

## **Leadership Board**

**Date:** 7 August 2017

**Subject:** Transport for the North (TfN) – Incorporation as a Sub-national Transport Body

**Report of:** Thematic Lead for Transport and Digital Connectivity

### **Executive Summary**

The purpose of this report is to seek the Leadership Board's consent to the making of Regulations by the Secretary of State to allow Transport for the North (TfN) to become a Sub-national Transport Body (STB).

In July 2016 the Leadership Board agreed in principle that, subject to further development of TfN's Proposal to become an STB with central government, the NECA should become a full member of the proposed statutory body. This report moves that decision forward in light of the Secretary of State's positive response to the Proposal put to him by NECA and other Constituent Authorities.

## Leadership Board

### Recommendations

The Leadership Board is recommended to provisionally consent to:

- i. 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;
- ii. The transfer of Rail North Limited to Transport for the North so that it can be subsumed within Transport for the North;
- iii. The signing of a new Rail Franchise Management Agreement with Transport for the North replicating as far as possible the current Rail North Limited Members Agreement; and
- iv. Continuation of the payment of the current funding for Rail North Limited to Transport for the North after its inauguration.

The Leadership Board is further recommended to agree that:

- v. Delegated authority is given to the Head of Paid Service to fully consent to items (i) to (iv) on the Leadership Board's behalf, provided that she is satisfied, in consultation with the Chair of the Leadership Board and the Monitoring Officer, that the final draft Regulations serve only to give Transport for the North the statutory powers to carry out the functions set out in paragraph 1.3; and
- vi. That the Thematic Lead for Transport be designated as NECA's main representative, and that Cllr Carl Marshall be designated as NECA's alternate representative, on Transport for the North.

The Leadership Board is also recommended to note that Chief Executives intend to 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 Transport for the North, for the Leadership Board to review at a later meeting.

## Leadership Board

### 1. Background Information

- 1.1 The purpose of this report is to update the Leadership Board on the progress of Transport for the North (TfN) in its proposal to become a Sub-national Transport Body (STB); to outline the process by which TfN is intended to become an STB and the part that NECA may play in it; and to seek the Leadership Board's consent to the making of Regulations by the Secretary of State to allow TfN to become an STB.

Further background information regarding the proposals set out in this report, along with a description of TfN's role and purpose, can be found in **Appendix 1**.

- 1.2 At its meeting on the 19th July 2016, the Leadership Board considered a report concerning TfN's proposal to become a statutory body. The Board resolved that:
- i. The Leadership Board supports Transport for the North's proposal to become a statutory body with devolved powers and agrees that the proposal would be submitted to central government;
  - ii. The Leadership Board agrees, in principle, that, subject to further development of the proposal with central government, the North East Combined Authority should become a full member of the proposed statutory body; and
  - iii. The Chief Executive Officer for Transport be authorised, in consultation with the Thematic Lead for Transport, to progress the proposal with a view to a further report being brought to the Leadership Board before NECA makes a final decision to become a full member of the statutory body.
- 1.3 Subsequent to this resolution and similar resolutions from TfN's other Constituent Authorities a Proposal was submitted to the Secretary of State for Transport.

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.

A complete list of the powers and functions that are expected to be granted to TfN through the Regulations is available in **section 6.5 of Appendix 1**.

## Leadership Board

- 1.4 A core aspect of the powers and functions of TfN is that Rail North Limited will be subsumed by TfN. The additional level of local involvement with the local rail network that has been achieved by the creation of the 'North East Rail Management Unit' (NERMU) will be preserved through the creation of a Rail North (North East) Area Sub Committee.
- 1.5 At the time of writing this report the legislative Regulations are currently being drafted which 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. It is expected that the drafting of the Regulations will be concluded in July or August. The NECA Heads of Legal Services (or their representatives) have had meetings with TfN and the Department for Transport (DfT) regarding the proposed regulations.
- 1.6 It is anticipated that the Secretary of State will send a letter to each of the Constituent Authorities of TfN requesting formal consent to the making of the Regulations to be provided by early September 2017.
- 1.7 A draft Constitution for TfN has also been drawn up which includes provisions which reflect and implement the Submission Proposal. It is proposed that the constitution is approved at the inaugural meeting of TfN when it is formally created as a Sub-national Transport Body during 2018. An outline of the draft Constitution is included in **section 6 of Appendix 1**.
- 1.8 It is anticipated that the first formal meeting of TfN will take place following the making of the Regulations, and that that meeting will formally approve the Constitution.
- 1.9 The Proposal noted that all Constituent Authorities of TfN will be entitled to appoint a representative to TfN, such representative to normally be the Elected Mayor, Leader or Member with delegated responsibility for transport. In addition, the NECA will need to nominate an alternate member. The NECA representative and their alternate would represent NECA on:
- TfN Partnership Board;
  - Rail North Committee (which will effectively replace the previous 'Association of Rail North Authorities')
  - Rail North Sub Committee (which will effectively replace the previous 'Rail North Limited Board')
  - Rail North (North East) Area Sub Committee (which will effectively replace the 'North East Rail Management Unit (NERMU) Board').

## 2. Proposals

- 2.1 Leaders are asked to provisionally consent to the making by the Secretary of State of Regulations under section 102E of the Local Transport Act 2008 to

## **Leadership Board**

establish TfN as a Sub-National Transport Body.

- 2.2 TfN are carrying out further work to develop the Regulations, but the final version of the Draft Regulations is not expected to be available before the next meeting of the Leadership Board. Therefore Leaders are also being asked to give delegated authority to the Head of Paid Service to provide full consent to the Regulations on the Leadership Board's behalf when the final draft Regulations are available. In determining whether to do so she will consult with the Chair of the Leadership Board and the Monitoring Officer, and satisfy herself that the final draft Regulations serve only to give Transport for the North the statutory powers to carry out the functions intended for it, and that they do not prejudice the NECA's interests.
- 2.3 The Leadership Board is also asked to consent to transfer the functions and powers of Rail North to TfN. 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 it is proposed that these payments will continue to be made to TfN to enable it to continue to support rail franchise management.
- 2.4 Finally it is proposed that the Thematic Lead for Transport be designated as NECA's main representative, and that Cllr Carl Marshall be designated as NECA's alternate representative, on TfN.

### **3. Reasons for the Proposals**

- 3.1 The proposals are being put forward to enable TfN to become a Sub-national Transport Body so as to improve transport in the North of England. Further information is provided in **Appendix 1**.

The main benefit to NECA of being a part of TfN is the added influence a Sub-national Transport Body can have with the DfT and the national delivery agencies of Network Rail and Highways England when setting and allocating national infrastructure delivery spending.

- 3.2 In July 2016 the Leadership Board agreed in principle that, subject to further development of the proposal with central government, the NECA should become a full member of the proposed statutory body. These proposals move that decision forward in light of the Secretary of State's positive response to the Proposal put to him by NECA and other Constituent Authorities.

### **4. Alternative Options Available**

- 4.1 Option 1 – The Leadership Board may accept the recommendation set out in paragraphs (i) - (vi) above.

## Leadership Board

- 4.2 Option 2 – The Leadership Board may not accept the recommendations set out in paragraphs (i) - (vi) above.
- 4.3 Option 1 is the recommended option. If NECA were to decide not to become part of TfN, TfN would have no remit to work to improve the economy of the North East. Its Strategic Transport Plan would assume that the North East was a neighbouring area (much as it currently does for Scotland and the Midlands) and would therefore not propose or advocate investment in the NECA's transport assets to DfT, Highways England or Network Rail. 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 the 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 would 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 the Leadership Board agrees to the recommendations set out in this report, the next steps are expected to be as follows:
- TfN will produce final draft Regulations, expected to be in July or August;
  - Subject to the final draft Regulations being satisfactory to the Head of Paid Service as set out in paragraph 2.2, TfN will be notified that NECA is content to consent to the Regulations;
  - It is anticipated that the Secretary of State will send a letter to each of the Constituent Authorities requesting formal consent to the making of the Regulations to be provided by early September 2017;
  - It is anticipated that the first formal meeting of TfN will take place following the making of the Regulations, and that that meeting will formally approve the Constitution.
  - Chief Executives, working with Economic Director 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 Transport for the North, for the Leadership Board to review at a later meeting.

## 6. Potential Impact on Objectives

- 6.1 As a member of the Sub-national Transport Body, NECA would have access to additional resources to develop strategic infrastructure projects with the purpose of facilitating economic growth in line with the Strategic Economic Plan and the

## Leadership Board

Local Transport Plan. As a Statutory Partner in the Department's investment processes, TfN will be able to provide advice on the North's priorities and influence the investment plans of Highways England and Network Rail.

### 7. Financial and Other Resources Implications

- 7.1 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.
- 7.2 At present the Transport for the North Constituent Authorities (i.e. NECA for the North East) and the Rail North Authorities (i.e. Non TfN authorities e.g. Nottingham City Council) make the Rail North Support Payment and those Authorities in receipt of Rail Administration 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. For clarity, Nexus currently receives Rail Administration Grant and an element of this is used to cover both payments to Rail North, although it should be noted that Rail Administration Grant is only confirmed on an annual basis and the use of this funding will be subject to ongoing review.
- 7.3 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.
- 7.4 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. TfN would be entitled to accept voluntary contributions towards its costs from any of the Constituent Authorities. In this regard, it should be noted there is no budget provision to cover any costs associated with NECA's membership of TfN if there was unanimous agreement to such a proposal

### 8. Legal Implications

- 8.1 This report outlines the legal procedures and implications if NECA wish to play its part as a full member of Transport for the North as it become a Sub-national Transport Body.
- 8.2 The Regulations to enable TfN to become a statutory Sub-national Transport Body, through Parliamentary processes are being drafted jointly by DfT and TfN officials. NECA legal representatives have had initial discussions with those drafting the Regulations and the Head of Paid Service in consultation with the

## **Leadership Board**

Monitoring Officer will approve or otherwise the final drafting, if Leaders are minded to delegate that authority as recommended in this report.

### **9. Key Risks**

- 9.1 When the Northern Powerhouse was being championed by the government and particularly the Chancellor of the day, George Osborne, there was significant impetus behind the development of the concept and the drive to form TfN. With the uncertainty following the general election, it may become less of a political priority and thus the benefits may not materialise as envisaged.
- 9.2 In a national context the less populated areas often receive less investment than more populated (congested) areas. One of the risks of joining TfN is that this situation is repeated but in a northern context, with Manchester, the M62 corridor and the North West rail network benefitting the most. That said, it is unlikely that this risk would be mitigated by deciding not to join TfN – on the assumption that most, or all, other authorities do indeed join then the NECA would have no ability at all to press its case for TfN to prioritise investment. The voting metrics do give some mitigation against the concentration of funding as does the corridor and network approach being taken through the development of the Strategic Transport Plan.
- 9.3 Currently there is no direct funding contribution from NECA to TfN, although significant officer and member time is invested in it. TfN funding from DfT is only guaranteed until 2020, thus the financial future of TfN is uncertain. There could be a risk that in the future TfN seek local financial contributions to enable it to continue. It should be noted however that under the proposed governance model, this would require unanimous consent from all member authorities. In addition, TfN will not have the ability to raise precepts or levies from constituent authorities.

### **10. Equality and Diversity**

- 10.1 The development and delivery of the emerging schemes aim to improve road and rail connectivity for all and as such do not negatively impact on Equality and Diversity.

### **11. Crime and Disorder**

- 11.1 Safety and Security are fundamental consideration in the design of new services and facilities and thus impacts will be assessed for individual projects at the appropriate stage of development.

### **12. Consultation/Engagement**

- 12.1 Legal Officers have been consulted and involved in the governance process and will review the regulations once they are drafted. The NECA lead legal officer



## **Leadership Board**

has also assisted with the drafting of this report. Prior to the drafting of this report the Chief Executive officer were briefed on Transport for the North and the outline governance proposals

12.2 There will be no public consultation on the Regulations as this is a parliamentary process led by the Secretary of State, who will formally ask each constituent authority to sign up to the Regulations to make TfN a Statutory Transport Body

### **13. Other Impact of the Proposals**

13.1 As each of the projects and plans of TfN become more defined, environmental and economic impacts and analysis will form key considerations when options are being considered.

### **14. Appendices**

Appendix 1: Background information regarding TfN's proposals

### **15. Background Papers**

Report to the Leadership Board on 19<sup>th</sup> July 2016

### **16. Contact Officers**

16.1 Tobyn Hughes, Managing Director (Transport Operations),  
[Tobyn.hughes@nexus.org.uk](mailto:Tobyn.hughes@nexus.org.uk)  
Tel: 0191 203 3203

16.2 John Softly, Assistant Director Legal Services, Resources Directorate, Newcastle City Council  
[john.softly@newcastle.gov.uk](mailto:john.softly@newcastle.gov.uk)  
Tel 0191 2777047

### **17. Sign off**

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

### **18. Glossary**



## **Leadership Board**

TfN – Transport for the North  
STB – Sub-national Transport Body  
NECA – North East Combined Authority  
DfT – Department for Transport  
NERMU – North East Rail Management Unit  
NPR – Northern Powerhouse Rail  
LEP – Local Enterprise Partnership