

# Cabinet

## 11 November 2015

**Time** 5.00 pm **Public Meeting?** YES **Type of meeting** Executive

**Venue** Committee Room 3 - Civic Centre, St Peter's Square, Wolverhampton WV1 1SH

### Membership

**Chair** Cllr Roger Lawrence (Lab)

**Vice-chair** Cllr Peter Bilson (Lab)

### Labour

Cllr Claire Darke

Cllr Steve Evans

Cllr Val Gibson

Cllr Andrew Johnson

Cllr Elias Mattu

Cllr John Reynolds

Cllr Sandra Samuels

Cllr Paul Sweet

Quorum for this meeting is five Councillors.

### Information for the Public

If you have any queries about this meeting, please contact the democratic support team:

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Some items are discussed in private because of their confidential or commercial nature. These reports are not available to the public.

# Agenda

## Part 1 – items open to the press and public

*Item No.*    *Title*

### MEETING BUSINESS ITEMS

- 1            **Apologies for absence**
- 2            **Declaration of interests**
- 3            **Minutes of the previous meeting (21 October 2015)** (Pages 3 - 10)  
[For approval]
- 4            **Matters arising**  
[To consider any matters arising from the minutes of the previous meeting]

### DECISION ITEMS (AMBER - DELEGATED TO THE CABINET)

- 5            **Children's Services transformation phase two**  
[To approve the proposals within the report to go out to full consultation][**report to follow**]
- 6            **Better Care technology and strengthening support at home**  
[To approve the development of an enhanced Better Care Technology offer and to work alongside Wolverhampton Homes to drive the significant service developments that would be required][**report to follow**]
- 7            **Outcome of options appraisal - Duke Street** (Pages 11 - 20)  
[To consider the outcome of the consultation]
- 8            **Rail devolution: establishment of and appointment of directors to West Midlands Rail Limited** (Pages 21 - 30)  
[To approve the proposed governance arrangements for the development and oversight of the West Midlands Rail Franchise through WMR Ltd and to approve the Council's membership of WMR Ltd and the appointment of directors to the board of WMR Ltd]

# Cabinet

## Minutes - 21 October 2015

### Attendance

#### Members of the Cabinet

Cllr Roger Lawrence (Chair)  
Cllr Peter Bilson (Vice-Chair)  
Cllr Claire Darke  
Cllr Steve Evans  
Cllr Val Gibson  
Cllr Andrew Johnson  
Cllr Elias Mattu  
Cllr John Reynolds  
Cllr Sandra Samuels  
Cllr Paul Sweet

#### Employees

Dereck Francis	Democratic Support Officer
Nick Edwards	Service Director - City Assets
Linda Sanders	Strategic Director - People
Mark Taylor	Director of Finance
Kevin O'Keefe	Director of Governance

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## Part 1 – items open to the press and public

*Item No.*     *Title*

- 1 Apologies for absence**  
No apologies for absence were received for the meeting.
- 2 Declaration of interests**  
No declarations of interests were made.
- 3 Minutes of the previous meeting (16 September 2015)**  
Resolved:  
That the minutes of the meeting held on 16 September 2015 be approved as a correct record and signed by the Chair.
- 4 Matters arising**  
There were no matters arising from the minutes of the previous meeting.
- 5 Draft Budget 2016/17**  
Cllr Andrew Johnson presented the report which identified additional savings proposals for 2016/17 and future years in accordance with the strategy set out in the Budget 2015/16 and Medium Term Financial Strategy (MTFS) 2015/16 to 2018/19

report, approved by Full Council in March 2015. The savings proposals and base budget revisions had been further developed in recent months having initially been reported to Cabinet in July 2015. Approval was requested to use the budget and savings proposals as the basis for consultation.

Resolved:

1. That the Savings, Redesign and Income Generation proposals amounting to £14.1 million in 2016/17 proceed to the formal consultation and scrutiny stages of the budget process.
2. That the Financial Transactions and Base Budget Revisions totalling a net reduction of £7.1 million in 2016/17 be incorporated into the 2016/17 draft budget.
3. That the adjustments to the 2016/17 July Budget projections, totalling £2.049 million, as detailed in Appendix C to the report, be incorporated into the 2016/17 draft budget.
4. That authority be delegated to the Cabinet Member for Resources in consultation with the Director of Finance to approve the final budget consultation arrangements.
5. That authority be delegated to the responsible Cabinet Member and the Cabinet Member for Resources in consultation with the responsible Director and the Director of Finance to implement financial transactions, base budget revisions, efficiencies and income generating opportunities at the earliest opportunity where the proposal is not reliant on the outcome of formal budget consultation.
6. That it be noted that because the future remains extremely uncertain a full update to the Medium Term Financial Strategy (MTFS) 2016/17 – 2018/19 would only be conducted once the Spending Review and the Provisional Local Government Finance Settlement have been announced, on 25 November and mid-December 2015 respectively.
7. That it be noted that a review of the anticipated assumptions and projections built into the Draft Budget and Medium Term Financial Strategy 2016/17 – 2018/19 had been undertaken following the Government Summer Budget 2015 announcement which indicated that there would be some additional cost pressures and potential further cuts to grant, in addition to reviewing existing assumptions concerning the successful delivery of significant levels of challenging savings. This had resulted in the savings target for 2016/17 being revised upwards from £22.0 million to £24.0 million. It is important to note, that this new savings target for 2016/17 still includes a prudent uplift of £5.2 million due to the extremely uncertain times within which the Council is operating.
8. That it be noted that when identifying savings proposals key focus continues to be placed upon the Council's strategic approach to addressing the projected budget deficit, which is to: manage demand for core services by using early intervention to help families in trouble live unsupported and independent lives; improve educational attainment and skills, and to

encourage enterprise and business and private sector employment and to stimulate economic activity through capital investment.

9. That it be noted that due to the uncertainty surrounding the future of public finances in 2016/17 and beyond, the projected additional savings requirement in each of the next three financial years could still change significantly as more information becomes available.
10. That it be noted that due to the current level of uncertainty medium term financial planning has been restricted to a three year period in the Medium Term Financial Strategy.
11. That it be noted that a comprehensive review of all service areas, led by Finance, was undertaken to challenge all areas of underspend and identify any recurring savings which may contribute towards the savings strategy for 2016/17. The results of this review have been included in the proposals and base budget revisions included in this report.
12. That it be noted that the Council's General Fund Balance stands at £10.0 million; the minimum balance as determined in the Council's approved Reserves and Balances Policy. This is in accordance with the planned approach as set out in the Council's MTFs, approved by Full Council on 4 March 2015. Emphasis had therefore been placed on identifying budget savings to meet the approved savings strategy for 2016/17 and later years without calling on these general reserves.
13. That it be noted that the 2016/17 budget timetable would, as in previous years, include an updated report presented to Cabinet in January 2016 detailing the outcome of the Provisional Local Government Settlement, with the final budget report being presented to Cabinet in late February and then Full Council in March 2016 for final approval.
14. That it be noted that the overall level of risk associated with the Draft Budget and Medium Term Financial Strategy 2016/17 to 2018/19 continues to be assessed as Red.

6 **Wolverhampton Safeguarding Adults Board annual report 2014/15**

Cllr Elias Mattu presented the Wolverhampton Safeguarding Adults Board's (WSAB) Annual Report 2014/15 and Executive Summary. The report aimed to inform Cabinet of safeguarding activity during 2014/15 and presented the progress made against the priorities for 2013/16. The Annual Report is agreed by the WSAB and provided an overview of how partners had discharged their safeguarding responsibilities over the preceding year.

Cllr Elias Mattu placed on record his thanks and appreciation to the WSAB and Alan Coe, its Independent Chair for the way he had moved the Board forward considerably over the last twelve months.

Resolved:

1. That the report be received in order to ensure a clear understanding in relation to the work of Wolverhampton Safeguarding Adult Board over the last year.

2. That the range of work that is taking place to safeguard adults in Wolverhampton, and the continued challenges, developments and achievements in this critical area of work be noted.

7 **Single Market Position Statement for Adult Services**

Cllr Elias Mattu presented a report on the Single Market Position Statement for Adult Services. The aim of the document was to open a dialogue with the wider community stakeholders by providing them with the current picture of care and support delivery, including demand and finance. Similarly, adding in the projection for the future in terms of expected demand, finance and the changes to the commissioning and purchasing market. The document also included potential opportunities for developments in the market and any particularly innovative ideas that the Council wanted to encourage.

Resolved:

1. That the Single Market Position Statement for Adult Services be approved so that it can be used to support on-going dialogue with providers to develop the market.
2. That the production, following discussions with the stakeholders/providers, of the 'appropriate format(s) and distribution of the Market Position Statement be approved.

8 **Options paper for the Recovery House/Recovery Team**

Cllr Elias Mattu presented a report on a proposal to undertake consultation on proposed changes to The Mental Health Recovery House / Recovery Team. The Recovery House service had been delivered in partnership with the health service since 2000 as a four bedded crisis house. It offered urgent and planned interventions for people who are experiencing either an acute mental health episode or are in recovery, and or /are in need of a period of assessment, re-ablement or respite.

Resolved:

That a three month service user, stakeholder, public and staff consultation regarding the proposed changes to The Mental Health Recovery House / Recovery Team be approved.

9 **Outcome of consultation on the future delivery options for Oxley Day Centre and Adults Short Breaks services**

Cllr Elias Mattu presented the report on the outcome of consultations on the future options for: the Support Plus day service currently delivered from a number of sites across the City; Oxley Day Centre; Pathways to work service at Bushbury woodcraft centre in Steele Drive; and the Adult Short breaks services delivered from two sites within the City.

In presenting the report Cllr Mattu assured Cabinet that under the proposals service users locating to new venues would continue to be supported by their current staff.

Resolved:

1. That the All Age Disability in house provider decommissions the service at Oxley Day Centre and provides the services across the city in community venues, which would improve outcomes for individuals.
2. That the Oxley Day Centre site including Oxley Moor House be declared surplus to the People Directorate's requirements and appropriated to the Corporate Landlord to manage as surplus assets and to deal with the progression of their future use / disposal.
3. That the All Age Disability In House Provider Service relinquish its lease with Corporate Landlord for the use of the Pathways to work Site in Steele Drive, Bushbury.
4. That the Adult short breaks services delivered at Ernest Bold and Swan Bank sites be merged and delivered from the council owned Ernest site.
5. That it be noted that the service re-design would deliver savings of £563,000.

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#### **Safeguarding Children Board annual report 2014/15**

Cllr Val Gibson presented the Wolverhampton Safeguarding Children Board's (WSCB) draft Annual Report 2014/15 and Executive Summary. The Annual Report had been agreed by the WSCB and provided an overview of how partners have discharged their safeguarding responsibilities over the preceding year.

Cllr Val Gibson placed on record her thanks and appreciation to the WSCB and Alan Coe, its Independent Chair for the way he had moved the Board forward considerably over the last twelve months.

Resolved:

1. That the report be received in order to ensure a clear understanding in relation to the work of Wolverhampton Safeguarding Children Board over the last year.
2. That the range of work that is taking place to safeguard children in Wolverhampton, and the continued challenges, developments and achievements in this critical area of work be noted.
3. That it be noted that this report is a draft. The Wolverhampton Safeguarding Children Board Annual Report was agreed in principal by the Board on 16 September 2015 as partners wished to make further amendments' these amendments are to be submitted by 18 October 2015 and final sign-off by the Chair on 5 October 2015.

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#### **Wolverhampton Youth Justice plan**

Cllr Val Gibson presented the report on the local Youth Justice Plan previously approved by the Youth Offending Team (YOT) Management Board. The plan set out how Youth Justice services are provided and resourced in Wolverhampton which has a strong track record of delivery and improvement against Government targets. Underpinning the plan was an action plan which was regularly reviewed and monitored by the YOT Management Board.

Resolved:

1. That the local Youth Justice Plan previously approved by the Youth Offending Team Management Board be formally approved and adopted.
2. That the progress and ongoing challenges in delivering Youth Justice interventions in the current economic climate be noted.

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**Consultation on special educational needs disabilities strategy**

Cllr Val Gibson presented the report on a draft Special Educational Needs and Disabilities (SEND) Strategy. The strategy highlighted the good practice already achieved in co-production with families and young people by the Council, Wolverhampton Clinical Commissioning Group (CCG) and other partners during the local implementation of the SEND code of practice. It also highlighted the challenges emerging in the city and areas for further development. It was proposed that the draft strategy be the basis of consultation with wider stakeholders.

Resolved:

That the draft Special Educational Needs and Disabilities Strategy be approved for a three month period of consultation. This would enable all key stakeholders to have active involvement in shaping the final strategy.

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**Proposed new fostering fees and allowances scheme**

Cllr Val Gibson presented the proposal to change the fees and allowances structures paid to approved Wolverhampton foster carers including Family and Friends (Connected persons) carers who care for Wolverhampton Looked After Children. The proposal aimed to ensure that the Council retained and recruited sufficient foster carers to meet the needs of the looked after children in the city and to compete more effectively with Independent Foster Care Agencies.

Resolved:

1. That the proposed new fostering fee and allowance structure be approved.
2. That the Council wide incentives be supported and be progressed via the Corporate Parenting Strategy group.
3. That it be noted that this item had been considered as pre-decision scrutiny and would therefore not be available to call-in.
4. That the feedback from Children, Young People and Families Scrutiny Panel be noted.

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**Sustainability implementation plan monitoring report 2014/15**

Cllr John Reynolds presented the report on progress in the second year of the Council's joint Sustainability Implementation Plan and Climate Local Action Plan.

Resolved:

1. That the Council's Sustainability Implementation Plan monitoring and Climate Local Wolverhampton progress report for 2014/15 be received and noted.
2. That the projects and actions in the draft Sustainability Implementation Plan programme for 2015/16 be noted.



3. That the report be approved for publication, and authority be delegated to the Chair of the Sustainability Advisory Group to approve, firstly, a final version of the monitoring and progress report and, secondly, amendments to the 2015/16 programme as projects and actions develop.

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**The local strategy for flood risk management in the Black Country**

Cllr Steve Evans presented the report that sought approval to carry out public consultation on the draft Local Strategy for Flood Risk Management in the Black Country and its associated Strategic Environmental Assessment (SEA). This was a statutory requirement of the Flood and Water Management Act 2010.

Resolved:

1. That consultation on the Local Strategy for Flood Risk Management in the Black Country be carried out with the public, other flood risk management authorities and others with an interest.
2. That a further report is made in due course on the outcome of the consultation and to consider approval of the Local Strategy for Flood Risk Management in the Black Country.

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# Cabinet Meeting

## 11 November 2015

<b>Report title</b>	Outcome of Options Appraisal – Duke Street	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Elias Mattu Adults	
<b>Key decision</b>	Yes	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Linda Sanders, People	
<b>Originating service</b>	Commissioning (Disabilities and Mental Health)	
<b>Accountable employee(s)</b>	Kathy Roper Tel Email	Commissioning Team Manager 01902 550975 Kathy.roper@wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	Strategic Executive Board Adults and Safer City Scrutiny Panel	13 October 2015 24 November 2015

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### Recommendation(s) for action or decision:

Cabinet is recommended to:

Agree the implementation of option 2, to de-register Duke Street bungalows as residential care and to change the registration to supported living with the potential of Wolverhampton Homes becoming the landlord subject to further work and discussions taking place and the Council commissioning an alternative provider to deliver the care element. A period of TUPE would apply to this option.

### Recommendation(s) for noting

Cabinet is recommended to note the indicative timescales to complete the work to move to a supported living service and maximise potential savings.

## **1.0 Purpose**

- 1.1 This report provides Cabinet with an update on the work carried out with residents and their families of Duke Street residential care home. This followed the initial consultation on the future of the service, carried out between December 2014 and February 2015. Duke Street bungalows is a residential care home for adults with a learning disability.
- 1.2 The report sets out the costed options appraisal for Duke Street if we were to de-register it as a residential care home and re-register it as a supported living service.
- 1.3 The report sets out an indicative action plan to progress the project.

## **2.0 Background**

- 2.1 The Duke Street Bungalows are a council run residential home for up to 20 adults with profound and multiple learning disabilities (pmlD). It is made up of three detached bungalows and is situated in Wednesfield in the North of the City. At present there are 18 residents at Duke Street.
- 2.2 In December 2014, a 12 week consultation began on the future options for service delivery. Cabinet were presented with the outcome of the consultation in March 2015 and agreed that further work should be carried out with the residents and their family members. Cabinet approved a fully costed option appraisal be prepared and presented back to Cabinet with a view to moving to a supported living model as soon as possible.
- 2.3 The Cabinet report of March 2015 agreed that work should begin to support families to understand why a supported living model was being considered for Duke Street and to gain the views of the residents.
- 2.4 In general the residential care model can be described as providing a 'one size fits all' approach to the provision of care. In any one residential care home, every person living there is likely to have different individual support needs. Regardless of these varying support needs, the cost of care will usually be dependent on the cost of a place in a home rather than the actual cost of care and support needed.
- 2.5 Supported living is a concept that was developed as an alternative to institutional residential care for people with learning disabilities. Supported living is not a prescriptive model of service design and can look very different for different people. For one person it may be a few hours support a week to live alone in a rented flat, for another it may be round the clock support to live in a home they own, and for others it may be a shared house with friends and support to meet individual needs. For the current residents at Duke Street the Council recognise the need for 24 hour care and support.
- 2.6 Improving a person's choice and control is the most important outcome that supported living must achieve. This includes having security of tenure in their chosen accommodation and some choice over how their care is provided.

### **3.0 Current Situation/discussions**

- 3.1 A social worker was appointed to carry out the assessments of all the residents at Duke Street to ensure a consistent approach was applied. The social work assessments were supported where possible by family members and additional information gathered by an independent empowerment organisation (see 3.5). The aim of these assessments was to ensure that a fuller picture of each resident, their wants and views was captured to help assess the level of support that they would need if a decision is taken to move to supported living. The assessments have formed part of the Equality Analysis work and will be used to develop individual support plans for each resident moving forward under this model.
- 3.2 The social work assessments identified that the residents had a level of need that means they require care and support throughout a 24 hour day because:
- The complex health needs of the residents means they all require 1:1 support when accessing the community
  - ten of the residents require 1:1 support for personal care
  - eight people require 2:1 support for personal care
  - For building based activities a staff ratio of 1: 2 is needed for 17 of the residents whilst one resident requires 1:1 support.
- 3.3 It is recognised that the residents of Duke Street have profound learning disabilities and several have complex health needs which will require the same level of care and support in either a residential or supported living model moving forward. The use of assistive technology has the potential to improve outcomes and provide more dignity and privacy however the residents will still need their staff teams to carry out the majority of daily living tasks.
- 3.4 A number of themes were identified by the social worker during the reviews. People wanted to partake in more activities and there appeared to be a lack of a person centred approach to the care plans. People were worried about potential changes in accommodation. Existing relationships with staff are viewed as being very important and families felt that staff are doing their best for the residents. The period of uncertainty that has existed since the initial consultation has created anxiety for the residents and their families.
- 3.5 Changing Our Lives, an independent empowerment organisation who specialise in working with people with learning disabilities, were commissioned to support the residents to have their voice heard and to provide the Council with a report of their findings. Changing our Lives developed an individual profile of each resident with their likes and dislikes and the key 'must haves' in any future service. These profiles assisted the social worker in their review of each resident's needs. As a result of this work some key themes have emerged which reveal that the quality of people's life at Duke Street is in some ways institutionalised, and people are limited in the extent to which they are supported to achieving ordinary life outcomes. Some of the reasons for this appear to include shortcomings in the way people are supported and the model of support in place.

- 3.6 Work has been completed to look at the known costs for delivering a supported living service at Duke Street, it identified the Housing Benefit and additional benefits residents could be eligible for and would need if the service moved to a supported living model. The Housing Benefit levels are indicative at this time and cannot be confirmed until an application is made.
- 3.7 The social work assessments enabled the commissioner to calculate the one off costs for additional support that the residents would need to move to a supported living model of care including the need to go to the Court of Protection for most residents.
- 3.8 Commissioners have held a number of meetings with a group of the residents family members to understand the concerns they may have about the proposals. The family members have the best interest of the residents at heart and have wanted to be part of the process to ensure the best outcomes. Whilst they would prefer that the residential model at Duke Street remain unchanged, families have worked with commissioners to develop a service specification, and are committed to working with the Council at all stages in the process, for example supporting the Council to identify a housing provider experienced in delivering high quality supported living services, to ensure that Duke Street bungalows can be used to deliver a supported living model. They are also willing to be part of the evaluation process to find a care provider who has a good record for providing person centred care and support.
- 3.9 The Care Quality Commission (CQC) has been approached to understand the timelines and requirements for de-registering and re-registering of Duke Street. CQC estimate that from the time of receiving the application to approval being given a provider should allow a minimum of twelve weeks.
- 3.10 CQC did not express a view about what changes, if any, they would require to the building if the service was registered as supported living. The new application for supported living would require a new statement of purpose for supported living that demonstrated how residents would have a clear choice of how care was provided and ensuring that appropriate tenancies were in place.

#### **4.0 Options Appraisal**

- 4.1 Two supported living options have been evaluated. With the largest cost in delivering services being staff costs, at the time of The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) transfer no significant savings are accrued. It is possible following the period of the initial contract (timeframe described in the contract) to achieve further savings by renegotiating the contract value.
- 4.2 The model of supported living that would be pursued for the residents of Duke Street would be a shared home with around the clock care, ensuring that the level of support does not diminish.

### **Option 1:**

To de-register the service, change the registration to supported living with a Registered Social Landlord (RSL) becoming the landlord and the council continuing to deliver the care and support.

The 2015/16 controllable budget (before savings) for the Duke Street as a residential home is £1.5 million. The costs of option 1 are summarised below. This would give a full year savings of £303,000.

<b>Option 1</b>	<b>Forecast Costs (£000)</b>	<b>Comments</b>
Staffing (restructured)	1,220	Savings from restructure for S/living
Service Costs	30	
Rent	77	Forecast cost of Rent
Housing Benefits (HB)	(107)	HB contributions based on indicative calculations
<b>Total</b>	<b>1,220</b>	

#### Benefits;

- It Improves independence choice and control
- It is in line with best practice
- It will maintain current domestic arrangements / friendships
- Housing Benefits and additional residents benefits will provide alternative funding routes reducing the budget commitment
- It responds to families concerns that the quality of the service will deteriorate if it is externalised.

#### Risks;

- Deprivation of Liberty (Dols) and Best Interest Assessments will lead to Court of Protection applications being made. Delays in the Court hearing applications may impact on timeline and introduces further costs
- CQC inspection following receipt of application could lead to delays in making service fit for purpose
- The revised cost model taking into account assumed levels of Housing Benefit contribution and additional resident's benefits does not deliver the level of savings identified.

### **Option 2**

To de-register, change the registration to supported living with the potential of Wolverhampton Homes becoming the landlord subject to further work and discussions taking place and the council commissioning an alternative provider to deliver the care element. A period of TUPE would apply to this option.

The 2015/16 controllable budget (before savings) for the Duke Street as a residential home is £1.5 million. The costs of option 2 are summarised below. It is estimated that the full year effect of the savings after a period of TUPE protection would be in the region of £378,000.

<b>Option 2</b>	<b>Forecast Costs (£000)</b>	<b>Comments</b>
Staffing	1,145	Estimated costs after period of TUPE
Service Costs	30	
Rent	77	
Housing Benefits (HB)	(107)	HB contribution based on indicative calculations
<b>Total</b>	<b>1,145</b>	

### **Benefits**

- It will improve independence choice and control
- It is in line with best practice
- It will maintain current domestic arrangements / friendships
- HB and additional residents benefits will provide alternative funding routes reducing the care purchasing budget commitment
- Additional savings are made once the period of TUPE has ended.

### **Risks**

- Dols/ Best Interest Assessments will lead to Court of Protection applications being made. Delays in the Court hearing applications may impact on timeline and introduces further costs
- CQC inspection following receipt of application leads to delays in making service fit for purpose
- TUPE transfer of staff risk mitigation plan does not give potential care providers sufficient confidence to bid
- Savings identified not delivered in timescale originally required
- Legal challenge from family relatives concerned that the process is flawed.

## **5.0 Implementation Plan**

- 5.1 There are a number of actions required to move the project towards a successful conclusion, an implementation plan has been developed. Close project management will be needed to pull the various work streams together to achieve the projected transfer date. The work to achieve the recommendation and transfer to an external RSL and care provider would be delivered as indicated below:



## Delivery of an external supported living service December 2015 – Nov 2016

Work streams	timeline	Actions
Asset transfer /management	Dec 2015- March 2016	<p>Agree transfer of Duke St residential homes to provider</p> <ul style="list-style-type: none"> <li>• Agree lease/ownership terms</li> <li>• management arrangements</li> <li>• set rents</li> <li>• Void Cover</li> <li>• Agree nominations right process</li> <li>• Agree asset up-grade (phased process)</li> </ul>
Residents	Dec 2015- April 2016	<ul style="list-style-type: none"> <li>• Complete Best Interest Assessments</li> <li>• Initiate the Court of Protection/Dols application</li> <li>• Commission external support to Work with families/advocates to develop support plans</li> <li>• Work with Welfare Rights to apply for housing benefit claims</li> </ul>
Tender for new care provider	<p>Dec 15- Feb 16 ( 8 wks + Christmas break)</p> <p>March-May 2016</p> <p>June- July 2016 August 2016 August 2016</p> <p>August –October 2016</p> <p>Nov 2016</p>	<ul style="list-style-type: none"> <li>• Development of due diligence tender pack</li> <li>• Tender Exercise</li> <li>• Evaluate/permission to award</li> <li>• Award</li> <li>• Link in with external support planning and families to finalise support plans</li> <li>• TUPE discussion period for staff (3 months)</li> <li>• Agree and set up Service Level Arrangement agreement with Housing Provider</li> </ul> <p>New service operational</p>
CQC	August 2016	<ul style="list-style-type: none"> <li>• Develop new statement of purpose for service with new provider</li> <li>• Application to de-register residential service(care provider)</li> <li>• Application to register as supported living(care provider )</li> <li>• CQC inspection (assuming this is required)</li> <li>• CQC issue new registration</li> </ul> <p>New S/Living service operational</p>

## **6.0 Risk associated with implementation plan**

6.1 The following potential risks could arise:

6.1.1 The need to make applications to the Court of Protection could impact on the timeliness of implementation and introduces further costs. In order to mitigate this risk, the Court of Protection costs and implementation process have already been identified. It is understood that as long as the required Deprivation of Liberty and Court applications have been made, the Council will be able to continue the de-registration and re-registration process ensuring that due process has been followed in line with the Mental Capacity Act 2006 and it has been agreed that it is in the 'best interests' of the residents.

6.1.2 The registration of the new service will require a Care Quality Commission (CQC) inspection following the receipt of the application. Current work with providers indicates that this process takes a minimum of 12 weeks. Commissioners will work closely with CQC to manage the process and minimise this risk.

6.1.3 External providers have voiced concern over the potential pension and redundancy liabilities associated with a TUPE transfer of the current staff team. A full due diligence information pack containing pension actuarial and redundancy information will be included as part of the tender notification.

6.1.4 Potential providers may feel unable to utilise the site given the limitations of its current configuration. An estimate on the potential cost of a refit at Duke Street has been obtained from the council's internal quantity surveyors.

6.1.5 The complexity of the process could mean that savings are not delivered within the timescale originally required. A robust project management and escalation process will be implemented to support the change management process.

6.1.6 The families of the current residents at Duke Street have expressed concern about the proposals, and could seek to make a legal challenge. Over recent months officers have been meeting with family members. Regular meetings have been taking place to explain the process and the implications for each resident. Legal advice has been sought throughout the process.

## **7.0 Financial implications**

7.1 The 2015/16 controllable budget for Duke Street (before savings) is £1.5 million.

7.2 The Medium Term Financial Strategy includes savings proposals totalling £3.1 million by 2016/17 for the implementation of reduced-cost delivery models for disability in-house provision.

- 7.3 A move to supported living will produce potential savings of £303,000 for Option 1 and £378,000 for Option 2 (after an agreed period of TUPE protection). To test the viability of the savings for Option 2 formal market testing will be carried out to confirm there is interest in the market and to confirm that the predicted savings will be achieved.
- 7.4 Costings quoted in this report are based on initial market testing and the number of proposed hours to be delivered, however when compared to benchmarking costs against other neighbouring local authorities these savings appear to be realistic. The actual cost of the contract will form the basis of the negotiation with any successful provider.
- 7.5 One off additional costs of £32,000 has been identified to ensure that the Council follows statutory requirements to provide best interest/Dols applications and Court of Protection orders to support the residents with the transfer to a supported living model. This one-off cost will be funded from the savings identified in year 1.
- 7.6 The actual costs associated with the TUPE transfer are unknown but will be considered and resolved as part of the contract negotiations with the selected provider. [AS/30102015/F]

## **8.0 Legal implications**

- 8.1 There are legal implications associated with this report. A contract would be required between City of Wolverhampton Council and the RSL, a new care and support provider would need to be tendered for and contracted with, and any change of provider or external outsourcing of the service would likely bring about the transfer of staff, subject to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), as later amended.
- 8.2 Applications to the Court of Protection will be needed in some instances. These are required for all adults assessed as not having capacity to make a decision about changes to their living arrangements.  
[RB/22092015/B]

## **9.0 Equalities implications**

- 9.1 Equality analysis (EA) has been undertaken, using the individual community care assessments and the personal profiles developed for each resident. The analysis indicates that there is the potential for differential impacts to be felt by some of the residents should a decision to move to a supported living model be approved. A bespoke individual action plan will be developed for every resident to describe the steps the Council are taking to minimise these impacts.

## **10.0 Environmental implications**

- 10.1 There are no environmental implications associated with this report.

## **11.0 Human resources implications**

- 11.1 There are human resource implications associated with this report as it recommends a restructure of the service and a transfer under TUPE regulations. This will be completed in line with human resource policies and procedures.

## **12.0 Corporate landlord implications**

- 12.1 There are corporate landlord implications as there is an option to transfer the building to a Registered Social Landlord, taking it out of the corporate landlord portfolio. Should this report be approved a further report will be prepared for Cabinet Resources Panel seeking approval for said transfer to take place.

## **13.0 Schedule of background papers**

- 13.1 Outcome of consultation on the future of In House Services March 2015.

# Cabinet Meeting

## 11 November 2015

<b>Report title</b>	Rail Devolution; Establishment of and Appointment of Directors to West Midlands Rail Limited	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Peter Bilson City Assets	
<b>Key decision</b>	Yes	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Nick Edwards, City Assets	
<b>Originating service</b>	Transportation	
<b>Accountable employee(s)</b>	Marianne Page Tel Email	Service Lead, Transport Strategy 01902 551798 Marianne.Page@wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	Strategic Executive Board	27 October 2015

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### Recommendation(s) for action or decision:

The Cabinet is recommended to:

1. Approve the proposed governance arrangements set out in this report for the development and oversight of West Midlands Rail Limited (WMR Ltd), established as a company limited by guarantee with a Board of Directors appointed from each of the constituent partner authorities for the purpose of providing local democratic strategic guidance for the specification of the new West Midlands rail franchise being let by the Department for Transport (DfT) during 2017.
2. Approve City of Wolverhampton Council joining WMR Ltd as a member.
3. Approve the appointment by the Council of the Leader of the Council as a principal director on the Board of WMR Ltd and the Cabinet Member City Assets as substitute director on that Board and the Council agrees to indemnify its appointees to the Board other than for wilful misconduct

4. Authorise the Council to agree and enter into or execute such documents as are necessary to give effect to these decisions including but not limited to Board Minutes, Company Resolutions or other company documents.

**Recommendations for noting:**

The Cabinet is asked to note:

1. That it is intended that WMR Ltd will in due course enter into a formal partnership agreement with the DfT that will set out the rights and obligations of WMR Ltd in relation to the award of the new West Midlands Rail Franchise and related matters and that:
  - a) that agreement will require approval by a 75% vote of WMR Ltd's members and will be the subject of a future report to Cabinet/Council; and
  - b) any WMR Ltd member may resign its membership of WMR Ltd at any time, including where the member does not approve the terms of any such agreement.

## 1.0 Purpose

- 1.1 The purpose of this report is to approve the proposed governance arrangements for the development and oversight of the West Midlands Rail Franchise through WMR Ltd and to approve the Council's membership of WMR Ltd and the appointment of directors to the board of WMR Ltd.

## 2.0 Background

- 2.1 West Midlands Rail (WMR) Partner Authorities have been developing a proposal for increasing local involvement and influence over local rail services for approximately two and a half years, in line with government policy on devolution and evidenced by the benefits experienced elsewhere from local control of rail services.
- 2.2 In order for Partner Authorities to be active partners in the future management of the West Midlands Rail Franchise, the DfT require that an appropriate governance framework is in place. This is expected to involve all Shire, Unitary and Metropolitan authorities, including the West Midlands Integrated Transport Authority (ITA) in the West Midlands Travel to Work Area. Partner Authorities expected to participate in WMR are shown in Table 1, below:

<b>Metropolitan Authorities</b>	<b>Shire and Unitary Authorities</b>
Birmingham City Council	Herefordshire Council
City of Wolverhampton	Northamptonshire County Council
Coventry City Council	Shropshire Council
Dudley Metropolitan Borough Council	Staffordshire County Council
Sandwell Metropolitan Borough Council	Telford and Wrekin Council
Solihull Metropolitan Borough Council	Warwickshire County Council
Walsall Metropolitan Borough Council	Worcestershire County Council
West Midlands Integrated Transport Authority	

Table 1 WMR Partner Authorities

- 2.3 Leaders' Rail Group (LRG), with senior political representation from each Partner Authority, was set-up in September 2014 and has collectively expressed a view that a separate body with the purpose of engaging with DfT on the letting of the West Midlands Rail Franchise and subsequently participating in the management of the Franchise is the preferred vehicle for providing strong political governance. This recognises that the geography for local rail services incorporates a broad and disparate group of local authorities. The most straightforward way to achieve this is to set up a company limited by guarantee, owned by the Partner Authorities, which is the purpose of this report.
- 2.4 A formal Partnership Agreement is to be negotiated between WMR Ltd and DfT which will govern the relationship between the two organisations, and will set out the rights and obligations of both parties.

- 2.5 The Partnership will have two distinct phases of development:
- a) Phase 1: The period between now and the commencement of the new West Midlands Rail Franchise in 2017, during which WMR Ltd and DfT will work collaboratively on the franchise design and procurement processes although the Secretary of State for Transport will retain responsibility for letting the franchise; and
  - b) Phase 2: The period following the commencement of the new West Midlands Rail Franchise, during which it is expected that the relationship between WMR and DfT will develop into a clearly governed partnership for managing the franchise.
- 2.6 Partner Authorities are seeking greater influence and management over the West Midlands local rail network, and the Secretary of State for Transport has made a commitment to work with Partner Authorities to achieve these ends. The process for the letting of the new West Midlands Rail Franchise is now underway, and is already being developed in partnership with Partner Authorities.
- 2.7 It is expected that the existing London Midland franchise will be split into two business units early in the new franchise term. One of these will be for the West Midlands local rail network of services, and the other those operated predominantly on the West Coast Main Line.
- 2.8 Some important local routes, in particular on the Birmingham – Stafford and Birmingham – Coventry – Northampton routes will be operated by the West Coast Main Line business unit, and Partner Authorities are also expecting to be able to contribute to the specification and management of these services.
- 2.9 The franchise will be let by the DfT and as such, financial and contractual risk will initially remain with central government. However, it is a longer term aspiration of the Partner Authorities that future rail franchises might be entirely devolved to local control, as is the case on Merseyside, and it is expected that during the next franchise term, the options for increased devolution with transfer of funding and powers will be explored. However, any such increased devolution direct to Partner Authorities would be expected to require the approval of the Partner Authorities and, in the case of changes to WMR Ltd's expected partnership agreement with the DfT would require the approval of a 75% majority of WMR Ltd members.
- 2.10 The proposition that Partner Authorities have agreed with DfT for rail devolution in the West Midlands includes the following features:
- a) The existing London Midland franchise will split into two business units after the West Midlands Rail Franchise is let in 2017; a West Midlands Rail Local Business Unit and a West Coast Business Unit (further details are available on the Council's website using the following link [appendix C](#)).



- b) The specification of the West Midlands Rail Franchise will be led by the DfT, with Partner Authorities having a strong involvement, including staff from West Midlands Passenger Transport Executive (Centro) on behalf of the ITA and some Partner Authority and/or Centro staff being seconded to work alongside the DfT's team on behalf of the Partner Authorities and WMR Ltd. Following franchise award, it is expected that WMR Ltd will jointly manage the franchise in partnership with the DfT. This will allow WMR Ltd to develop experience and capability in readiness for future full devolution.
- c) Partner Authorities, via WMR Ltd, will also influence over franchises that provide core services through the region when they are retendered.

### **3.0 Proposed West Midlands Rail Governance**

- 3.1 The primary benefits from the proposed devolution of local rail services in the West Midlands are derived from the guiding strategic influence of local politicians. Consequently, robust governance arrangements that enable each of the participating Partner Authorities to have a voice are considered to be vital.
- 3.2 The principles that the governance is designed to achieve are:
  - Effective, inclusive and transparent decision making between partner authorities
  - Democratic accountability
  - Robust financial management
- 3.3 To achieve delivery of these principles the governance structure is proposed to be as follows:
  - a) Each of the Partner Authorities will become a member of WMR Ltd. A 75% vote of the members will be required to admit any further members.
  - b) Strategic guidance and local democratic accountability will be provided by the Board of Directors of WMR Ltd which will take all decisions on behalf of WMR Ltd not reserved to WMR Ltd's members. The Board will be formed of the Leaders or other senior representative appointed by each of the seven constituent councils of the ITA and each of the seven Shire and Unitary Partner Authorities or (in their absence) by substitute directors appointed by each of those authorities. Each Director will have one vote at Board meetings and decisions will also be capable of being taken in writing (including by e-mail).
  - c) The entering by WMR Ltd of the envisaged formal partnership agreement with the DfT or any other agreement providing for the involvement of WMR Ltd in the specification, letting process or management of any rail franchise agreement, in addition to requiring the approval of the Board of Directors, will require the approval of a 75% vote of the members, as will any substantial amendment subsequently made to any such agreement. Decisions requiring to be taken by WMR Ltd under the envisaged partnership agreement will be taken by WMR Ltd's Board of Directors subject to any consultation or other similar arrangements from time to time agreed between the members of WMR Ltd.

- d) Only Partner Authority members who are local transport authorities for their areas will be entitled to vote at members meetings (including at annual general meetings, if WMR Ltd chooses to have these). The ITA will have seven votes to reflect that it represents seven constituent councils and each Shire and Unitary Partner Authority member will have one vote. The ITA's constituent councils will join WMR Ltd as Associate Members without a separate vote in addition to the votes they are able to exercise through the ITA.
- e) The Partnership Agreement between WMR and DfT would be held and managed by WMR Ltd.

#### **4.0 WMR Ltd Board of Directors**

- 4.1 Leaders' Rail Group (LRG) was set up in Shadow form at a meeting in Stafford on 25 September 2014 and, following approval of the governance arrangements set out in this Report and the Partner Authorities formally joining WMR Ltd, will in effect become the Board.
- 4.2 Each Partner Authority other than the ITA will be represented on the Board by a principal director or (in the absence of the principal director) a substitute director appointed by that Partner Authority. The ITA will in effect be represented on the Board by the appointees of the ITA's constituent councils. Each Director will have one vote at Board meetings.
- 4.3 The Board of WMR Ltd are to be responsible, initially, for determining the desired strategic direction, on behalf of Partner Authorities, for the specification of the new West Midlands Rail Franchise. Going forward, and subject to the agreement of each Partner Authority, the Board will oversee strategic policy matters in respect of the envisaged partnership agreement between WMR Ltd and the DfT.
- 4.4 The Board is expected to meet at least quarterly.

#### **5.0 West Midlands Rail Limited**

- 5.1 WMR Ltd will be a separate body, acting on behalf of the ITA and Metropolitan and Shire/Unitary Partner Authorities and will be a company limited by guarantee.
- 5.2 WMR Ltd has already been formally incorporated, set-up by Centro as a dormant company in 2014 in order to preserve the availability of the company name. At the point that Partner Authorities become members of WMR Ltd, Centro will cease to be a member and upon the new directors being appointed the existing sole director will resign.
- 5.3 The key objects of WMR Ltd are:
  - to promote the devolution of responsibility for rail passenger services and (where appropriate) associated facilities in the West Midlands and Northamptonshire to local transport authorities or other appropriate local authorities or other bodies within that area (acting through WMR Ltd (the Company));

- to manage or to assist in managing the performance of rail passenger services operating within the West Midlands and Northamptonshire pursuant to rail franchise agreements or other similar agreements;
- to improve rail passenger services and associated facilities within the West Midlands and Northamptonshire; and
- to develop and oversee the implementation of a long-term strategy for rail passenger services in the West Midlands and Northamptonshire as approved by the Members.

- 5.4 The rights of Partner Authorities to be consulted by the Secretary of State about the specification for rail franchises is unaffected by the existence of WMR Ltd and will remain. Similarly, powers to procure increments from the train operator will also remain, as at present. WMR Ltd is intended to provide Partner Authorities with a powerful further influence by providing a united, collegiate voice at the heart of franchise specification and management.
- 5.5 The longer term role of WMR Ltd in specifying and managing the West Midlands Rail Franchise will be governed by a formal partnership agreement with the DfT which as noted above will require a 75% vote of WMR Ltd members. Each subsequent phase of devolution is expected to require a separate agreement with the DfT or changes to the initial partnership agreement, and any such agreements or changes will also require such approval by members, as well as the approval of the Board.
- 5.6 It is proposed that Partner Authorities join WMR Ltd and appoint directors to WMR Ltd's Board in advance of the LRG meeting scheduled for 4 December 2015 so that that meeting will become the first meeting of the new WMR Ltd Board of Directors.
- 5.7 A summary of the provisions of the WMR Ltd Articles of Association together with a copy of the Articles are available on the Council's website using the following links [Appendix A](#) [Appendix B](#).
- 5.8 Administrative support for WMR Ltd and the Board of Directors of WMR Ltd will be provided by Centro.

## **6.0 Financial implications**

- 6.1 As previously agreed by LRG and as applied for 2015/16, funding for WMR is divided between Metropolitan districts (75%) and Shire/Unitary authorities (25%). For Metropolitan districts this funding is provided through the Centro levy. For Shire/Unitary authorities, the 25% balance is divided equally amongst the seven Partners. There is therefore no direct financial contribution required from the City Council.
- 6.2 Future funding requirements will be agreed by the WMR Ltd Board of Directors, and will be divided as described in paragraph 6.1 above. For the remainder of the franchise competition period, the agreed budget for 2015/16 and anticipated costs for the following two years are shown in table 2, below:

Table 2 WMR Indicative Budgets - April 2015 - October 2017

Description	2015/16	2016/17	2017/18 (7 Months)
1. Franchise Specification	£220,000	£100,000	£0
2. DfT/WMR Agreements	£25,000	£15,000	£15,000
3. WMR Governance and Admin	£5,000	£85,000	£80,000
4. Project/Programme Support	£135,500	£136,000	£95,000
5. Contingency (10%)	£38,550	£33,600	£19,000
<b>Total</b>	<b>£424,050</b>	<b>£369,600</b>	<b>£209,000</b>

- 6.3 After the commencement of the West Midlands franchise in October 2017, the current assumption is that most WMR operating costs will be met by the DfT, and that the requirement for direct Partner Authority financial contributions should be very modest.
- 6.4 In the event that any Partner Authority was to resign from WMR Ltd. in accordance with the recommendation for noting 1(b), the resigning member would be required to honour its funding commitments for the duration of the applicable financial year.
- 6.5 A risk workshop involving Partner Authorities was held in July 2015 resulting in the compilation of a comprehensive risk register. WMR project risk is monitored and managed monthly through the WMR Programme Board and Officers' Rail Devolution Group.
- 6.6 No financial or contractual risk for the West Midlands franchise will be held by WMR Ltd or its member authorities. These risks will remain with the DfT for the next franchise term. Any future change to the apportionment of risk as part of proposals for further devolution will be subject to agreement by individual Partner Authorities.
- 6.7 Financial liability for each member in the event of WMR Ltd being wound up through insolvency is limited to £1. [MF/16102015/O]

## 7.0 Legal implications

- 7.1 No financial or contractual risk for the West Midlands franchise will be held by WMR Ltd or its member authorities. These risks will remain with the DfT for the next franchise term. Any future change to the apportionment of risk as part of proposals for further devolution will be subject to agreement by individual Partner Authorities.
- 7.2 The Council has the powers to join WMR Ltd and to appoint directors to its Board of Directors under section 1 of the Localism Act 2011.
- 7.3 In becoming a Member of WMR Limited and appointing a Director on its Board, the Council and the appointed Director will need to play an active role in the management of WMR Limited. The appointed Director will also need to be aware of the responsibilities of directors under company law legislation and to be aware of the proposed WMR Limited articles of association. [RB/16102015/Z]

7.4 The Articles of Association of WMR Limited are in accordance with the summary, further details of which are available on the Council's website using the following link [Appendix A](#)

## **8.0 Equalities implications**

8.1 There are no equalities implications arising from this report.

## **9.0 Environmental implications**

9.1 There are no environmental implications arising from this report.

## **10.0 Human resources implications**

10.1 There are no human resources implications arising from this report.

## **11.0 Corporate landlord implications**

11.1 There are no corporate landlord implications arising from this report.

## **12.0 Schedule of background papers**

12.1 Appendix A – Summary of WMR Ltd Articles of association

12.2 Appendix B – WMR Ltd Articles of association

12.3 Appendix C – WMR Schematic Map

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