



Draft LEGAL PROPOSAL for Midlands Connect as a statutory Sub-National Transport Body (STB)

Midlands Connect Strategic Board - 15 February 2018 Consultation Draft

The Strategic Board on 2 November 2017 discussed the potential for establishing a Sub-National Transport Body and agreed to consider a draft legal proposal in February 2018. The draft legal proposal would only be shared with 'constituent authorities' and proposed 'co-opted members' who effectively form our existing governance membership base.

This draft legal proposal sets out how the scoping of the potential for establishing Midlands Connect as a statutory Sub National Transport Body could be framed to address the requirements from section 102F 5(A) of the Local Transport Act 2008.

The draft proposal provides as follows:

1 Constituent Authorities

1.1 The constituent authorities making these proposals are the local transport authorities situated wholly or partly in the Midlands region of England, namely:

- Derby City Council
- Derbyshire County Council
- Herefordshire Council
- Leicester City Council
- Leicestershire County Council
- Lincolnshire County Council
- Nottingham City Council
- Nottinghamshire County Council
- Rutland County Council
- Shropshire Council
- Staffordshire County Council
- Stoke-on-Trent City Council
- Telford and Wrekin Council
- Warwickshire County Council
- West Midlands Combined Authority
- Worcestershire County Council

2 Area of the STB

The area of the STB will be the area of the constituent authorities.

3 Name of the STB

The name of the STB will be Midlands Connect.

4 Governance: Midlands Connect Partnership Board [the full STB]

- 4.1 Each constituent authority will appoint one of their councillors / members or their elected mayor as a member of Midlands Connect Sub-National Transport Body. The person appointed would be that authority's elected mayor, chair or leader, provided that, if responsibility for transport has been formally delegated to another elected member of the authority, that elected member may be appointed as the member of Midlands Connect, if so desired.
- 4.2 Each constituent authority will appoint another of their elected members as a substitute member to act as a member of the Midlands Connect in the absence of the person appointed under paragraph 4.1.
- 4.3 There will be a presumption that decisions are normally taken by consensus. [In the absence of a consensus, and subject to paragraphs 4.5 and [12.1], decisions will be made on an agreed voting mechanism.
- 4.4 If a consensus cannot be reached, there will be a requirement for a simple majority of the constituent members must vote in favour of the decision [e.g. 9 or more of the 16 members representing the constituent authorities]. In addition, there will also be a weighted voting mechanism, which will require a super-majority [two-thirds] of that weighted vote to be in favour of a decision.
- 4.5 The preferred weighted voting mechanism is set out below:
- a. With voting weighted on a population basis with each constituent authority having one vote for every 200,000 people within its area;
- 4.6 Projected voting entitlements (based on 2014 population estimates) are set out in Schedule A.]
- 4.7 Certain decisions will require both a super-majority consisting of two-thirds of the weighted vote to vote in favour of the decision and a simple majority of the members appointed by the constituent authorities to be carried. Such decisions will be:
- 4.7.1 The approval and revision of Midlands Connect's transport strategy
- 4.7.2 The approval of Midlands Connect's annual budget
- 4.7.3 Any changes to Midlands Connect's constitution
- 4.7.4 Any matters referred to Midlands Connect from the Midlands Connect Strategic Board

- 4.8 The Midlands Connect Partnership Board will meet at least twice a year.
- 4.9 Where full attendance cannot be achieved, the Partnership Board will be quorate where Constituent Members are representative of 75% (6 from 8) of the East Midlands authorities and 75% (6 from 8) of the West Midlands authorities.

5 Co-opted Members

- 5.1 The regulations may provide for the appointment of persons who are not elected members of the constituent authorities to be co-opted members of the Midlands Connect Sub-National Transport Body, to attend the Partnership Board.
- 5.2 Persons to be appointed as co-opted members will include:
- a. the person appointed by Midlands Connect as “independent chair of the Partnership Board” for the purposes of paragraph [see 4.5]; and
 - b. one elected member appointed by each of the local transport authorities which are not constituent authorities of Midlands Connect [and a member of other relevant regional and national agencies as appointed], namely:-

Department for Transport
Highways England
Network Rail
High Speed Two Limited

- 5.3 We propose to further consider the appropriate business and private sector representation for example, through representatives of the Local Enterprise Partnerships as co-opted members, and would formalise arrangements through Midlands Connect’s constitution to be agreed by members. The LEPs to be considered in the first instance as co-opted members include:

Greater Lincolnshire LEP
D2N2 LEP
Greater Birmingham and Solihull LEP
Coventry and Warwickshire LEP
Stoke and Staffs LEP
Black Country LEP
The Marches LEP
Leicester and Leicestershire LEP
Worcestershire LEP

- 5.4 We will also consider whether the constituent members of the West Midlands Combined Authority would request to be co-opted members, and would formalise

arrangements through Midlands Connect's constitution to be agreed by members. The existing West Midlands Combined Authority constituent members include:

Birmingham City Council
Coventry City Council
Dudley Metropolitan Borough Council
Sandwell Metropolitan Borough Council
Solihull Metropolitan Borough Council
Walsall Metropolitan Borough Council
Wolverhampton City Council

- 5.5 In accordance with section 102G(4) and (5) of the Local Transport Act 2008, co-opted members will be non-voting members of Midlands Connect, except to the extent that the voting members of Midlands Connect resolve that such members should have voting rights. Any such resolution would be incorporated in Midlands Connect's constitution.

6 Executive Arrangements

- 6.1 Midlands Connect will not operate formal statutory executive arrangements. Functions of Midlands Connect will be exercised by the entire Sub-National Transport Body, to be set out in detail in the Midlands Connect Constitution.
- 6.2 Midlands Connect is a "Local Authority" for the purpose of section 101 of the Local Government Act 1972 and provides the flexibility to delegate the discharge of its functions to a committee, sub-committee or officer, or to another Local Authority. As such, Midlands Connect may establish a committee(s) to discharge any functions as are delegated to it.
- 6.3 The functions of agreeing a budget and the transport strategy of Midlands Connect will not be delegated functions and will only be determined by a meeting of the Partnership Board. Decisions to amend the constitution will not be delegated and can only be determined by a meeting of the Partnership Board.
- 6.4 It is anticipated that Midlands Connect will establish committees, including a scrutiny committee [as set out in paragraph 12].

7 Midlands Connect Strategic Board

- 7.1 A Strategic Board will be established to provide leadership and accountability to the work of Midlands Connect. The Strategic Board will agree an annual business plan consistent with the Midlands Connect Strategy and provide oversight on operational matters, including ensuring value for money is achieved and the timely delivery of work programmes. There will be an opportunity for the Strategic Board to provide public visibility and engagement, including with other bodies like Midlands Engine and

Transport for the North. The Strategic Board will be complemented by a Steering Group representing members at official level providing expertise and co-ordination to the Midlands Connect programme.

7.2 The Strategic Board will consist of:

[three West Midlands Local Transport Authority Leaders,
three East Midlands Local Transport Authority Leaders,
two West Midlands Local Enterprise Partnerships,
two East Midlands Local Enterprise Partnerships, and
various key partners of Midlands Connect,]

7.3 The Strategic Board will be nominated by the Partnership Board and meet at least three times a year. The Partnership Board will appoint the chair of the Strategic Board, and may appoint the same person as is appointed to be the “independent chair” of the Partnership Board. The Partnership Board may also appoint a single or multiple vice-chairs from the Constituent Authorities. Where the Chair or Vice-Chair is the representative member from a Constituent Authority they will have a vote.

7.4 Subject to paragraph 7.3, Midlands Connect will determine the functions of the Strategic Board.

7.5 The Strategic Board will determine its own procedures, subject to any requirements that Midlands Connect may impose.

8 Executive Body

8.1 Midlands Connect will not establish an executive body. Midlands Connect will identify roles to ensure all statutory responsibilities are effectively satisfied, including posts of a Head of Paid Service, a Monitoring Officer and a Chief Finance Officer and may delegate the discharge of agreed functions to its officers in accordance with a scheme of delegation or on an ad hoc basis.

9 General Functions

9.1 General functions provided for in section 102H of the Local Transport Act 2008, including:

- (a) to prepare a transport strategy for the area (see section 102I).
- (b) to provide advice to the Secretary of State about the exercise of transport functions in relation to the area (whether exercisable by the Secretary of State or others).

- (c) to co-ordinate the carrying out of transport functions in relation to the area that are exercisable by different constituent authorities, with a view to improving the effectiveness and efficiency in the carrying out of those functions.
- (d) if the STB considers that a transport function in relation to the area would more effectively and efficiently be carried out by the STB, to make proposals to the Secretary of State for the transfer of that function to the STB (this would require the formal consent of each Constituent member).
- (e) to make other proposals to the Secretary of State about the role and functions of the STB.

9.2 The functional power of competence in section 102M of the Local Transport Act 2008.

Midlands Connect will use the general functions to develop a specific role for Midlands Connect in relation to Roads, including:

- 9.3 to be consulted in relation to the development of the Road Investment Strategy for roads in relation to roads and rail wholly or partially within the Midlands Connect area
- 9.4 to make proposals to the Secretary of State (or others) in relation to investment for the strategic road network and rail network which are wholly or partially within the Midlands Connect area
- 9.5 to make proposals to the Secretary of State to identify the major road network wholly or partially within the Midlands Connect area

Midlands Connect will use the general functions to develop a specific role for Midlands Connect in relation to Rail, including:

- 9.6 to be consulted in relation to the development of the High Level Output Specification for rail wholly or partially within the Midlands Connect area
- 9.7 to work with Local Transport Authorities to make proposals for the development and delivery of rail franchises which are wholly within the Midlands Connect Area
- 9.8 to be consulted in relation to changes to rail services which are wholly or partially within the Midlands Connect Area

10 Exercise of local transport functions

- 10.1 It is not proposed that any transport functions exercisable by a Local Authority or Passenger Transport Executive/Combined Authority should be exercisable by Midlands Connect instead of by the Local Authority or Passenger Transport Executive/Combined Authority.
- 10.2 It is proposed that various transport functions should be exercisable by Midlands Connect concurrently with the Local Authority or Passenger Transport Executive/Combined Authority as set out below. That is, both the Local Authority and

Midlands Connect are able to exercise the functions, either together or separately. The general local transport functions of Midlands Connect should be:

- 10.3 Midlands Connect should have the same power of a local authority under section 56(2) of the Transport Act 1968 to give capital grants to persons for purpose of the provision of facilities for public passenger transport.
- 10.4 There will be an operating agreement between Midlands Connect and the constituent authorities providing, inter alia, for the drawing up of agreed protocols in relation to the exercise of concurrent functions. Such protocols would be kept under regular review.

The general local transport functions of Midlands Connect in relation to Ticketing:

- 10.5 Midlands Connect to work with the Local Transport Authorities under section 134C - 134F and sections 135-138 of the Transport Act 2000 in relation to making advanced and joint and through ticketing schemes.
- 10.6 Section 134C - 134F of the Transport Act 2000 are new provisions introduced under section 7 of the Bus Services Act 2017 and replace sections 135-138 for schemes wholly in England; sections 135-138 will continue to apply in England only in relation to joint ticketing schemes where one of the parties is a Local Transport Authority in Wales.

The general local transport functions of Midlands Connect in relation to Rail:

- 10.7 Midlands Connect should have the same powers and rights of a Passenger Transport Executive/Combined Authority under section 13 of the Railways Act 2005 including rights to be consulted in relation to franchise agreements for services to, from or within its area.

11 Financial

- 11.1 The Regulations should provide for the constituent authorities to make statutory contributions towards the costs of Midlands Connect, provided only that a decision to require such contributions and the overall amount of such contributions is agreed by each relevant authority. The apportionment of such contributions should be determined unanimously unless agreed to the contrary.
- 11.2 Midlands Connect should be able to accept voluntary contributions to its costs from constituent authorities.
- 11.3 Midlands Connect will work with DfT to establish arrangements for VAT treatment when Midlands Connect are a statutory body. Including considering whether an order should be made by the Treasury specifying Midlands Connect (or STBs generally) as a body to which section 33 of the Value Added Tax Act 1994 applies. This would enable Midlands Connect to claim refunds of VAT paid by it in certain cases.

12 Scrutiny

- 12.1 It is proposed that Midlands Connect arrange for the appointment of a scrutiny committee including at least one member of each constituent authority nominated by the constituent authority.
- 12.2 The scrutiny committee appointed by Midlands Connect may not include a member, substitute member or co-opted member of Midlands Connect, but may include co-opted persons representative of non-constituent authorities and non-councillor representatives of passengers, road users, employers and employees.
- 12.3 The arrangements should ensure that the membership of the scrutiny committee reasonably reflects the political balance of elected members on the constituent authorities (or, in the case of combined authorities, their constituent councils) taken together.
- 12.4 The arrangements should ensure that the scrutiny committee has power to:
- (a) review and scrutinise decisions made, or other action taken, by Midlands Connect
 - (b) make reports or recommendations with respect to the discharge of the functions of Midlands Connect
 - (c) make reports or recommendations on transport matters that affect the area of Midlands Connect or inhabitants of the area
 - (d) require members or officers of MC to attend meetings of the committee to answer questions.
 - (e) invite other persons to attend meetings of the committee]

13 Miscellaneous

- 13.1 It may be necessary that certain additional Local Authority enactments are applied to Midlands Connect as if Midlands Connect were a Local Authority, including matters relating to staffing arrangements, pensions, ethical standards, and provision of services etc.
- 13.2 Such provisions should include:
- 13.2.1 The following provisions of the Local Government Act 1972
- (a) Section 113 (secondment of staff)
 - (b) section 116 (member of Midlands Connect not to be appointed as officer)
 - (c) section 117 (disclosure officers of interests in contracts)
 - (d) sections 120-123 (acquisition and disposal of land)
 - (e) section 135 (standing orders for contracts)
 - (f) section 142 (2) (provision of information)
 - (g) section 222 (power to instigate and defend legal proceedings)

- 13.2.2 Section 1 of the Local Authorities (Goods and Services) Act 1970 to enable constituent authorities to provide services to Midlands Connect, and vice-versa
- 13.2.3 Section 9 (5) of the Transport Act 1968 to enable Transport for West Midlands and West Midlands Combined Authority to provide services to Midlands Connect, and vice-versa
- 13.2.4 Section 7 of the Local Government and Housing Act 1989 (staff to be appointed on merit)
- 13.2.5 Section 29 of the Localism Act 2011 (register of interests)

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Schedule A

MIDLANDS CONNECT - VOTING METRICS

MIDLANDS CONNECT CONSTITUENT AUTHORITIES

Midlands Connect Constituent Authorities	Population*	% of Midlands Connect area Population	'Population Weighted – 200k'
West Midlands Combined Authority	2,808,356	29.14	14 (28%)
Staffordshire County Council	860,165	8.93	4 (8%)
Nottinghamshire County Council	801,390	8.32	4 (8%)
Derbyshire County Council	779,504	8.09	4 (8%)
Lincolnshire County Council	731,516	7.59	4 (8%)
Leicestershire County Council	667,905	6.93	3 (6%)
Worcestershire County Council	575,421	5.97	3 (6%)
Warwickshire County Council	551,594	5.72	3 (6%)
Leicester City Council	337,653	3.50	2 (4%)
Shropshire Council	310,121	3.26	2 (4%)
Nottingham City Council	314,268	3.22	2 (4%)
Derby City Council	252,463	2.62	1 (2%)
Stoke on Trent City Council	251,027	2.61	1 (2%)
Herefordshire Council	187,160	1.94	1 (2%)
Telford and Wrekin Council	169,440	1.76	1 (2%)
Rutland County Council	38,022	0.39	1 (2%)
Total votes	9,636,005	100	50

*population as per ONS 2014 Estimates

Notes

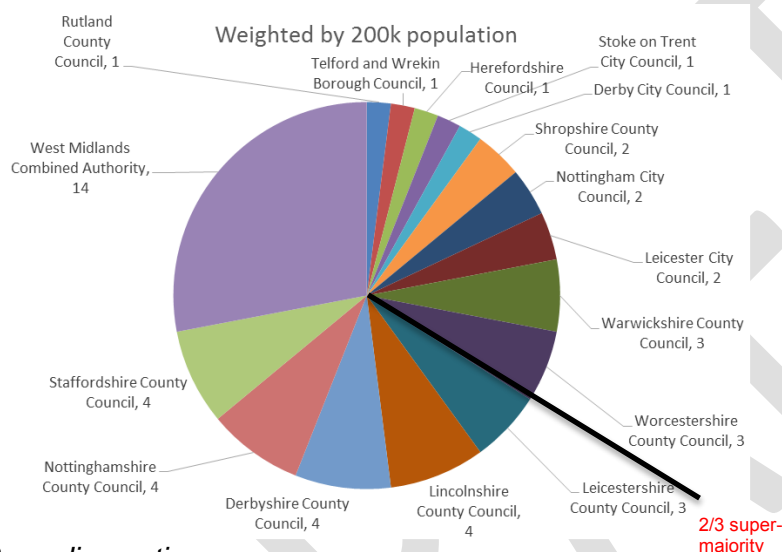
- (1) Column 1 authorities are Combined Authorities / Local Transport Authorities on their existing boundaries
- (2) Column 2 population figures are ONS 2014 estimates based on current Combined Authorities / Local Transport Authorities boundaries
- (3) Column 3 is the proposed option which awards one vote to each Combined Authorities / Local Transport Authorities for each 38,022 or part thereof of resident population.
- (4) Column 4 is the population of the Combined Authorities / Local Transport Authorities as a percentage of the aggregate Midlands Connect area population 9,636,005.
- (5) On the publication of the annual ONS estimates, the voting band of each authority would be reviewed and adjusted, if necessary.

Comparison of Voting Options:

Four voting options were considered by nominated officials from each of the proposed constituent members, through the 'STB Advisory group'. The Steering group recommended a preferred option be presented to Strategic Board, with further information on preceding options set out below:

- a. **PREFERRED OPTION: 'Population Weighted – 200k'** - with voting weighted on a population base of a vote for every 200k people. There would be 50 votes in total, no individual member would have a veto and at least 9 votes would be required to reach a super-majority and simple majority.

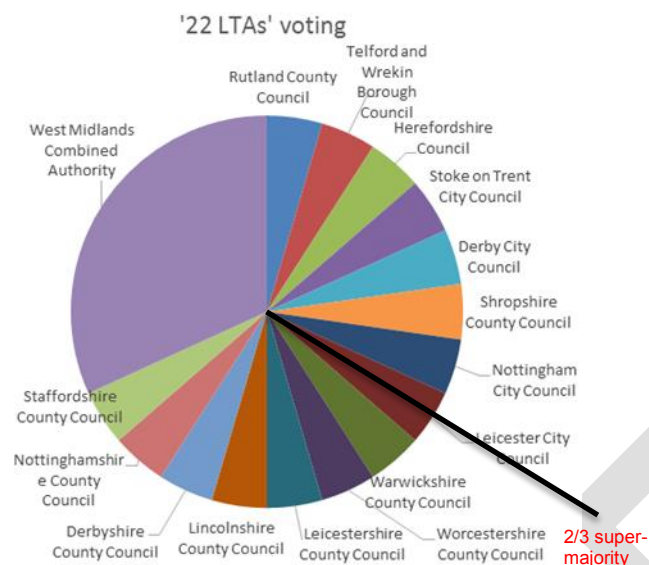
'Population Weighted – 200k'



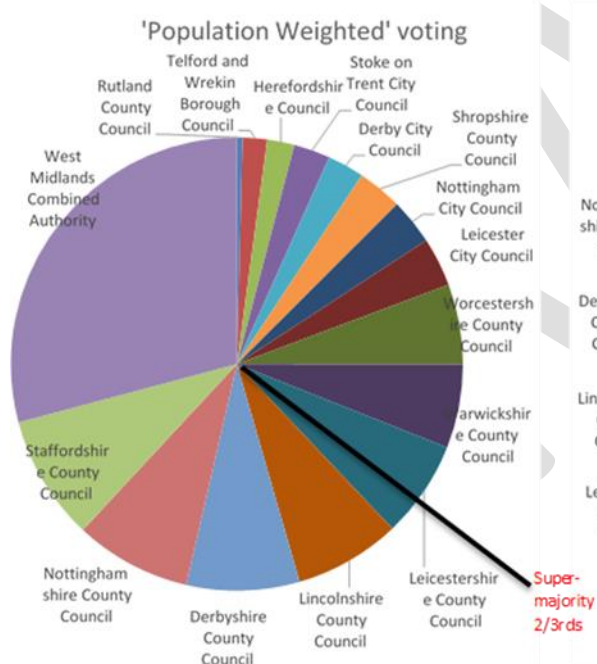
Preceding options:

- b. '22 Local Authorities' – gives each constituent member a single vote, apart from the Combined Authority which would have votes for how many constituent members it has, in the case of the West Midlands Combined Authority, 7 votes. There would be 22 votes in total, no individual member would have a veto and at least 9 votes would be required to reach a super-majority and simple majority.
- c. 'Population weighted – smallest authority' - with each 'constituent member' having a vote based on population, with quantum based on the smallest member's population. This is set out in annex A and means at least 170 'weighted' votes would be required for a super-majority, with the 'simple majority' rule as a safeguard to ensure at least 8 'constituent members' agree. No one member would have a veto, a minimum of 2 members (with West Midlands Combined Authority) and 5 (without West Midlands Combined Authority) could prevent a super-majority.
- d. 'One authority, One vote' - granting each 16 'constituent members' an equal vote. This would mean at least 11 of 16 members would need to vote in favour to form a super-majority, and a minimum of 6 members would be needed to prevent a super-majority.

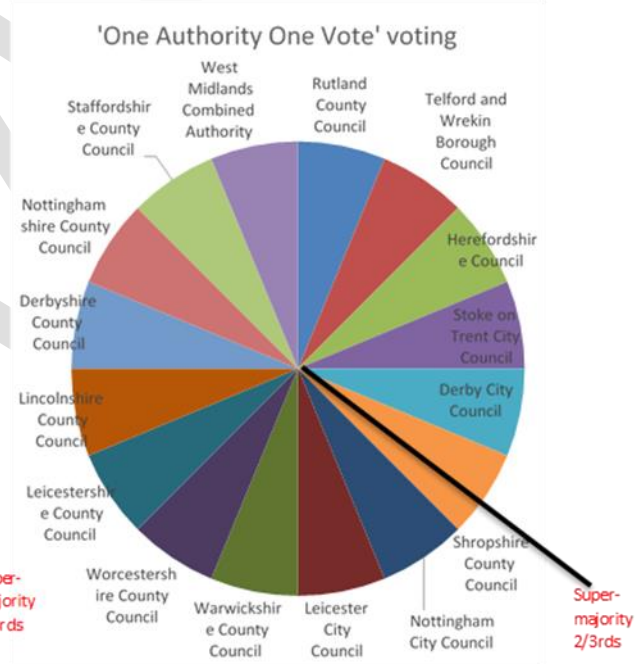
'22 Local Authorities'



'Population Weighted – smallest population'



'One Authority, One Vote'



It was felt that these three options did not appropriately reflect the distinct characteristics of our area or kept to the simplicity that would be conducive to collective decision-making. Alternative options were therefore considered to provide a clearer and reasonable account of the characteristics of our area.

1 Responding to the Consultation

- 1.1 Consultees are welcome to send comments through to Midlands Connect via MCAdmin@MidlandsConnect.uk or through correspondence addressed to Midlands Connect, 16 Summer Lane, Birmingham, B19 3SD.
- 1.2 **Please provide responses by Tuesday 15th May 2018.**
- 1.3 Respondents are welcome to answer all or only some of the questions set out below, they are offered as prompt questions.

Consultation Questions:

Midlands Connect are looking at the options to establish a statutory Sub-National Transport Body (STB) for the Midlands, following TfN as the first STB in the country. This would enable the Midlands to have a formal and unified voice, influencing Government decision making. The prime functions for an STB would be to publish a pan-Midlands strategy and provide advice to DfT Secretary of State on investment opportunities across the area.

1. **Do you, in principle, support the establishment of a Sub-National Transport Body for the Midlands (including the ability to publish a transport strategy and advise central Government on transport matters in the Midlands)?**
 - a. **What do you regard as the benefits Midlands Connect will provide as a statutory Sub-National Transport Body?**

Midlands Connect has set out a draft proposal, including the constituent members and a number of co-opted members. Primary legislation sets out what bodies can be considered as 'constituent authorities'¹.

2. **Do you, in principle, think your relevant Local Transport Authority should be a member of the Midlands Connect Sub-National Transport Body?**

Beyond general functions of an STB, Midlands Connect could make a proposal to DfT for other transport functions to be exercised by it, either alone or together with the Secretary of State or local transport authorities, eg in relation to constructing new highways. Any proposal to DfT would need formal consent from each 'constituent member' and any regulations would also need formal consent from all 'constituent members'. The draft proposal stipulates some concurrent functions but that any such functions could be exercised only if the proposed use is consented to by the relevant LTA whom the use may affect.

3. **Are you content with the proposed functions in the draft STB proposal?**
4. **What other functions do you think an STB should have/not have?**
 - a. **Would you be content with an STB having such functions if any use of those functions required the consent of the relevant LTA?**

[For prospective constituent members]

¹ See Part 5A of the Local Transport Act section 102E (5) <http://www.legislation.gov.uk/ukpga/2016/1/section/21/enacted>

Midlands Connect will continue to explore a variety of appropriate funding options. The proposal, aligns with TfN's approach for consistency, in that a compulsory contribution can be required if all members agree, but individual members can also make voluntary contributions if they choose to.

5. Would you be content that any local funding requirement for the STB would require the consent of each individual constituent member?

Midlands Connect aims to maintain continuity from the governance structure that has served members effectively to date. Some key decisions may require a vote, to be set out as the transport strategy, annual budget and amendments to the constitution. A number of voting options has been explored, learning from past experiences, which all 'constituent members' will need to consent to the final proposal to DfT.

6. Are you content with the preferred voting mechanism, to be used when consensus can not be reached?

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