

<b>MEETING:</b>	<b>Cabinet</b>
<b>MEETING DATE:</b>	<b>3 December 2015</b>
<b>TITLE OF REPORT:</b>	<b>West Midlands rail devolution</b>
<b>REPORT BY:</b>	<b>Head of transportation and access</b>

## Classification

Open

## Key Decision

This is not a key decision.

## Wards Affected

County-wide

## Purpose

To agree arrangements for participation in the West Midlands Rail Partnership in preparation for potential devolution of the West Midlands rail franchise currently operated by London Midland and managed centrally by the Department for Transport.

## Recommendation(s)

**THAT:**

- (a) the council becomes a member of the West Midlands Rail Limited Company, subject to legal agreements being satisfactorily finalised;**
- (b) authority is delegated to the director of economy, communities and corporate to complete these agreements;**
- (c) Subject to recommendations A and B, the leader be appointed as a director of the company and the cabinet member transport and roads be appointed as substitute who will be authorised to make decisions in this capacity relating to the strategic direction of the WMRL;**
- (d) Subject to recommendations A and B, funding of £13,200 in 2016/17 and £7,464 in 2017/18 be approved as the council's contribution towards the costs of administering the partnership and developing the case for full devolution of the rail franchise.**

## Alternative Options

1. Not to join the WMR Ltd. Centro, which has been leading on the franchise devolution proposals has been requested by the Department of Transport to set out its proposed governance arrangements and needs to clarify the views of all the constituent local transport authorities covered by the current West Midlands rail franchise by 4 December 2015. This is not recommended as it would reduce the council's influence over the refranchising process and any subsequent devolved powers to manage the franchise locally.
2. Join the partnership at a later stage. This is not recommended as joining the partnership at a later stage would require a 75% supporting vote of existing partners and this could not be guaranteed.

## Reasons for Recommendations

3. To ensure that the council can play an active role in the developing proposals for rail franchise devolution for the West Midlands rail service.

## Key Considerations

4. The council is keen to support rail service improvements in the county and has lobbied government and Network Rail for greater investment in local infrastructure to improve service reliability and enable greater capacity.
5. Government set out proposals for rail decentralisation and invited expressions of interest in its consultation document of 2012 – 'Rail Decentralisation – Devolving Decision Making on Passenger Rail Services in England'. It received three detailed expressions of interest to pursue devolution of powers including one from Centro relating to the West Midlands Rail franchise operated by London Midland. The other submissions were 'Rail in the North' and from Transport for London. Government noted that Centro's proposal sought to include a wider area than that covered by its boundary of operation and was based on a Birmingham travel to work area. This included services between Hereford and Birmingham. The benefits which government wishes to explore through rail devolution include:
  - Cost reduction and enhanced value for money
  - Local democratic control
  - Benefits for passengers
  - Supporting and stimulating economic growth
  - Contribution to carbon reduction
6. The West Midlands Rail (WMR) franchise is currently operated by London Midland and covers rail services across the west midlands, focused on Birmingham and its surrounding conurbation. It includes the Hereford to Birmingham services and operational responsibility for Ledbury and Colwall rail stations. This provides an important service for local transport needs and longer distance commuting opportunities. The quality and frequency of this service is important in terms of connections with the west midlands conurbation, providing connectivity with the regional economic hub and future connections with HS2.

7. The WMR franchise covers a total of 112 stations. The list below provides a comparison with the other shire authorities indicating total number of rail stations and the number (in brackets) which are operated through the WMR franchise
- Herefordshire 4 (2)
  - Shropshire (including Telford and Wrekin) – 19 (6)
  - Worcestershire – 17 (14)
  - Staffordshire – 23 (13)
  - Warwickshire – 23 (14)
  - Northamptonshire – 7 (0)
8. There are two other rail franchises operating in Herefordshire. The Wales and Borders franchise, operated by Arriva Trains Wales, provides services operating north south, through the county, between south wales and the north west and includes operational responsibility for Hereford and Leominster rail station. The Great Western franchise, operated by First Great Western, provides services between Hereford and London via Worcester and the Cotswolds (using the same line as the West Midlands franchise).
9. Centro established an informal partnership supported by an officer working group ( the Officers Rail Devolution Group – ORDG) and a members group (the Leaders Rail Group – LRG) to develop proposals for taking over devolved management responsibility for West Midlands rail services. The full range of local authority partners represented at these meetings comprises:

<b>Metropolitan Authorities</b>	<b>Shire and Unitary Authorities</b>
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	

10. The aims and ambitions for WMR devolution have been set out in a vision statement included at appendix 1. This has been developed in discussion with council officers and members and is consistent with our longer term ambitions for improved rail services in the county. In summary, these include:
- a passenger network that is more closely aligned to regional priorities and objectives,
  - improved connectivity to areas of economic activity, population centres and national and international hubs such as Birmingham Airport and the proposed new HS2 Stations
  - provision of capacity for growth across all rail freight and passenger sectors
  - maximising the benefits of investment such as HS2 and railway electrification

11. A formal bid to take over the next franchise (due to end 2016) was submitted to the DfT in 2014. The DfT rejected this proposal indicating that it preferred a phased approach which would see it (government) directly managing the re-letting of the franchise (December 2015 – June 17) whilst allowing for the devolution proposals to develop. DfT also confirmed that it would need to be content that an appropriate governance framework was in place clarifying the formal roles of the partners within the devolution arrangement.
12. The partnership had initially set out a governance model which would allow for two tiers of membership – those authorities accepting financial risk and those which would not. The feedback from government to the 2014 submission required a review of this model and development of a more formal partnership.
13. A report setting out proposals for options for different governance models was considered at the LRG meeting of 26 June 2015. A copy of that report is included at appendix 2. The LRG recommended the establishment of West Midlands Rail Limited (WMR Ltd) as a company limited by guarantee with the LRG forming its board of directors.
14. Articles of association setting out arrangements for the West Midlands Rail Limited Company, a private company limited by guarantee under the Companies Act 2006 are included at Appendix 3.
15. The WMR Ltd 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 and potentially to full devolution. However, any such increased devolution direct to WMR Ltd would require the further 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

### **Issues to Consider**

16. It is understood that all current partners (the local authorities listed at paragraph 8) intend to join the WMR Ltd. The WMR Leaders Rail Group is due to meet 4 December to confirm its proposals for forming the WMR Ltd and all partner authorities have been requested to confirm their intentions in time for that meeting.
17. If the council does not join the partnership at this time it will continue to be a formal consultee for the DfT in its preparations for letting the next franchise. If the council wished to join the partnership at a later stage it is likely that this would need to be confirmed by a 75% vote of the partners.
18. Whilst the longer term costs associated with a devolved rail franchise are not known Centro has requested financial contributions towards the costs for developing devolution proposals and administrative costs associated with the establishment of a formal governance proposal. In the current financial year the contribution is £15,145, which the council has already paid, and £13,200 and £7,464 has been requested towards costs for 2016/17 and 2017/18. (A table sets out apportionment of costs in the

financial implications section below). Centro has not clarified contribution costs beyond the letting of the next franchise but has suggested that these will be reduced as full management costs would be borne by the Department for Transport.

19. The benefits to Herefordshire of joining the WMR Ltd have the potential to be significant. It will allow the council to engage fully in the formal discussions with the DfT about the details and specification for the next franchise as part of a louder voice for the west midlands region. This should enable the council to better secure quality rail services to help drive the local economy and maintain connectivity for Herefordshire residents and visitors. By being part of WMR Ltd Herefordshire would be able to secure longer term benefits of devolution if this is taken forward which could include further enhancement of local services, more closely aligned with local needs.

## Community Impact

20. The corporate plan includes the priority to support economic growth and connectivity and commits to the formation of local strategic partnerships to benefit the council and the local community. By joining the WMR Ltd at this stage the council will be protecting its position for improved rail connectivity and will be joining a regional partnership which could have significant influence over rail services and connectivity in the future.

## Equality and Human Rights

21. This report does not impact on any Equality and Human Rights issues.

## Financial Implications

22. The projected costs for the WMR Ltd proposal are set out in the table below. Meetings of the Leaders Rail Group have established a 75:25 split in contribution between the Centro authorities and the shires, including at present Herefordshire Council. The funding requirement covers the period to the letting of the new rail franchise at which point Centro have indicated the WMR Ltd partners would be required to take a further decision to remain as partners and agree a partnership arrangement with DfT for the joint management (or other arrangement to be determined) of the franchise and a potential time frame for full devolution. The council would have the opportunity at that point to consider whether or not it wished to remain a member depending on the future proposals.

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
<b>Total</b>	<b>£424,050</b>	<b>£369,600</b>	<b>£209,000</b>
<b>Herefordshire Council Contribution</b>	<b>£15,145.00</b>	<b>£13,200.00</b>	<b>£7,464.00</b>

23. Herefordshire Council has already provided a contribution towards the costs of the proposal for current financial year of £15,145 (which represents 1/7 of 25% of total costs for the year). Contributions for 2016/17 and 2017/18 are set out in the table above and would be required should the council formally join the WMR Ltd. These funds are as yet unbudgeted.
24. In the event that any partner authority were to resign from WMR Ltd. the resigning member would be required to honour its funding commitments for the duration of the applicable financial year.

## **Legal Implications**

25. 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. WMR is a company limited by guarantee (CLG); CLG are normally incorporated for non-profit making functions, have no share capital and members rather than shareholders.
26. The council's maximum liability as a member of WMR Ltd is limited to £1 which becomes due in the event that the company is wound up. If it is intended that assets of the council are to be transferred into the company (either property or personnel) then arrangements will need to be put in place to protect the council's position, and this would be the subject of a further report.
27. The council will be subject to the articles of the company in their present form on joining. The company and all its members from time to time are parties to the articles and can therefore sue and be sued under them. Additionally, directors of the company do have potential to be personally liable for actions taken in respect of their role as a director and it is expected an indemnity will be provided by the council and/or an insurance policy will be put into effect.
28. Although it is acknowledged that there is no intention to trade in the first two years, if this position changes and additional responsibilities/powers are devolved to the company, this will be subject to a further report. That notwithstanding, it is advised that a members' agreement (the equivalent of a shareholders agreement) is agreed now between the partners to address those matters not in the articles such as: capitalisation and funding (initial and ongoing); contributions of the parties (for example, intellectual property rights, know-how, secondment of staff, provision of premises); the composition of the board and management arrangements; approval of business plan; and, confidentiality. This will be a legally binding document setting out essential provisions concerning the relationship between the partners and their liability to each other. Current and new members would need to enter into the agreement which will take time to negotiate and settle between the parties.

## **Risk Management**

29. The risks associated with not joining the partnership at this stage would be that:
  - a) Future influence – it may be difficult to join at a later stage (after formation of the WMR Ltd) as it would require a 75% majority vote of Board members to approve
  - b) Current influence – not joining now would mean that the council's views on the next franchise would be as an individual stakeholder consulted by government. It is likely that its views would carry additional weight if they were shared/endorsed by WMR Ltd.

30. If cabinet determines to join the formal partnership the main risks relate to the pressure on officer and member resources to play an active role in developing proposals and identifying immediate resources to cover the financial contributions in the run up to the next franchise (£21K). If resource commitments prove to be too great and do not align with benefits of engagement the council could leave the WMR Ltd at any stage.

## **Consultees**

31. No local consultation has taken place on the proposals set out in this report. West Midland rail partner authorities are planning a public consultation jointly with DfT around the re-letting of the West Midlands Rail franchise and emerging devolution proposals for December 2015 to March 2016.

## **Appendices**

Appendix 1: West Midlands Rail Devolution – Realising the West Midlands’ Rail Vision

Appendix 2: Report to West Midlands Leaders Rail Group

Appendix 3: West Midlands Rail Ltd, Private Company – draft Articles of Association

## **Background Papers**

- None identified