Section 24.”

- 2.2 As noted above, NECA and the other proposed constituent authorities within TfN had received a draft version of the regulations prior to the meeting on 7 August 2017. Those draft regulations set out the specific legal provisions which TfN considers it requires to perform its general functions (such as the preparation of a transport strategy, advising the Secretary of State on transport functions and co-ordinating the exercise of transport functions by the constituent authorities of TfN), as well as the power to provide capital grants, undertake smart ticketing and to participate in the rail franchising process.
- 2.3 The final draft regulations which have now been received are substantially the same as the previous draft but also incorporate the specific powers under the Highways Act 1980 which TfN considers it requires to deliver its function of promoting and co-ordinating road transport schemes. These include a number of powers which are (a) exercisable jointly with the Secretary of State and (b) a number of powers which are also exercisable concurrently with local highway authorities (which, in NECA’s case, are the seven constituent local authorities).
- 2.4 The Secretary of State has contacted each highway authority to seek its consent to the making of the regulations. The issue of whether each highway authority provides its consent to the making of the regulations is a matter for that highway authority. It is a separate matter to the issue of whether NECA provides its consent to the making of the regulations. However, in any event, it should be noted that the final draft regulations make clear that TfN will not be able to exercise any such highway powers in the area of a highway authority unless that highway authority consents to TfN doing so in each individual case.

3. Reasons for the Proposals

- 3.1 It is proposed that NECA provides its consent to the making of the regulations to allow the creation of TfN as a Sub-national Transport Body so as to improve transport in the North of England.

4. Alternative Options Available

- 4.1 Option 1 – consent is given to the making of the regulations.
- 4.2 Option 2 – consent is not given to the making of the regulations.
- 4.3 Option 1 is the recommended option for the reason set out in paragraph 3.1. If NECA were not part of TfN, TfN projects such as Northern Powerhouse Rail and Smart ticketing would not include the North East in their scope, and studies to consider ways to promote economic growth through transport would not consider benefits to the North East. Whilst clearly NECA would have the same opportunities open to it as today to make the case itself for investment in its transport links and assets, it may be doing so in competition with TfN and other Sub-national

Transport Bodies which would be much larger than NECA and far better resourced.

5. Next Steps and Timetable for Implementation

5.1 If NECA gives its consent to the making of the regulations, then it is anticipated that TfN will be created in 2018. It will adopt its constitution at its first meeting. The seven local authority Chief Executives within the NECA area and the NECA Head of Paid Service, working with Economic Directors and Transport Officers, will develop a draft set of priorities that NECA may wish to achieve through its membership of TfN, along with internal protocols for the governance of NECA's involvement in TfN, for Leadership Board to review at a later meeting.

6. Potential Impact on Objectives

6.1 These are set out in the report to the Leadership Board on 7 August 2017.

7. Financial and Other Resources Implications

7.1 These are set out in the report to the Leadership Board on 7 August 2017.

8. Legal Implications

8.1 These are set out in the report to the Leadership Board on 7 August 2017.

9. Key Risks

9.1 These are set out in the report to the Leadership Board on 7 August 2017.

10. Equality and Diversity

10.1 These are set out in the report to the Leadership Board on 7 August 2017.

11. Crime and Disorder

11.1 These are set out in the report to the Leadership Board on 7 August 2017.

12. Consultation/ Engagement

12.1 These are set out in the report to the Leadership Board on 7 August 2017. In line with the Leadership Board's decision, this report has been forwarded to the Chair and the Monitoring Officer for their consideration.

13. Other Impacts of the Proposals

13.1 These are set out in the report to the Leadership Board on 7 August 2017.

14. Appendices.

14.1 Appendix 1: Leadership Board paper on 7th July 2017

15. Background Papers

Draft regulations under section 102E of the Local Transport Act 2008 (Confidential – Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 – financial/business information)

16. Contact Officer(s)

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17. Sign Off

- 17.1
- Head of Paid Service: ✓
 - Monitoring Officer: ✓
 - Chief Finance Officer: ✓

18. Glossary

- 18.1 TfN Transport for the North
STB Sub-national Transport Body
DfT Department for Transport
RNL Rail North Limited