

Cabinet – 28 October 2015

Establishment of West Midlands Rail Limited

Portfolio: Councillor A. Andrew, Deputy Leader and Economy, Infrastructure and Development

Related portfolios: None

Service: Economy and Environment
Legal and Democratic Services

Wards: All

Key decision: No

Forward plan: No

1. Summary

- 1.1 The West Midlands local authorities (Metropolitan and Shire) 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. It is proposed that West Midlands Rail Limited (WMR) be established to formalise partnership arrangements. The purpose of this report is to approve the Council's proposed membership of West Midlands Rail Limited and confirm the appointment of a director to the board of West Midlands Rail Ltd and appoint a substitute director.
- 1.2 Walsall Council participation in West Midlands Rail Limited may help realise the ambition that the Council and Centro have articulated for the local transport network, including better passenger rail services on the Rugeley – Walsall – Birmingham line, and new/reinstated services to Aldridge and Wolverhampton (via Willenhall and James Bridge).

2. Recommendations

- 2.1 That approval be given to the Council becoming a member of West Midlands Rail Limited.
- 2.2 That Councillor Andrew as Deputy Leader and appropriate portfolio holder be appointed as the principal director of the board.
- 2.3 That Cabinet appoint a substitute director to the board.

- 2.4 That the Head of Legal and Democratic Services be authorised to agree to execute such documents as are necessary to give effect to these decisions.
- 2.5 To note that West Midlands Rail Limited will in due course enter into a formal partnership agreement with the Department for Transport that will set out the rights and obligations of West Midlands Rail Limited in relation to the award of the new West Midlands Rail franchise and related matters and that:
- (a) agreement will require approval by a 75% vote of West Midlands Rail Limited's members and will be subject of a future report to Cabinet; and
 - (b) any West Midlands Rail Limited member may resign its membership of West Midlands Rail Limited at any time, including where the member does not approve the terms of any such agreement.

3. Report detail

- 3.1 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.
- 3.2 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	

- 3.3 A key motivation for participating in West Midlands Rail Limited is the ambition of Walsall Council and Centro to improve the local transport network, including passenger rail services. The key improvements envisaged are articulated in the West Midlands Local Transport Plan 2011 and the Walsall Transport Strategy 2010. These include:

- Bloxwich Station and Bloxwich North Station increase in service frequencies
- Walsall – Birmingham New Street service increase from four trains per hour (tph) to six tph at peak times
- Walsall – Birmingham New Street service extended to Birmingham International (HS2 Interchange Station) and Coventry
- Reinstated/new Wolverhampton – Willenhall – James Bridge – Walsall service
- Direct Walsall – London Euston service
- Extending Walsall – Birmingham New Street service to a new station at Aldridge
- Extending Rugeley Trent Valley service to Stafford to give connections to destinations further north
- Walsall – Brownhills – Lichfield service
- Walsall Rail Station redevelopment

3.4 Whilst this ambition will involve a mix of support, funding (capital and revenue) and approvals from a variety of rail industry partners, membership of West Midlands Rail Limited is believed to be a mechanism by which this ambition might, in part, be realised. Certainly it would give Walsall Council an opportunity to have a say in how local rail services are specified and procured post-2017.

3.5 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.

3.6 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.

3.7 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.

- 3.8 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.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.
 - (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 have influence over franchises that provide core services through the region when they are retendered.

4. Council priorities

4.1 The agreed Council purpose is to:

'Improve lives and life chances for everyone who lives and works in the Borough of Walsall and in so doing, minimise the help that residents need from the state.'

4.2 The five priorities that will support this purpose are: -

- i. Supporting business to thrive and supporting local people into work
- ii. Improving Health and well being, including independence for older people and the protection of vulnerable people
- iii. Creating Safe, Sustainable and Inclusive Communities
- iv. Improving Safeguarding, Learning and the Life Chances for Children and Young People, raising aspirations
- v. Create a modern, dynamic and efficient workforce designed around what residents need.

4.3 A comprehensive and accessible passenger rail network in the West Midlands has the potential to support this ambition, by providing access to employment, education, training, leisure and retail opportunities for local people. It removes dependence on private modes, helps improve local air quality, and promotes social inclusion and independence.

5. Risk management

5.1 The Department for Transport will let a single franchise with a Train Operating Company (TOC) in 2017 on a net cost basis (i.e. revenue risk with the operator), but will implement a separate agreement with WMR to facilitate local influence over these services. The franchise will be split into two business units: West Midlands Regional Services; and Longer-Distance Services that operate to/from London and Liverpool via the West Midlands. During the franchise period (2017 to circa 2024), DfT and WMR will prepare for full devolution of the West Midlands Regional Services in the subsequent franchise, with procurement expected to start circa 2022.

5.2 There are no immediate financial risks for the Council in participating in WMR. However, there may be a reputational risk for the Council, should the management of the franchise attract negative criticism.

5.3 The Council will reserve the right to participate in any future agreement with DfT and/or future rail franchise(s) subject to a full examination of the costs and risks (when they are fully known), and subject to full political debate.

6. 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 ITA levy. For Shire/Unitary authorities, the 25% balance is divided equally amongst the seven Partners.
- 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:

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 is expected to be very modest.
- 6.4 In the event that any Partner Authority were to resign from WMR Ltd. in accordance with paragraph 1(b), the resigning member would be required to honour its funding commitments for the duration of the applicable financial year.

7. Legal implications

- 7.1 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.
- 7.2 The position of the Deputy Leader as a Director of the Board of West Midlands Rail Limited and of any substitute is that they would by definition be acting in the best interests of WMR Ltd., however, their presence on the Board would reflect a Walsall Metropolitan Borough Council dimension and any feedback that they provided to this Council would keep Walsall informed of proposals in relation to the West Midlands rail network.
- 7.3 A summary of the WMR Ltd. Articles of Association are attached as an **Appendix** to this report.

8. Property implications

None arising directly from this report.

9. Health and wellbeing implications

None arising directly from this report.

10. Staffing implications

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

11. Equality implications

Equality Impact Assessment to be undertaken by Centro.

12. Consultation

Arrangements agreed at Leaders' Rail Group in September 2014

Background papers

None

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Simon Neilson
Executive Director

9 October 2015



Councillor A. Andrew
Portfolio holder

9 October 2015

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).