

From: Barbara Cooper, Corporate Director Growth Environment and Transport

To: Roger Gough, Leader of Kent County Council

Subject: Decision No: 20/00010 Transport for the South East – Proposal to Government

Key decision Affects more than two Electoral Divisions

Classification: Unrestricted

Past Pathway of Paper: N/A

Future Pathway of Paper: Leader Decision

Electoral Division: All divisions

Summary: Transport for the South East (TfSE) intends to become a statutory body, for which it needs to submit a Proposal to Government with a request for transport powers. If this is accepted, it will be taken through Parliament.

In June 2019, and during the consultation on TfSE's draft Proposal to Government, the then Secretary of State, Chris Grayling, indicated that he would not consider further Sub-national Transport Bodies becoming statutory bodies at that time. Since then, however, and the TfSE consultation, a revised proposal taking account of the feedback has been prepared. Concurrently, the ministerial team at the Department for Transport (DfT) has changed twice.

KCC responded to the draft Proposal to Government (Environment and Transport Cabinet Committee, July 2019) and also to the draft Transport Strategy for the South East (Environment and Transport Cabinet Committee, January 2020). The Transport Strategy for the South East has also now been revised following the end of the consultation on 10th January.

KCC is now required to formally consent to the final Proposal and endorse the final Transport Strategy for the South East so that TfSE can approve both documents for submission to Government at the shadow Partnership Board meeting on 16 July 2020. This requires a decision by the Leader in accordance with the KCC constitution.

Recommendation: The Leader of the Council takes the proposed decision which states:

“As Leader of the Council, in accordance with Section 19.2 of the Council's Constitution, I agree to:

1. Consent to Transport for the South East's Proposal to Government for powers in addition to the general powers of a Sub-national Transport Body and endorse the Transport Strategy for the South East as part of this proposal.
2. Participate in, and cooperate with, Transport for the South East in accordance with the powers requested from Government and those powers operating concurrently with Kent County Council as Highway Authority and Local Transport Authority.

I delegate authority to the Corporate Director of Growth, Environment and Transport, in consultation with the Leader and Monitoring Officer, to enter into relevant legal agreements and take other appropriate actions as necessary to implement the decision.”

1. Background

- 1.1 The powers of each Sub-national Transport Body (STB) must be requested in a Proposal to the Secretary of State for Transport, with the consent of all its constituent transport authorities. If accepted by the Secretary of State it will then be agreed in law through the Parliamentary process.
- 1.2 Although there are now several STBs in England, Transport for the North is the only one with statutory status. The then Secretary of State (Chris Grayling) wrote to all emerging STBs in June 2019 to state that his preference was, at the time, to work with all other STBs on a voluntary partnership basis rather than creating more statutory STBs, and that the Department for Transport (DfT) would continue to take account of the views of STBs operating in 'shadow' form in developing national transport policy and investment decisions.
- 1.3 Since then, there have been two changes in the ministerial team at the DfT. Representatives from Transport for the South East (TfSE) met with the new Minister of State (George Freeman) in October 2019¹ and his feedback was that TfSE is working well and it should submit a Proposal to Government alongside a business plan. This business plan is effectively the Transport Strategy for the South East, with the proposal setting out the powers needed to deliver the Transport Strategy. In February 2020 the ministerial team changed again so that now Baroness Vere is the Parliamentary Under Secretary of State under whose remit STBs fall. The TfSE Chair has written to arrange a meeting with her as soon as this is possible.
- 1.4 TfSE need consent for the Proposal to Government from each of its constituent authorities before obtaining approval at the Shadow Partnership Board in July 2020. TfSE also need the support of constituent authorities for the final Transport Strategy for the South East, which will be agreed at the same Board meeting. Following the meeting, TfSE will submit both the Proposal and Transport Strategy to government.
- 1.5 A previous Key Decision was taken by the Leader on 8th December 2018 (16/00120) which agreed to:

¹ George Freeman also spoke at the TfSE launch event on 10th October 2019 and the TfSE Parliamentary Reception on 15th October 2019.

1. Establish, and participate in, a shadow Sub National Transport Body (SNTB) to the South East, known as Transport for the South East (TfSE), at the cost, for the purposes, and with the membership, set out in the accompanying report; and
2. The proposal to establish, and participate in, a formal Sub-National Transport Body for the South East also known as TfSE and with the same purpose and membership.

2. Transport for the South East

2.1 TfSE is comprised of 16 Local Transport Authorities (LTAs) and 5 Local Enterprise Partnerships (LEPs). There are also other bodies co-opted onto the board – the Chair of the South Downs National Park to represent protected landscapes and two district council representatives. Network Rail, Highways England and Transport for London (TfL) are non-voting members of the Board. The constituent authorities are:

- East Sussex County Council (lead authority and Accountable Body)
- West Sussex County Council
- Kent Council Council
- Medway Council
- Hampshire County Council
- Surrey County Council
- Brighton and Hove City Council
- Southampton City Council
- Portsmouth City Council
- Isle of Wight Council
- The Berkshire unitary authorities through the Berkshire Local Transport Body (LTB) which includes West Berkshire, Wokingham, Windsor & Maidenhead, Bracknell Forest, Reading and Slough.
- Five LEPs within the TfSE area are also included: South East LEP (SELEP), Enterprise M3, Coast to Capital, Solent and Thames Valley Berkshire.

3. Consultation on Proposal to Government

- 3.1 Following a period of informal engagement, the draft Proposal to Government was agreed at the TfSE Shadow Partnership Board meeting in March 2019. This draft Proposal to Government was consulted on for 12 weeks between 3rd May and 31st July 2019.
- 3.2 The draft Proposal requested a range of powers and responsibilities, including several powers that are already held by its constituent LTAs. All these powers were proposed to be held concurrently with Highway Authorities (HA) and LTAs, with the commitment to only implement them with the consent of the affected HA/LTA and with the consensus of all constituent authorities. Table 1 sets out the powers that were requested in the draft Proposal.

	Proposed Power
General functions	As set out in the Local Transport Act (2008), these functions will give TfSE the powers to develop a transport

	strategy for the area and to provide advice to the Secretary of State (this is the minimum power for STBs).
Rail	Right to be consulted about new rail franchises
	Set high level output specification for rail
Highways	Set the Road Investment Strategy for the Strategic Road Network
	Enter into agreements to undertake certain works on the Strategic Road Network (SRN), Major Road Network (MRN) and local roads
	Acquire land to enable construction, improvement, or mitigate adverse effects of highway construction
	Construct highways, footpaths, bridleways
Capital grants	Make capital grants for the provision of public transport facilities
Bus service provision	Duty to secure the provision of bus services
	Enter into Quality Bus Partnerships
	Implement bus service franchising
Smart ticketing	Introduce an integrated ticketing scheme
Air quality	Establish clean air zones
Other powers	Promote or oppose Bills in Parliament
	Incidental amendments to enable TfSE to operate as a type of local authority

Table 1: Powers and functions requested by TfSE in their draft Proposal to Government.

- 3.3 The draft Proposal to Government also included constitutional arrangements for TfSE once it becomes a statutory body. As with the existing shadow body, once statutory status is granted it is expected that each constituent authority will continue to appoint one of their Councillors/Members or their elected Mayor as a member of TfSE on the Partnership Board. The Partnership Board will be the only place where all constituent authorities are represented at an elected Member level, so the Board will have formal decision-making powers. The Partnership Board will meet at least twice a year, with the option to meet more regularly. Each constituent authority will also appoint another one of their Councillors/Members as a substitute member.
- 3.4 KCC responded to the consultation on the draft Proposal giving support for the formal establishment of an STB for the South East and highlighting the benefits of TfSE having statutory status. This includes speaking with one voice to ensure the case for transport investment in the region is clearly heard by government. As a statutory body, the government will be required to ‘have regard to’ the Transport Strategy for the South East.
- 3.5 The response also supported the proposed population-weighted voting mechanism, which would give Kent 11 votes out of a total of 54 because it has the largest population of all constituent authorities.
- 3.6 Importantly, the KCC response supported the proposed functions and powers being sought by TfSE but some of these were supported on condition that the principle of subsidiarity is applied, meaning that decisions on the use of these powers are made at the most local level i.e. by constituent authorities.

3.7 The KCC response to the consultation was discussed at Environment and Transport Cabinet Committee in July 2019.

4. Revised Proposal to Government

4.1 Following the closure of the Proposal consultation, the Proposal to Government was revised by TfSE and subsequently agreed at the Shadow Partnership Board meeting in September 2019. The revised proposal incorporated changes to address concerns that were put forward in the consultation. The changes are summarised as:

- Strengthening the opening narrative and strategic case to ensure that social inclusion and environmental protection, including reducing emissions, are clearly recognised as a priority for TfSE (reflecting the development of the Transport Strategy).
- Highlighting that the current governance arrangements for co-opted members are considered to work well, and strongly recommending that the Statutory Body continues with them.
- Providing clarification around the principle of consent and the concurrent nature of the powers. Additionally, the principle of subsidiarity has been incorporated into the document to demonstrate that any decisions relating to the powers is made at the most immediate (local) level and that, where possible, future aspirations will focus on drawing down powers from central government rather than seeking concurrent powers with LTAs.
- Removing the bus franchising power from the proposal, with the emphasis placed on building stronger relationships with the bus operators and working with local authorities to ensure that services are operating in a way that supports the delivery of the Transport Strategy e.g. smart and integrated ticketing at a regional (or wider) level.

4.2 The powers relating to rail have remained unchanged. However, TfSE is closely monitoring the outcomes of the Williams' Rail Review and will consider whether it should include provision to assume a role in contracting for rail services as it matures as an organisation.

4.3 Many of KCC's original comments have been addressed in the revision of the Proposal. This includes clarifying partnership working arrangements and explicitly setting out how the principle of subsidiarity should be applied in relation to powers concurrently held with LTAs.

4.4 The Proposal to Government has since been further updated to include reference to the COVID-19 pandemic and recognise that this has made significant changes to the way people live, work and travel. Whether these are short-term changes or accelerate longer-term changes is unknown, but TfSE is undertaking technical work to try to understand the possible impact in transport terms but also on the South East's economy.

4.5 The revised Proposal to Government is attached at Appendix B.

5. Consultation on Transport Strategy for the South East

- 5.1 The draft Transport Strategy for the South East was also subject to a public consultation, this one from 7th October 2019 to 10th January 2020. The Transport Strategy sets out an alternative approach to transport planning in that it looks to choose a preferred scenario for 2050 and plan what infrastructure is needed to achieve it – ‘decide and provide’. The vision statement is:

By 2050, the South East of England will be a leading global region for net-zero carbon, sustainable economic growth where integrated transport, digital and energy networks have delivered a step-change in connectivity and environmental quality.

A high-quality, reliable, safe and accessible transport network will offer seamless door-to-door journeys enabling our businesses to compete and trade more effectively in the global marketplace and giving our residents and visitors the highest quality of life.

- 5.2 The draft Strategy identified six journey types across the region, and the challenges and opportunities for each. These were: radial journeys, orbital and coastal journeys, inter-urban journeys, local journeys, international gateways and freight journeys, and future journeys. The draft Strategy also looked at potential priority interventions that could help deliver the Strategy, such as highway schemes, railway schemes, and public transport access to airports.
- 5.3 KCC’s response was supportive of the development of the Strategy and reiterated the importance of speaking with a single voice so that TfSE can truly influence government decision making on transport infrastructure investment. The vision and strategic goals for TfSE align with Kent’s own ambition and outcomes for transport set out in *Local Transport Plan 4: Delivering Growth without Gridlock*. Further, there is synergy with the themes being explored in the *Kent and Medway Energy and Low Emissions Strategy*, particularly around clean growth and developing the route to net zero carbon.
- 5.4 The proposed KCC response to the draft Transport Strategy was discussed at Environment and Transport Cabinet Committee on 23rd January 2020 and was endorsed by Members, with a letter sent to TfSE from the Cabinet Committee confirming that outcome.

6. Revised and Transport Strategy for the South East

- 6.1 The public consultation on the draft Transport Strategy for the South East received 3,676 responses of which 3,076 were part of a Friends of the Earth campaign based around a standardised response text. Questionnaires were submitted by 474 organisations or individuals and 126 other written responses were received.
- 6.2 Analysis of the consultation responses found strong levels of support for key elements of the draft strategy, including:
- 78% of respondents agreed with the use of the ‘decide and provide’ approach. This is the approach of deciding what type of future you want and then plan what infrastructure needs to be provided to achieve it. It is different to the traditional ‘predict and provide’ approach where the

transport capacity to accommodate the predicted increase in demand is planned to be provided.

- 85% of respondents agreed that transport policy in the South East should move away from being vehicle-based to based on 'planning for people' and 'planning for places'.
- 84% of respondents supported TfSE's vision for the South East.

- 6.3 Other notable themes that came forward in the consultation responses were around the need to prioritise cycling/walking/active travel, prioritising the environment and tackling climate change, and highlighting specific road improvements.
- 6.4 The Consultation Report identifies all the themes that were raised and how TfSE has responded to them, which includes where the Transport Strategy text has been amended as a result; where themes will be investigated further by the forthcoming area studies; or explaining the reasoning for the content of the draft Transport Strategy.
- 6.5 Like the Proposal to Government, the final version of the Transport Strategy has been updated to recognise the change in travel behaviour owing to the COVID-19 pandemic and the need to reflect on what may become the 'new normal' once the short-term impacts are over. Nevertheless, the Transport Strategy reiterates the commitment of TfSE to achieving the vision set out for a more productive and more sustainable South East.
- 6.6 There have been no changes to the vision or strategic priorities, except to recognise that net zero carbon should be achieved by 2050 at the latest – which was a key theme in the consultation responses. Consequently, the section on achieving net zero carbon has been expanded to explain the differing situation across the South East's authorities; and committing to an assessment of the carbon reduction impacts of interventions that will be identified in the forthcoming area studies.
- 6.7 Recognition has been added of the need of the Transport Strategy for the South East to influence the direction of national, regional and local policies and strategies because they will be critical in achieving the overall vision. This goes some way to clarifying the interaction between the Transport Strategy for the South East and the Local Transport Plans and Local Plans across the region.
- 6.8 Greater recognition has been given to the need for targeted highway schemes beyond the short-term. However, the revised Transport Strategy also includes the need for transport appraisal methodologies to be updated to reflect the shift in emphasis from vehicles to people/places. This was also included within KCC's response to the consultation.
- 6.9 A new section on bus services, reference to the use of water transport along the Thames, the role for long-distance coach services, and taking a natural capital approach to transport planning, so that opportunities to deliver wider environmental benefits are grasped, are all themes that been added since the draft Transport Strategy was published.

6.10 Overall, the revised and final version of the Transport Strategy for the South East has built on the strengths of the draft Transport Strategy. Importantly, it now recognises the need of local policies and strategies to take account of the Transport Strategy for the South East as they will be vital to delivering its vision. This will likely necessitate KCC to produce a new Local Transport Plan (LTP) aligned to the Transport Strategy for the South East.

6.11 The revised Transport Strategy for the South East is attached at Appendix C.

7. Legal implications

7.1 Invicta Law was commissioned to review the draft Proposal to Government, and this informed the KCC response to the consultation. Invicta Law has since been commissioned to review the revised Proposal.

7.2 Invicta Law has provided detailed legal advice to officers on the revised Proposal to Government for the establishment of TfSE and its impact on KCC. The revised proposal sets out the specific legal powers that are being sought from the Secretary of State for Transport and these powers would broadly be in line with KCC's objectives as a founding member of TfSE, if it is established as a new statutory STB.

7.3 TfSE updated the Proposal to Government since the Invicta Law review to recognise the COVID-19 pandemic. There were no changes to the requested powers and so further legal advice has not been sought.

8. Financial implications

8.1 KCC contributes £58,000 per year to fund the development of TfSE. All constituent authorities contribute. This has been matched by £1 million from the DfT in 2018/19 and a further £500,000 in 2019/20. The DfT has not yet confirmed funding, if any, for 2020/21 or subsequent years. This will mean that the programme for developing the transport strategy with area studies etc, will be programmed over a longer time scale so that TfSE can commission work within its annual budgets. It will not require increased contributions from constituent authorities to compensate for a lack of DfT funding.

9. Equalities implications

9.1 The KCC Equalities Impact Assessment (EqIA) for the revised Proposal to Government is attached at Appendix D.

9.2 TfSE has undertaken an Integrated Sustainability Appraisal, which includes an Equalities Impact Assessment on the draft Strategy. It found that:

“...the interventions are likely to result in a positive impact on protected characteristics, particularly age and deprivation. Improvements to the transport network, including pedestrian and cycleways, should result in more reliable and comfortable journeys, encouraging users to move away from private vehicles.”

10. Data Protection implications

10.1 A Data Protection Impact Assessment is not required as this decision does not require the processing of personal data.

11. Other corporate implications

11.1 N/A

12. Governance

12.1 Section 19.2 of KCC's Constitution authorises the Leader to establish joint arrangements for Executive functions.

12.2 The Monitoring Officer has delegated authority to update the Constitution consequent to the exercise of Executive power. Following the decision being taken and implemented, and subject to TfSE becoming a statutory body, TfSE will be listed as an Outside Body on the Council website and added to the list of partnership arrangements in Section 19 of the Constitution.

13. Conclusion

13.1 TfSE intends to seek statutory status in 2020. To do this it needs to submit the final Proposal to Government alongside its final Transport Strategy for the South East.

13.2 Since the consultation on the draft Proposal to Government, TfSE has revised the document taking account of the comments from KCC and others (KCC's response was discussed at Environment and Transport Cabinet Committee in July 2019). The revised Proposal has addressed KCC's concerns, as set out in section 4 of this report.

13.3 The results of the consultation on the draft Transport Strategy for the South East demonstrated that the majority of respondents supported the strategy. Nevertheless, a range of themes and specific comments emerged, and the Transport Strategy has been updated as a result. The final Transport Strategy for the South East has built on the strengths of the draft version and largely addressed the points raised in KCC's consultation response, as set out in section 6 of this report.

13.4 The Leader will be asked to take the decision to consent to TfSE's Proposal to Government and endorse the Transport Strategy for the South East in advance of TfSE submitting them to the DfT in summer 2020.

14. Recommendation

14.1 The Leader of the Council takes the proposed decision which states:

"As Leader of the Council, in accordance with Section 19.2 of the Council's Constitution, I agree to:

1. Consent to Transport for the South East's Proposal to Government for powers in addition to the general powers of a Sub-

national Transport Body and endorse the Transport Strategy for the South East as part of this proposal.

2. Participate in, and cooperate with, Transport for the South East in accordance with the powers requested from Government and those powers operating concurrently with Kent County Council as Highway Authority and Local Transport Authority.

I delegate authority to the Corporate Director of Growth, Environment and Transport, in consultation with the Leader and Monitoring Officer, to enter into relevant legal agreements and take other appropriate actions as necessary to implement the decision.”

15. Background Documents

Appendices:

- Appendix A: Proposed Record of Decision
- Appendix B: Revised Proposal to Government (September 2020)
- Appendix C: Revised Transport Strategy for the South East
- Appendix D: Equalities Impact Assessment (EqIA)

Previous Committee reports:

- Kent County Council’s response to Transport for the South East’s draft Proposal to Government:
<https://democracy.kent.gov.uk/documents/s91339/Item%2015%20-%20Report%20-%20KCC%20Response%20to%20Transport%20for%20the%20South%20East%20Proposal%20Consultation.pdf>
- Kent County Council’s response to Transport for the South East’s draft Transport Strategy for the South East:
<https://democracy.kent.gov.uk/documents/s95532/Item%209%20-%20Report%20-%20Transport%20for%20the%20South%20East.pdf>

16. Contact Details

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