

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Economy, Transport and Environment
Date:	16 July 2019
Title:	Transport for the South East – Hampshire County Council Response to Formal Consultation on the Draft Proposal to Government
Report From:	Director of Economy, Transport and Environment

Contact name: Keith Willcox

Tel: 01962 846997

Email: keith.willcox@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to set out the context and outline progress on Transport for the South East (TfSE) becoming a sub-national transport body. It seeks approval for the guiding principles to inform a response to the TfSE consultation on its draft Proposal to Government, which sets out proposed constitutional arrangements and powers for the body.

Recommendations

2. That the Executive Member for Economy, Transport and Environment notes the content of the draft proposal to establish a sub-national transport body for the South East to be known as Transport for the South East (TfSE), as set out in this report (paragraphs 22-30).
3. That the Executive Member for Economy, Transport, and Environment agrees the principles set out in this report (paragraphs 31-40) to form the basis of the County Council's response to the consultation on the draft proposal.
4. That authority is delegated to the Director of Economy, Transport, and Environment to finalise the detailed consultation response based on the approved principles in consultation with the Executive Member for Economy, Transport, and Environment.

Executive Summary

5. On 18 March 2019, the Transport for the South East Shadow Board (TfSE) approved a Draft Proposal to Government for formal consultation, which can be accessed [here](#).
6. The formal consultation period will close on 31 July 2019. Since it opened, correspondence received from the Secretary of State for Transport has indicated the Government's preference to work with sub-national transport

bodies on a voluntary partnership basis for the time being. It was previously anticipated that the TfSE proposal would be finalised and submitted to Government by the end of this calendar year, but in light of this correspondence these timescales may now need to be reviewed.

7. Consultation responses and next steps will be discussed at September's meeting of the TfSE Shadow Partnership Board. Should the County Council be required to respond to proposals arising, a report could be prepared for the consideration of the October Cabinet meeting as necessary.
8. The subject of the consultation is the exact terms of a Proposal to Government requesting statutory status for TfSE as a sub-national transport body, which will require approval by Parliament. Transport for the North was the first sub-national transport body to achieve statutory status in April 2018.
9. The statutory basis for a sub-national transport body is set out in Part 5A of the Local Transport Act 2008¹ as amended by the Cities and Local Government Devolution Act 2016, which says that "the Secretary of State may by regulations establish a sub-national transport body for any area in England outside Greater London" (s102E(1)) and it goes on to set the conditions and limits for such arrangements.
10. The twin purposes for creating a sub-national transport body are to facilitate the development of transport strategies and so promote economic growth for the area.
11. The legislation requires a new sub-national transport body to be promoted by, and have the consent of its constituent authorities, and that its Proposal to Government has been the subject of consultation within the area and with neighbouring authorities. TfSE is planning that the formal consultation from 3 May – 31 July 2019 will be carried out in a way that meets this condition.

Contextual information

12. Transport for the South East (TfSE) was established in shadow form in June 2017. In order to develop an ambitious Transport Strategy for the South East region, it brings together 16 Local Transport Authorities, five Local Enterprise Partnerships, and other key stakeholders, including: environmental groups, transport operators, district and borough authorities, and national agencies.
13. TfSE will seek to support the growth of the South East's economy, ensuring the delivery of high quality sustainable and integrated transport systems. In brief, this will:
 - i) support increased productivity to grow the South East and UK economy and compete in the global marketplace;
 - ii) help to improve safety, quality of life, and access to opportunities for all; and

¹ <http://www.legislation.gov.uk/ukpga/2008/26/part/5A>

- iii) protect and enhance the South East's unique natural and historic environment.
14. A sub-national transport body is a body corporate, which may only be established by the Secretary of State if it is considered that:
- i) its establishment would facilitate the development and implementation of transport strategies for the area; and
 - ii) the objective of economic growth in the area would be furthered by the development and implementation of such strategies.
15. Sixteen upper tier authorities in the South East have been working together since 2016 to develop a proposal for a sub-national transport body. They are:
- Bracknell Forest Borough Council
 - Brighton and Hove City Council
 - East Sussex County Council
 - Hampshire County Council
 - Isle of Wight Council
 - Kent County Council
 - Medway Council
 - Portsmouth City Council
 - Reading Borough Council
 - Slough Borough Council
 - Southampton City Council
 - Surrey County Council
 - West Berkshire Council
 - West Sussex County Council
 - The Royal Borough of Windsor and Maidenhead Council
 - Wokingham Borough Council
16. The existing Shadow Partnership Board also includes arrangements for involving the five Local Enterprise Partnerships (Coast to Capital, Enterprise M3, Solent, South East, Thames Valley Berkshire); two National Park Authorities (South Downs and New Forest); 44 boroughs and districts in East Sussex, Hampshire, Kent, Surrey and West Sussex; and the transport industry and end user voice in its governance.

17. These efforts have been acknowledged by the Department for Transport, and a grant of £1million was awarded to TfSE to fund the development of the emerging Transport Strategy for the South East.
18. To achieve statutory status, TfSE is required to develop a Proposal to Government which will need to demonstrate the strategic case for the creation of a sub-national transport body and set out how TfSE will fulfil the statutory requirements for such a body as outlined in the enabling legislation.
19. The draft proposal will also need to identify the types of powers and responsibilities that the sub-national transport body will be seeking, as well as identifying the proposed governance structures.
20. The legislation requires that a new sub-national transport body will be promoted by, and have the consent of, its constituent authorities, and that the proposal has been the subject of consultation within the area and with neighbouring authorities.
21. In fulfilment of this requirement, TfSE has provided for a public consultation to last twelve weeks, which will be made available on the TfSE website and circulated to relevant stakeholders. Constituent authorities and other TfSE partner organisations are encouraged to circulate the consultation document to their own stakeholders.

The Draft Proposal to Government

22. At its meeting on 18 March 2019, the TfSE Shadow Partnership Board approved a Draft Proposal to Government for formal consultation, which can be accessed [here](#).
23. The consultation period will close on 31 July 2019. During this time there will be ongoing dialogue with key partners and stakeholders about the content of the proposal. All constituent authorities will be expected to provide a formal response to the consultation.
24. As indicated above, it was previously envisaged that a final proposal would be recommended to the Shadow Partnership Board meeting in September 2019 and submitted to Government in November 2019. It was anticipated that the Secretary of State would then make a formal response to the proposal setting out the powers and responsibilities to be granted prior to the drafting of the requisite Statutory Instrument to be laid before Parliament with the consent of all the constituent authorities.
25. However, in light of the correspondence received from the Secretary of State, further information is awaited on future timescales, and the Shadow Partnership Board will deliberate on next steps when it next meets in September.

26. The draft proposal has the following headings:

- Executive Summary
- The Ambition
- Strategic and Economic Case
- Constitutional Arrangements
- Functions

Constitutional arrangements

27. It is proposed that each constituent authority will appoint one of their elected members or their elected mayor as a member of TfSE on the Partnership Board. It is intended that the regulations should provide for the appointment of persons who are not elected members of the constituent authorities to be co-opted members of the TfSE Partnership Board. Currently two LEPs, a representative from the Boroughs and Districts, the Chair of the TfSE Transport Forum, and a representative from the protected landscapes in the TfSE area have been co-opted onto the Shadow Partnership Board.

28. A number of voting options were considered to find a preferred option that represents a straightforward mechanism as well as the characteristics of the partnership, and which does not provide any single authority with an effective veto. The starting point for decisions will be consensus, and if that can't be achieved then decisions will require a simple majority of those Constituent Bodies who are present and voting. Where consensus cannot be achieved the following matters will require enhanced voting arrangements:

- The approval and revision of Transport for the South East's ("TfSE") Transport Strategy;
- The approval of TfSE annual budget;
- Changes to the TfSE constitution.

29. Decisions on these issues will require both a super-majority, consisting of three quarters of the weighted vote in favour of the decision, and a simple majority of the constituent authorities. The details of the proposed weighted voting system are set out in Section 4 of the Draft Proposal to Government.

Functions

30. The specific functions that TfSE is seeking as part of its Proposal to Government are set out in Section 5. These include the following:

- general sub-national transport body functions relating to the preparation of a Transport Strategy, advising the Secretary of State and co-ordinating transport functions across the TfSE area (with the consent of the constituent authorities);
- Local Transport functions;

- being consulted on rail franchising and setting the overall objectives for the rail network in the TfSE areas;
- jointly setting the Road Investment Strategy RIS for the TfSE area;
- obtaining certain highways powers which would operate concurrently and with the consent of the current highways authority to enable regionally significant highways schemes to be expedited;
- securing the provision of bus services, entering into quality bus partnership and bus franchising arrangements with the consent of the constituent authorities;
- introducing integrated ticketing schemes;
- establishing Clean air zones with the power to charge high polluting vehicles for using the highway with the consent of the constituent authorities;
- power to promote or oppose Bills in Parliament; and
- incidental powers to enable TfSE to act as a type of local authority.

Hampshire County Council's Comments

Subsidiarity and Devolution of Powers

31. The County Council takes the view that the ***principle of subsidiarity*** should inform the development of TfSE as far as possible, with an emphasis laid on drawing down powers from Government that lend themselves to sub-national governance and would sit well at the regional level. On this basis, the County Council welcomes the inclusion of the following powers as part of the proposal:
 - To set High Level Output Specification for Rail;
 - To set Road Investment Strategy (RIS) for the Strategic Road Network (SRN).
32. The Proposal to Government is a key step in a process which, if successful, will shape TfSE and the management of transport issues in the South East for years to come.
33. Although the draft proposal includes consideration of the process to make future amendments to TfSE's functions and constitution, the initial phase of set up will be pivotal in establishing the terms of any future negotiation, and is likely to be the best opportunity at which to seek true devolution of powers from central government to the region.
34. The County Council would therefore welcome ***further discussion as to what other powers held centrally at present could be beneficially devolved to***

the regional level with a view to improving outcomes for residents, and to supporting sustainability and economic growth.

Concurrent Powers and Consent

35. The draft proposal predominantly focuses on powers to be held concurrently with the local highway authorities. In most cases (though not all), the proposal requires that the exercise of such powers is with the consent of the affected local authority(ies). However, as currently written, there are a number of significant powers that do not currently require this, such as constructing highways or making capital grants for the provision of public transport facilities. ***The County Council would require that any such powers may only be exercised by TfSE with the express consent of the authority(ies) affected which concurrently hold the same power.***
36. The proposed constitutional arrangements stressing majority and super-majority decision making may be appropriate on matters of strategy, budget, and constitution, but for particular interventions and activities it is vital to establish the principle of local consent. The draft proposal rules out the use of vetoes per se, but in certain circumstances the withholding of local consent could amount to a veto, and the Proposal to Government should be clear that this right would be ***enshrined in the constitutional arrangements to preserve the final say of existing local highway authorities on interventions within and affecting their borders.***
37. ***These two key principles, the one of consent and the other of subsidiarity, should lie at the core of the proposal, with the principle of local consent written into the constitutional arrangements.*** The County Council is keen to engage with other constituent authorities about the possibility of a “**Political Declaration**” that would clarify the centrality of these guiding principles over and above the necessary detail and legal provisions to be included in the Proposal to Government.
38. Partnership working, and the associated establishment of joint committees, can go a long way to achieving mutually beneficial transport outcomes on a sub-regional basis, but a sub-national transport body for the South East, entrusted with statutory powers, offers new and unique benefits for the region as a whole, and Hampshire in particular. Specifically, when formalised as a sub-national transport body, TfSE will be able to:
 - exercise greater influence over Government than individual authorities, or informal joint working arrangements between them;
 - attract more investment in the region as a whole and for specific localities; and
 - obtain powers over and above those held by specific authorities, drawing funding and powers down from Government to facilitate more regional and local solutions for sub-national transport needs and issues.

39. There are therefore clear benefits to be gained through participation in TfSE, and the County Council's significant involvement to date places it well to help ensure that local outcomes can ultimately be delivered across the region. The wider Hampshire area is home to three international gateways, namely the maritime ports of Southampton and Portsmouth, and the airport of Southampton. This makes the county a key player in TfSE.
40. Authority is therefore sought to finalise a detailed response to the draft proposal in consultation with the Executive Member for Economy, Transport and Environment and based upon the principles outlined above. Such a response will comment on each of the powers sought or otherwise mentioned in the draft proposal. However, worthy of comment here is the County Council's desire to see ***General Power 102P under Part 5A of the Local Transport Act 2008 explicitly excluded from the proposal***. This empowers the sub-national transport body to direct constituent authorities about the exercise of transport functions in relation to the sub-national transport body's strategy. Clearly, this would be unacceptable to the County Council, and it will be important to ensure it is clearly excluded both from the Proposal to Government and from any counter proposal made in turn by Government itself.

Finance

41. TfSE has established an annual subscription of £58,000 per county and £30,000 per unitary. The Department for Transport (DfT) has recently settled a one-off grant of £1,000,000 towards the cost of the development of the Transport Strategy. There is a reasonable expectation that DfT will allocate some core revenue funding for TfSE once it has achieved statutory status, on the basis that the constituent authorities will continue to make contributions. TfSE will also seek further capital funding from the DfT to take forward its technical work programme.

Conclusions and Way Forward

42. TfSE provides an opportunity to support and deliver growth plans across the region through the development of a long-term strategic programme of transport measures to facilitate economic growth and make the South East more competitive. It will complement the work of the LEPs and support delivery of Local Plans.
43. Such a body would also enable the County Council to influence the prioritisation of investment by the major national transport agencies such as Highways England and Network Rail in a way that has not been possible in the past.
44. The consultation period closes on 31 July 2019, and the responses will be reported to the next meeting of the TfSE Shadow Partnership Board on 19 September 2019, where the constituent authorities will discuss next steps in light of the Secretary of State for Transport's recent letter.

45. Subject to agreement of this report's recommendations, the County Council will seek to work with other constituent authorities to develop a Political Declaration as set out above.

Consultation and Equalities

46. This paper relates to a procedural matter which will not in and of itself have an impact on people with protected characteristics. As and when the work of TfSE leads to the delivery of schemes and interventions in Hampshire, the County Council will have opportunity to assess impacts on people with protected characteristics and take these into account when consenting to, implementing, or influencing TfSE operations.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
<u>Title</u>	<u>Date</u>
Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>
TfSE Proposal to Government	

Section 100 D - Local Government Act 1972 - background documents	
<p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

This paper relates to a procedural matter which will not in and of itself have an impact on people with protected characteristics. As and when the work of TfSE leads to the delivery of schemes and interventions in Hampshire, the County Council will have opportunity to assess impacts on people with protected characteristics and take these into account when consenting to, implementing, or influencing TfSE operations.