

TRANSPORT FOR LONDON

BOARD

**SUBJECT: PROPOSED TRANSPORT FOR LONDON BILL 2010**

**DATE: 4 NOVEMBER 2010**

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**1 PURPOSE AND DECISION REQUIRED**

1.1 The purpose of this paper is to seek the Board's approval for the promotion of the Transport for London Bill ('the Bill') for deposit in Parliament on 26 November 2010 and to seek the Mayor's consent to do so, as required by the Greater London Authority Act 1999 (the 'GLA Act').

**2 BACKGROUND**

2.1 TfL has identified various opportunities to maximise the value of its assets. Realisation of these opportunities is an important element of the approved Business Plan and cannot be achieved unless TfL acquires new powers or deficiencies in its existing powers are overcome.

2.2 Section 167 of the GLA Act permits TfL to promote private bills in Parliament, subject to complying with the requirements of that section and Schedule 13 of the Act.

2.3 Approval to promote a private bill and to obtain the consent of the Mayor to do so is a matter reserved to the Board. At its meeting on 16 September 2010, the Finance and Policy Committee noted the provisions proposed to be contained in the Bill and the processes which are required to be undertaken prior to the Bill's deposit in Parliament.

2.4 The Bill makes provision in relation to the following matters:

- (a) **The procedure which applies to the sale of operational land:** The current requirement that Secretary of State consent be obtained to sell TfL operational land is proposed to be amended to apply no longer to TfL.
- (b) **Power to grant security:** TfL is seeking the power to give security over its assets or revenues for borrowing. Currently, TfL is precluded from mortgaging or charging any of its property as security for money which it has borrowed or otherwise owes.
- (c) **Formation of limited partnerships:** TfL is seeking to extend its power to form bodies corporate so as to enable TfL to become a partner of a limited partnership or to promote and assist, or join with other persons in promoting or assisting, a limited partnership in order to carry on any activities which TfL has power to carry on. Limited partnerships are used in the private sector as an investment vehicle.

- (d) **Entities which may undertake specified activities:** TfL is seeking to expand the list of entities through which specified activities, principally revenue generating, can be undertaken by including a company limited by guarantee and limited liability partnerships or a limited partnership of which a subsidiary of TfL (but not TfL itself) is a member or partner. This amendment does not compromise the statutory position that TfL should not be exempt from certain taxes when carrying on these activities.
- (e) **Clarification of the risk mitigation power:** The newly acquired power to enter into derivative investments is proposed to be clarified so that it expressly permits TfL to enter into derivative investments for the benefit of any TfL pension scheme. The list of risks which may be mitigated is also proposed to be expanded to include indices.
- (f) **Other minor amendments:** Other minor corrections will be made to the GLA Act.

2.5 A copy of the Bill is attached at Appendix 1.

### **3 PROCESS**

- 3.1 The GLA Act sets out a number of requirements that TfL must satisfy when promoting a bill. Prior to deposit, TfL is required to consult the Mayor, the London Assembly and the boroughs and, as a matter of practice, consults other relevant stakeholders and the public. Such consultation took place from 20 September to 22 October 2010. A list of organisations and persons consulted is attached at Appendix 2.
- 3.2 TfL has received six consultation responses. None of the consultees expressed any general objection to the Bill and London First noted its support for the proposals. The consultation responses were carefully considered, but no amendment to the Bill is thought necessary.
- 3.3 The GLA Act requires that the Mayor must consent to TfL's promotion of the Bill and must confirm such consent following deposit. The Mayor is required to consult the London Assembly prior to giving his consent on both occasions.
- 3.4 To comply with Parliamentary Standing Orders, private bills may only be deposited on 27 November each year. As that day falls on a Saturday this year, the Bill, subject to the Mayor's consent, will be deposited on 26 November 2010. Private bills typically take between 18 months and three years to receive Royal Assent following deposit, depending on the amount of opposition to the provisions in the bill.
- 3.5 It is recommended that Howard Carter, General Counsel, or in his absence Ellen Howard, Director of Corporate Governance, is given delegated authority to amend the Bill if required prior to deposit and as a consequence of the Parliamentary process and to deposit the Bill in Parliament.

## **4 RECOMMENDATION**

4.1 The Board is asked to:

- (a) APPROVE the promotion of the Transport for London Bill 2010 for deposit in Parliament on 26 November 2010 and the completion of all of the statutory requirements including obtaining the consent of the Mayor to deposit the Bill; and
- (b) DELEGATE authority to Howard Carter, General Counsel, or in his absence Ellen Howard, Director of Corporate Governance, to amend the Transport for London Bill 2010, if required, prior to deposit and as a consequence of the Parliamentary process and to deposit the Transport for London Bill in Parliament.

## **5 CONTACT**

5.1 Contact: Howard Carter, General Counsel  
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# Proposed Transport for London Bill

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**PROPOSED**

**B I L L**

To confer further powers upon Transport for London; and for related purposes.

**W**HEREAS –

- (1) It is expedient that the powers of Transport for London should be extended and amended as provided in this Act:
- (2) It is expedient that provision be made in relation to the restriction under section 163 of the Greater London Authority Act 1999 (c.29) on Transport for London's powers to dispose of certain land:
- (3) It is expedient that Transport for London should have further powers as regards giving security for borrowing:
- (4) It is expedient that Transport for London should have powers as regards forming, promoting and assisting limited partnerships:
- (5) It is expedient that Transport for London should have further powers as regards the carrying out of activities specified pursuant to section 157 of the Greater London Authority Act 1999:
- (6) It is expedient that further provision be made as regards risk mitigation:
- (7) It is expedient that the other provisions contained in this Act should be enacted:
- (8) The purposes of this Act cannot be effected without the authority of Parliament:
- (9) In relation to the promotion of the Bill for this Act, Transport for London has complied with the requirements of section 167 of, and Schedule 13 to, the Greater London Authority Act 1999:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **Citation and commencement**

1.—(1) This Act may be cited as the Transport for London Act 2010 and, except for section 5(1) to (4) and (6) to (8) (power to give security for monies borrowed etc.) shall come into operation at the end of the period of two months beginning with the date on which it is passed.

(2) Section 5(1) to (4) and (6) to (8) (power to give security for monies borrowed etc.) shall come into operation on the appointed day.

### **Interpretation**

2. In this Act—

“the 1992 Act” means the Transport and Works Act 1992 (c. 42);

“the 1999 Act” means the Greater London Authority Act 1999 (c.29);

“company” has the same meaning as in the 1999 Act;

“Mayor” means the Mayor of London;

“subsidiary” has the meaning given by section 1159 of the Companies Act 2006 (c.46);  
and

“TfL” means Transport for London.

### **Appointed day**

3.—(1) In section 1(2) (citation and commencement) “the appointed day” means such day as may be fixed by a decision of TfL, subject to and in accordance with the provisions of this section.

(2) Different days may be fixed under this section for different provisions.

(3) No day fixed under this section may be before the end of the period of two months beginning with the date on which this Act is passed.

(4) TfL shall cause to be published in a newspaper circulating in London and in the London Gazette notice—

(a) of the taking of any such decision and of a day fixed thereby; and

(b) of the general effect of the provisions of this Act coming into operation as from that day,

and the day so fixed shall not be earlier than the expiration of two months from the publication of the notice or, if it is published on two days, from the later of those days.

(5) Either a photostatic or other reproduction certified by the officer appointed for that purpose by TfL to be a reproduction of a page or part of a page of any such newspaper or the London Gazette bearing the date of its publication and containing any such notice shall be evidence of the publication of the notice and of the date of publication.

### **Restrictions on disposal of land**

4.—(1) Section 163 (restrictions on disposal of land) of the 1999 Act shall be amended as follows—

(2) In subsection (1) the words “Neither Transport for London nor” shall be deleted and the word “not” shall be inserted after “shall”.

(3) Subsection (2) shall be deleted.

**Power to give security for monies borrowed etc.**

5.—(1) Except as provided in subsections (6) and (7), section 13 of the 2003 Act (which restricts the power of local authorities and certain other bodies to give security for money which they have borrowed or owe) shall cease to apply in relation to TfL.

(2) TfL may charge all or any of its property and all or any part of its revenues, including without limitation by way of a floating charge over all or part of its assets or any class of its assets, as security for money—

- (a) which TfL, or a subsidiary of TfL, has borrowed,
- (b) which TfL, or a subsidiary of TfL, otherwise owes, or
- (c) the repayment of which TfL, or a subsidiary of TfL, has guaranteed,

on such terms as to the ranking in priority or otherwise as may be determined by TfL.

(3) TfL may not exercise its powers under subsection (2) except with the consent of the Mayor.

(4) Unless otherwise determined by TfL all money borrowed by TfL and any of its subsidiaries, or which TfL or any of its subsidiaries otherwise owes or the repayment of which TfL or any of its subsidiaries has guaranteed after the coming into force of this section, together with any interest on the money borrowed, shall be charged indifferently on all the remaining revenues of TfL and its subsidiaries that are not subject to any charge granted over them under subsection (2), but such charge under this subsection shall be subject to any charge over any such revenues under subsection (2) existing at the time at which the charge under this subsection is enforced.

(5) Where—

- (a) a company which has not been formed by TfL or a subsidiary of TfL becomes a subsidiary of TfL (“the company”); and
- (b) immediately before the company becomes a subsidiary of TfL there is in effect a charge on all or part of its property or revenues as security for money which it has borrowed or otherwise owes or the repayment of which it has guaranteed (“the existing borrowing”),

the charge may, according to its terms, continue to have effect as regards the property or revenues of the company (whether such property was acquired or such revenues generated before or after the company become a subsidiary of TfL) as security for the existing borrowing notwithstanding section 164 of the 1999 Act.

(6) Subject to any charge having priority under arrangements made pursuant to subsection (2), subsections (5) to (9) of section 13 of the 2003 Act (appointment of a receiver to enforce payment of a charge under section 13(3)) shall apply to a charge under subsection (4) as they apply in relation to a charge under subsection (3) of that section.

(7) Any charge under section 13(3) of the 2003 Act on the revenues of TfL which is in effect at the time when this section comes into force shall, subject to subsection (8), continue to have effect over all TfL revenues.

(8) Nothing in subsection (7) shall prevent TfL from creating a charge over any of its property and revenues under subsection (2) as security for money which TfL or any of its subsidiaries has borrowed or otherwise owes or the repayment of which TfL or any of its subsidiaries has guaranteed; and any charge under section 13(3) of the 2003 Act which continues to have effect as provided in subsection (7) shall be subject to any charge granted over any such revenues under subsection (2) existing at the time at which the charge under section 13(3) is enforced.

(9) In this section—

“the 2003 Act” means the Local Government Act 2003 (c.26); and

“charge” includes a mortgage or any other encumbrance and related expressions shall be construed accordingly.

### **Power for TfL to form limited partnerships**

**6.**—(1) Section 156 of the 1999 Act (general powers) shall be amended as follows.

(2) After subsection (1) insert—

“(1A) Transport for London may—

- (a) join with any other person in forming a limited partnership registered as such under the Limited Partnerships Act 1907 (c.24) by becoming a partner (whether limited or general within the meaning of that Act) of the limited partnership; and
- (b) promote and assist, or join with any other person in promoting and assisting, a limited partnership so registered,

for the purpose of carrying on any activities which Transport for London has power to carry on.”

(3) In subsection (5)—

- (a) in paragraph (a), after “company” insert “or partnership” and after “subsection (1)” insert “or (1A)”;
- (b) after “that company”, in both places where those words occur, insert “, or partnership”; and
- (c) after “the company” insert “or partnership”.

### **Specified activities**

**7.**—(1) In section 157(1) of the 1999 Act (power of the Secretary of State to specify activities which may not be carried out by TfL except through certain companies limited by shares) for the words from “a company which is limited” to the end substitute—

“(a) a limited liability partnership or a limited partnership of which a subsidiary of Transport for London (but not Transport for London) is a member or partner; or

(b) a company which is registered under the Companies Act 2006 and limited by shares or limited by guarantee and which is—

(i) a subsidiary of Transport for London; or

(ii) a company which Transport for London formed, or joined with others in forming, by virtue of section 156(1) above and which does not fall within sub-paragraph (i) above.”

(2) In article 3 of the Transport for London (Specified Activities) Order 2000 (S.I. 2000/1548) (prohibition against carrying on specified activities through companies) for the words “a company limited by shares and registered under the Companies Act 2006” substitute “a limited liability partnership or a limited partnership of which a subsidiary of Transport for London (but not Transport for London) is a member or partner or through a company which is registered under the Companies Act 2006 and limited by shares or limited by guarantee”.

### **Arrangements for risk mitigation**

**8.**—(1) Section 49 of the Transport for London Act 2008 (c.i.) (power to make arrangements for risk mitigation) shall be amended as follows.

(2) In subsection (3)—

(a) in paragraph (c), leave out “any index reflecting”;

(b) in paragraph (d), at end, leave out “or”; and

(c) after paragraph (e) insert—

“(f) any other economic or market related risk to which any TfL body is subject; or

(g) any index reflecting any of the matters referred to in paragraphs (a) to (f).”

(3) After subsection (10) insert—

“(11) Subsection (12) applies where a TfL body incurs an actual or prospective liability with respect to any pension scheme or arrangement.

(12) Where this subsection applies-

- (a) relevant longevity shall be taken to be an economic risk to which the TfL body is subject; and
- (b) the power in subsection (2) may be exercised by a qualifying TfL subsidiary for the purpose of limiting the extent to which the TfL body will be affected by changes in relevant longevity or any of the other matters specified in subsection (3) notwithstanding that the exercise of the power may also limit the extent to which a person other than a TfL body will be affected by those changes;

and for the purposes of this subsection “relevant longevity” means the length of life (whether actual, average or projected) of members, or any category of members, of the pension scheme or arrangement.”

**Minor amendment of the 1999 Act**

**9.** In paragraph 14(1)(b) of Schedule 20 to the 1999 Act (transitional provisions) for “paragraph 7” substitute “paragraph 5”.

# Proposed Transport for London Bill

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PROPOSED

**B I L L**

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SESSION 2010-11

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## Draft Transport for London Bill 2010: List of Consultees

<b>Consultee – Statutory</b>
Mayor of London
Transport Committee, Assembly
Liberal Democrat Group, Assembly
Conservative Group, Assembly
Labour Group, Assembly
Green Group, Assembly
City of London
City of Westminster Council
London Borough of Barking & Dagenham
London Borough of Barnet
London Borough of Bexley
London Borough of Brent
London Borough of Bromley
London Borough of Camden
London Borough of Croydon
London Borough of Ealing
London Borough of Enfield
London Borough of Greenwich
London Borough of Hackney
London Borough of Hammersmith & Fulham
London Borough of Haringey
London Borough of Harrow
London Borough of Havering
London Borough of Hillingdon
London Borough of Hounslow
London Borough of Islington
London Borough of Lambeth
London Borough of Lewisham
London Borough of Merton
London Borough of Newham
London Borough of Redbridge
London Borough of Richmond upon Thames
London Borough of Southwark
London Borough of Sutton
London Borough of Tower Hamlets
London Borough of Waltham Forest
London Borough of Wandsworth
Royal Borough of Kensington & Chelsea
Royal Borough of Kingston upon Thames

<b>Consultee – Non Statutory</b>
Department for Communities and Local Government
Department for Transport
HM Treasury
London CBI
London Chamber of Commerce and Industry
London Councils
London Development Agency
London Fire and Emergency Planning Authority
London First
London TravelWatch
Metropolitan Police Authority
Tom Brake MP
Clive Efford MP
Stephen Hammond MP
<b>Total consultees: 53</b>