

DATED

2021

Hampshire County Council

Isle of Wight Council

Portsmouth City Council

and

Southampton City Council

**AGREEMENT
Relating to
Transport for South Hampshire
and the Isle of Wight**

Richard J Ivory, Solicitor
Service Director: Legal & Business Operations
Southampton City Council
Civic Centre
Southampton
SO14 7LT

RECITALS

1. The Parties to this Agreement are all Local Authorities who have joined together to form Transport for South Hampshire and the Isle of Wight (hereinafter referred to as "TfSHIOW") which shall from time to time trade as Solent Transport, the purpose of which is to promote the sub regional transport agenda, implement schemes of a sub-regional nature and lobby and/or influence on all other associated aspects of life within the TfSHIOW Area.
2. The Parties wish to enter into this Agreement to record their respective rights and obligations to each other
3. The Parties enter into this Agreement in pursuance of their powers under the Local Government Acts 1972 and 2000 and all other enabling powers.
4. The Parties further note that these arrangements will be kept under review.

NOW IT IS AGREED:

1. Commencement

This Agreement shall come into force on the date above and shall continue in force until determined in accordance with Clause 13.

2. Description

The Parties have entered into this Agreement with the intention of codifying the governance arrangements for TfSHIOW. This Agreement records the present intentions of the Parties. It is entered into in good faith, but it is expressly recognised that this Agreement cannot fetter the discretion of the Parties. Subject to that, the following points are agreed.

3. Parties

- a. Hampshire County Council of The Castle, Winchester, Hampshire, SO23 8UJ
- b. Isle of Wight Council of County Hall, High Street, Newport, Isle of Wight, PO30 1UD
- c. Portsmouth City Council of Civic Offices, Guildhall Square, Portsmouth, Hampshire, PO1 2BG
- d. Southampton City Council of Civic Centre, Southampton, Hampshire S014 7LY

4. Definitions

- 4.1 "The Parties" means the Parties to this Agreement set out in Clause 3
- 4.2 "TfSHIOW" means Transport for South Hampshire
- 4.3 "The TfSHIOW Area" means the geographical area shown on the plan in Appendix 1
- 4.4 "Key Objectives" means the Key Objectives for TfSHIOW laid out in Appendix 2

- 4.5 “Lead Authority” means the local authority appointed by the Parties under this agreement to lead on a particular function in accordance with Clause 12.

5. Interpretation

- 5.1 The headings for each section throughout this Agreement are provided for ease of reference only and shall not affect its construction or interpretation.
- 5.2 Where the masculine gender is used it shall also incorporate the feminine gender. Where the singular is used, it shall also incorporate the plural and words importing party and persons includes bodies, corporate and unincorporated and (in each case) vice versa.
- 5.3 Any reference to legislation shall include a reference to that legislation as amended, applied, consolidated, re-enacted by or as having affect by virtue of any subsequent legislation

6. Principles and Key Objective

- 6.1 The Parties agree to establish and participate in a Partnership to be known as “Transport for South Hampshire” (“TfSHIOW”).
- 6.2 The Key Objectives for TfSHIOW are as set out in Appendix 2.

7. Governance Structures, Joint Committee, Senior Management Board and Working Groups and Membership

- 7.1 The Governance Structures, Joint Committee, Senior Management Board and Working Group shall be established in accordance with Appendices 3, 4 and 5. Any proposed change to this Agreement or the Joint Committee (but not the Senior Management Board, Working Groups or any other similar structures) shall be treated as a variation in accordance with Clause 18.
- 7.2 The terms of reference and membership of the Governance Structures, Joint Committee and Working Group shall be as laid out in Appendices 3 and 4. Any proposed change to membership shall be treated as a variation in accordance with Clause 18.

8. Decision Making

- 8.1 A Joint Committee will be established with the terms of reference, membership and constitutional arrangements as set out in Appendices 3, 4 and 5.
- 8.2 The Joint Committee will be administered by the relevant Lead Authority appointed in accordance with Clause 12 of this agreement. The constitutional arrangements for the Joint Committee will be determined by that Lead Authority and will, unless the Lead Authority determines otherwise, follow the Constitutional arrangements of the Lead Authority.
- 8.3 The quorum for the joint committee shall be all parties, & decisions shall be unanimous.

9. Legal, Governance and Financial Administration Issues

- 9.1 TfSHIOW shall appoint one of the Parties to provide the services of legal adviser to the partnership under this Agreement, and that authority shall act as Lead Authority for providing advice and guidance on all corporate governance, constitutional and other legal matters. The charges for such provision (which may be sub-contracted by that authority to other authorities or the private sector) shall be met in accordance with clause 10 of this Agreement.
- 9.2 TfSHIOW shall appoint one of the Parties to provide the services of financial adviser to the partnership under this Agreement and that authority shall act as Lead Authority for providing advice and guidance on all financial administration and other associated financial issues. The charges for such provision (which may be sub-contracted by that authority to other authorities or the private sector) shall be met in accordance with clause 10 of this Agreement.

10. Financial Commitments of the Parties

- 10.1 The running costs shall be met by a financial contribution from the parties commensurate and based on a pro rata formula agreed by the Joint Committee based on population.
- 10.2 Capital schemes shall be funded and the costs of those shall be met from funding either from Government, other agencies, the private sector and/or jointly funded by the parties and/or other local authorities, and funding for capital schemes shall be managed and handled separately from the running costs and revenue expenditure of the Joint Committee.

11. Staff

- 11.1 When any Party agrees to undertaking work at the request of TfSHIOW, the staff of the Party undertaking such work shall be considered to be seconded to TfSHIOW.
- 11.2 During the period of secondment, the staff shall continue to be employed by the Party from whom they were seconded and managed by that Party and no changes to the staff's terms and conditions of employment shall take place.
- 11.3 When the period of secondment comes to an end, the staff shall be treated as having returned to their original authority on the terms and conditions applying to their posts had they not been seconded

12. Lead Authorities and their Duties

- 12.1 In order to achieve the objectives of the partnership, the Parties may appoint a Lead Authority to act on their behalf in implementing decisions of the Joint Committee.
- 12.2 In the event of an authority being appointed as Lead Authority by TfSHIOW, subject to any terms, conditions, limitations or caveats, the Lead Authority shall:
- a. act as agent for TfSHIOW in the management and day-to-day supervision of the particular task the Lead Authority has been asked to lead on;

- b. compile and return all financial and participation data relevant to the task that the Lead Authority has been asked to lead on;
 - c. convene meetings comprising such individuals, bodies or others as agreed by TfSHIOW in establishing the Lead Authority arrangements and update the Parties to this Agreement on the progress of the task assigned to the Lead Authority;
 - d. act as the representative of TfSHIOW in any discussions or negotiations when acting as the Lead Authority;
 - e. provide such administrative resources and office facilities as are reasonably necessary to enable the Lead Authority to manage the project (subject to any caveats or limitations agreed by TfSHIOW in establishing the Lead Authority arrangements);
 - f. exercise overall responsibility for ensuring the quality assurance of the project or task assigned to the Lead Authority, including monitoring and evaluation in consultation with other Parties; and
 - g. play such other role(s) as would normally and reasonably be expected of a Lead Authority in relation to the project or task as assigned.
- 12.3 The Lead Authority shall have full authority and power to act within the scope of the roles and responsibilities laid out in this Agreement on behalf of TfSHIOW in the course of or for the purpose of doing the activities agreed by TfSHIOW as Lead Authority in relation to the specific task assigned. Such action may be taken without further consent or approval from the Joint Committee provided this is within the scope of the authority given by the Joint Committee. The parties shall take such steps as shall be necessary to enable the Lead Authority to fulfil its role.

13. Termination and Withdrawal

- 13.1 TfSHIOW recognises that the success of the partnership depends upon the mutual co-operation of all the Parties and the withdrawal of any Party may have serious administrative and financial repercussions for the remaining Parties and any Party withdrawing from TfSHIOW shall, unless otherwise unanimously agreed:
- a. give six months' notice in writing of withdrawal to all other Parties; and
 - b. the other Parties shall consider what future arrangements should apply for the discharge for their functions which may include to agreeing to continue joint arrangements further to a new joint agreement.

14. Intellectual Property

- 14.1 Unless otherwise agreed:
- a. The Parties shall not acquire any right, title or interest in or to the intellectual property rights of TfSHIOW.
 - b. TfSHIOW will not acquire any right, title or interest in or to the intellectual property rights of the Parties.
- 14.2 Any issues, challenges or claims in relation to any intellectual property rights shall be advised to each of the Parties immediately, and any intellectual property right claim shall be managed by the Parties as agreed.

15. Data Protection, Freedom of Information, Information Sharing and Confidentiality

- 15.1 Without prejudice to the specific requirements of this clause, each Party shall comply with its legal requirements under data protection legislation, the General Data Protection Regulation, freedom of information and associated legislation, and the law relating to confidentiality.
- 15.2 An authority will be appointed as a Lead Authority for the purposes of ensuring compliance with any legislative or legal requirements relating to these issues should they arise directly in relation to TfSHIOW (as compared to information held by the Parties to this Agreement).
- 15.3 Subject to any legal obligations either arising upon the Parties and/or TfSHIOW, information supplied by the Parties or third parties shall, unless agreed by TfSHIOW, subject to any over-riding legal obligations, be treated as confidential.

16. Liability of the Parties

- 16.1 Whilst the Parties shall make all reasonable attempts to mitigate loss, each Party (“the indemnifying Party”) shall be liable for and indemnify the others against any expense, liability, loss, claim or proceeding whatsoever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by any act or omission of that indemnifying Party in respect of its role in the activities of the Joint Committee and/or under this Agreement and /or where acting as Lead Authority .
- 16.2 Whilst the Parties shall make all reasonable attempts to mitigate loss, each Party (“the indemnifying Party”) shall be liable for and shall indemnify the others against any reasonable expense, liability, loss, claim or proceeding in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of or is caused by any act or omission of that indemnifying Party in respect of its role in the activities of the Joint Committee and/or under this Agreement and/or where acting as Lead Authority .
- 16.3 Whilst the Parties shall make all reasonable attempts to mitigate loss, each Party (“the indemnifying Party”) shall indemnify the others in respect of any reasonable loss caused to each of the other Parties as a direct result of that indemnifying Party’s negligence, wilful default or fraud or that of any of the indemnifying Party’s employees in respect of its role in the activities of the Joint Committee and/or under this Agreement and/or where acting as Lead Authority.
- 16.4 Where a Party is appointed the Lead Authority under the terms of clause 12 of this Agreement, the other Parties shall each indemnify the Lead Authority on pro rata basis according to the proportions of their respective financial commitments as set out in Clause 10 of this Agreement with the intent that the Lead Authority shall itself be responsible for its own pro-rata share.

17. Review

This Agreement may be reviewed at any time by agreement between the Parties.

18. Variations

This Agreement may at any time be varied or amended by the Monitoring Officer where the amendment is minor and has been agreed by all the Parties in writing in advance. Otherwise, this Agreement may at any time be varied or amended by a deed executed by all the Parties

19. Insurance and Indemnification

Each of the Parties shall ensure that they have a sufficient policy of insurance of any work that they undertake on behalf of TfSHIOW and for a period of six years after termination of this Agreement.

20. Severability

If any term, condition or provision contained in this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this agreement.

21. Publicity

The Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.

22. Waiver

No term or provision of this Agreement shall be considered as waived by any of the Parties to this Agreement unless a waiver is given in writing by that Party to all other Parties to this Agreement.

23. Notice

Any notice, demand or other communication required to be served under this Agreement shall be sufficiently served if delivered personally to or sent by pre-paid first class recorded delivery post or facsimile transmission to the addresses set out in Clause 3 and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee at the time of personal delivery or on the second working day after the date of posting or unsuccessful transmission as the case may be. Anything served personally or transmitted which is received at the recipient's premises on a day when it would not in the ordinary course of its business have been open for business shall be deemed to have been received on the next following day when it is open in the ordinary course of business or would have been if it had not ceased to conduct business.

24. Governing Law

This Agreement shall be governed by and construed in accordance with English Law and the Parties hereby submit to the exclusive jurisdiction of the English Courts.

This agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

26. Exercise of statutory authority

Without prejudice to this agreement, nothing in this agreement shall be construed as a fetter or restriction on the exercise by any of the parties of their statutory functions.

27. Exclusion of Third-Party Rights

Save to the extent as expressly provided for in this Agreement no person not a Party to this Agreement shall have any right to enforce any term of this Agreement and the provisions of the Contracts (Rights of Third Parties) 1999 shall not apply to this Agreement

28. Survival of Clauses

The following clauses shall survive the expiry or termination of this Agreement

- Clause 4 (Definitions)
- Clause 5 (Interpretation)
- Clause 6 and Appendix 2 (Principles and Key Objectives)
- Clause 9 (Legal, Governance and Financial Administration Issues)
- Clause 10 (Financial Commitment of the Parties)
- Clause 14 (Intellectual Property)
- Clause 15 (Data Protection, Freedom of Information, Information Sharing and Confidentiality)
- Clause 19 (Insurance and Indemnification)
- Clause 23 (Notice)
- Clause 28 (Survival of Clauses)

29. No Partnership at Law

As public bodies, the Parties do not enter into this Agreement with any view of profit. The use of the terms “partners” and “partnership” in this Agreement merely denotes the intention of the Parties to work within local government legislation in a common way to achieve shared objectives and should not be taken as an indication of any legal partnership for the purposes of the Partnership Act 1890.

**THE COMMON SEAL OF THE PARTIES IS
HEREUNDER AFFIXED IN THE PRESENCE OF:**

Authorised Signatory _____
Hampshire County Council

**THE COMMON SEAL OF THE PARTIES IS
HEREUNDER AFFIXED IN THE PRESENCE OF:**

Authorised Signatory _____
Isle of Wight Council

**THE COMMON SEAL OF THE PARTIES IS
HEREUNDER AFFIXED IN THE PRESENCE OF:**

Authorised Signatory _____

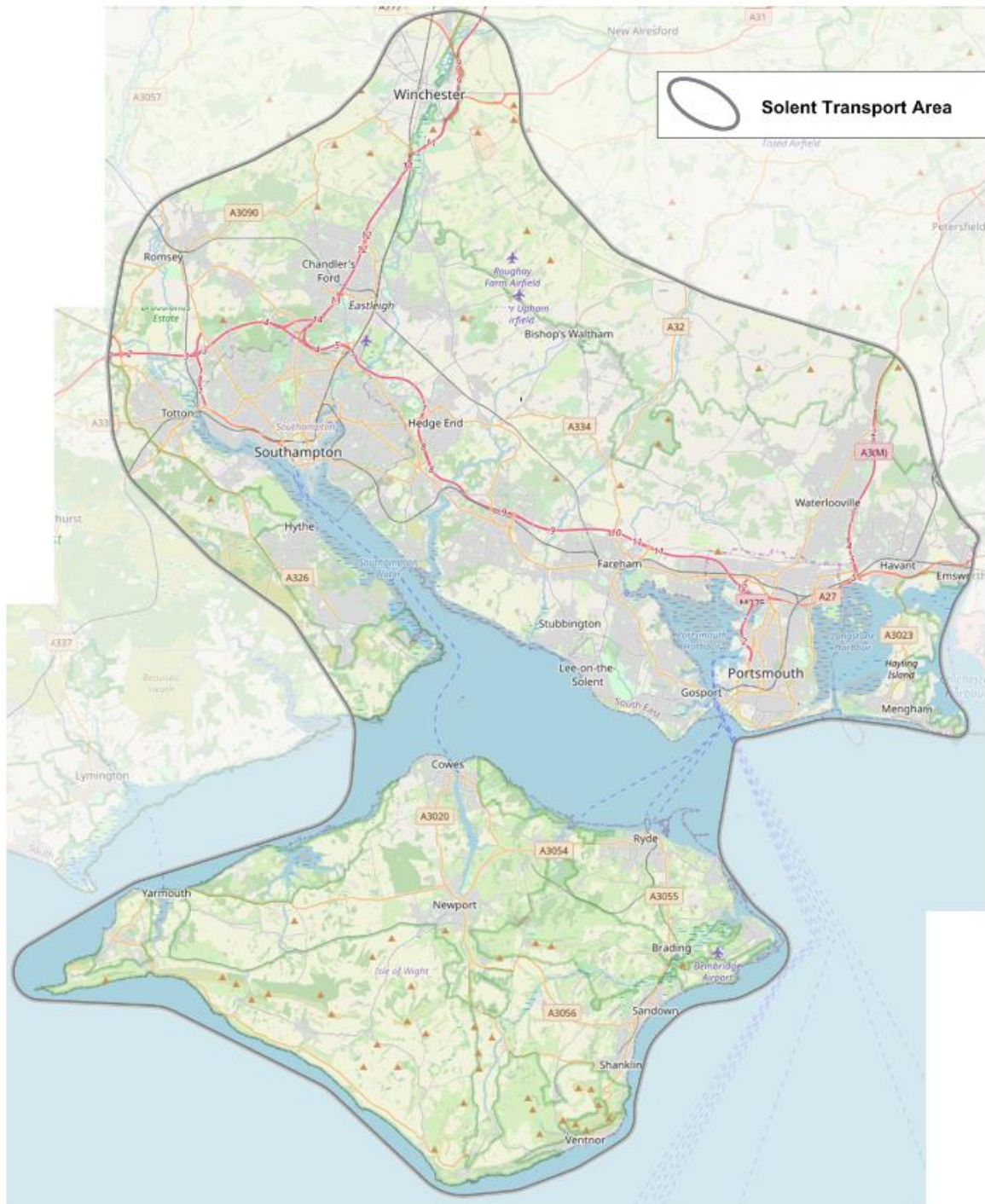
Portsmouth City Council

**THE COMMON SEAL OF THE PARTIES IS
HEREUNDER AFFIXED IN THE PRESENCE OF:**

Authorised Signatory _____

Southampton City Council

APPENDIX 1



KEY OBJECTIVES OF TfSHIOW

Objectives of TfSHIOW shall be:

- Development and Delivery of seamless and co-ordinated public transport operation in partnership with the operators across the sub-region and securing infrastructure to support that;
- Development and Delivery of sub-regional transport schemes and innovations and implementation of sub-regional transport policies (including strategic traffic management);
- Pursuing and securing funding for sub-regional transport schemes (and supporting each transport authority in doing so for local schemes);
- Holding and dispersing developer contributions for sub-regional transport schemes;
- Holding and dispersing other transport funding allocated on a sub-regional basis.
- Monitoring and reviewing delivery at sub-regional level and
- Developing and updating transport policies in support of the South Hampshire Spatial Strategy, the Regional Transport Strategy and the Regional Spatial Strategy (The South East Plan).

GOVERNANCE, JOINT COMMITTEE AND WORKING GROUPS
TFSHIOW - TERMS OF REFERENCE FOR JOINT COMMITTEE

GENERAL

- a. This is a joint committee of the Parties under Section 102(1) of the Local Government Act 1972.
- b. The Parties have arranged under Section 101(1) of that Act for the discharge by the Joint Committee of such of the council's functions as are within the terms of reference (set out below).
- c. Certain functions are delegated by this Joint Committee within their terms of reference to officers.
- d. Where a function or matter within the Joint Committee's competence has been delegated, the Joint Committee may exercise that function / matter concurrently with the officer to whom it has been delegated.

TERMS OF REFERENCE

1. To develop and keep under review the strategic policy framework within which the Parties can each discharge their transportation functions and other incidental or linked functions so as to achieve the Key Objectives across the TfSHIOW Area.
2. To recommend the Annual Business Plan to the parties who will approve the Business Plan through their own decision-making system and, once approved, to implement the approved Annual Business Plan
3. To discharge, on behalf of the Parties their functions where such arrangements:
 - affect two or more of the Parties; and
 - have been authorised by all of the Parties by being specifically referred to in the Approved Annual Business Plan.
4. To influence, advise and lobby government and other agencies, both nationally and internationally, where to do so is consistent with the Key Objectives.
5. To commission research into matters relevant to the Key Objectives.
6. To pursue and seek funding.
7. To develop proposals for the future development of TfSHIOW.
8. To develop proposals on how the Parties can discharge their functions to promote or improve the economic, social and environmental wellbeing in the TfSHIOW area to achieve the Key Objectives
9. To carry out such other activities calculated to facilitate, or which are conducive or incidental to the discharge of the TfSHIOW's functions in implementing the Annual Approved Business Plan
10. To report to the Partnership for South Hampshire (PfSH) on progress in delivering the key objectives.
11. To organise and run, at least on an annual basis, a conference of all the relevant and interested stakeholders

12. To appoint members to the Working Groups and to modify or vary the terms of reference of the existing working groups set out in Appendix 4, and to establish such further Working Groups from time to time as the Committee considers necessary.

TERMS OF REFERENCE FOR THE SENIOR MANAGEMENT BOARD

GENERAL

The Senior Management Board is an informal body and without statutory powers or authority, save as directly delegated to individual officers by their authority / the Joint Committee of TfSHIOW.

SPECIFIC TERMS OF REFERENCE

1. To provide policy advice to the Joint Committee and to implement the decisions of the Joint Committee.
2. To provide policy advice on behalf of the parties to the Joint Committee.
3. To implement the decisions of the Joint Committee.

GENERAL TERMS OF REFERENCE

1. To provide advice and guidance to the Joint Committee within the specific terms of reference of the Joint Committee.
2. To monitor and review the activities of the five Working Groups.
3. To monitor the business plan and delivery and to recommend future iterations of the business plan to the Joint Committee.
4. To implement and deliver the decisions of the Joint Committee.

TERMS OF REFERENCE FOR THE WORKING GROUPS

GENERAL

- a. These Working Groups are informal bodies and without statutory powers or authority save as directly delegated to individual officers by their authority / the Joint Committee.

SPECIFIC TERMS OF REFERENCE OF THE WORKING GROUPS

1. Transport strategy
2. Public Transport (bus, rail, ferry and integration improvements).
3. Strategic traffic management and travel information
4. Strategic transport corridors
5. Resources and funding

GENERAL TERMS OF REFERENCE FOR ALL WORKING GROUPS

1. To provide advice and guidance to the Senior Management Board and Joint Committee within the specific terms of reference of each Working Group
2. To monitor and review the budget, governance, financial compliance matters and issues where appropriate.
3. To monitor the action plan and delivery
4. As delegated by the Joint Committee / Working Group, to be responsible for operational decision making & the day-to-day management of projects and activities carried out in the name of or on behalf of TfSHIOW

MEMBERSHIP

Joint Committee

One Executive Member of each of the partner local authorities leading on the respective issues within the Terms of Reference of the Joint Committee or exceptionally in the absence of that person, any properly appointed substitute member of the relevant partner local authority or another Executive Member of that local authority to attend the meeting as a Joint Committee member.

Note: A standing invite to the Committee will be provided to TfSE, National Highways and Network Rail, any and each of whom will be eligible to attend and speak but, for the avoidance of doubt, not vote. In addition any national or regional transport body that the Joint Committee feels would be appropriate may be invited to attend and contribute, but not vote.

A standing invite also exists so that the relevant district councils may attend any meeting and may also attend any meeting and speak (with the consent of the chair) where a matter of relevance to their jurisdiction is under discussion. For the avoidance of doubt, the relevant district councils are:

- Havant
- Gosport
- Test Valley
- Fareham
- New Forest
- Winchester
- Eastleigh
- East Hampshire

A standing invite also exists so that the relevant transport operators and/or stakeholders may attend any meeting and may also attend any meeting and speak (with the consent of the chair) where a matter of relevance to their operation is under discussion.

Senior Management Board

The Chief Executives of each of the partner local authorities, or their senior representatives.