

NORTH EAST COMBINED AUTHORITY

Request for Special Urgency



DATE: 27 March 2018

SUBJECT: Transport for the North

REPORT OF: Tom Sunter

EXECUTIVE SUMMARY

The report requests the consent of the Chair of the Overview and Scrutiny Committee under Paragraph 13 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 on the basis that it is impractical to include the matter on the NECA Forward Plan for a period of 28 clear days before the decision is made.

Consent will also be sought from the Vice-Chairs of the North East Combined Authority (there being no Chair) under sections 32 and 33 of the Leadership Board Rules of Procedure set out in Part 4.1 of the NECA Constitution.

The NECA Head of Paid Service will be invited to exercise authority delegated to her by the Leadership Board on 7 August 2017 in consultation with the Vice-Chairs of the Leadership Board (due to a current vacancy in the role of Chair) and the Monitoring Officer. The decision the Head of Paid Service will be invited to make is to authorise (consent to) the signing of a new Franchise Agreement with Transport for the North and Rail North Limited.

In accordance with Paragraph 12 (1(b) and (c)) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 a copy of this report will be published on the North East Combined Authority website.

RECOMMENDATIONS

1. The Chair of the Overview and Scrutiny Committee is requested to consent to permit the decision to be made without it being entered onto the Combined Authorities Forward Plan as a key decision;
2. The Vice-Chairs of NECA (there being no Chair) are each requested to consent to permit the decision to be made without it being entered onto the Combined Authorities Forward Plan as a key decision.

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1. Background

- 1.1 The purpose of this report is to authorise NECA to enter into the Franchise Management Agreement with TfN and Rail North Limited. At its meeting on the 7 August 2017 the Leadership Board provisionally granted consent to:
- i. The making by the Secretary of State of Regulations under section 102E of the Local Transport Body 2008 to establish Transport for the North as a Sub-National Transport Body;
 - ii. The transfer of Rail North Limited to Transport for the North so that it can be subsumed within Transport for the North;
 - iii. The signing of the Franchise Management Agreement with Transport for the North replicating as far as possible the current Rail North Limited Members Agreement; and
 - iv. Continuation of the payment of the current funding for Rail North Limited to Transport after its inauguration.

The Leadership Board also authorised agreement that:

- v. Delegated authority is given to the Head of Paid Service to fully consent to items (i) to (iv) on the Leadership Board's behalf, provided that she is satisfied, in consultation with the Chair of the Leadership Board and the Monitoring Officer, that the final draft Regulations serve only to give Transport for the North the Statutory powers to carry out the functions set out in paragraph 1.3; and
 - vi. That the Thematic Lead for Transport be designated as NECA's main representative, and that Cllr Carl Marshall be designated as NECA's alternate representative, on Transport for the North.
- 1.2 Following this resolution and similar resolutions from TfN's other Constituent Authorities the Sub-national Transport Body (Transport for the North) Regulations 2018 which establishes TfN as a Sub-National Transport Body were made on 22 January 2018 and are due to come into force on 1 April 2018.
- 1.3 The Shadow Board of TfN approved the Franchise Management Agreement in principle at its meeting on 8 February 2018. This will then need to be approved at TfN's Board meeting in early April when it first meets as a Sub-national Transport Body.
- 1.4 The TfN report recommended the Shadow Board:
- Endorse the draft Franchise Management Agreement (intended to replace the current*

Members Agreement) and recommendation that each of TfN's Authorities progress signing of the Agreement in readiness for the first TfN meeting (i.e. in advance of TfN's effective commencement date (1st April 2018). The Franchise Management Agreement has been developed between Transport for the North and its Constituent Authorities.

2. Proposals

- 2.1 The Franchise Management Agreement sets out the terms on which TfN agrees to interface with the rail franchisees, the Rail North Partnership Board, the Management Team and each TfN Rail Authority.
- 2.2 The Franchise Agreement replicates as far as possible the terms of the original members' agreement. The new Franchise Agreement is in accordance with the approval given by NECA Leadership Board on 7 August 2017. The terms of the agreement have been checked by Newcastle City Council Legal Department on behalf of NECA.

3. Reasons the Decision is Urgent and Cannot Reasonably be Deferred

- 3.1 The final terms of the Franchise Management Agreement have been discussed over a number of months but agreement on the final terms was only reached on 27 March 2018. The Agreement is to have an effective date of 1 April 2018. Transport for the North has requested urgent approval by each Constituent Authority. The decision is urgent because Transport for the North indicate that the Agreement needs to be completed from 5 April 2018 to ensure that the other matters relating to transfer of Rail North to TfN can be completed.

4. Alternative Options Available

- 4.1 The alternative option would be for the Chair of the Overview and Scrutiny or, subsequently the Vice-Chairs of NECA to decline to make the decision to enable the decision to be made without being put on the Forward Plan. The result would be a delay of 28 clear days, plus five days call-in period from publication of the decision notice.

5. Next Steps and Timetable for Implementation

- 5.1 Following consent by the Overview and Scrutiny Committee, the Vice-Chairs will be invited to consent in accordance with the NECA Constitutional requirements for urgent decisions.
- 5.2 Subsequent to the consent of the Chair of the Overview and Scrutiny Committee and the Vice-Chairs of the North East Combined Authority, the North East Combined Authority Head of Paid Service will be invited to make the following decision:

The Head of Paid Service is recommended to:

“Authorise NECA to enter into a Franchise Management Agreement with Transport for

the North and Rail North Limited”.

5.3 The Monitoring Officer will then execute the Agreement in accordance with their constitutional authority.

5.4 It is intended that the franchise agreement is completed on the 5 April 2018 or as soon as possible thereafter.

6. Potential Impact on Objectives

6.1 As a member of the Sub-national Transport Body, NECA would have access to additional resources to develop strategic infrastructure projects with the purpose of facilitating economic growth in line with the Strategic Economic Plan and the Local Transport Plan. As a Statutory Partner in the Department’s investment processes, TfN will be able to provide advice on the North’s priorities and influence the investment plans of Highways England and Network Rail.

7. Financial and Other Resources Implications

7.1 TfN is funded through government grant and although future funding decisions will remain the responsibility of the government at the time, establishing TfN in statute ensures it has the stability and permanence to be confident of future Central Government support.

7.2 At present the Transport for the North Constituent Authorities (i.e. NECA for the North East) and the Rail North Authorities make the Rail North Support Payment and those Authorities in receipt of Rail Administration Grant make the Rail North Supplemental Payment to support Rail North Limited. Upon TfN assuming the responsibilities and functions of Rail North Limited these payments will continue to be made to TfN to enable it to continue to support rail franchise management. For clarity, Nexus currently receives Rail Administration Grant of £252k for 2018/19 and an element of this is used to cover the payments to Rail North (£54k in 2017/18), although it should be noted that Rail Administration Grant is only confirmed on an annual basis and the use of this funding will be subject to ongoing review.

7.3 The Submission Proposal provides that the Constituent Authorities may all agree to contribute to the costs of TfN in the future. However, a decision to raise such contributions and the amount would require a unanimous decision of the Constituent Authorities and could only be taken after written consent to the proposal has been received from each of the Constituent Authorities. Unless unanimously agreed otherwise, the apportionment of any financial contributions would be determined on the basis of the Resident Populations of each of the Constituent Authorities. TfN would be entitled to accept voluntary contributions towards its costs from any of the Constituent Authorities. In this regard, NECA would need to determine how any future contributions could be funded, before agreeing to make any future additional contributions.

8. Legal Implications

- 8.1 The Sub-national Transport Body (Transport for the North) Regulations 2018 are due to come into force on 1 April 2018. This decision will ensure that the franchise management agreement can be completed.

9. Key Risks

- 9.1 The assurances given within the existing Rail North Members Agreement are replicated in the TfN Franchise Management Agreement which uses the same governance and voting metrics. Thus the NECA influence remains the same under the changed agreement.

10. Equality and Diversity

- 10.1 There are no equality and diversity implications arising directly from this report.

11. Crime and Disorder

- 11.1 Safety and security are fundamental considerations in the design of new services and facilities and thus impacts will be assessed for individual projects at the appropriate stage of development.

12. Consultation/ Engagement

- 12.1 Legal officers have been consulted and involved in the process on commenting on the draft legal agreements subject to this report.

13. Other Impacts of the Proposals

- 13.1 As each of the projects and plans of TfN become more defined, environmental and economic impacts and analysis will form key considerations when options are being considered.

14. Appendices

- 14.1 Report to the Leadership Board of 7 August 2017.

15. Background Papers

- 15.1 Report to Leadership Board on 19 July 2016

16. Contact Officer(s)

- 16.1 Tobyng Hughes, Managing Director (Transport Operations)
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17. Sign Off

- 17.1
- Head of Paid Service: ✓
 - Monitoring Officer: ✓
 - Chief Finance Officer: ✓

18. Glossary

NECA – North East Combined Authority