

Roger Elkins, Cabinet Member for Highways & Infrastructure	Ref No: H&I 10 (19/20)
July 2019	Key Decision: Yes
Transport for the South East: response to consultation about statutory status	Part I
Report by Lee Harris, Executive Director Place Services and Matt Davey, Director of Highways, Transport & Planning	Electoral Division(s): All

Summary

The Cities and Local Government Devolution Act requires that a new Sub-national Transport Body (STB) must be promoted by, and have the consent of, its constituent authorities, and that the proposal has been the subject of consultation.

Transport for the South East (TfSE) are consulting until 31 July 2019 on a draft Proposal to Government (attached as Appendix A), which includes constitutional arrangements and functions that the STB is seeking through statutory status.

The report sets out the County Council's suggested Consultation Response (attached as Appendix B), which supports the draft Proposal as it is presented. The Consultation Response also highlights the importance of securing influence over national investment programmes such as the Roads Investment Strategy and Rail High Level Output Statement.

West Sussex Plan: Policy Impact and Context

A STB can only be established where it will facilitate the implementation of a transport strategy and further the objective of economic growth. Therefore, the establishment of TfSE is expected to support the County Council's ambitions to:

- give children and young people the best start in life by facilitating access to services and education;
- ensure West Sussex is a prosperous place by facilitating economic growth;
- supporting strong, safe and sustainable communities by improving sustainable transport infrastructure and services; and
- facilitating independence in later life by improving sustainable transport infrastructure.

Financial Impact

The County Council's £58,000 annual subscription to Transport for the South East will continue to be met from within the existing budget.

The County Council has made clear in its response to the consultation that Local Transport Authorities should not be looked on to provide additional funding, whether directly through increased contributions or indirectly via redirection of central Government funding.

Recommendation

The Cabinet Member for Highways and Infrastructure is recommended to:

- a) approve the County Council's consultation response (Appendix B); and,
- b) delegate authority to the Director for Highways, Transport and Planning to endorse the submission of the proposal for the creation of TfSE as a statutory body to the Secretary of State, provided that no substantive changes are made to the final Proposal to Government prior to submission.

Proposal

1. Background and Context

- 1.1 The Cities and Local Government Devolution Act 2016 makes provision for the establishment and constitution of Sub-national Transport Bodies (STBs) for any area in England (outside of Greater London).
- 1.2 A STB can prepare a Transport Strategy for an area that would support economic growth and include proposals for the promotion and encouragement of safe, sustainable, integrated and efficient strategic transport facilities and services to and from the area covered by the STB.
- 1.3 A STB is a body corporate that may only be established by the Secretary of State if it is considered that:
 - a) its establishment would facilitate the development and implementation of transport strategies for the area; and
 - b) the objective of economic growth in the area would be furthered by the development and implementation of such strategies.
- 1.4 Sixteen upper-tier authorities in the South East have been working together since 2016 to develop a proposal for a STB as part of a Shadow Partnership Board. They are; Bracknell Forest; Brighton and Hove; East Sussex; Hampshire; Isle of Wight; Kent; Medway; Portsmouth; Reading; Slough; Southampton; Surrey; West Berkshire; West Sussex; Windsor and Maidenhead; and Wokingham.
- 1.5 The existing Shadow Partnership Board also includes arrangements for involving the five Local Enterprise Partnerships (Coast to Capital, Enterprise M3, Solent, South East and Thames Valley Berkshire); two National Park Authorities (South Downs and New Forest) and Areas of Outstanding Natural Beauty; 44 Boroughs and Districts in East Sussex, Hampshire, Kent, Surrey and West Sussex; and the transport industry and end user voice in its governance.
- 1.6 These efforts have been acknowledged by the Department for Transport, and grants of £1.6m have been awarded to TfSE to fund the development of the emerging Transport Strategy for the South East.
- 1.7 To achieve statutory status, TfSE is required to develop a Proposal to Government that will need to demonstrate the strategic case for the creation of a STB and set out how TfSE will fulfil the statutory requirements for such a body as outlined in the enabling legislation. The draft Proposal will also need

to identify the types of powers and responsibilities that the STB will be seeking, as well as identifying the proposed governance structures.

- 1.8 The Cities and Local Government Devolution Act requires that a new STB 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.

The Draft Proposal to Government

- 1.9 At its meeting on 18 March 2019, the TfSE Shadow Partnership Board approved a draft Proposal to Government for formal consultation, which is attached at Appendix A. The consultation period will close on 31 July 2019.
- 1.10 A final Proposal is expected to be recommended to the Shadow Partnership Board meeting in September 2019 and, subject to approval, it is expected to be submitted to Government in November 2019 (although this may be delayed if it is considered unlikely to obtain Government approval). At the point of submission to Government, all constituent authorities will be asked to signal their support for the creation of TfSE as a statutory body.
- 1.11 Once the Government has received the proposal from TfSE, there will be a period of three to six months while the Secretary of State considers the request. The Secretary of State will then formally respond to the TfSE proposal setting out the powers and responsibilities that have been granted to TfSE. Work will then begin on drafting the Statutory Instrument which will be laid before Parliament. It is anticipated that, if the final Proposal is submitted to Government in November 2019, this will happen in late 2020. All constituent authorities will be required to give their consent to the creation of the statutory body following the formal response from the Secretary of State. It is anticipated that a further Key Decision would be required to give County Council consent.
- 1.12 On 10 June 2019, the Secretary of State wrote to the chairmen of all emerging STBs including Cllr Keith Glazier, Chairman of TfSE (see Appendix C), indicating that he is not minded to establish new statutory bodies but wishes to continue working with emerging STBs on a voluntary partnership (i.e. non-statutory) basis. As this letter was received during TfSE's consultation on the draft Proposal to Government, it is not reflected in the draft Proposal or any of the supporting material. Therefore, the process and timetable that follows the consultation set out in paragraphs 1.10 and 1.11 may change as a consequence of the Secretary of State's views.
- 1.13 The draft Proposal includes the constitutional arrangements and functions that TfSE is seeking that are summarised in paragraphs 1.14-1.17.

Constitutional arrangements

- 1.14 As a member of TfSE, each constituent authority will appoint one of their elected members or their elected mayor to 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 Partnership Board. Currently two LEPs, a representative from the Borough and District Councils, the Chair of the TfSE Transport

Forum and a representative from the protected landscapes in the TfSE area, alongside Highways England and Network Rail have been co-opted onto the Shadow Partnership Board.

- 1.15 A number of voting options were considered to find a preferred option that represents a straightforward mechanism, 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 cannot be achieved, 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 the Transport Strategy;
 - The approval of TfSE annual budget;
 - Changes to the TfSE constitution.
- 1.16 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 weighting voting system are set out in Section 5 of the draft Proposal to Government set out in Appendix A. Of a total of 54 votes in weighted voting, the County Council's vote would equate to 6 votes.

Functions

- 1.17 The specific functions that TfSE is seeking as part of its Proposal to Government are set out in Section 6 of Appendix A. The proposed powers will operate concurrently and with the consent of the constituent authorities. In outline, these include the following:
- General STB 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);
 - Being consulted on rail franchising and setting the overall objectives for the rail network in the TfSE area;
 - Jointly setting the Road Investment Strategy (RIS) for the TfSE area;
 - Certain highway powers which would operate concurrently and with the consent of the current highway authority to enable regionally significant highway schemes to be expedited;
 - Securing the provision of bus services, entering into quality bus partnership and bus franchising arrangements;
 - Introducing integrated ticketing schemes;
 - Establish clean air zones with the power to charge high polluting vehicles for using the highway;
 - Power to promote or oppose Bills in Parliament;
 - Incidental powers to enable TfSE to act as a type of local authority.

Proposed WSCC Consultation Response

- 1.18 The County Council is one of the founding Local Authorities for TfSE and has been involved in the development of the draft Proposal and Transport Strategy. In general, the County Council supports the draft Proposal as it is presented.

- 1.19 The West Sussex Transport Plan 2011-26 identifies the County Council's highest priority for transport is improvements to the A27 at Chichester, Arundel and Worthing. This is because historic underinvestment in the strategic road network and the parallel rail network has resulted in problems that now hold back economic growth. Therefore, the power to jointly set the Roads Investment Strategy (RIS) and Rail High Level Output Statement (HLOS) will provide the County Council, through its role on TfSE, with direct influence on investment decisions that affect the national road and rail networks. The draft Consultation Response highlights the importance of influence over the RIS and HLOS.
- 1.20 The draft Proposal includes powers that would operate concurrently with the County Council and would require the express agreement of the constituent Local Transport Authorities. The draft Consultation Response states that the County Council's expectation is that the key role of TfSE will be to broker solutions that will be agreed by each constituent Local Transport Authority.
- 1.21 The draft Consultation Response also provides comments that TfSE are requested to take into account when finalising the Proposal to Government, which may be addressed through further non-substantive changes or through other mechanisms. These include; the County Council's desire to avoid creating additional bureaucracy and a request that TfSE build a culture of avoiding bureaucracy that will endure over time; and a request to improve the understanding of transport users about the roles and responsibilities of TfSE as part of future communications and engagement activities.
- 1.22 Local Transport Authority contributions have helped to establish TfSE and secure DfT grant funding, which is extremely welcome. However, the lack of core central Government funding will inevitably cause Local Transport Authorities to question the value of these contributions in future. The County Council considers that TfSE should look for opportunities to generate income through regionally based transport initiatives; for example smart ticketing, to supplement local contributions.
- 1.23 As outlined in paragraph 1.8, the Proposal is required to be promoted by, and have the consent of, its constituent authorities.

Factors taken into account

2. Consultation – Stakeholder Engagement

- 2.1 The County Council is responding to a consultation by a third party, so no consultation with external bodies has taken place as they have also been invited to respond to the consultation.
- 2.2 Feedback received from the County Councillor for Chichester East include that; a) that the role of TfSE may evolve over time resulting in conflict with the County Council's ambitions; and b) TfSE may require further funding from Local Authorities in order to ensure its long term financial sustainability. The draft Consultation Response has addressed this feedback by highlighting the importance of democratic accountability that will reduce the likelihood of conflicts with the County Council's ambitions and also requesting that TfSE

identify opportunities to generate income to ensure the body is financially sustainable in the long term.

3. Financial (revenue) and Resource Implications

- 3.1 TfSE has established an annual subscription of £58,000 per county and £30,000 per unitary. The County Council’s subscription will continue to be met from within the existing Planning Services budget.

Revenue consequences of proposal

	Year 1 2019/20 £m	Year 2 2020/21 £m	Year 3 2021/22 £m	Year 4 2022/23 £m
Annual TfSE Subscription Budget	0.058	0.058	0.058	0.058
Change from Proposal	0	0	0	0
Budget after Proposal	0.058	0.058	0.058	0.058

- 3.2 To date, DfT has awarded grants of £1,600,000 towards the cost of developing the Transport Strategy and related activities. 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.
- 3.3 The County Council has made clear in its response to the consultation that Local Transport Authorities should not be looked on to provide additional funding, whether directly through increased contributions or indirectly via redirection of central Government funding.
- 3.4 The County Council has already committed staff resources to support TfSE to develop the draft Proposal and draft Transport Strategy. These resources are principally from Planning Services and are funded through the existing budget.
- 3.5 There are no capital consequences from this proposal.

4. Impact of the proposal

The impact of the proposal is expected to be better transport, economic, social and environmental outcomes through the influence of TfSE on strategic transport investment.

5. Legal Implications

An STB can only be created by the Secretary of State and if created, it would become an authority in its own right. The Secretary of State can only create an STB by responding to a Proposal put forward by the relevant constituent authorities. This report is about a consultation with the County Council about the form and content of such a proposal.

6. Risk Assessment Implications and Mitigations

- 6.1 There are few risks to the County Council connected with TfSE; the proposal sets out key strategy, influencing and consultative roles for the new body. None of these activities are inherently risky.
- 6.2 There is a potential risk that TfSE will request additional funding from Local Authorities in the future. However, it would be up to each Local Authority to decide whether or not to increase the level of Local Authority contributions.
- 6.3 There is a potential risk that central Government could fund TfSE by reducing funding to Local Authorities. The County Council is clear in its response to the consultation that this should not happen and highlights the potential for TfSE to pursue income generation opportunities to supplement core central Government funding. It should, however, be acknowledged that this will remain a risk.
- 6.4 There is also a potential risk that if TfSE were to pursue opportunities to generate income, this could reduce similar opportunities for the County Council. The Consultation Response highlights that in pursuing opportunities to generate income, TfSE should conduct an impact assessment that takes account of any potential impacts on other public bodies.

7. Other Options Considered

- 7.1 The other options considered are; a) to object to the draft Proposal to Government, or b) to seek amendments to the draft Proposal to Government.
- 7.2 Objecting to the draft Proposal to Government would mean withdrawing support for a Proposal that the County Council has helped to develop through its involvement in TfSE. This would mean that the Proposal would not have the consent of the County Council and could not be submitted to Government for consideration. If this option were pursued, it is unlikely that TfSE would be established as a statutory body.
- 7.3 Consideration has been given to seeking amendments to the draft Proposal to Government, particularly to address the concerns set out in paragraph 1.21. However, it is recognised that the draft Proposal is the product of a considerable amount of collaborative work by the constituent authorities and it is recognised that some aspects of the draft Proposal are likely to be more relevant to other parts of the TfSE area, for example dense urban areas.

8. Equality and Human Rights Assessment

- 8.1 There are no identifiable Human Rights implications.
- 8.2 There are no adverse equalities impacts arising from the recommendations of this report as the County Council is responding to a consultation by a third party about the establishment of a new transport body. Furthermore, potential equality and human rights implications arising from the work TfSE would be considered by TfSE in decision-making; for example the draft Transport Strategy will be accompanied by an Integrated Sustainability Appraisal that includes an Equalities Impact Assessment.

9. Social Value and Sustainability Assessment

There are no social value or sustainability implications arising from the recommendations of this report as the County Council is responding to a consultation by a third party about the establishment of a new transport body. Furthermore, social value and sustainability implications arising from the work of TfSE would be considered by TfSE in decision-making; for example the draft Transport Strategy will be accompanied by an Integrated Sustainability Appraisal.

10. Crime and Disorder Reduction Assessment

There are no identifiable crime and disorder implications.

Lee Harris

Executive Director of Place

Matt Davey

Director Highways, Transport and Planning

Contact Officer: Darryl Hemmings, Transport Planning & Policy Manager,
0330 222 6437

Appendices

Appendix A: TfSE Proposal to Government: Draft for Consultation

Appendix B: Draft WSCC Consultation Response

Appendix C: Letter from Secretary of State for Transport to emerging STB chairmen dated 10 June 2019

Background papers

[LDR18 \(16/17\) Shadow Sub-National Transport Body for the South East](#)