

Transport for the North – Implementing Rail North Acquisition

1. Summary

- 1.1 The case for rail investment in the North is strengthened where both strategic 'track and train' needs have been considered and presented to government by a single, unified and representative body.
- 1.2 The proposition for establishing TfN as a statutory body includes for the acquisition of Rail North Ltd and a mechanism for implementing this is under development.
- 1.3 The Secretary of State (SofS) is not granting TfN the powers to carry rail passengers as this will be subject to a future business case for further devolution.
- 1.4 TfN will become a statutory partner to the SofS and DfT in the rail investment process via the statutory powers granted to it.

2. Background and Response of the Secretary of State to TfN STB Proposal

- 2.1. TfN's submission in October 2016 proposed that the STB should become the sole owner of Rail North Limited, provided that any changes to RNL's constitutional arrangements would ensure:
 - That the rights and interests of those RNL member authorities which are not constituent authorities of TfN are protected; and
 - That Rail North Ltd member authorities which are TfN constituent authorities are able to retain rights similar to their existing rights through TfN's constitutional arrangements.
- 2.2. The Secretary of State's response confirmed that one of the key functions of the STB would be:

'The coordination of regional transport activities, (such as smart ticketing), and the co-management of the TransPennine Express and Northern rail franchises through the acquisition of Rail North Ltd.'
- 2.3. We expect the Statutory Instrument that establishes TfN to reflect this principle and consider this to enhance the status of Rail North's functions from 'contractual' to 'statutory' – a positive step forward for the North's authorities. We have considered how best to achieve an optimum acquisition of Rail North by TfN and our recommendations are set out in section 2 below.

- 2.4. In recognising TfN's ambition for a strong, influential role in rail investment planning, the SofS has also proposed that TfN is established as a 'statutory partner' to the DfT, a role which would see it gain unprecedented access to government's infrastructure investment decision making.
- 2.5. DfT has proposed that the current arrangements for Rail North Ltd and DfT, which see joint working on rail franchising progressed through the Rail North Partnership Strategic Board, are broadened to ensure that TfN has a constructive forum through which it can advise the SofS on rail infrastructure priorities, in addition to continued co-management of rail franchises.
- 2.6. In confirming a key function of TfN will include co-management of rail franchises, the SofS has however confirmed that he is not minded to grant an STB the power to carry rail passengers at this present time.
- 2.7. The TfN Partnership Board and Association of Rail North Partner Authorities have recognised the SofS's response to TfN's STB proposal as a positive step forward for sub-national transport investment planning and confirmed that the ambition towards future devolution of franchising responsibilities should be retained.

3. Implementing Acquisition of Rail North - Recommended Approach

- 3.1. In considering acquisition options, the aim is to achieve functional alignment of TfN and Rail North, ensuring synergies from co-ordinated 'track and train' planning are achieved; that these are driven by 'local decision' making and the strategic economic objectives determined through the IER and STB's Statutory Transport Plan; that investment priorities for the sub-national region are presented by a single and unified voice; and an efficient sub-national governance and administrative structure is achieved. In short, the acquisition model to align TfN and Rail North Ltd should be driven by functional and operational needs.
- 3.2. **Functions and Business Incorporation** – our recommended approach in light of the above and the SofS's response is that the functions and business of Rail North Ltd are transferred to TfN, in effect providing the North's authorities with one single body, operating under a relatively simple final structure that would oversee co-managing rail franchising and development and implementation of a sub-national transport strategy. Given the current functions of RNL would be undertaken by TfN, the requirement for a separate franchising entity would cease to exist. Current Rail North members' rights and obligations would be retained and transferred through to TfN's Constitution and governance arrangements – further details are summarised at the end of this note.
- 3.3. Having a single body representative of the North and responsible for 'track and train' investment planning would also enable effective implementation of the SofS's proposal for a statutory partner role and provide a constructive means of engagement with the DfT on rail infrastructure investment planning through the established Partnership Strategic Board.

- 3.4. Under this approach, the existing Partnership Agreement between DfT and Rail North Ltd that governs co-management of rail franchising would be transferred to TfN with appropriate enhancements to reflect both the acquisition of Rail North by TfN and the extended remit to include TfN's statutory partner role. TfN would continue to represent the whole of the 'Rail North' area through the arrangements set-out in its Constitution and a Franchise Management Agreement that would replicate rights and obligations of member authorities under the current Rail North Ltd Members Agreement.
- 3.5. Under the transferred Partnership Agreement, TfN would retain the same abilities as Rail North Ltd to bring forward proposals for further devolved franchise responsibilities as capabilities and capacity mature. Having a single body responsible for exercising strategic rail services and infrastructure functions across the North would arguably strengthen the case future proposals. Any proposal for further powers would need also to include provision for the STB to be granted powers to carry rail passengers.

4. Alternative Approaches Considered

- 4.1. Ownership Transfer - The option to transfer ownership of Rail North Ltd to TfN was the approach anticipated and previously endorsed when TfN's STB proposal was submitted to the SofS. This approach would enable TfN to indirectly undertake Rail North Ltd's rail franchise functions through transfer of ownership to TfN. Whilst governance and operational arrangements would be streamlined to some extent, Rail North Ltd as a body would continue to exist and with it the inherent risks around contractual complexities, accountable ambiguity, and financial and administrative inefficiencies.
- 4.2. The SofS's requirement for the statutory partner role to be conducted through the existing Partnership Strategic Board arrangements were considered likely to exacerbate the above risks. The intention not to grant STB's the power to carry rail passengers would also impact on the ability to transfer ownership of Rail North Ltd on a 'like for like' basis.
- 4.3. Under a transfer of ownership, the powers of Rail North would be derived from its owner, TfN. Therefore even under this approach, Rail North would not have the power to carry rail passengers at this stage.

Appendix

TfN's Constitution and governance arrangements - Key FAQ's

Why can't we retain Rail North Ltd as a completely separate body, with the same current powers?

A single body representative for the North and responsible for strategically co-ordinating 'track and train' investment at a sub-national level is considered the most effective approach because:

- Exercise of Rail North's Franchise Management functions can now be undertaken by TfN within its statutory powers, supplemented through 'contractual' arrangements that would replicate those currently in effect between Rail North and DfT through the Rail North Partnership Agreement. Delivering these functions under one umbrella body i.e. within the STB organisation, will better inform the development of rail infrastructure priorities and integration with the wider multi-modal sub-national Transport Strategy (Statutory Transport Plan). Greater alignment with the IER and Northern long term economic objectives can also be achieved;
- Efficiencies in governing, directing and administering through a single body will be less bureaucratic and lead to expedient and aligned strategic decision making, greater returns from resources (personnel and financial), and potentially overtime a diminishing reliance on the public purse;
- The case for rail investment is strengthened where both 'track and train' needs have been considered. A single body presenting this case to government will enable effective implementation of the SofS's proposal for the STB's statutory partner role, and increase the chances of securing increased rail investment for the North.

Whilst technically feasible to continue with two separate bodies, this approach would be contrary to the SofS's policy intent that strategic rail functions, both services and infrastructure, are undertaken by one sub-national body and that consequently, Rail North should be acquired by the STB. An approach that seeks to retain two separate bodies would likely require further discussions with the SofS and Department regarding policy intent, with associated adverse implications to the timescales for establishing an STB in 2017.

Will the STB have the same responsibilities as Rail North Ltd?

The SofS's response makes clear that a key function of TfN shall be the co-management of the TransPennine Express and Northern Rail franchises through the acquisition of Rail North Ltd. We expect the Statutory Instrument that establishes the STB to reflect this policy intent.

Will the STB be able to award future franchises?

It is expected that the STB will be able to bring forward Devolution Proposals for future franchises consistent with the arrangements under the current Partnership Agreement. Proposals relating to the

letting of franchises would now need to include a request for powers to carry rail passengers, in addition to franchise awarding powers.

Will TfN's acquisition of Rail North adversely affect members franchising rights and responsibilities?

TfN's Constitution and governance arrangements will seek to ensure the rights and obligations of Rail North's current membership are protected. The arrangements will however need to reflect acquisition of Rail North by TfN as a statutory body, as required by the SofS.

How will the acquisition impact on current Rail North governance?

TfN's Constitution will describe its functions and the governance structures and the major partnerships through which these will be exercised. All current members of Rail North will become members of TfN as described below: (see proposed governance structure at the end of this note)

TfN's Statutory (Corporate) Body will consist of 19 Constituent Authorities. It will operate and take decisions through a Partnership Board which will include representatives of the STB Constituent Authorities (19 members), the Co-opted Authorities (6 members of Rail North Limited), representatives of the 11 LEPs and representatives of the Department for Transport and of other Government Agencies. These arrangements would replace current requirements for the Association of Rail North Partner Authorities – minimising the administrative and logistical burdens on member Authority representatives.

TfN will establish a 'Rail North Committee'. The Committee shall be made up of the Members of TfN and the Co-opted Members representing the current Rail North Authorities.

The purpose of this committee shall be to consider and advise TfN on all matters relating to rail transport in the Rail North area (franchise services) and TfN area (franchise services and infrastructure) including the following matters:

1. the promotion and improvement of rail services in the area of TfN and the wider Rail North area
2. the management of the performance of obligations under franchise agreements let by the Secretary of State in respect of the carriage of passengers by rail;
3. the development of the long term rail strategy of TfN;
4. the delivery of the long term rail strategy of TfN;
5. recommending to TfN the Rail North business Plan and related annual budget and any Rail North policies; and
6. recommending to TfN the appointment of officers to serve on the Rail North Partnership Board and their removal and replacement.

What would happen to the Rail North Ltd Board?

To replace the current Rail North Ltd Board, the Rail North Committee will establish a Sub-Committee, representative of the current 11 Rail North area groups. The Sub-Committee will meet at least 4 times

a year and its main purpose will be the 'business' meeting for monitoring progress of the franchises, developing franchise output changes and business plans. Specifically, the role of the Sub-Committee shall include:

1. overseeing the implementation of the Rail North Business Plan;
2. providing direction to the Rail North Partnership Strategic Board members in relation to Franchise Agreement matters; and
3. making recommendations in relation to Reserved Matters including the Business Plan and Budget.

The Committee's remit will include oversight of both the STB's rail infrastructure and rail franchise functions in line with the aim for strategic co-ordination of 'track and train' priorities across the sub-national region.

How will the committee take decisions on franchise matters?

Key decisions on franchising matters i.e. what are currently defined as Rail North 'Reserved Matters' in the Rail North Ltd Members Agreement, will continue to be taken in line with voting arrangements set out in Rail North's Articles. In essence, these voting rights will be transferred and explicit in TfN's Constitution.

Will all current Rail North Member rights be in TfN's Constitution?

Existing Rail North member's rights in relation to franchise management are covered through a Members Agreement between each authority and Rail North Ltd. These rights would transfer to a 'Franchise Management Agreement' with the exception of voting rights on 'Reserved Matters' which would transfer to TfN's Constitution.

What would happen to Rail North Partnership Strategic Board?

This would continue to be the forum through which TfN would jointly work with DfT to co-manage current rail franchises. Its remit however would be broadened to reflect TfN's enhanced role as Statutory Partner to DfT for strategic rail infrastructure investment planning.

TfN's Rail North Committee would agree with TfN's Operating Board the representatives on the Rail North Partnership Strategic Board.

How will the change affect Regional Business Unit arrangements?

The current Partnership Agreement and Members Agreements set out the parties' obligations and commitments in relation to the allocation of certain Management Team responsibilities to Regional Business Units. These obligations and commitments will be protected and embodied within the revised Partnership Agreement and Franchise Management Agreements and updated where appropriate to reflect agreed arrangements for example, in relation to the North East RBU.

Revised Governance Structure – Proposed



Rail North current governance structure



Transport for the North structure post Rail North acquisition

