



Committee and Date

Cabinet

14 October

Responsible Officer

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WEST MIDLANDS RAIL DEVOLUTION

Summary

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 West Midlands Rail Limited (WMR Ltd) and to approve the Council's membership of WMR Ltd and the appointment of directors to the board of WMR Ltd.

Recommendations

Cabinet is recommended to:

2. Approve the proposed governance arrangements set out in this report for the development and oversight of the 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.
3. Approve Shropshire Council joining WMR Ltd as a member.
4. Approve the appointment by the Council of Cllr Keith Barrow as a principal director on the Board of WMR Ltd and Cllr Simon Jones as his substitute director on that Board.
5. Authorise the Corporate Head of Legal and Democratic Services and Solicitor to the Council to agree and enter into or execute such documents as are necessary to give effect to these decisions.
6. To note 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; 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.

Compliance Issues

7. Consultation has been undertaken with the Cabinet Member for Highways and Transport, Council Legal and Council Finance Teams

Relevance to Policy

8. Shropshire Local Transport Plan 2011- 2026 (Policy C1: Rail Infrastructure, Policy C2: Rail Services and Information, Policy C3: Access to rail stations) sets Shropshire rail policy targets, the delivery of which will benefit greatly from the proposed WMR devolved Rail Franchise.
9. Furthermore as a local transport authority, the Council has a clear duty to represent Shropshire at key national transport forums. The WMR partnership is already becoming an influential rail forum, realising the role of rail as a key driver of economic growth.

Summary

10. 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.
11. In order for Partner Authorities to be active partners in the future management of the West Midlands Rail Franchise, the DfT requires 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
Coventry City Council	Northamptonshire County Council
Dudley Metropolitan Borough Council	Shropshire Council
Sandwell Metropolitan Borough Council	Staffordshire County Council
Solihull Metropolitan Borough Council	Telford and Wrekin Council
Walsall Metropolitan Borough Council	Warwickshire County Council
Wolverhampton City Council	Worcestershire County Council
West Midlands Integrated Transport Authority	

Table 1 WMR Partner Authorities

12. 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.

13. 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.
14. 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.

Background

15. 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.
16. 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.
17. 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.
18. 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.

19. 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 (see map in 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.

Proposed West Midlands Rail Devolution Governance Structure

20. 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.
21. The principles that the governance is designed to achieve are:
 - Effective, inclusive and transparent decision making between partner authorities
 - Democratic accountability
 - Robust financial management
22. 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.

WMR Ltd Board of Directors

- 23. 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.
- 24. 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.
- 25. 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.
- 26. The Board is expected to meet at least quarterly.

West Midlands Rail Limited

27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.

West Midlands Rail Limited Articles of Association

33. A summary of the provisions of the WMR Ltd Articles of Association are attached as Appendix A and a copy of the Articles is attached as Appendix B.

Administrative Arrangements

34. Administrative support for WMR Ltd and the Board of Directors of WMR Ltd will be provided by Centro.

Financial Implications

35. 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 (Shropshire Council - 2016/17 - £13,200, 2017/18 - £5,343)
36. Future funding requirements will be agreed by the WMR Ltd Board of Directors, and will be divided as described in paragraph 35, 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:

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

Table 2 WMR Indicative Budgets - April 2015 - October 2017

37. 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.
38. In the event that any Partner Authority was to resign from WMR Ltd. in accordance with paragraph 6 (b), the resigning member would be required to honour its funding commitments for the duration of the applicable financial year.

Management of Risk

39. 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.
40. 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.
41. Financial liability for each member in the event of WMR Ltd being wound up through insolvency is limited to £1.

Legal Implications

42. 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.

Timescales

43. The first meeting of the new Board of Directors is proposed to take place on 4 December 2015, subject to the Partner Authorities having by then applied to join WMR Ltd and having formally appointed their Leaders and/or other chosen nominees to the Board of Directors.
44. Key milestones going forward are shown in Table 3 below:

Issue OJEU/PQQ	December 2015
Public Consultation	Winter 2015/ Spring 2016
Publish ITT	July 2016
Contract Award	June 2017
Commence Service	October 2017

Table 3 West Midlands Franchise Key Milestones

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Human Rights Act Appraisal

The recommendations contained in this report are compatible with the provisions of the Human Rights act 1998.

Environmental Appraisal

None arising directly from this report.

Risk Management Appraisal

Paras 39 - 41

Community / Consultations Appraisal

None arising directly from this report.

This report has been reviewed In accordance with the Council's equalities duties and there are no implications.

Cabinet Member: Cllr Simon Jones

Appendices :

Appendix A- Summary of WMR Ltd Articles of Association

Appendix B- WMR Ltd Articles of Association

Appendix C – WMR Schematic Map

Appendix A

Summary of WMR Ltd Articles of Association

Introduction

1. The Articles of Association of WMR Ltd (the Company) are derived from the model articles of association for companies limited by guarantee contained in Regulations made pursuant to the Companies Act 2006 but incorporating changes that are typically made to those model articles to clarify or to add to them and changes reflecting the proposed specific objects and bespoke governance arrangements developed by the WMR governance workstream group.

Objects and Powers

2. The objects of the Company (article 2) are limited to activities relating to the devolution of West Midlands rail services as described in the main body of this Report. The powers of the Company (article 3) are mostly generic powers enabling the Company to do all necessary things in pursuance of its stated objects.

Application of Income, Winding Up and Members' Liability

3. Any income/monies held by the Company are to be applied to promote the Company's objects and not returned to members except where the Company is formally wound up (in which case members share in accordance with their voting rights) (articles 4 and 5).
4. In the event of an insolvent winding up each member's liability is limited to £1 (article 6) and the position under applicable company law is that no member assumes any further liability in respect of the Company merely as a result of being a member (e.g. not including where they have otherwise agreed to assume such liability pursuant to a separate funding agreement).

Board of Directors

5. The Company's Board of Directors will be appointed by each member authority (other than the ITA) appointing a principal director and a substitute director to represent them (the substitute director only being entitled to vote in the absence of the principal director) (article 22). This right for member authorities to appoint directors could be amended in circumstances where the members agree by a 75% majority vote to the admission of a further member authority (for example as a result the creation of a combined authority with more than seven constituent authorities) and any changes to this right will also require a 75% majority vote.
6. A director may be removed by the appointing member authority and will cease to be a director in various specified circumstances, including where the director resigns, is an elected member of the appointing authority and ceases to be an elected member, or the appointing authority resigns its membership of the Company (articles 22 and 23).

7. The chair of the Board will be selected annually by the Board but the position must alternate between a director appointed by an ITA constituent council and a director appointed by a shire council or unitary authority (with the vice chair for the time being selected from the other category of directors) (article 17).
8. Each director will have one vote at Board meetings and the chair will not have a casting vote (articles 12 and 17.4).
9. The quorum for Board meetings shall be a majority of directors (not counting substitute directors) (article 16).
10. Board meetings must be held at least four times per year and additional meetings may be called by any director (article 14).
11. Non-directors may be invited to Board meetings on a non-voting basis (article 11).
12. The Board will generally make all decisions on behalf of the Company and be responsible for the management of the Company except that:
 - a) the Company's members may by a special resolution (i.e. a 75% vote) direct the Board to take any specified action; and
 - b) any agreement between the Company and the Secretary of State for Transport relating to rail franchising (and any substantial amendment to any such agreement) will also require approval by such a special resolution (articles 7 and 8).

It is intended that further member approval rights will be considered in the light of the terms of the final agreement with the Secretary of State and the consequences on the decisions that it will be open to the Company to make. Those approval rights would either be incorporated into article 8.3 or in a separate agreement between the member authorities, which it is expected would also deal with funding issues.

13. The Board may delegate their powers (e.g. to a committee or to an employee or secondee acting for the Company) (articles 9 and 10).
14. Directors may participate at Board meetings by conference call/telephone (article 15). Board decisions can also be made by e-mail where a resolution is circulated to all Directors and approved by a majority of them within the timescale proposed with the resolution (with substitute directors counting and being entitled to vote only where the relevant principal directors have not indicated either agreement or disagreement to the resolution within the required timescale) (article 13).
15. Directors may authorise a conflict of interest relating to a director, but where the conflict relates to a personal financial interest it must also be authorised by ordinary resolution (i.e. majority vote) of the Company's members. A director may not vote on the authorisation of their own conflict of interest and any voting rights in relation to the relevant matter following authorisation of the conflict will

depend on the terms of the authorisation decided on by the directors. (Article 18)

16. However, no conflict authorisation is required by reason of a director being a member or officer of a member authority and a director may provide his or her appointing authority with such information about the Company's activities as he or she sees fit (article 18.1).
17. Directors who are members of a member authority will not be entitled to receive any remuneration for acting as a director and any expenses payable will be limited by the relevant Local Government Act requirements (articles 25.3 and 26.2).

Membership

18. Membership of the Company is divided into two categories – members who are local transport authorities (as defined in section 108 of the Transport Act 2008) (LTA Members) and those who are not (Associate Members). Unless approved by special resolution of the members, only the ITA, the ITA's constituent councils and the other shire/unitary Partner Authorities may be admitted to membership (articles 28 and 29). Where further and different categories of members are approved by special resolution it may then be appropriate to amend the Articles of Association to adjust voting and director appointment rights, which could also be done by special resolution of the members.
19. Standard provisions are included regarding the calling and holding of a general meeting of members, the quorum for which is members holding a majority of the voting rights (articles 32 to 37 and 39 to 42). No requirement is included for the Company to hold annual general meetings, but the Directors may choose to convene these.
20. Members authorities would attend members meetings by resolving to authorise a representative to exercise their rights at the meetings (article 40).
21. Decisions at general meetings may be taken on a show of hands if unanimous and no one requires a poll vote, but will otherwise require a poll vote. On a poll vote only LTA Members will have a vote and the ITA will have one vote for each of its constituent councils, i.e. 7 votes in total and the other local transport authority members would have one vote each (articles 38 and 39). The proposed provision for a successor to the ITA (i.e. a combined authority) to have one vote for each constituent council for whose area it is the local transport authority is subject to further review in the light of the expected make up of the combined authority that is proposed to succeed the ITA.
22. It would be possible for the ITA or a successor combined authority to cast some of its votes for and some of its votes against a resolution if that were agreed by the constituent council leaders (sitting as the ITA/combined authority). However, under applicable company law, all of those votes would need to be cast by one representative acting for the ITA/combined authority (even though the authority would be able to appoint more than one representative to attend a general meeting if it wished to do so).

23. The chair of a general meeting is prohibited by law from exercising a casting vote (article 38.4).
24. There is an exception to the non-voting status of an Associate Member to allow such a member to vote on and to defeat any resolution under the Companies Act to remove a director it has appointed (article 38.3).
25. Any member may terminate its membership of the Company on 7 days notice at any time (article 30.1). Provision is made for expelling members who are not local authorities (should such members be admitted with the consent of the members) where their conduct is considered likely to have an adverse effect on the Company (article 31).
26. Provision is also made for membership changes arising from the proposed combined authority that is expected to succeed the ITA and for other potential changes. In particular, provision is made for the ITA's membership to be capable of transferring to a successor combined authority (article 30.2), for an LTA Member ceasing to be a local transport authority and thereby becoming a non-voting Associate Member (article 30.3) and for the combined authority then to have one vote for each constituent council for whose area it is the local transport authority (article 38.2). Depending on the number of such constituent councils and the number of other LTA members, this could result in any the combined authority having a majority of votes at members meetings those constituent councils between them also appointing a majority of the Directors.

Miscellaneous

27. Standard articles are included regarding company notices, use of a common seal and the right of Directors to be indemnified from the Company's assets (where it has assets) in respect of liabilities properly incurred as Directors and/or to insure against such liabilities (articles, 43, 44 and 46). In addition, reference is included to the applicability of transparency/information requirements applicable to the Company under the Local Authorities (Companies) Order 1995 (article 45).

Appendix B- WMR Ltd Articles of Association

Appendix C – WMR Schematic Map

West Midlands Franchise – Business Units



