



Board Meeting

Date	19 August 2016
Report title	West Midlands Rail Limited – Collaboration Agreement with Department for Transport
Leader with lead responsibility	Councillor Roger Lawrence – Transport
Accountable Chief Executive	Laura Shoaf, Managing Director Transport for West Midlands Email LauraShoaf@wmita.org.uk Tel 0121 214 7444
Accountable employee(s)	Malcolm Holmes, Programme Director, West Midlands Rail Tel 0121 214 7058 Email malcolmholmes@westmidlandsrail.com
Report to be/has been considered by	WMR Officers' Rail Devolution Group Strategic Transport Officers' Group

Recommendation(s) for action or decision:

The West Midlands Combined Authority is recommended to:

1. Note progress being made by WMR Ltd towards meeting the objectives of the company;
2. Cast its votes in favour of the special resolution that is necessary under Article 8.3 of West Midlands Rail Limited (WMR Ltd) Articles of Association to authorise the signing of the Collaboration Agreement (included with this report as appendix A), whether that resolution is passed in writing or at a general meeting of the Company.

1.0 Purpose

- 1.1 The purpose of this report is to seek authorisation for the West Midlands Combined Authority (WMCA) to cast its vote in favour of the special resolution that is necessary under Article 8.3 of West Midlands Rail Limited (WMR Ltd) Articles of Association to authorise the signing of the Collaboration Agreement, whether that resolution is passed in writing or at a general meeting of the Company.
- 1.2 The Collaboration Agreement sets out the relationship between WMR Ltd and the Department for Transport (DfT) in relation to the management of the West Midlands Rail franchise and further rail devolution in West Midlands.

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 over three years, in line with government policy on devolution and evidenced by the benefits experienced elsewhere from local control of rail services.
- 2.2 In December 2015, West Midlands Rail Limited (wholly owned by Partner Authorities) was formally established with the following objects:
 - a) *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));*
 - b) *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;*
 - c) *To improve rail passenger services and associated facilities within the West Midlands and Northamptonshire; and*
 - d) *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.*
- 2.3 The West Midlands franchise competition, led by the DfT, to replace the existing London Midland franchise in October 2017 is well underway. WMR have been working in close partnership with the competition team, including the secondment from WMCA of two employees to the DfT, and additional direct input to the Joint Project Board and other levels of governance for the competition.
- 2.4 The franchise will be let by the DfT and as such, financial and contractual risk for the franchise will remain with the Secretary of State. However, it is a longer term intention of the WMR Ltd 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.

- 2.5 Any such changes to the Collaboration Agreement to enable such advancement of devolution will require a special resolution of WMR to approve under Article 8.3.
- 2.6 The proposition that WMR Ltd has agreed with DfT for rail devolution in the West Midlands includes the following features:
- a) The existing London Midland franchise will split into two separable business units after the new West Midlands Rail Franchise is let in 2017: a West Midlands Separable Business Unit and a West Coast Separable Business Unit (see map in appendix B).
 - b) The specification of the West Midlands rail franchise is being led by the DfT, with WMR Ltd having a strong involvement, including staff from the WMCA being seconded to work alongside the DfT's team on behalf of 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 seek influence over franchises that provide core services through the region when they are retendered.

3.0 Progress Update

- 3.1 Demonstrable progress towards achieving WMR Ltd objectives has been made in recent months including:
- A joint DfT/WMR Public and Stakeholder Consultation exercise, led by a WMR secondee. A substantial number of public and stakeholder events were held across the region, and all WMR Partner Authorities responded to the consultation;
 - Agreement with DfT that two separable business units will be created in the West Midlands franchise enabling local control and management of services in the West Midlands;
 - DfT approval for WMR to specify the name, identity and brand guidelines for the West Midlands Separable Business Unit. The identity, which was approved by the WMR Board of Directors (WMR Board), will provide a locally relevant brand identity, specified locally, that will transcend the life of individual franchises, avoiding costly rebranding exercises in the future;
 - Direct input to the creation of the franchise specification, seeking significant enhancements to services across the region, especially in relation to capacity, and the frequency of services during the evening and on Sundays;
 - The inclusion of a Service Quality Regime for the West Midlands Separable Business Unit, designed to ensure that stations and trains are presented to a consistently high standard;
 - The drafting of a Collaboration Agreement (the subject of this report), setting out how the DfT will work with WMR to further rail devolution for the region, and provide an influential and meaningful role for WMR in the active management of the West Midlands Separable Business Unit.

3.2 At the time that approval was sought from each Partner Authority (approved by the West Midlands Integrated Transport Authority on 18 November 2015) to establish WMR Ltd, it was anticipated that a formal agreement outlining the collaboration with DfT would be required. The Collaboration Agreement, which has been drafted by WMR and DfT, is intended to govern the relationship between the two organisations, and will set out the rights and obligations of both parties.

4.0 The Collaboration Agreement

4.1 The Collaboration Agreement has been drafted in stages by the DfT and WMR. In March 2016, the WMR Board approved the Heads of Terms to the Collaboration Agreement, which led to the drafting of the full agreement. The full Collaboration Agreement, as included in appendix A of this report for approval, was approved in principle by the WMR Board in June 2016.

4.2 In summary, the Collaboration Agreement sets out:

- a) The role for WMR during the period until the creation of the West Midlands Separable Business Unit;
- b) The role for WMR following the creation of the West Midlands Separable Business Unit and how the franchise will be jointly managed;
- c) The creation of a joint Strategic Board by 31 October 2016 as the primary mechanism for collaboration between the two parties. The Strategic Board will consist of four members two each for the DfT and WMR Ltd, and to be quorate and allow a vote to be taken, at least one person from each organisation must be present and vote in favour of the relevant matter. The role of the Strategic Board will be to oversee the management of the West Midlands franchise, and to consider WMR proposals for further devolution;
- d) The creation of a Joint Management Team to oversee the management of the West Midlands Separable Business Unit, which will include for the primary management of the West Midlands Separable Business Unit to be undertaken by a WMR Ltd employee (employed by the West Midlands Combined Authority as the host authority). The costs for this employee will be met by DfT and WMR Ltd as set out in paragraph 16;
- e) The ability for WMR to propose and require cost-reducing, self-funding or WMR funded changes to passenger services and fares, subject to there being no adverse financial consequences for the Secretary of State. Where savings or income is generated, WMR will be able to use these to improve passenger rail services in the region;
- f) Arrangements for the funding of WMR Ltd after the commencement of the 2017 West Midlands Franchise, which include for the majority of funding to be provided by DfT (see paragraph 16);
- g) How further devolution will be taken forward, including the option for WMR Ltd to seek full devolution of the West Midlands Separable Business Unit at the end of the 2017 franchise;
- h) The provision of an annual meeting between the Secretary of State or Minister and the Chair and Vice Chair of WMR Ltd to discuss the progress in achieving the objectives and purpose set out in the Collaboration Agreement;

- i) Rights for the Secretary of State to override Strategic Board and other management decisions where their decisions would conflict with Secretary of State duties and that the Secretary of State will make all decisions in relation to the defined “Reserved Matters”. Such Reserved Matters include:
- decisions increasing net costs or net future costs to the Secretary of State;
 - determination of events of franchisee default;
 - the content of the Rail Investment Strategy and Statement of Funds Available;
 - any other specific actions that may be required under the Railways Act 2005
- j) The Collaboration Agreement is expected to remain in force until superseded or terminated. The Secretary of State may terminate the agreement where WMR Ltd ceases to be substantially representative of the local transport authorities within the WMR area or in advance of the award of the 2017 West Midlands Franchise, should Government policy change.

4.3 The Heads of Terms have been seen and commented on by Pannone Corporate, the external legal advisor engaged by WMCA to advise WMR Ltd.

5.0 Financial implications

5.1 Currently, WMR Ltd is funded entirely by contributions from Partner Authorities. As previously agreed by the WMR Board, and as applied for 2016/17, funding for WMR is divided between Metropolitan districts (75%) and Shire/Unitary authorities (25%). For Metropolitan districts this funding is provided through the WMCA transport levy. For Shire/Unitary authorities, the 25% balance is divided equally amongst the seven authorities. It is recognised that WMR Ltd members are not funded to undertake rail franchise management, although similarly it should be noted that the economy of the region is anticipated to benefit from the improved rail services that are expected to result from local involvement in specification and management. Discussions with DfT to agree funding have resulted in the majority of future WMR Ltd funding to be provided by DfT (£0.5m¹ per annum), with a minimum £0.14m contribution from WMR Ltd member authorities.

5.2 WMR Ltd may seek to receive funding over and above the £140K from Member authorities where this would enable additional outputs to be achieved. This will be determined and agreed by the WMR Board in due course.

5.3 It is expected that the split of funding contribution from WMR Partner Authorities will continue to be determined as described in paragraph 4.1 above.

6.0 Management of Risk

6.1 As noted in paragraph 2.4, financial and contractual risk is initially with DfT. It is possible that risk could pass to WMR Ltd (but WMR Members would only share in that risk in accordance with such arrangements as they agree at the time, given WMR's limited liability status) in either of the following ways:

¹ 2016 prices, no indexation permitted

- a) Where WMR Ltd enters into arrangements where it has funded a service enhancement as referred to in 4.2(e), in which case it would be liable to continue to pay for this;
- b) Where there is a transfer of powers/funding to WMR Ltd, as referred to in paragraph 2.4. However, any such transfer would constitute a “substantial amendment” to the Collaboration Agreement and would therefore require a special resolution of WMR Ltd to approve under Article 8.3.

6.2 It remains the case that should any WMR Member not be content with any amendments to the Collaboration Agreement, they can at any time resign from membership of WMR Ltd under Article 30.1, although it should be noted that DfT have a right to terminate the Collaboration Agreement in the event that WMR ceases to be “substantially representative of the local transport authorities within the WMR Area”.

6.3 In relation to project programme risk, a workshop involving Partner Authorities was held in July 2015 resulting in the compilation of a comprehensive risk register. WMR project risk is reviewed every eight weeks, and monitored and managed monthly through the WMR Officers’ Rail Devolution Group and the WMR Board.

7.0 Timescales

7.1 Key milestones going forward are shown in Table 1 below:

Publish Invitation to Tender	July 2016
Signing of Collaboration Agreement by WMR Ltd Chair and Secretary of State	September 2016
Contract Award	June 2017
Franchise Commencement	October 2017

Table 1 West Midlands Franchise Key Milestones

8.0 Legal implications

8.1 Matters required to be considered are set out within the body of this report. There are no additional legal implications flowing from the contents of this report.

9.0 Equalities implications

9.1 None arising directly from this report.

10.0 Other implications

10.1 None arising directly from this report.

11.0 Schedule of background papers

11.1 West Midlands Integrated Transport Authority, 18 November 2015: ‘Establishment of West Midlands Rail Limited’

12.0 List of Appendices

12.1 The following appendices accompany this report:

Appendix A:	Collaboration Agreement relating to devolution of rail responsibilities in the West Midlands
Appendix B:	West Midlands franchise map showing the two separable business units