

Cabinet

10 May 2018

Proposed Statutory Sub-National Transport Body for the Midlands

Recommendations

That Cabinet:

- 1) Note the emerging proposals for Midlands Connect to become a Statutory Sub-National Transport Body (STB) for the Midlands.
- 2) Agree or provide comments on the draft response to the consultation on the Midlands Connect proposition as set out in Appendix A.
- 3) Agree the process for the council to consider the Midlands Connect proposition as set out in Appendix B.

1.0 Background

- 1.1 The recently published Midlands Engine 'Vision for Growth' sets out how the region can emulate the UK's Industrial Strategy and drive Britain's post-Brexit growth, with the aim to add £54 billion of GVA to the regional and national economy by 2030.
- 1.2 Midlands Connect acts as a key pillar in the Midlands Engine partnership, bringing transport and infrastructure investment into a joined-up consideration around the area's skills, innovation and trade priorities. The partnership published its strategy in March 2017, which identifies the priority areas of investment that are needed on the strategic road and rail network up to 2040 to support the ambitions of the Midlands Engine. The strategy also details how investment in new technology is required to ensure the area increases its levels of productivity.
- 1.3 Midlands Connect represents 16 constituent members, 9 Local Enterprise Partnerships, Network Rail, Highways England, Birmingham and East Midlands Airports, the Department for Transport and the business community via the East and West Midlands Chambers of Commerce. The partnership currently operates on a non-statutory voluntary basis. The County Council supports the Midlands Connect strategy, and is represented on the Strategic Board, Steering Group and Technical Advisory Group by a number of senior members and officers.

- 1.4 The existing Midlands Connect governance aims to recognise and complement the role of Local Transport Authorities, Local Enterprise Partnerships and key organisations such as the West Midlands Combined Authority and Transport for East Midlands. Through the publication of its strategy, the partnership has already begun to communicate a clear message to Government as to what investment in transport is needed to support the growth of the regional economy.

2.0 Legislation

- 2.1 The government introduced the power to establish Sub-National Transport Bodies through Section 21 of the Cities and Devolution Act 2016, amending the Local Transport Act 2008.
- 2.2 The primary legislation sets out that Sub-National Transport Bodies would have General Functions, including establishing a Transport Strategy for the area and providing advice to Government regarding the strategy.
- 2.3 Local Authorities can also propose that a Sub-National Transport Body have general local transport functions. Midlands Connect would look at smart ticketing as one of these functions.
- 2.4 Transport for the North (TfN) is set to become the first Sub-National Transport Body in England. They submitted a proposal for statutory status in October 2016 and received a positive response to their submission, by the Secretary of State in March 2017. After receiving 56 Local Authority consents including all 19 constituent authorities, this enabled the regulations to be approved to become a statutory body. After being passed by the House of Lords and the House of Commons, legislation was signed on the 22 January 2018 with it coming into force on the 1st April 2018.
- 2.5 A number of other non-statutory partnerships such as England's Economic Heartland are also looking to become an STB.

3.0 Emerging Midlands Connect STB Proposition

- 3.1 At a meeting on 2nd November 2017, the Midlands Connect Strategic Board discussed the potential for Midlands Connect to become a formal STB. A draft proposal, including a draft legal proposal, has been prepared and Midlands Connect is currently undertaking the required statutory consultation with appropriate bodies, such as Highways England and authorities neighbouring the proposed STB geographical area, on behalf of the Proposed Constituent Authorities (PCAs), including the County Council. The draft legal proposal is for consideration by the PCAs and sets out the proposed membership and geographical coverage of the STB, governance arrangements, general functions and issues relating to scrutiny and finance.
- 3.2 The proposal sets out how Midlands Connect, as an STB, would act as a valuable statutory partner for the Government to ensure infrastructure

investment delivers growth across the whole of the Midlands. Midlands Connect would continue to support local aspirations, including through further Devolution and Local Industrial Strategies; add value to, but not replace, any existing local powers and responsibilities; and provide an effective and co-ordinated voice to feed into key investment decisions taken by the government.

- 3.3 The name of the proposed STB would be Midlands Connect. The Proposed Constituent Authorities are those wholly or partly in the Midlands Regions of England. Governance of the STB would be by means of a Partnership board. Each constituent authority would appoint one of their councillors or their elected mayor to be represented on the Partnership Board along with a substitute member. The Partnership Board would meet at least twice per annum.
- 3.4 The Partnership Board would appoint a Strategic Board, to provide leadership and accountability for the work of Midlands Connect. The Strategic Board would agree an annual business plan consistent with the Midlands Connect Strategy and provide oversight of operational matters. The Strategic Board would meet three times a year and be chaired by the person appointed by the Partnership Board as the Chair. The Strategic Board would be complemented by a Steering Group representing members at officer level providing expertise and co-ordination of the Midlands Connect programme. The proposal is that Midlands Connect will not operate formal statutory executive arrangements. The Coventry and Warwickshire Local Enterprise Partnership would be invited to join as a co-opted member of the STB, together with other co-opted members.
- 3.5 Midlands Connect would exercise the general functions as set out in section 102H of the Local Transport Act 2008, including:
 - 3.5.1 To prepare a transport strategy for the area.
 - 3.5.2 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).
 - 3.5.3 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.
 - 3.5.4 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).
 - 3.5.5 To make other proposals to the Secretary of State about the role and functions of the STB.

- 3.6 In relation to roads, Midlands Connect will use the general functions to develop a specific role including:
- 3.6.1 To be consulted in relation to the development of the Road Investment Strategy in relation to roads wholly or partially within the Midlands Connect area.
 - 3.6.2 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.
 - 3.6.3 To make proposals to the Secretary of State to identify the Major Road Network wholly or partially within the Midlands Connect area.
- 3.7 In relation to rail, Midlands Connect will use the general functions to develop a specific role including:
- 3.7.1 To be consulted in relation to the development of the High Level Output Specification for rail wholly or partially within the Midlands Connect area.
 - 3.7.2 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.
 - 3.7.3 To be consulted in relation to changes to rail services which are wholly or partially within the Midlands Connect area.
- 3.8 The general local transport functions of Midlands Connect in relation to ticketing will include:
- 3.8.1 Working with Local Transport Authorities under section 134C – 134F and sections 135-138 of the Transport Act 2000 in relation to making advanced, joint and through ticketing schemes.
 - 3.8.2 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.

4.0 Implications for Warwickshire

- 4.1 It is not proposed that Midlands Connect take away any statutory local transport functions which the County Council or any Passenger Transport Executive/Combined Authority is responsible for undertaking.

- 4.2 Various general local transport functions would be exercisable by Midlands Connect separately or concurrently with the Local Transport Authority or Passenger Transport Executive/Combined Authority. However, it would be the Local Authority's decision as to whether they wished Midlands Connect to work concurrently with them on such functions.
- 4.3 It is envisaged that Midlands Connect will provide one voice for the wider region to ensure the strategic transport needs of its geographical area are clearly articulated to Government to inform the future planning and funding of major transport infrastructure. Without having an STB in place, the Midlands may struggle to compete with other areas where statutory STB's are in the process of being established.
- 4.4 Currently, there isn't a statutory regional transport strategy and the power of an STB to adopt one would not involve a transfer of any of the existing functions of the County Council. Once a strategy is adopted the legislation provides that, "The constituent authorities of an STB must exercise transport functions with a view to securing the implementation of the proposals contained in the transport strategy". Transport in this context has a wide meaning including not just passenger and freight vehicles and services but the roads and rails on which they move. The current Midlands Connect (non-statutory) strategy produced in March 2017 includes policies relating to the A46 Corridor Study and the Midlands Motorway Hub Study. Any future STB strategy is likely to include similar policies relating to major roads such as the A5 and A46 which the County Council has a keen interest in.
- 4.5 Once an STB has been created, an increase in its powers can only be achieved by further draft regulations being laid before Parliament and a function belonging to a PCA can only be added if it consents (functions of other public bodies can be added without their consent).
- 4.6 Regulations can include the power for the STB to give legally binding directions to a PCA as to the exercise of its transport functions; whilst it is not proposed that such a power would be included in the initial regulations it would appear that the Secretary of State could make regulations adding such a power subsequently without the consent of the PCAs. The boundaries of an STB (i.e. adding and removing a member authority) can be changed only if the existing members have together made a proposal to the Secretary of State to that effect. The legislation is ambiguous as to whether "together" means that the member authorities are unanimous or whether a weighted super-majority plus a simple majority would suffice. Once a member of the STB, the County Council could only leave the STB if a majority of the other members agreed or it was dissolved entirely.
- 4.7 It is proposed that there will be a presumption that decisions are normally taken by consensus. If a consensus cannot be reached, there will be a requirement for a simple majority of the constituent members who must vote in favour of the decision (e.g. the votes of 9 or more of the 16 members representing the constituent authorities would be required). In addition to this,

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.

The preferred voting mechanism is to be based on a weighted population basis with each PCA having one vote for every 200,000 residents within its area.

- 4.8 Midlands Connect has funding from Government for a number of specific programmes until 2020.
- 4.9 Midlands Connect remains in discussion with Government regarding future funding opportunities and propose to have the ability to agree voluntary contributions from partners.
- 4.10 Midlands Connect would be a statutory partner with Government with the focus on securing further investment in delivering infrastructure throughout the Midlands.
- 4.11 As primary legislation does not allow STBs the power to borrow money or raise revenue, they will need to ensure that a sustainable long term investment programme is developed. Although, Government is expected to provide a substantial amount of funding for Transport for the North, other potential funding options are also being explored.
- 4.12 DfT has committed £10million of funding per annum towards the recently established Transport for the North (TfN) Sub-National Transport Body. It is likely that Midlands Connect would look to DfT to contribute towards funding for an initial 6 year period, similar to that of Transport for the North. The STB proposition allows for PCAs 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 would also need to be determined unanimously. Whilst the County Council would not expect to contribute towards the core running costs of the STB, it should be recognised that if DfT funding is not forthcoming there will need to be a workable mechanism in place for members to contribute towards these costs, and that the County Council would not be able to veto or opt out of this. The draft response to the consultation therefore recommends that such a mechanism is developed by Midlands Connect to address this potential eventuality.
- 4.13 There is currently a team of 16 staff at Midlands Connect who are funded until 2020. It is envisaged that the current staffing arrangements would continue should the STB become formally established, and that the County Council would continue to contribute officer time in terms of providing geographical and technical input to the wider work of Midlands Connect. Should funding be secured from DfT towards the core running costs, it will provide greater clarity in terms of future staffing and resource availability.

5.0 Consultation response

- 5.1 The required statutory consultation with appropriate bodies, such as Highways England and authorities neighbouring the proposed STB geographical area, is being undertaken by Midlands Connect on behalf of the Proposed Constituent Authorities (PCAs), including the County Council. Letters will be sent out to neighbouring authorities and other appropriate organisations and individuals with a copy of the 'Strategic Case' for Midlands Connect as an STB. Simultaneously, letters will be sent to 'Proposed Constituent Authorities' and potential 'Co-opted members' with a copy of the 'Strategic Case' and 'draft Legal Proposal', as there are additional specific questions for potential members of Midlands Connect to consider. These will be for internal consultation by PCAs.
- 5.2 The consultation will run from 7th May 2018 until mid-July 2018.
- 5.3 Midlands Connect will collate responses following the consultation and report any issues back to the STB Advisory Board.
- 5.4 A draft response to the consultation questions is attached at **Appendix A** to this report. Cabinet is asked to agree or provide comments on this response in order that the Council has an agreed response drafted in readiness to return to Midlands Connect once the consultation process commences on 7th May.

6.0 Timescales associated with the decision and next steps

- 6.1 Midlands Connect has set out an indicative timetable to become a statutory STB by summer 2020. These timescales have been amended to reflect the parliamentary time which is now required for Brexit related legislation over the next two years.
- 6.2 The decision as to whether the County Council should become part of the STB is an important one for the Authority. It is vital therefore that our democratic processes dovetail with the proposed timescales which Midlands Connect is working to.
- 6.3 The proposed timetable is attached as **Appendix B** to this report. Cabinet is asked to agree the process for the County Council to consider the Midlands Connect STB proposition.

Appendices

- Appendix A: Draft response to the Midlands Connect STB Consultation
- Appendix B: Proposed timetable

Background Paper

Draft Midlands Connect STB Legal Proposal

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The report was circulated to the following members prior to publication:

Local Member(s): None

Other members: Councillor Chattaway, Roberts, Shilton, Clarke, Fradgley, Horner, Kondakor

Proposed Sub-National Transport Body (Midlands Connect) – Response to consultation questions

1. **Do you, in principle, support the establishment of a statutory Sub-National Body (STB) 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?**

The County Council agree with the principle of establishing a Statutory Sub-National Body (STB) for the Midlands. However, this is dependent on the final details within the Legal Proposal and a clearer understanding of the financial implications for the authority.

The establishment of the STB will enable Midlands Connect to act as a valuable statutory partner for the Government to ensure infrastructure investment delivers growth across the whole of the Midlands. Midlands Connect would continue to support local aspirations, including through further Devolution and Local Industrial Strategies; add value to, but not replace, any existing local powers and responsibilities; and provide an effective and co-ordinated voice for the Government.

Further, it will enable Midlands Connect to provide one voice for the wider region to ensure the strategic transport needs of its geographical area are clearly articulated to Government to inform the future planning and funding of major transport infrastructure.

The STB would strengthen the case in the Midlands for Major Infrastructure spending decisions and would allow a greater influence when funds are allocated.

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

The County Council support the principle of becoming a member of the STB. However, there are still uncertainties, particularly around funding and staffing which need to be clarified before a full commitment can be made.

The County Council's current position would be to sign up based on the proposed functions of the STB. However if additional functions are proposed in the future, we would need to review this position.

3. **Are you content with the proposed functions in the draft STB proposal?**

- a. **To prepare a Transport Strategy for the area;**

The County Council would support this.

Proposed Sub-National Transport Body (Midlands Connect) – Response to consultation questions

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);

The County Council would support this.

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;

This would be supported, for example, this is already happening in relation to work surrounding smart ticketing across the Midlands.

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).

This would be dependent on the individual case and situation. The County Council does not at present envisage supporting the transfer of any functions of the Local Transport Authority or Passenger Transport Executive as is made clear in its response to 4.a below.

e. To make other proposals to the Secretary of State about the role and functions of the STB.

The County Council would accept this role for the STB but on the basis that no functions would transfer from, or be shared by, a PCA without its individual consent, as it is required by the legislation in any event.

f. 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.

The County Council would support this. However, we would expect to continue to be consulted in addition to Midlands Connect and respond as appropriate even if the view of the County Council differed to the view of Midlands Connect.

g. 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.

The County Council would support this.

Proposed Sub-National Transport Body (Midlands Connect) – Response to consultation questions

h. To make proposals to the Secretary of State to identify the major road network wholly or partially within the Midlands Connect area.

The County Council would support this.

i. To be consulted in relation to the development of the High Level Output Specification for rail wholly or partially within the Midlands Connect area.

The County Council would support this. However, we would expect to continue to be consulted in addition to Midlands Connect and respond as appropriate even if the view of the County Council differed to the view of Midlands Connect.

j. 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.

The County Council would support this.

k. To be consulted in relation to changes to rail services which are wholly or partially within the Midlands Connect area.

The County Council would support this. However, we would expect to continue to be consulted in addition to Midlands Connect and respond as appropriate even if the view of the County Council differed to the view of Midlands Connect.

l. Midlands Connect should have the same power of a local authority to give capital grants to persons for the purpose of the provision of facilities for public passenger transport.

The County Council would support this, provided that the power of PCAs to do the same is not impaired and no PCA could be required to contribute directly or indirectly without its individual consent.

m. 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 County Council would support this and regard it as an important safeguard if functions are to be exercisable concurrently, subject to review and agreement of the terms of such an operating agreement.

n. 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 through ticketing schemes.

The County Council would support this as work is already being undertaken on smart ticketing across the West Midlands, which the County Council is currently involved in.

Proposed Sub-National Transport Body (Midlands Connect) – Response to consultation questions

The County Council would support the STB having a co-ordinating role but would not support the imposition of such schemes on unwilling authorities.

o. 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.

The County Council would support this, although we would expect to be able to respond individually as well even where we differ.

4a. What other functions do you think an STB should have/not have?

The County Council does not suggest any additional functions.

The County Council note that Midlands Connect do not propose to have the following functions:

- a. Any functions which replace the functions of the Local Authority or Passenger Transport Executive (as opposed to those functions which are to be concurrent).
- b. Being responsible for any operational or maintenance responsibilities.
- c. Set priorities for local authorities for roads that are not part of the Major Road Networks areas of responsibility.
- d. Any consultation function which would replace consultation with an existing local authority (as opposed to being additional to local authority consultation).
- e. Give directions to a constituent authority about the exercise of transport functions by the authority in their area.
- f. Take on responsibility for any concessionary or operational functions.

It is on that basis that the County Council supports this STB proposal. The County Council would not support any change to this in the future as it would undermine the statutory roles and responsibilities of the authority.

4b. Would you be content with an STB having such functions if any use of those functions required the consent of the relevant LTA?

The view of the County Council would not change even were the consent of the relevant authority to be required.

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

The County Council would not expect to contribute towards the core running costs but may wish to contribute towards specific projects on a case by case basis, just as it has done to date.

Proposed Sub-National Transport Body (Midlands Connect) – Response to consultation questions

The County Council expects that no member could be obliged to contribute to a specific project or grant without its consent. However, if core running costs require funding from members at any stage, it is not practicable for each member to have a veto or opt out. A clear and workable decision making mechanism needs to be set out for determining what funding requests will be made to members, how costs will be apportioned, how that relates to the annual budget and in what circumstances they may be made an obligation by majority or super-majority.

The County Council is concerned that a funding framework which gives every member a veto may prove unworkable, and that an annual budget can be approved by a super-majority but the funding for it depends on unanimity.

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

If a consensus cannot be reached, there would be a requirement for a simple majority of the constituent members to vote in favour of the decision (e.g. the votes of 9 or more of the 16 members representing the constituent authorities would be required). In addition, there would 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.

The preferred weighted voting mechanism is for voting to be weighted on a population basis with each constituent authority having one vote for every 200,000 residents within its area.

Certain decisions would 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. These decisions would be:

- The approval and revision of Midlands Connect's transport strategy
- The approval of Midlands Connect's annual budget
- Any changes to Midlands Connect's constitution
- Any matters referred to Midlands Connect from the Midlands Connect Strategic Board

The Partnership Board would meet twice a year. Where full attendance cannot be achieved, the Partnership Board would 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.

The County Council would support an approach to voting with voting being weighted on a population base of one vote for every 200, 000 residents. There would be 50 votes in total, no individual member would have a veto and at least the votes of 9 members would be required to reach a super-majority and simple-majority

Proposed Sub-National Transport Body (Midlands Connect) – Response to consultation questions

7. Any other comments

There is currently a team of 16 staff at Midlands Connect who are funded until 2020. It is envisaged that the current staffing arrangements would continue should the STB become formally established, and that the County Council would continue to contribute officer time in terms of providing geographical and technical input to the wider work of Midlands Connect. Should funding be secured from DfT towards the core running costs, it will provide greater clarity in terms of future staffing and resource availability.

APPENDIX B – Proposed timetable

Midlands Connect	Warwickshire County Council
	17 January 2018 – Corporate Board
15 February 2018 – Strategic Board decision whether to consult on a draft STB proposition.	
7 th May 2018 (minimum period of 8 weeks) – Consultation with proposed constituent members and, simultaneously, statutory consultation with, neighbouring authorities and others.	10 May 2018 – Cabinet (decision on the STB consultation)
Engagement with Leaders and MPs.	
25 May 2018 – Steering Group to consider any consultation responses so far received.	
19 July 2018 TBC – Partnership Advisory Board to consider consultation responses and any amendments to the STB proposition. Decision whether/not Constituent Authorities should commence process for approving STB proposition.	20 June 2018 – Communities Overview and Scrutiny (comment on the STB proposition) 10 July 2018 – Full Council (comment on the STB proposition)
27 September 2018 – Midlands Connect Steering Group to review progress of approval of STB proposition by PCAs.	September/October 2018 – Cabinet (decision on the STB proposition)
18 October 2018 – Midlands Connect Strategic Board decision whether to proceed with a formal STB submission to Government provided PCAs have confirmed approval.	
November 2018 to March 2019 – Consideration of STB proposition by DFT/Secretary of State.	
Post-March 2019 – Subject to Secretary of State approval, drafting of regulations.	
Summer/Autumn 2019 – commence process for obtaining statutory consent of Local Authorities for draft STB regulations.	Cabinet (date tbc) (decision on the STB proposition)

APPENDIX B – Proposed timetable

Winter/Spring 2019/20 – Draft STB regulations laid before Parliament.	
Summer 2020 – STB regulations given assent.	