



Leadership Board (Extraordinary Meeting)

Thursday 24th March 2016 at 2.30 pm

Meeting to be held in a Committee Room, Durham County Hall, Durham, DH1 5UQ

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AGENDA

Page No

1. **Apologies for Absence**
2. **Declarations of Interest**

Please remember to declare any personal interest where appropriate both verbally and by recording it on the relevant form (to be handed to the Democratic Services Officer).

Please also remember to leave the meeting where any personal interest requires this.

3. **Membership of the Leadership Board - Appointment of the LEP Representative**

Members are requested to note the intention to circulate the above report on a supplemental agenda in accordance with the provisions of the Local Government (Access to Information) Act 1985

4. **Local Growth Fund - Project Approvals**

Members are requested to note the intention to circulate the above report on a supplemental agenda in accordance with the provisions of the Local Government (Access to Information) Act 1985

5. **Tyne Tunnels Tolls 2016/17**

Members are requested to note the intention to circulate the above report on a supplemental agenda in accordance with the provisions of the Local Government (Access to Information) Act 1985

6. **Tyne and Wear Bus Strategy - Next Steps**

Members are requested to note the intention to circulate the above report on a supplemental agenda in accordance with the provisions of the Local Government (Access to Information) Act 1985

7. **Metro Operations 2017 to 2019**

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8. **The Devolution Agreement**

Members are requested to note the intention to circulate the above report on a supplemental agenda in accordance with the provisions of the Local Government (Access to Information) Act 1985

9. **Date and Time of Next Ordinary Meeting**

19 April 2016 at 2pm at Sunderland Civic Centre

Contact Officer: Victoria Miller Tel: 0191 211 5118 E-mail: victoria.miller@northeastca.gov.uk

To All Members

North East Combined Authority

Leadership Board

Date: 24 March 2016

Subject: Metro Operations 2017 to 2019

Report of: Joint report of the Transport Lead Executive Officer and Managing Director (Transport Operations)

EXECUTIVE SUMMARY

The contract for the concession to operate the Tyne and Wear Metro is due to expire on 31st March 2017. For the period 1st April 2017 to 31st March 2019 Nexus intends to manage the Metro as an in-house operation. This will allow Nexus to prepare the Metro business for the significant change that will be brought by investment in a new train fleet.

Although Nexus has the contractual right to extend the current contract for a further two years, it proposes not to exercise this option.

Both Nexus and the operator, DB Regio Tyne and Wear Ltd (DBTW), are dissatisfied with the structure and the financial and operational performance of the current contract which, consequently, means that passenger outcomes are not where either party would want them to be. An investment package has been agreed with DBTW to improve performance over the final year of the contract.

The Department for Transport has provided written confirmation that revenue grant funding (£24.7m in the current financial year) will continue throughout this period.

Nexus seeks the Leadership Board's endorsement of this approach.

RECOMMENDATIONS

The Leadership Board is recommended to:

- agree that Nexus should plan to manage the Metro as an in-house operation for the period from 1 April 2017 to 31 March 2019;
- endorse Nexus' intention to allow the current Metro Concession with DB Regio Tyne and Wear Limited (DBTW) to expire on 31 March 2017;
- note that Nexus has secured confirmation from the Department for Transport that revenue funding for Metro will be unaffected by this move, for the period April 2017 to March 2019;

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- note that Nexus and DBTW have agreed an investment package to secure improvements in fleet performance and customer service until the current contract expires on 31 March 2017; and
- agree to receive a further report identifying options for 2019 onwards in the summer of this year.

1 Background Information

- 1.1 In 2010 a contract was let to DBTW for the operation of the Tyne and Wear Metro system. Under this contract, broadly speaking, DBTW operates the Metro service on a daily basis, maintains the trains, is responsible for the safe movement of trains and passengers, and for managing the relationship with customers.
- 1.2 The current contract ('Concession') was let on the basis of a seven-year contract, extendable by two additional years. The contract end date is therefore 31 March 2017, although by extending the contract it is possible for the end date to be 31 March 2019.
- 1.3 Contractually the decision over whether to extend for two years is for Nexus alone; the contractor has no formal influence over this. Should Nexus wish to exercise the option to extend it must do in writing by 30 June 2017.
- 1.4 The Metro relies on almost £25m Metropolitan Rail Grant (MRG) each year. MRG is a revenue grant paid directly to Nexus by the Department for Transport (DfT) and under an arrangement established in 2010 is expected to run until 2019. Therefore the DfT is an important stakeholder whose views should be taken into account.
- 1.5 In this report Nexus seeks the Leadership Board's endorsement of its preferred course of action, taking account of the views of the various parties involved.

2 Existing contract

- 2.1 Metro's patronage has been growing steadily for the past two years, and it remains one of the most high-frequency and lowest cost urban rail operations in the UK for both passengers and taxpayers.
- 2.2 However both Nexus and the operator, DBTW, are dissatisfied with the structure and the financial and operational performance of the current contract which, consequently, means that passenger outcomes are not where either party would want them to be.
- 2.3 From Nexus' perspective operational punctuality has for some time been well below target levels; train fleet reliability is low by UK standards; and customer communications during system disruption has been of variable quality. As a result,

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customer satisfaction with Metro is at a low point and a number of contractual targets have been missed. At the same time, DBTW is earning significantly less than originally forecast in its bid.

- 2.5 On this basis, the best approach for all parties would seem to be to allow the current contract to expire on 31 March 2017, and for Nexus not to exercise its option to extend it.
- 2.6 Nexus and DBTW have reached an agreement in principle that, should it be decided that the contract will expire in March 2017, DBTW will invest during the remainder of the contract in improved fleet performance and customer communications. Nexus also intends to re-invest unbudgeted payments that have been received from DBTW arising from poor performance, to further improve fleet performance.

3 Future Plans

- 3.1 Nexus is working on an outline business case for investment in a new train fleet, along with a draft specification for rolling stock. This is expected to be completed shortly, and is intended to convey the benefits of investing in a new fleet to fund-holders and other stakeholders. The target date for the introduction of a new fleet is the early 2020s.
- 3.2 Nexus has established a project to determine future operating arrangements for the Metro, and is working on the assumption that the future arrangements for Metro operations will be built around the acquisition and deployment of a new fleet of trains, to be operational in the early part of the 2020's. The current operating contract will therefore not be re-let on a like for like basis.
- 3.3 The process to procure a new operator of the system would require certainty of both revenue grant funding and of the funding for rolling stock. Whilst positive discussions have been held with the government, any certainty of funding remains some way off. It is therefore not feasible to begin a procurement process to find a new operator at this time.
- 3.4 It is therefore proposed that Nexus will present options for future operating models and fleet to the Leadership Board during the summer, and this will inform discussions with the government and other fund-holders.
- 3.5 Subject to there being an agreed approach and certainty of funding, Nexus expects to begin a procurement process in June 2017 to select a new operator of the Metro

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system, potentially under a different set of arrangements to those in place today. The intended start date of this new contract would be April 2019.

4. Interim Arrangement

- 4.1 Given that the existing contract lapses on 31 March 2017, and that Nexus does not expect any new contractual arrangement to start until April 2019, there will be a two-year period in which an interim arrangement is required. As rail concession contracts typically operate for a term of a least 5 years (to take account of the mobilisation and demobilisation processes), it is not considered feasible to seek an external operator for this interim period.
- 4.2 Instead, it is proposed that Nexus should manage the Metro as an in-house operation during this period. Doing so would allow Nexus to prepare the Metro operation for the revised arrangement moving forward from 2019, in which the acquisition and deployment of new fleet will be central.
- 4.3 Nexus was the owner, manager and operator of the Metro system from the opening of the system in 1980 to the point at which the Concession commenced in 2010. Many of the staff who currently work in Nexus have worked for Metro during their careers, and this includes current senior management in Nexus' Rail and Infrastructure department.
- 4.4 The staff that currently operate the Metro system would all be entitled to transfer to Nexus under the provisions of TUPE. Importantly this would include depot maintenance staff, drivers, control room staff and customer services staff. There should therefore be no reason why the transfer of Metro's operations in-house should, of itself create any operational capability or capacity issues that are not already present under the existing arrangement. The due diligence exercise will be expected to identify where such issues may exist.
- 4.5 In addition all existing management would be entitled to transfer under TUPE, and it can be expected at this stage, that all would do so.
- 4.6 The Concession Agreement provides a number of safeguards in regard to the final year of the contract with DBTW, an example being in relation to operational assets, particularly in respect of the maintenance, protection and preservation of such assets such that they remain in good standing or good working order, subject to fair wear and tear; repairs, maintenance and general condition. Through the Concession

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Agreement, Nexus will exercise its right to satisfy itself that operational assets transferring back to it are in a suitable condition in order for it to continue to provide Metro services.

- 4.7 In recognition of the major exercise that bringing the operation back in-house will be, Nexus will establish a dedicated project team to be led by a Metro Transition Director. Subject to this report being approved, the appointment to this post will occur before the end of the current financial year with the team populated shortly after. In addition, external support will be procured where required to support the transition process and to supplement operational capacity and capability. Budgetary provision for this already exists within Nexus' 2016/17 budget as agreed by the Leadership Board in January 2016.
- 4.8 The DfT is a key stakeholder in the Metro, and Nexus has held numerous discussions with officials to ensure that they understand the decision to allow the existing contract to lapse and to manage the system in-house for a period of time. As a result the DfT has written to the Managing Director (Transport Operations) to confirm that should Nexus allow the contract with DBTW to lapse, it will continue to provide revenue funding through to March 2019. This is conditional upon a new contractual arrangement being established with effect from April 2019 but as paragraph 3.3 indicates, this is something that would clearly require a further longer-term funding commitment from central government.

5 Potential Impact on Objectives

- 5.1 The proposals outlined in this paper will ensure that Metro operations will continue in the interim period between 2017 and 2019, with appropriate revenue support from central government. This will ensure that appropriate plans can be implemented to improve the performance of Metro and create a smooth transition to a new contract to deliver a replacement fleet for Tyne and Wear Metro.

6 Finance and Other Resources

- 6.1 Ensuring that revenue grant support from DfT covering the period 1 April 2017 to 31 March 2019 will continue is vitally important. The written confirmation from DfT that this is the case is therefore extremely helpful.
- 6.2 The cost of Metro operations currently falls on DBTW albeit approximately 95% of the costs incurred by DBTW are met by Nexus (from a combination of DfT grant and fare revenue). The small proportion of costs incurred by DBTW that are not met by Nexus are accommodated via commercial revenues earned largely in respect of advertising on trains and at stations, penalty fare income and through granting

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concessions at stations e.g. coffee kiosks, newsagents and other commercial ventures.

- 6.3 Although DBTW are not generating the level of financial return envisaged when they originally bid for the Metro concession, equally they are not incurring losses. It therefore follows that Nexus ought to be able to accommodate the cost of running Metro operations from within the payment it currently budgets for in regards the operating concession. Nexus had a good understanding of the costs incurred in delivering Metro operations prior to the letting of the concession and an exercise, similar to the one which led to the completion of the 'long form report' for prospective bidders in 2009 will be undertaken in conjunction with DBTW in order to better understand the way in which costs are now incurred and in particular, what drives those costs.
- 6.4 Any costs over and above those already provided for will need to be met from within the wider Nexus budget, including reserve funding.
- 6.5 The cost of the transition during 2016/17 will be met from within Nexus' 2016/17 revenue budget, as referred to in paragraph 4.7

7 Legal

- 7.1 The key legal implications are set out in the body of the report. Nexus have the contractual right to decide whether or not to extend the existing concession with DBTW beyond April 2017.

9 Other Considerations

9.1 Consultation/Community Engagement

There are no specific consultation requirements arising from this report, however Metro customers and key stakeholders will continue to be informed throughout the process. A consultation will be undertaken during 2016 on elements of the contract that can meaningfully be consulted on to shape the contract for 2019 and beyond

9.2 Human Rights

There are no specific human rights considerations arising from this report.

9.3 Equalities and Diversity

There are no specific equalities and diversity considerations arising from this report.

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9.4 Risk Management

Ensuring that adequate funding from DfT is available during the transitional period 2017-19 mitigates a key financial risk associated with the recommendations contained within this report.

There are however, other risks arising and these have been considered in a risk workshop. These relate primarily to:-

- The transition from the current operating concession to in-house operations
- Ensuring that operational performance does not deteriorate any further and that it in fact improves
- Nexus capability and capacity to manage the service
- Financial arrangements in particular the need to ensure that costs do not increase as a result of operations coming back in-house.
- Workforce matters including TUPE, pensions and industrial relations
- Safety Management and regulatory approvals

The Metro Transition Director will be responsible for developing and managing a detailed risk register throughout the mobilisation period.

9.5 Crime and Disorder

There are no specific crime and disorder considerations arising from this report.

9.6 Environment and Sustainability

There are no specific environment and sustainability considerations arising from this report.

10 Background Documents

10.1 None

11 Links to the Local Transport Plans

11.1 The proposal supports the continued delivery and enhancement of Metro services going forward as set out in the Transport Manifesto.

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12 Contact Officers

12.1 Tobaun Hughes, Managing Director (Transport Operations),
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14 Sign off

- Head of Paid Service ✓
- Monitoring Officer ✓
- Chief Finance Officer ✓