

TELFORD & WREKIN COUNCIL

CABINET – 21 JULY 2016

WEST MIDLANDS RAIL COLLABORATION AGREEMENT

REPORT OF ASSISTANT DIRECTOR, CUSTOMER & NEIGHBOURHOOD SERVICES

LEAD CABINET MEMBER – CLLR ANGELA MCCLEMENTS

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

1.1 The purpose of this report is to seek authorisation for Telford & Wrekin Council 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. 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. RECOMMENDATIONS

2.1 That Cabinet:

2.2 Notes the progress being made by WMR Ltd towards meeting the objectives of the company;

2.3 Approves that Telford & Wrekin Council casts its vote 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;

2.4 Approves the appointment of Councillor Angela McClements as a Director of WMR Ltd and notes that Councillor Shaun Davies will attend as her substitute and Councillor Kuldip Sahota will resign as Director.

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	Contributes to all by improving access within the Borough and to external destinations but specifically:

		Protect and create jobs as a 'Business Supporting, Business Winning Council'
	Will the proposals impact on specific groups of people?	
	No	-
TARGET COMPLETION/DELIVERY DATE	Issue OJEU/PQQ - December 2015 Public Consultation - Winter 2015/Spring 2016 Publish ITT - July 2016 Contract Award - June 2017 Commence Service - October 2017	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	The operating costs of West Midlands Rail (WMR) Ltd for the period 2015/16 to 2017/18, and the Authority's contribution to these costs were agreed by Cabinet on 15 th October 2015. The signing of the Collaboration Agreement provides an update on the on-going costs in relation to WMR. The authorities contribution on an annual basis will be £5k which will be met from existing transport budgets. MLB 22.06.16
LEGAL ISSUES	Yes	As detailed in the previous Cabinet and Council reports the Council's maximum liability is very limited and is detailed in the section entitled "Management of Risk" below. Legal advice has been given regarding the terms of the Collaboration Agreement and the Council has the power to approve the recommendations contained in this report.
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	-
IMPACT ON SPECIFIC WARDS	No	-

PART B) – ADDITIONAL INFORMATION

4. Background

- 4.1 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.
- 4.2 In December 2015, West Midlands Rail Limited, 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.*

Progress Update

4.3 Demonstrable progress towards achieving WMR Ltd objectives has been made in recent months including:

- A joint DfT/WMR Public and Stakeholder Consultation exercise. 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) at their meeting in March 2016, 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 West Midlands local services, ensuring that stations 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.

4.4 At the time that approval was sought from each Partner Authority 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.

The Collaboration Agreement

4.5 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 May 2016.

4.6 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, with an independent chair, appointed by members of the board. The Strategic Board will consist of four members in addition to the independent chair, two each for the DfT and WMR Ltd. 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.
- 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.
- 4.7 The Heads of Terms have been seen and commented on by Pannone Corporate, the external legal advisor engaged by WMCA to advise WMR Ltd.

Financial Implications

- 4.8 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 WMR Ltd members are not funded to undertake rail franchise management, although similarly it should be noted that the economy of the region is expected to benefit from the improvement in 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 funding to be provided by DfT (up to £500K¹), with a minimum £140K contribution from WMR Ltd member authorities. This will equate to a contribution of £5k per year from Telford & Wrekin which will be met from existing budgets.
- 4.9 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 by the WMR Board in due course and approval sought from the Member authorities if the funding is required.
- 5.0 It is expected that the split of funding will continue to be determined as described above.

Management of Risk

- 6.0 As noted, 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:
- a) Where WMR Ltd enters into arrangements where it has funded a service enhancement as referred to in 14(e), in which case it would be liable to continue to pay for this;

¹ 2016 prices, no indexation permitted

- b) Where there is a transfer of powers/funding to WMR Ltd, as referred to in paragraph 8. 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.
- 7.0 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 WM Area”.
- 8.0 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.

5. PREVIOUS MINUTES

Cabinet - 15th October 2015 – WMR Governance
Full Council – 26th November 2015 – WMR Governance

6. BACKGROUND PAPERS

Appendix A – Collaboration Agreement

Report prepared by Dominic Proud, Service Delivery Manager – Transport & Highways Development, Telephone: 01952 384697