

North Tyneside Council Report to Cabinet Date: 9 September 2013

ITEM 7(f)

Title: Northern Grid For Learning - Transition to Lead Authority Model

Portfolio(s): Children, Young People and Learning

Cabinet Member(s): Councillor Ian Grayson

Report from Directorate: Children, Young People and Learning

Report Author: Gill Alexander

(Tel: (0191) 643 8000)

Wards affected: All

PART 1

1.1 Purpose:

The purpose of the report is to obtain approval and authorisation for the Authority to assume responsibility as the lead authority for the management and development of the business currently carried on by Northern Grid For Learning (**NGFL**) for itself and on behalf of the other NGFL member authorities.

The members of NGFL (the **NGFL Authorities**) are the Borough Councils of;

North Tyneside
South Tyneside
Redcar and Cleveland
Stockton on Tees
Darlington
Middlesbrough, and
Hartlepool

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) Approve the proposal that the Authority take responsibility as lead authority, under the terms of a contractual arrangement with the NGFL Authorities, for the future management of the activities of NGFL, and assume the assets and liabilities of NGFL on that basis;
- (2) Authorise the Director of Children, Young People and Learning in consultation with the Head of Law and Governance, The Strategic Director of Finance and Resources and the Cabinet Member for Children Young People and Learning, to agree and conclude an appropriate commercial agreement with NGFL and the NGFL Authorities

on such terms as are deemed appropriate to give effect to the proposal referred to in item (1) above, and to agree and conclude such ancillary agreements relating to the contracts, liabilities and assets of NGFL as may be necessary to achieve that transition;

- (3) Approve the provision of a guarantee to the Tyne and Wear Pension Fund (the **Fund**) by the Authority in respect of the liabilities of NGFL to the Fund, and the entry by the Authority into an agreement for the subsumption of the pension liabilities and assets of NGFL into those of the Authority, in each case on the basis that the Authority secures appropriate and proportionate indemnities and contribution agreements from the other NGFL Authorities in respect of any future liabilities to the Fund that may arise under that guarantee or subsumption;
- (4) Authorise the Strategic Director of Finance, in consultation with the Director of Children, Young People and Learning, the Head of Law and Governance and the Cabinet Member for Finance to agree and conclude such forms of guarantee, subsumption agreement, indemnities and contribution agreements as may be necessary and appropriate to give effect to the matters approved in item (3) above; and
- (5) Authorise the Director of Children, Young People and Learning to do such things and agree such matters as may be ancillary to the matters authorised and are considered reasonably necessary to give effect to their intention, including following the transition contemplated above, to take steps to effect a solvent and orderly winding up of NGFL.

1.3 Forward Plan:

28 days notice of this report has been given and it first appeared on the Forward Plan that was published on 27 March 2013.

1.4 Council Plan and Policy Framework

This report relates to the following themes in the 2012-15 Council Strategic Plan:

PRIORITY 2

Maintaining excellent education, training and employment opportunities, including apprenticeships and working in collaboration with partners

1.5 Information:

1.5.1 Background

1.5.2 NGFL is a company limited by guarantee that was formed in 2003 by the NGFL Authorities to deliver IT enabled learning support and broadband services to schools and educational establishments. The 'Grid' initiative was part of a national programme with regional groups taking collective responsibility for coordinated deliver of relevant services and resources within their regions.

1.5.3 NGFL was established with its own premises, management and staff, and was managed locally but with guidance from a board of directors representing the member authorities. NGFL is an admitted body to the Tyne and Wear Pension Fund (the **Fund**) and contracted in its own name for the provision of a broadband network to support the NGFL Authorities, their schools and other learning establishments in the region.

- 1.5.4 Changes in the costs of broadband services and the requirements of educational establishments for what NGFL was set up to deliver have meant that over time the business model, and the justification for the infrastructure of NGFL have become less relevant. This was recognised by the NGFL Authorities and following a review of the business undertaken by Ernst and Young, radical changes to the structure and business of NGFL were recommended. These proposed that NGFL should shed a number of workstreams and refocus its business to align more closely with what the market actually required. The NGFL Authorities agreed that these recommendations should be adopted.
- 1.5.5 The removal of a number of non-core activities from the business of NGFL meant that a number of staff posts, including those of some senior managers, became redundant and as a consequence of this in the short term the need to meet the redundancy, pensions and restructuring costs placed significant pressure on the cash flow position of NGFL. This caused the NGFL Authorities to review the position of NGFL to determine how best to proceed. One option open to the NGFL Authorities was to fund the short term cash flow requirements of NGFL by way of loans or cash injection. The medium term projections for the business showed no long term financial problems as long as the projections were correct, but the NGFL Authorities were reluctant to put further funds into the business when the business was contracting, and because of the staff changes there was uncertainty about its ability to operate effectively to meet the projected income targets. A second option for the NGFL Authorities was to place NGFL into liquidation. This would have caused a liability to the Fund to crystallise. As the NGFL Authorities were, (by reason of a guarantee to the Fund by South Tyneside, which was in turn supported by indemnities from the other NGFL Authorities), ultimately liable for any such liability, this was not an attractive option. Liquidation would also have led to large contractual claims from BT in respect of a recently procured contract for the delivery of a broadband network, and this possibility coupled with the fact that all NGFL Authorities actually wanted the service offered by NGFL to continue, meant there was no benefit to be gained from closing down the business.
- 1.5.6 Following consideration by the NGFL Board, it was concluded that if appropriate arrangements could be made the most cost effective and appropriate solution would be for an NGFL Member to assume responsibility for the activities of NGFL as a lead authority, to take over all necessary assets, deal with any liabilities and then to wind up NGFL on an orderly basis. Such an arrangement would allow costs and structures of the business to be rationalised, and for all liabilities to be shared as they were previously, except that the relationship between the NGFL Authorities would be governed by a contractual arrangement rather than through the constitution of a jointly controlled company.
- 1.5.7 As North Tyneside Council had access to the contract management and IT resource delivered under its partnership with Balfour Beatty Workplace Limited, and was actively involved in seeking to resolve the issues facing NGFL, (the Authority delivered HR support to the NGFL Business on a contract basis), it was proposed that North Tyneside should take the lead in trying to create appropriate conditions for a transition to a lead authority model. This work has been underway for some months and it is now considered that the obstacles to transition have been or can be appropriately addressed.
- 1.5.8 The key issues that arise in relation to the proposed transition, and the proposals for dealing with them, are as follows;
- 1.5.8.1 Network provision and support contract with BT

NGFL concluded a contract with BT for the creation of an appropriate broadband network to support the services delivered by NGFL to the NGFL Authorities and their schools following a regulated procurement exercise (the **BT Contract**). This contract is valued at approximately £1.8m per annum with quarterly payments, and will continue until at least July 2017, but may have a six month run on to allow coterminous end dates for services. Discussions have taken place with BT and BT have confirmed that they would be content to have this contract novated to the Authority. This would mean that the Authority would primarily be responsible for the payments arising under the BT Contract and for the monitoring of its performance and payment regime. The Authority has worked with the other NGFL Authorities to establish firm agreement as to the contributions that each of them will make towards the BT Contract Costs and any novation and lead authority arrangement will be on the basis that the Authority is fully indemnified in respect of any liability arising to it under the BT Contract in respect of services supplied to any other NGFL Authorities.

1.5.8.2 Staffing Issues and Pension Costs

Following the recent changes, only three staff currently remain employed by NGFL. For operational purposes these staff are now/are intended to be located at the Authority's Langdale building and managed by a member of the Authority's education team. These staff represent what is necessary to enable the NGFL business to operate and to manage the BT Contract. It is proposed that upon the coming into effect of any lead authority agreement any remaining NGFL employees should transfer to the Authority, with the other NGFL Authorities undertaking to pay to the Authority a proportionate contribution to the employment costs of those staff. The transfers of staff will arise under operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and the employment rights of the affected staff will transfer to the Authority, but these liabilities will be subject to the appropriate indemnities from the other NGFL Authorities.

Significant ongoing staff and pension costs have now been taken out of the NGFL business, and the risk of a pensions deficit liability arising for NGFL in the event that the business ceases to operate in its current form have been addressed with the Fund. It has been confirmed by South Tyneside, in its capacity as administrator of the Fund, that should a transition to a lead authority model occur, the liabilities of NGFL to the Fund that may otherwise arise may be subsumed into the other liabilities of the Authority to the Fund such that no liability will result. It has been proposed that as part of the restructuring of the NGFL business South Tyneside should step down from its current position as the guarantor to the Fund in respect of the liabilities of NGFL and that the Authority, as the proposed operator of the business, should take its place. In assuming such responsibility for the pensions liabilities associated with NGFL again the Authority will do so on the basis that it receives appropriate indemnities from the other NGFL Authorities for their proportionate contributions to those liabilities.

1.5.8.3 Premises and Operating Costs

The Authority has, with a mandate from the NGFL Board, entered into discussions with the agents representing the landlord of the premises occupied by NGFL to seek to agree a release from the current lease. The lease runs to 2014. If this is obtained, whilst there will be a one off capital cost associated with any release (which will be shared by the NGFL Authorities) this will still represent a saving in the full term costs arising under the lease. If no release can be agreed then the premises will be

vacated in any event.

1.5.8.4 Finance, Assets and Liabilities

In 2013/14 NGFL is operating with a turnover of approximately £2.3m of which £2.2m is funded from annual charges to the member authorities and their schools. The residual sum is achieved from services provided to independent customers on a commercial basis, most of whom have a contractual agreement with NGFL of more than 5 years.

The BT contract payments are currently circa £1.8m pa. Following the recent staff changes outlined in this paper staff costs have been significantly reduced to approximately £225k for 2013/14. Other current overheads of NGFL amount to £130k.

Whilst the NGFL income and expenditure outlined above show an operating surplus, NGFL would not be operational on a long term basis if not for the support and direction provided by the member authorities and in particular North Tyneside Council as the lead authority. Appropriate reimbursement for such support would need to be agreed and factored into the final business model.

There are no other material assets or liabilities beyond those outlined in sections 1.5.8.1 to 1.5.8.3 above.

1.5.8.5 Capacity and costs

The assumption of responsibility for the ongoing management of the NGFL business will impact on the resources of the Authority in that we will, assuming that all current NGFL staff transfer to the employment of the Authority, require to manage those staff and integrate the NGFL activity into our other activity. There is an extent to which this management can be practically absorbed as much of what NGFL does is closely linked with certain aspects of what the Authority already does, however there will be aspects of this programme that will require support from other parts of the Authority, in particular Finance, Human Resources, Legal and IT/Balfour Beatty. Balfour Beatty Workplace Limited has indicated that it will be able to support the proposals to manage and supervise the BT Contract, and to the extent that there is any cost arising to the Authority for this support this will be a cost shared by all NGFL Authorities, and it is hoped that a more proactive contract monitoring/management regime will benefit all parties, as there was some concern that historically the depth of resource and contract management skills for a contract such as the BT Contract may not always have been available to NGFL.

The Authority will be able to charge the other NGFL Authorities a contribution to the costs it incurs in respect of the support of the NGFL business and so this transition, whilst reflecting only an element of cost recovery, will represent an income opportunity for the Authority.

1.5.8.6 Opportunity

Although under the terms of a Lead Authority agreement the NGFL business must be managed on the agreed basis and for the benefit of all NGFL Authorities, there are inevitably benefits arising from the position as Lead Authority to identify new opportunities to develop the business and the services delivered by the business which may sit well with other wider objectives of the Authority. There will also be a

benefit to the arrangement in that the Authority will be in a better position to influence matters that directly affect us and not subject to arrangements under the direction of a third party.

1.5.9.10 Current Position

NGFL is not as it stands sustainable as an independent entity since it relies upon the administrative support and day to day direction of the NGFL Authorities and the Authority. The Authority has effectively, with the support of the other Member Authorities, assumed de facto control of the NGFL activities and it is currently doing so on the basis only of a non legally binding memorandum of understanding. If the Authority is to continue to do this it should do so on a properly regulated contracted basis. Should NGFL cease to operate this would not only result in significant detriment and disruption to the services received by all its customers, but it would also lead to significant costs for all NGFL Authorities, and in any event there is considered to be real benefit and value in what NGFL can provide.

Any proposals to restructure the NGFL business will be implemented on the basis that they do not materially worsen the financial position of the Authority from that which presently exists, and that whilst there may be a reorganisation of the relationship between the NGFL Authorities the underlying responsibilities of the NGFL Authorities to each other and to NGFL do not change, but NGFL should be in a position where it can deliver its services in a more effective and efficient way and from a significantly lower cost base.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

Grant the Approvals and Authorisations requested at paragraph 1.2 of this Report and authorise the Authority to assume a position as Lead Authority for the ongoing conduct of the NGFL activities.

Option 2

Decline to grant the requested Approvals and Authorisations and take no alternative action.

Option 3

Propose an alternate NGFL Member be appointed as Lead Authority.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

Following the cost driven changes to its business, NGFL is not operationally sustainable and cannot effectively manage its affairs without direct support from the member authorities. The NGFL Authorities and the NGFL Directors consider that this support is best provided by a single member authority in consultation with the others, and delivered

under a contractual model. This avoids any need for short term additional revenue funding for NGFL.

The original justification for the corporate structure of NGFL no longer exists and whilst what it can deliver continues to be necessary, the structure of the business is now overly costly and unwieldy.

The ongoing commitments of NGFL mean that winding up the Company and failing to put in place suitable alternative arrangements to take over these liabilities and obligations would give rise to the crystallisation of significant liabilities for all NGFL Authorities. All NGFL Authorities value what NGFL does and wish to see this continue. The proposed model represents a more efficient way of delivering the NGFL offering, but with a significantly reduced cost base, and allows all NGFL Authorities the opportunity to make savings on the underlying costs previously associated with the NGFL business.

There are currently issues within NGFL and its arrangements with its customers and suppliers that require clarification and strengthening. It is possible to achieve this as part of the arrangements that give effect to the transition to a lead authority model.

The change to a lead authority model will not lead to any increased financial risk or costs to any NGFL Authorities, and in the case of the Authority the assumption of the position of pensions guarantor will not ultimately increase any financial liability beyond that which already exists.

It would be inefficient to have the business managed by the Authority while pensions matters were dealt with elsewhere, and to bring all of the administrative aspects of the business together is considered the most efficient solution.

By assuming lead authority status the Authority would have greater control of the delivery of the NGFL service and have greater opportunity to develop this and to propose initiatives for its enhancement. The Authority also has access to the ICT and contract management resources of Balfour Beatty Workplace Limited who will support the proactive monitoring and management of the BT supply contract.

Option 2 would leave the Authority with an assumed management role for aspects of NGFL without any contractual framework to support this and may potentially result in significant costs for all Member Authorities should NGFL fail.

It is not considered that any other Member Authority has the capacity or inclination to assume the position as lead authority.

1.8 Appendices:

None

1.9 Contact officers:

Stephen Greenway,	Solicitor, Law and Governance, tel. (0191) 643 5375
Jonathan Chicken;	School Improvement Officer, CYP&L (0191) 643 8588
Anthony Gollings;	Financial Business Manager for CYP&L and Finance & Resources, tel. (0191) 643 8071

1.10 Background information:

Background papers/information used in the compilation of this report are available at the office of the author:

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

Detailed financial implications of this proposal are contained within the body of this report.

Should the recommended option be approved, charges to North Tyneside Council and its schools for broadband network services will be contained within current revenue budgets. The recommended option also allows for an appropriate contribution to be made to the Council and its partners in respect of any management and administrative costs of the lead authority model.

2.2 Legal

The transition to a lead authority model will require a number of legal agreements and arrangements to be put in place, and these are identified in the main body of this report. The transfer of staff will arise under TUPE and appropriate arrangements will need to be put in place to offset any liabilities and associated pension liabilities that may arise as a result. This will be addressed in the Lead Authority Agreement to be concluded with the Member Authorities. There are no reasons why any of these arrangements cannot be concluded and they are all matters which the Authority has the capacity to undertake should it choose to do so. The recommended option will allow the authority a greater degree of awareness and immediate control over this aspect of the services currently taken from NGFL and provide opportunities to develop these for the future.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Members of the Children, Young People and Learning and Finance Directorates have been working with members of Law and Governance to progress matters and to enable an informed decision to be taken on the options available.

2.3.2 External Consultation/Engagement

Other NGFL member Authorities have been engaged with the Authority in relation to the planned changes and are supportive of the recommended option. Consultation with any staff whose employment may be affected by the transfer and who may be subject to TUPE has been ongoing throughout recent months and will continue as required.

2.4 Human rights

It is not considered that there are any human rights implications arising from the matters contained in this Report

2.5 Equalities and diversity

It is not considered that there is any impact on equality and diversity issues arising from the matters contained in this Report

2.6 Risk Management

It is not considered that adopting the recommended option will create any additional levels of risk for the Authority. The progression of this matter has and will continue to be managed in conjunction with all professional service areas within the Authority, and any risks arising will be identified and mitigated or managed appropriately.

2.7 Crime and disorder

The adoption of the recommended option will not have any impact on crime and disorder matters.

2.8 Environment and sustainability

The adoption of the recommended option will have no impact on environmental or sustainability matters.

PART 3 - SIGN OFF

- Chief Executive x
- Strategic Director(s) x
- Mayor/Cabinet Member(s) x
- Chief Finance Officer x
- Monitoring Officer x
- Strategic Manager Policy, Partnership, Performance and Communication x