

Cabinet Meeting

11 November 2015

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

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:

Metropolitan Authorities	Shire and Unitary Authorities
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
Total	£424,050	£369,600	£209,000

- 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