

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	2 nd September 2014
Report of:	Andrew Ross – Head of Strategic Infrastructure
Subject/Title:	Rail North Ltd – Governance Arrangements
Portfolio Holder:	Cllr David Brown – Strategic Outcomes Portfolio Holder

1.0 Report Summary

- 1.1 Rail North is a group of 30 Local Transport Authority (LTA) partners, including Cheshire East, who are working together with the Department for Transport (DfT) on devolving more responsibility for specifying and managing passenger rail services in the north of England.
- 1.2 The aim is to develop a more collaborative approach to managing local rail services. Rail North and DfT are working together on the design of the next Northern and TransPennine Express (TPE) franchises, which between them account for most regional services in the local authority areas covered. The map at Appendix 2 illustrates the coverage of Northern service provision in Cheshire East (there are currently no TPE services operating in the Borough). The franchises are due to commence from February 2016.
- 1.3 The devolution programme has now reached a critical stage with the need to formalise the governance arrangements and decision making process. Each LTA in the Rail North area are being invited to sign-up to membership by the end of September 2014. This report sets out the proposed governance arrangements for Rail North Ltd and the Association of Rail North Partner Authorities and seeks Cabinet approval to become members of both bodies.

2.0 Recommendations

- 2.1 To note the proposed governance arrangements for Rail North Ltd (RNL) and the Association of Rail North Partner Authorities ("The Association") and to agree that Cheshire East Council should become a member of both bodies.
- 2.2 To authorise the Head of Paid Services (in consultation with the Portfolio Holder for Rail North) to enter into the RNL Members Agreement on behalf of Cheshire East Council and to be admitted to membership of both the Association and RNL.
- 2.3 To nominate Councillor Michael Jones to the Leaders' Committee of The Association and appoint a substitute member.

- 2.4 To note that a further report will be produced when the Heads of Terms for the DfT / RNL Partnership are finalised.

3.0 Reasons for Recommendations

- 3.1 The opportunity to become members of The Association and Rail North Ltd enables Cheshire East to have far greater influence over the development and implementation of rail services across the north of England. It will also enable Cheshire East to have greater influence over other key industry stakeholders, including Network Rail, and the development and implementation of their respective enhancement programmes.
- 3.2 The re-franchising process is at a critical stage and each LTA in the Rail North area is being invited to sign-up to by the end of September 2014 in order to:
- Demonstrate to Government a strong commitment to long term stewardship of Rail – with the power and influence to shape the passenger benefits and economic growth – across the north of England for the benefit of all;
 - Strengthen the decision making arrangements during the development of the Joint Venture arrangements with DfT and procurement of the new franchises;
 - Enable DfT to define the role of Rail North Ltd in the procurement documentation due for issue at the end of 2014, ensuring that devolution is 'cemented' in the formal franchise procurement process.
- 3.3 Appendix 1 sets out the further detail on governance arrangements, decision making process and voting share for each LTA. There may be opportunities to consider alternative options for calculating the voting share for each LTA in future. For example, if the voting share was calculated on a per capita basis, this would generate a higher proportion for Cheshire East. However, the current proposition is based on metrics relating to rail usage with a 1.6% share for Cheshire East.
- 3.4 All LTA's are able to withdraw from the arrangements at any time. The flexible arrangements proposed in the legal structures will enable the roles and responsibilities to develop over time as these are agreed between the 30 LTA's and DfT.
- 3.5 The form of partnership between Rail North and the DfT is currently under development. DfT has put forward a phased approach to full devolution:
- Phase 1: Being a partnership without significant transfer of risks but covering contract management, planning and investment – from February 2016.
 - Phase 2: Would bring in risk/reward sharing (allowing for any reinvestment in profit share, for example) – anticipated to be 2018/19 onwards.
 - Phase 3: Being full devolution – from 2023-25 onwards.
- 3.6 The three stage process represents a phased "earned devolution" model with triggers that have to be achieved by Rail North to proceed to the next phase. Phase 2 is not anticipated to be reached until 2018/19 by which time the risks

and rewards would be fully assessed and reported to enable each LTA to fully consider and review their position.

- 3.7 It is expected that Heads of Terms for the Partnership between DfT and RNL will be produced by the end of September for approval by the all parties through the Leaders Committee, including Councillor Michael Jones.
- 3.8 It should be noted that, until all eligible LTAs have had the opportunity to become members, RNL will not act as a fully functioning company and all significant decisions will be brought for approval to the Leaders' Forum and the full Leaders Committee in October. Once the full membership of RNL becomes clear and the geographical sub-groups have appointed their director and alternative director, the members of RNL will enter into a Members' Agreement which may necessitate changes to the interim Articles.
- 3.9 In the longer-term, the governance structures, including the partnership arrangements with DfT, would ensure the following:
- Better management of the franchises by a team based in the North with local knowledge. Through the partnership, a focus on delivering the shared objectives (e.g. economic growth) and the Long Term Rail Strategy. Easier and simpler route to delivering schemes/ projects that involve the train operator or changes to train services and growth in patronage and revenue;
 - RNL would have access to 'reward' share, e.g. additional revenue generated as a result of general growth translated to profit share. This would be used for investment in enhanced services / rolling stock / infrastructure; and
 - The North having complete control of services and investment in the Northern and TransPennine franchises, delivering the economic benefits as set out in the original devolution proposition.
- 3.10 The proposed governance arrangements are seen as the most appropriate mechanism to maintain momentum in the current negotiation with the DfT and franchise procurement, and also in the future partnership arrangements, but will also provide strong governance and decision making as well as political oversight to the decisions made by Rail North Directors and Officers.

4.0 Wards Affected

- 4.1 All wards – affecting rail services across the Cheshire East area.

5.0 Local Ward Members

- 5.1 All wards – affecting rail services across the Cheshire East area.

6.0 Policy Implications

- 6.1 The opportunity to have greater influence over the development and implementation of rail services will support the delivery of Cheshire East's Local Transport Plan (LTP3) and the strategic priorities for transport – to “create conditions for business growth” and “ensure a sustainable future”.

- 6.2 One of the objectives of Rail North is to support economic growth by delivering more rail capacity and better rail connectivity. Through Rail North there are opportunities to shape the provision of local rail services to support the delivery of ambitious growth proposals within the Local Plan. There are also opportunities to consider rail connectivity more strategically across the sub region in relation to the Cheshire and Warrington Strategic Economic Plan.

7.0 Implications for Rural Communities

- 7.1 The Rail North proposals provide an opportunity to consider the accessibility needs of rural communities. Many rail services in the borough are meeting a local need for access and are therefore highly valued by local communities. In some cases there is often no alternative travel option available. However, railway stations in rural communities can have low levels of use, which can give rise to the potential for exploring a reduction in the number of calls.
- 7.2 It is recognised that any proposal to reduce the number of calls at low use stations will have a detrimental impact on levels of local accessibility and therefore need to be carefully considered. By joining Rail North, Cheshire East will have a voice in the process and the opportunity feed in local data sources, outputs from community engagement and consultation to inform the process. All proposals will require a robust business case and clear justification.

8.0 Financial Implications

- 8.1 Prior to the commencement of the new franchises in February 2016, there will be a small cost involved with establishing and running Rail North Limited (RNL) of approximately £36,000 per annum. It is envisaged that this cost will be split between members proportionate to the agreed weighted voting share of the Association, with future changes agreed by the Association. Cheshire East's voting share is 1.6% leading to an annual cost of £576.00.
- 8.2 Although there is clarity on the costs associated with the procurement stage (prior to February 2016), the costs during the franchise period have yet to be confirmed. The cost categories are still being worked up and considered by Rail North. Going forward, clarity will emerge on the financial implications during the period of the franchise and beyond (see below).
- Procurement stage: until new franchises start in February 2016
 - Length of the franchise (7-9 years): up to 2023/25
 - Full Devolution: 2023/25 onwards when RNL would manage the re-franchising
- 8.3 Arrangements may need to be reviewed when the level of risk/expenditure to be borne by RNL under the partnership arrangements with DfT is established. However, in these circumstances, LTAs would have the opportunity to withdraw (or alter their status within RNL) before the franchise agreements are operative, if unwilling to accept risk or make increased payments.

9.0 Legal Implications

- 9.1 The proposed governance arrangements involve each LTA entering into various legal arrangements, namely:
- Becoming a member of Association of Rail North Partner Authorities (ARNPA);
 - Becoming a member of Rail North Ltd (RNL); and
 - Entering into a RNL Members' Agreement
- 9.2 It is proposed that ARNPA is formed under s143 of the Local Government Act 1942 and governed by a Leaders' Committee. A draft Constitution for the Association has been proposed by Rail North.
- 9.3 Members of the Association will establish RNL as a company limited by guarantee. The company will be formed under powers arising from sections 99 and 102A of the Local Transport Act 2008 and the general power of competence under section 1 of the Localism Act 2011 and the Council will be able to rely on these powers to become a member of RNL. Draft Articles of Association for RNL have been provided.
- 9.4 It is proposed that RNL should be formally incorporated in the next few weeks with interim Articles of Association based on the proposed governance arrangements endorsed by the Leaders' Forum. This will enable Rail North to comply with the Partnership Principles agreed with the Secretary of State in January and strengthen Rail North's negotiating position with DfT in relation to the Partnership Agreement. It will also enable RNL to be formally referenced in the procurement documentation for the Northern and TPE franchises.
- 9.5 The documentation provided shall be reviewed by Legal Services and continuing advice will be given on the governance arrangements ensuring that there is sufficient flexibility within the arrangement so that the Council can withdraw or alter its involvement should it be decided that the risks or increased expenditure are unacceptable.

10.0 Risk Management

- 10.1 At the commencement of the formal governance arrangements there will be minimal direct risk and cost associated to the membership, and any changes to that position would need to be agreed in accordance with the rules relating to that governance arrangement.
- 10.2 A full risk assessment of contract managing the new franchise has been undertaken by Rail North (i.e. major incidents and strike action) and the major risks sit with DfT, Network Rail and the Train Operating Company (TOC).
- 10.3 Going forward, each LTA has an opportunity to review their membership of the organisation as further information becomes available about each stage of the franchising process and phased approach to devolution in conjunction with the DfT partnership arrangement.

11.0 Background and Options

- 11.1 Rail North is the name of an interim organisation that was established with the aim of promoting the devolution of rail franchising from Whitehall to the North of England. It is a grouping of all 30 LTA in the North of England.
- 11.2 Rail North's vision is to create a world-class railway for the whole of the North of England. Supporting the economic aspirations of the North was the prime objective of Rail North's devolution proposal, with the aim of creating a railway recognised by passengers and businesses as serving their needs, and being both more effective and efficient.
- 11.3 Rail North has three over-arching objectives for rail services in the North of England:
- To support economic growth by delivering more rail capacity and better rail connectivity;
 - To improve the quality of the railways in the North, with a better offer for passengers to encourage more use; and
 - To deliver a more efficient railway and to secure greater value for money for the support from the public purse.
- 11.4 In order to be at forefront of the way in which the future of Rail is planned and delivered, the northern LTAs, through Rail North, have (on an informal basis) developed proposals for devolution of Rail responsibilities from DfT to the northern LTAs.
- 11.5 In November 2013, the Secretary of State for Transport responded to Rail North's proposals with the offer of a partnership arrangement with the DfT as a way of phasing in full devolution. The partnership will apply to both the Northern and TransPennine Express franchises, and has two main elements, as follows:
- The specification and procurement of the new Northern and TransPennine franchises; and
 - The development of a full Rail North/ DfT partnership for managing the two franchises once let.
- 11.6 The shared objectives that underpin the partnership were also agreed in January and include:
- Growing the railway to maximise the benefits of infrastructure investment and linking this to railway efficiencies;
 - Having a platform for determining investment priorities within the Partnership;
 - Risk and reward sharing between members of the partnership, including the potential for revenue or profit-sharing mechanisms that could allow reinvestment into rail services; and,
 - A partnership structure that allows the balance of risk to change over time.

11.7 The following partnership principles were agreed by the Secretary of State for Transport and the LTA Leaders in January 2014. The principles of joint working include:

- Full and open disclosure between the DfT and Rail North (subject to any confidentiality obligations which apply and the need for confidentiality agreements);
- Collaborative design of franchises, recognising the Secretary of State's responsibilities – including securing affordability and value for money;
- Joint decision on the arrangements for a single integrated partnership structure to manage the franchises; and
- A common programme and oversight structure.

11.8 As part of the January 2014 agreement with the Secretary of State, Rail North Leaders agreed to develop and formalise their decision making structures and in particular establish structures comprising a formal Leaders' Committee and a special purpose vehicle (probably a company limited by guarantee) called Rail North Ltd. These bodies would be the focus for overseeing local authority input into the design of the franchises, including the specification and commercial arrangements.

11.9 It is clear that the formal governance arrangements will form the basis of a long-term partnership arrangement and will need as much involvement at an early stage as possible of the 30 LTAs. The roles, responsibilities, functions and risks associated with any future arrangements will need to evolve in line with the voting rights and the wishes of its members. A summary of the governance arrangements is provided in Appendix 1.

11.10 The current Leaders' Forum was established after the Leaders meeting on 24 January 2014 as a "sounding board" until formal arrangements could be implemented. Councillor Michael Jones represents the Cheshire and Potteries sub-group on the Leaders' Forum.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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