

Board

Date: 17 December 2015

Item: Crossrail 2 Company

This paper will be considered in public

1 Summary

1.1 This paper proposes that a wholly owned subsidiary of TfL is established for the purpose of developing the Crossrail 2 project and makes proposals in relation to the appointment of non-executive directors.

2 Recommendation

2.1 **The Board is asked to note the paper and:**

- (a) agree that TfL or any of its Subsidiaries (as described in paragraph 2.2 below) establish a new subsidiary company in relation to the development phase of the Crossrail 2 project;**
- (b) authorise the TfL Officers (as described in paragraph 2.2 below) and the Subsidiaries to:**
 - (i) form a company as a subsidiary of TfL or any of the Subsidiaries (as appropriate);**
 - (ii) approve the adoption of the memorandum and articles of the new subsidiary;**
 - (iii) subject to paragraph 2.1(c) below, approve the individuals to comprise the board of directors and the Company Secretary of the new subsidiary;**
 - (iv) approve the individuals to be appointed officers of the new subsidiary; and**
 - (v) approve the name of the new subsidiary;**
- (c) the approval given in paragraph 2.1(b)(iii) above is subject to a condition that, where it is proposed to appoint any non-executive director to the new subsidiary (as opposed to a director who is already an officer of TfL), the approval of the Chair of TfL shall be obtained before any such appointment is made;**
- (d) subject to paragraph 2.1(e) below, authorise the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) to negotiate, approve, authorise, agree and execute (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate)) any documentation:**

- (i) to be entered into in connection with the incorporation of the new subsidiary; and**
- (ii) required in relation to the creation, operation, introduction and management of the subsidiary's regulatory compliance requirements,**

including, without limitation, all agreements, deeds, guarantees, indemnities, announcements, notices, contracts, certificates, letters or other documents;

- (e) note that TfL's Standing Orders will apply to any new subsidiary company formed pursuant to these approvals including, without limitation, the Scheme of Authorities;**
- (f) note that the new subsidiary will adopt its own governance arrangements including procedures for the open and transparent appointment of non-executive directors and their remuneration; and**
- (g) authorise TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the regulatory compliance of the new company.**

2.2 The following Officers and Subsidiaries shall have delegated authority:

- (a) TfL Officers: the Commissioner, Managing Director Finance, Managing Director Crossrail 2 and General Counsel.**
- (b) Subsidiaries: Subsidiaries of TfL including Transport Trading Limited (TTL) and any other subsidiary (whether existing presently or to be formed) of TTL and the directors of such authorised company shall be authorised to act for and on behalf of that company.**

3 Background

- 3.1** It is widely accepted that the successful delivery of major infrastructure projects can be enhanced by having responsibility for the project in a dedicated company at arms length from but responsible to the project's sponsors. Crossrail 2 has made significant progress with the design phase of the project and expects to enter the development phase in mid-2016, with the construction phase due to start in the early 2020s.
- 3.2** The creation of a delivery company offers advantages – particularly should the project be jointly sponsored, when the discipline imposed by the creation of a company is important in regulating change and ensuring the sponsors speak with one voice. That view is supported by HM Treasury guidance and endorsed by the National Audit Office in its 2014 review of Crossrail.
- 3.3** At present Crossrail 2 is sponsored by TfL and managed by a dedicated directorate in collaboration with Network Rail. A request has been made for £250m to fund the Development Phase and the Government has indicated that a response will be given in the Budget in March 2016, following a review by the newly established National Infrastructure Commission. It is possible that, should

funding be provided, the Department for Transport (DfT) will require a degree of control and may seek to participate in the project.

- 3.4 For Crossrail 2, with co-sponsorship a likely consequence of DfT co-funding the development phase, it will be important to distinguish between the roles of the sponsor and project team from that stage. Establishing a company will provide that role clarity and aid good governance, establishing clear accountability for project performance and control of expenditure.
- 3.5 In preparation for the development phase but also to add momentum to the project, it is recommended that a company is now created as a wholly owned subsidiary of TfL. The purpose of the company would be to provide powerful and widespread advocacy of the project in the run-up to the Budget and to continue to manage and develop the scheme, contributing to the negotiation of a funding solution and seek powers to construct the project in line with the requirements and funding envelope specified by the sponsor(s).
- 3.6 It is proposed that the company is initially established in keeping with the majority of companies within the TfL group, following TfL's Standing Orders. As potential co-sponsors come forward, it would be open to them to participate in the company if desired.
- 3.7 It is proposed that a small but powerful group of individuals would be rapidly appointed as non-executive directors to replace or supplement the initial internal TfL appointees. This will follow an open recruitment process that TfL is initiating, with the agreement of the Mayor's champion for Crossrail 2, in anticipation of Board approval so that time is not lost. The new subsidiary will adopt its governance arrangements in accordance with best practice, including procedures for the open and transparent appointment of NEDs and their remuneration.

4 Financial Implications

- 4.1 Costs extend to establishing and administering the company within the TfL structure and would not be expected to exceed £10k per annum, together with any remuneration of NEDs. These costs will need to be met from the budget allocated to Crossrail 2.

List of Appendices to this report:

None

List of Background Papers:

National Audit Office report – Crossrail <https://www.nao.org.uk/report/crossrail-3/>

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