

Date: 25 November 2014

Item 9: **Transfer of West Anglia routes from DfT to TfL and Crossrail and West Anglia Station Leases**

This paper will be considered in public

1 Summary

1.1 The purpose of this paper is to update the Committee on:

- (a) the proposed transfer of responsibility for the West Anglia Inner passenger train (WAI) services and stations from the Department for Transport (DfT) to TfL;
- (b) the proposals for London Overground Rail Operations Limited (LOROL) to operate the WAI services and stations under the existing London Overground Concession Agreement; and
- (c) the proposal for TfL to enter into 125 year station leases in respect of certain West Anglia Inner and Crossrail stations.

1.2 A paper is included on Part 2 of the agenda which contains exempt supplementary information. It is exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it concerns information relating to the business affairs of TfL.

2 Recommendations

2.1 **The Committee is asked to note the paper, the supplementary information on Part 2 of the agenda and to recommend that the Board:**

- (a) **approves:**
 - (i) **the transfer of responsibility for the West Anglia Inner services and stations and entering into the Terms of Transfer, Grant Memorandum and any further documentation required to facilitate the transfer (Transfer Agreements);**
 - (ii) **entering into a Deed of Amendment to the Concession Agreement with LOROL in relation to the West Anglia Inner services and stations (Deed of Amendment); and**
 - (iii) **entering into 125 year leases at Crossrail eastern and West Anglia stations (Station Leases), each with the value identified in the paper on Part 2 of the agenda;**
- (b) **authorises the agreement and execution (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate)) of any**

documentation to be entered into in connection with the completion and implementation of the Transfer Agreements, the Deed of Amendment with LOROL and the Station Leases (the Franchise Agreements) and any of the matters referred to therein (including, without limitation, all agreements, deeds, guarantees, indemnities, property or other licences, announcements, notices, contracts, certificates, letters or other documents); and

- (c) authorises TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the execution and implementation of the Franchise Agreements and the matters referred to therein.**

2.2 The following Officers and Subsidiaries shall have delegated authority:

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

3 Background

- 3.1 The Secretary of State for Transport (SoS) has agreed in principle that responsibility for WAI services between Enfield Town/Chingford/Cheshunt via Seven Sisters to Liverpool Street, and Romford to Upminster will transfer to TfL.
- 3.2 The Mayor has campaigned over an extended period of time for greater control over services provided in the London area on the National Rail network, to enable the quality of these services to be improved. The devolution of WAI services meets Mayoral strategy as set out in the Mayor's Transport Strategy (MTS) proposal 13, which reads that service quality standards "would be better achieved if the Mayor had more control over suburban rail services in the London area". The Mayor's Rail Vision (February 2012) expanded upon this and set out WAI services as a specific set of routes where TfL should become the contracting authority.
- 3.3 The main workstreams associated with the transfer and mobilisation of TfL's operator are: agreement of the transferring sum; agreement of pensions arrangements and costs; the separation of and future access to franchise assets (rolling stock, rolling stock and crew depots, stabling infrastructure, stations); the promulgation of the required statutory instrument to remove formally these routes from the DfT's franchising process; and internal and external communications.
- 3.4 As a result of the transfer of WAI services, 24 stations are proposed to transfer from the current station facility owner (Abellio Greater Anglia (AGA)) to LOROL on 31 May 2015.
- 3.5 In addition, as a result of the parallel transfer of Liverpool Street to Shenfield services to Crossrail (Crossrail eastern), also planned for 31 May 2015, a further 12 stations, including Stratford, are due to transfer to the Crossrail concession operator (MTR Corporation (Crossrail) Limited (MTRCCL)). The wider arrangements for the services transferring to Crossrail are included in the Crossrail

Sponsors Agreement between TfL and the SoS. The Sponsors Agreement was approved by the TfL Board at its meeting on 30 September 2008.

- 3.6 AGA currently operates the WAI stations and Crossrail eastern stations (with the exception of Stratford) under 99 year Full Repairing and Insuring (FRI) leases. It is proposed that these leases will be surrendered and TfL will enter into 125 year leases for both the Crossrail eastern and West Anglia stations with Network Rail (NR). TfL will subsequently enter into sub-leases of the relevant stations to LOROL and MTRCCL for the duration of their respective concessions.

4 Proposal for Transfer of WAI Services

- 4.1 The proposed date of transfer is 31 May 2015, the same date as the transfer of Liverpool Street to Shenfield services to the Crossrail operator (MTRCCL). LOROL will run the West Anglia services and stations under a variation to its existing Concession Agreement (Deed of Amendment) from 31 May 2015 to the expiry of the concession in November 2016 when the whole of the Overground services (including WAI services) will be re-let under a new Concession Agreement.
- 4.2 With respect to operations, TfL and LOROL have agreed heads of terms to operate West Anglia from the transfer date on a cost plus basis against a tight scope specification for the period to the end of the concession in November 2016, and are currently completing the negotiation of detailed terms. TfL has published a Prior Information Notice (PIN) in the OJEU that describes its future procurement strategy for London Overground, and specifically TfL's intention to re-let the concession including WAI services from November 2016.
- 4.3 The Deed of Amendment will include a Key Performance Indicator (KPI) regime for the West Anglia services which will ensure a staff presence at stations from first train to last, as well as improved train and station cleaning and maintenance, with penalties for any failures. KPIs will not be financially incentivised as they have not been measured in this way before. Instead they will be subject to robust client review until trends are clear and incentives can be priced without attracting risk premia.

Benefits (and Value)

- 4.4 The best measure of the value of the transfer is provided by combining those items linked directly to the transfer with the benefits delivered by the station upgrade programme and the new trains, both of which are subject to separate approval processes and will deliver significant benefits to customers using the West Anglia network. The combined benefit cost ratio across all three elements is 1.70 to 1, demonstrating good value for money.
- 4.5 The proposal also delivers a key objective set out in the MTS and represents a main outcome from the Mayor's lobbying. It will deliver major improvements to a neglected part of London's transport infrastructure and demonstrates the case for further devolution of control over rail services in London to the Mayor, in areas where customer demand is higher and the business case is therefore better.

4.6 The objectives for this project are as follows:

Objectives	Main benefits by stakeholder group
Delivery of improved train service reliability	Passengers using West Anglia train services will benefit from improved train service reliability, driven by the separation of the services covered from the current Greater Anglia franchise, the application of additional resources and a greater client focus on performance.
Delivery of improved train service frequency	Additional services will be provided on the route via Seven Sisters on Sundays, matching the frequency of service provided on this route during the rest of the week. Hours of operation on the Romford – Upminster branch will be extended so trains operate later on weekdays. A Sunday service will also be introduced on the route from a date currently under negotiation.
Delivery of an improved on train ambience in the short term	The interior of the trains will be refreshed to improve the ambience experienced by customers prior to the introduction of new trains.
Delivery of better actual and perceived on train security	Additional on train security staff will be provided on all routes to deter anti social behaviour and criminality, improving customer perceptions of safety and security.
Reductions to the cost of travel	Passengers will benefit from the extension of Freedom Pass validity to the AM Peak on the routes covered. Passengers will also benefit from lower Oyster PAYG fares on certain journeys.
Reduced levels of fare evasion	A new performance regime will be introduced to minimise fraudulent travel. TfL will benefit from improved revenue collection as it takes 100 per cent of revenue risk.

4.7 The specification for the transfer is based on the service standards adopted by London Overground which drove a major improvement in customer satisfaction on the Overground, following transfer of services from Silverlink. It is important that a common quality of service is maintained across TfL's rail networks in order to fulfil the MTS so this requirement drives the specification which aims to achieve an Overground style of service wherever this is practicable.

Delivery

- 4.8 TfL has defined an execution strategy for the transfer of the railway, which necessarily means working closely with the DfT, which is the current contracting authority for the services.
- 4.9 While separate to the transfer, TfL has also defined the enhancements it wishes to see to the transferring services and stations.
- 4.10 There is a specification for each of the 24 transferring WAI stations. Some change will be visible immediately such as more visible staffing (there are four unstaffed

stations currently), and better passenger information fully integrated into TfL's travel planning tools. Other parts of the programme would only be completed in the months to follow. Liverpool Street and Cheshunt will remain the responsibility of Network Rail and Greater Anglia respectively, though the current branding at the former will be reviewed.

4.11 There will also be an initial 'refresh' and deep clean of the current rolling stock. This would mainly affect interior finishes, seating and branding.

4.12 TfL is also sourcing new rolling stock for WAI services at the same time as for the newly electrified Gospel Oak to Barking line. The base order set out in the OJEU notice is for 39 trains, of which 30 are for the existing West Anglia Inner route from 2017 (replacing the 28 currently operating) and one is for the Romford to Upminster line. The OJEU notice also anticipates TfL options for more trains to meet future demand and provide potential frequency improvements. The introduction of the new train fleet on the existing West Anglia Inner route is expected to be complete by the end of 2018. This will be the subject of a separate paper to the Committee early in 2015.

4.13 Top five risks are shown below:

Risk No	Risk Description	Mitigation Actions
1	Insufficient rolling stock available – would not allow operation of specified train service	Work in progress to secure trains from other sources to overcome any shortfall of trains transferred from AGA.
2	Insufficient drivers available to operate planned train service	Additional drivers are currently in training. Any identified shortfall at transfer will be covered through a trading agreement with AGA pending drivers completing their training.
3	Station asset condition proves worse than expected requiring expenditure on repair before enhancement	Discussions on warranty provision have been a key part of station lease negotiation with the DfT. Early assessment of the station portfolio will identify issues.
4	Pensions – there is a liability for deferred and pensioner members which needs to be distributed between past and future operators	The DfT will provide definitive information to allow actuarial assessment of the liability. This should be in place before the Terms of Transfer and Grant Memorandum are finalised.
5	Multiple operators at Liverpool Street – TfL operations require sufficient priority	Joint working groups being established to address Liverpool Street station issues, contingency planning and control arrangements. These to continue after transfer.

4.14 The Deed of Amendment with LOROL will take account of the additional resources required to operate the WAI services. Staff currently employed by AGA will

transfer to LOROL under TUPE arrangements on 31 May 2015. These include train drivers and station staff currently operating the West Anglia services. AGA has been engaging with its staff throughout the transfer process and LOROL has now begun to engage AGA with staff through the unions. The first meeting between LOROL and the unions representing AGA staff was on 7 November.

- 4.15 Additional resources will be required either because the splitting of AGA services creates a need for an increased resource, or because TfL proposes enhancements in service quality such as all day staffing and improved operational performance. AGA has already recruited and started training on TfL's behalf of five drivers who will transfer to LOROL and has been asked to recruit additional drivers for resilience. LOROL will also recruit and train additional staff needed for headquarters and station functions. Some staff will be employed through agencies but exact numbers have still to be agreed with LOROL.
- 4.16 Devolution also drives the need for two additional trains to provide resilience and improve operational performance. These will be leased from a Rolling Stock Leasing Company ROSCO. Rolling stock will transfer from AGA and be leased from the relevant ROSCO but some trains may need to be cascaded from other operators for leasing by LOROL.

5 Proposal for Station Leases

- 5.1 The stations transfer is complicated by the fact that all but one (Stratford) are currently operated by AGA under 99 year FRI leases. AGA is currently only one of two train operating companies (TOCs) to have 99 year station leases which were introduced at the start of its franchise in 2011 under a DfT initiative. AGA has responsibility for all maintenance and renewals at the stations and for insurance. It is funded for station works through its franchise agreement. There is no Long Term Charge (LTC) payable by AGA to NR. AGA has no rights to undertake significant commercial development.
- 5.2 This contrasts with the station lease arrangements for other train operators, including LOROL under its industry standard lease, where the operator takes a short term lease coterminous with the franchise or concession period and only has responsibility for day to day maintenance. In this situation NR retains responsibility for heavy maintenance, renewals and insurance and recovers its costs through the LTC. If other operators call at the stations, they pay a share of the LTC and contribute to other running costs.
- 5.3 When the services transfer to TfL the current station lease arrangements will need to end. TfL is not a train operating company so could not take on the existing 99 year leases from AGA and sub-let them to its concession operator in its current form. This has necessitated negotiation of a new form of lease. While the detailed lease is still subject to negotiation the high level terms that have been agreed are described below.

Preferred Option – Terms of Letting Arrangements

- 5.4 The stations will be let by NR to Rail for London (RfL) for a term of 125 years. The letting will be limited to the 'regulated footprint' (i.e. the area that NR has traditionally let to the TOCs) although a review is underway to see whether additional areas may be required for operational or possibly commercial reasons.

- 5.5 RfL will enjoy the right to develop the station (although the lease will not include the track itself or the air space above it) save in respect of two stations where NR either has a development underway (Walthamstow Central) or plans to bring one forward within CP5 (Enfield Town) where NR will retain the benefit.
- 5.6 RfL will have the ability throughout the term of the lease to enhance and exploit commercial potential such as advertising, retail kiosks and lettings. It will also be able to undertake development at the stations within the demise, without the type of restrictions in the current TOC leases, although this will be subject to operational/safety consent, i.e. those required under station change or infrastructure protection in relation to railway infrastructure and operations outside the TfL demise.
- 5.7 Any development outside the lease “footprint” or which required a longer lease would need NR support and participation. Where either TfL or NR proposed such a scheme the development would be dependent on the parties agreeing separate bespoke terms. This may lead in time to a wider over-arching framework agreement between TfL and NR, although this is best considered at a later date when any specific plans are brought forward.
- 5.8 RfL will underlet the stations to the appropriate concession operator for a term that reflects the duration of the relevant concession and essentially each Operator would retain the risk profile that they would have on industry standard coterminous leases, so minimising RfL’s exposure to a claim.
- 5.9 The underlease will constitute the operator as the Station Facility Owner (SFO) i.e. the party assuming the responsibility for operating the station and the infrastructure manager under Railway and Other Guided Systems regulations (ROGs). The SFO will enter into regulated access agreements with other train operators who call at the station.
- 5.10 A key element of the structure is the Station Access Conditions (SACs) which set out the rights and obligations which govern the relationship between the key parties. These will be incorporated in the underlease and any Access Agreements and will bind RfL, the SFO and the TOCs using the station. A bespoke set of RfL Station Access Conditions has been developed for review by the Office of Rail Regulation.
- 5.11 Securing a long lease of these facilities on the basis above brings a number of advantages. It provides a robust basis for RfL to deliver future infrastructure enhancements and more flexibility to exploit commercial opportunities. It also gives RfL an enhanced level of direct control over these customer-facing facilities and affords a greater degree of operational flexibility than would be the case with a conventional lease arrangement. In addition, as RfL will control maintenance activities, it can drive efficiencies by taking advantage of TfL’s buying power and exploiting synergies with the delivery of enhancement projects. A long lease is also appropriate given RfL’s responsibility to appoint the concessionaire and its duty to act as operator of last resort.

Asset Management

- 5.12 As mentioned above, the proposed letting arrangements will effectively pass responsibility for asset condition to RfL. Day to day maintenance would be carried out by the concession operators. Renewals and long term maintenance would be the responsibility of RfL.

- 5.13 RfL has initiated a piece of work to define clear requirements and a detailed plan to transfer the asset data to the RfL Asset Management System. This data set will then form the basis of the scope of assets to be maintained.
- 5.14 It is proposed to deploy a two stage familiarisation/ survey approach. The first stage is to focus on familiarisation, verification of asset registers etc. to facilitate commencement of maintenance in May 2015. The second stage is to assess the stations in greater detail to define a clear, costed renewals programme working towards a mid 2016 date for completion of this task.
- 5.15 It is intended to adopt the East London Railway's (ELR's) Asset Management Policy, Strategy and System. TfL would thus define the maintenance requirements via a Stations Asset Management Plan, which covers both the Planned Preventative Maintenance and renewals of Landlord (as defined in the Stations Code) assets.
- 5.16 It is proposed to extend the current remit of the ELR's Fault Report Centre for first line reporting. A TfL resource plan has been developed and up to three TfL Infrastructure Management full time posts are anticipated to be created.
- 5.17 Stratford station, while due to transfer to MTRCCL on 31 May 2015, is currently let on conventional coterminous lease terms. Given this, and both the scale and complexity of the facility, it is recommended that the current lease structure is retained and hence does not form part of the stations recommended to transfer to the revised lease terms outlined in this paper.

6 Legal Implications

- 6.1 A 'Terms of Transfer' document will record the basis on which responsibility for the WAI services are transferred from the DfT to TfL. This includes a statement of irrevocable handover to TfL; the process by which necessary Statutory Instruments will be made, identification of prescribed Network Benefits which TfL must continue to secure from its operator e.g. membership of ATOC and participation in industry agreements; operator of last resort obligations and provision of information by TfL.
- 6.2 The DfT is progressing the necessary statutory instrument in parallel with Crossrail. A consultation will take place shortly and the Statutory Instrument will be laid before Parliament in January 2015.
- 6.3 A warranty for station lease liabilities for WAI will be reflected in the Grant Memorandum to be entered into between the SoS and TfL to reflect the agreed funding arrangements for the WAI services and stations. In the case of the Crossrail stations it is expected that the warranty will be agreed via a separate Crossrail Transfer Sum Agreement.

7 Financial Implications

- 7.1 The WAI "virtual separable business unit" (VSBU) started on 6 January 2014, which splits the management accounts, thus enabling the calculation of the "transfer sum" payable between the DfT and TfL. This settlement would last until the next general comprehensive spending review when overall grant for TfL is re-adjusted from 1 April 2016. There are two elements which contribute to the overall cost of the transfer:

- (a) the cost of running the WAI services which is informed by the VSBU; and
- (b) the cost to DfT of its revised franchise which is informed by AGA's financial model.

7.2 On top of these two elements TfL pays the DfT and AGA's costs and fees to May 2015 and the additional cost of LOROL running the WAI service to November 2016. TfL also takes on certain risk costs (for example pensions and station maintenance).

Commercial

7.3 In May 2014, TfL issued a contract award notice to inform the market of its intention to vary the London Overground concession to include the operation of the WAI services from May 2015.

7.4 TfL and LOROL have agreed Heads of Terms for the agreement to operate WAI Services in April 2014 and have been negotiating the Deed of Amendment. LOROL will sign up to a Deed of Amendment which will amend the existing Concession Agreement, requiring LOROL to operate WAI services to the same exacting standards they demonstrate on the existing London Overground network, from the date of transfer until the end of the LOROL concession in November 2016.

7.5 The WAI services will be treated separately from the rest of the concession due to the fact that this is a material change and a new part of the TfL network. Full integration will take place with the award and commencement of the second London Overground concession in November 2016.

List of appendices to this paper:

Appendix 1: List of West Anglia and Crossrail stations which will transfer

A paper on Part 2 of the agenda contains exempt supplemental information.

List of Background Papers:

None.

Contact Officer: Jon Fox, Director of London Rail
Number: 020 3054 8198
Email: Jonathanfox@tfl.gov.uk

List of West Anglia and Crossrail stations which will transfer

Station Name	Concession
Bethnal Green	West Anglia
Bruce Grove	West Anglia
Bush Hill Park	West Anglia
Cambridge Heath	West Anglia
Chingford	West Anglia
Clapton	West Anglia
Edmonton Green	West Anglia
Emerson Park	West Anglia
Enfield Town	West Anglia
Hackney Downs	West Anglia
Highams Park	West Anglia
London Fields	West Anglia
Rectory Road	West Anglia
Seven Sisters	West Anglia
Silver Street	West Anglia
Southbury	West Anglia
St James Street	West Anglia
Stamford Hill	West Anglia
Stoke Newington	West Anglia
Theobalds Grove	West Anglia
Turkey Street	West Anglia
Walthamstow Central	West Anglia
White Hart Lane	West Anglia
Wood Street	West Anglia
Maryland	Crossrail eastern
Brentwood	Crossrail eastern
Chadwell Heath	Crossrail eastern
Forest Gate	Crossrail eastern
Gidea Park	Crossrail eastern
Goodmayes	Crossrail eastern
Harold Wood	Crossrail eastern
Ilford	Crossrail eastern
Manor Park	Crossrail eastern
Romford	Crossrail eastern
Seven Kings	Crossrail eastern
Stratford	Crossrail eastern