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Report to: West Yorkshire Combined Authority

Date: 5 October 2017

Subject: Consent to Regulations establishing Transport for the North as a statutory body

Is this a key decision?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If relevant, state paragraph number of Schedule 12a, Local Government Act 1972, Part 1	N/A (S100A LGA 1972)

1 Purpose

- 1.1 To ask WYCA to confirm the consent previously given in principle to regulations establishing Transport for the North (TfN) as a statutory body and granting TfN the concurrent exercise of specified WYCA functions.

2 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 (DfT) and the National Transport Agencies to form TfN for the purpose of transforming the transport system of the North of England. 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.
- 2.2 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.
- 2.3 In October 2016, a proposal was submitted on behalf of 19 constituent authorities (including WYCA) to the Secretary of State, that TfN should be established on a statutory basis, as a Sub-National Transport Body (SBT). The reasons for the proposal were set out in detail in a report considered by WYCA in July 2016, with the aim being to putting in place appropriate governance to enable the economy of the North to grow through provision of better strategic transport connectivity.

- 2.4 At their meeting on 3 August 2017, WYCA considered a report detailing TfN's priorities, and seeking consent in principle to regulations establishing TfN as a SBT, and to proposals to transfer Rail North Ltd (which carries out rail franchise management functions on behalf of authorities including WYCA) to TfN.
- 2.5 At that meeting, WYCA resolved to:
- re-affirm WYCA's commitment to the priority areas set out in the report,
 - agree in principle to the transfer of Rail North Ltd to TfN once TfN has been established as a STB,
 - enter a new Rail Franchise Management Agreement with TfN on terms consistent with the Rail North Ltd Members' Agreement, and
 - fund TfN to carry out functions relating to supporting rail franchise management which are currently carried out by Rail North Ltd, on the existing basis, once TfN is established as a STB, and has assumed those functions.
- 2.6 Although regulations to establish TfN on a statutory basis had not been finalised, the report identified the general functions to be exercised by TfN. It also detailed functions to be exercised concurrently by TfN and its constituent authorities (such as WYCA) which include making capital grants, specified ticketing functions and rail franchising functions. It is intended for TfN's constitution to require TfN to consult with TfN's constituent authorities, before exercising these concurrent functions.
- 2.7 At the meeting on 3 August, WYCA consented in principle to the Secretary of State making the regulations. As consent to the finalised regulations was required by the beginning of September, WYCA also delegated authority to the Managing Director, in consultation with the Chair of WYCA and with WYCA's representatives on the Transport for the North Partnership Board, to consent to the regulations once they were finalised.
- 2.8 Timescales for consent have now been revised providing an opportunity for WYCA to consider revised draft regulations provided on a confidential basis which are attached as appendix 1 to this report. The draft regulations generally reflect the proposal endorsed in principle by WYCA but are different in some respects to the arrangements anticipated in the report to WYCA on 3 August. In particular, the regulations now provide for TfN to exercise specified highways and footpath functions.
- 2.9 These include the following functions of the Secretary of State under the Highways Act 1980, in relation to the construction of trunk roads:
- Section 6(5) (power to enter into agreements for works relating to trunk roads),
 - Sections 105A – 105C (functions relating to environmental impact assessments),
 - Sections 239 to 240 and 246 (powers to acquire land in connection with highways), and
 - Section 250 (powers relating to the acquisition of powers over land).

- 2.10 Secondly, the following powers under the Highways Act 1980 are conferred on TfN concurrently with local highway authorities (which in West Yorkshire are the district councils, not WYCA):
- Section 8(1) (power to enter agreements with local highways authorities etc for doing certain works),
 - section 24(2) (power of local highway authority to construct new highways),
 - section 25(i) (powers to enter into agreement for creation of footpath etc),
 - section 26 (i) (compulsory powers for creation of footpaths etc),
 - various functions in sections 239, 240, 246 and 250 relating to the acquisition of land for highway purposes.
- 2.11 Importantly, Regulations 14 and 15 taken together provide that TfN will not be able to carry out any of the functions which it holds concurrently with the district 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. The functions 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. There is no intention that TfN will itself become a highway authority.
- 2.12 It is also 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 relevant authorities covering the way in which the functions will be exercised.
- 2.13 TfN will also participate in the Highways North Board which will consist of the Members of TfN 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.
- 2.14 **Appendix 2** outlines the constitutional arrangements set out in the regulations. These will be reflected in TfN's constitution, to be approved at the first TfN meeting once it has been established as a STB. Further details were provided in the WYCA report of 3 August previously considered.
- 2.15 It is anticipated that TfN will be established as a statutory body on the following timetable:

Activity	Date
TfN constituent authorities and WY districts consent to the regulations	By 20 October 2017
Regulations made by Secretary of State	By December 2017
Shadow STB Board created	When regulations have been made
TfN established as a statutory body	1 April 2018 (provisional)

3 Financial Implications

- 3.1 Regulation 18 provides that TfN constituent authorities including WYCA must make a contribution in respect of reasonably incurred costs of TfN, if they **all** agree on the need for a contribution and the amount required. In this event, the amount would be apportioned between the constituent authorities on the basis of population, or on another agreed basis. Regulation 18 also provides that each constituent authority may contribute to the costs of TfN, if it chooses to do so.

4 Legal Implications

- 4.1 **Appendix 1** (the draft regulations) is confidential information provided by DfT on terms which currently forbid its public disclosure. As such, it cannot be published and the public **must** by law be excluded from the meeting whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed (S100A(2) Local Government Act 1972).
- 4.2 WYCA's decision to consent to the regulations in principle was published as a Key decision before the WYCA meeting on 3 August 2017.
- 4.3 As a constituent authority of TfN, WYCA must consent to the Secretary of State making the regulations, including the provisions in regulations 6, 7 and 8 for TfN to exercise concurrent functions with WYCA as set out in paragraph 2.6 of this report.
- 4.4 Further to representations by WYCA, TfN and DfT have acknowledged that to comply with statutory requirements, the consent of each individual WY district council is also now required to the regulations, but only in so far as they provide for TfN to exercise concurrent highways functions with those districts. WYCA's consent to this aspect of the regulations is neither sought nor required.

5 Staffing Implications

- 5.1 None

6 External Consultees

- 6.1 WYCA officers have been liaising closely with their counterparts in WY councils about the regulations, in particular the concurrent functions to be exercised by TfN.

7 Recommendations

- 7.1 To note that Transport for the North are now liaising directly with each WY district council to seek the consent of each individual district to the regulations, in so far as they provide for Transport for the North to exercise concurrent highways functions with those districts, once it is established as a Sub-National Transport Body.

- 7.2 To confirm WYCA's consent previously given in principle to the making of regulations (attached as Appendix 1 to this report) by the Secretary of State for Transport to establish Transport for the North as a Sub-National Transport Body under section 102E of the Local Transport Act 2008, and which provide for Transport for the North to exercise concurrent functions with its constituent authorities, including WYCA.

8 Background Documents

- 8.1 None