

# **West Midlands Rail Executive and DfT Collaboration Agreement with Department for Transport**

**Decision maker: Cabinet member Infrastructure and transport**

**Decision date: Friday, 30 July 2021**

**Report by: Senior Transport Planning Officer**

## **Classification**

Open

## **Decision type**

Key

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

## **Wards affected**

(All Wards);

## **Purpose**

To set out the changes to the Collaboration Agreement between West Midlands Rail Ltd (WMRL) and the Department for Transport (DfT) and seek cabinet member approval to support these changes.

## **Recommendation(s)**

**That the Cabinet member:**

- (a) Approve that the Council supports WMRL entering into a new Collaboration Agreement with the Department for Transport (included as Appendix A);**
- (b) On behalf of the Council votes in favour of new Collaboration Agreement at a Special Resolution meeting of the WMRL Board of Directors planned to take place in September 2021.**

## **Alternative options**

1. The cabinet member votes against the revised Collaboration Agreement between WMRL and DfT. This is not recommended as this could result in WMRL losing the

contractual basis for its partnership working with DfT as well as the loss of WMR Ltd's funding grant from DfT.

## Key considerations

2. The changes to rail franchising following publication of the government's White Paper 'Great British Railways' mean that the existing Collaboration Agreement between West Midlands Rail Ltd (WMRL) and the Department for Transport (DfT) is likely to terminate in September 2021. A new agreement must therefore be negotiated in order to protect WMRL's ongoing role working in partnership with government to manage rail service in the region, as well as its grant income.

## The Existing Collaboration Agreement and National Rail Policy

3. The 2016 Collaboration Agreement (referred to as CA1) between WMRL and the DfT is the primary agreement by which WMR Ltd's responsibilities for franchise management and government grant funding are set out and enshrined. CA1 was signed in April 2017 following Secretary of State and WMR Ltd approval (the latter by means of a Special Resolution).
4. By means of a high-level summary, CA1 includes provisions for:
  - a) A Strategic Board between WMRL and DfT officials;
  - b) Sharing of franchise management responsibilities;
  - c) The ability of WMRL to make changes and retain the benefits of those changes for reinvestment in the local rail network. This includes the powers to make adjustments to rail fares in the region;
  - d) Funding of WMRL by means of a £500k grant each year; and
  - e) An annual meeting between WMRL Chair and Vice Chair and the Secretary of State or a Minister.
5. The executed version of CA1 is included as **Appendix B** for reference.
6. CA1 is coterminous with the West Midlands Franchise Agreement, originally intending to endure until March 2026. However, changes outlined in the White Paper now mean that the Franchise Agreement is expected to terminate on 19 September 2021. As such it is now necessary for WMRL to negotiate and enter into a successor agreement with the DfT to take effect from the termination of the existing Franchise Agreement.

## Revised Collaboration Agreement

7. Discussions with DfT officials have concluded that in general CA1 worked effectively and is a solid foundation on which to build. Consequently, the revised Collaboration Agreement (henceforth referred to as CA2), represents an evolution of its predecessor.

8. The main areas of amendment in CA2 reflect the government's change of approach from the current franchising system to a new commercial model - Passenger Service Contracts. The changes include:
- Removal of all references to the franchise and replace with the new national rail contract (NRC);
  - A revised purpose to make it clearer that it is about local democratic accountability (original purpose was much narrower in its definition);
  - Revised objectives to remove all references to the 2017 franchise competition, and make WMRE DfT's agent for collaboration with other TOCs; and
  - Amended meeting structure designed to better align the governance of the Franchise with DfT's approvals process.
- 9 At present, is it unclear if government intends to progress further devolution of rail beyond the current devolution agreements in place (for example, Transport for Wales, Merseytravel and Transport Scotland). Hence, changes to the agreement confirm the intention to maintain ongoing partnership working with the DfT and local democratic engagement, rather than the pursuit of devolved rail powers.
- 10 There are no proposed changes to the grant WMRL receive from DfT, or to the arrangements in place for the savings account held jointly between WMRL and DfT. The Heads of Terms (HoT) for CA2, including a summary of the changes between CA1 and CA2, can be found in **Appendix C**.
- 11 The CA2 draft has been reviewed by Pannone Corporate, the WMRL external legal advisors.
- 12 CA2 was approved in principle by the WMRL Board at its AGM on 15 June 2021.

### **Implications for WMR Partner Authorities**

- 13 In accordance with the WMRL Articles of Association, paragraph 8.3, any change to the WMRL relationship with the DfT or substantial changes to that agreement must gain the prior approval of WMR 'Member'<sup>1</sup> authorities by special resolution. As such, the change to the Collaboration Agreement drafting must be endorsed by a minimum of 75% of Member authorities

### **Community impact**

- 14 The recommendation set out in this report supports the following ambitions and success measures set out in the Herefordshire County Plan 2020-24:

1. **Environment:** Protect and enhance our environment and keep Herefordshire a great place to live:

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<sup>1</sup> WMR Member authorities are the West Midlands Combined Authority and the seven Shire and Unitary Local Transport Authorities. In the continuing spirit of inclusivity, approval from individual Metropolitan District Authorities have also been sought throughout this process, although this is not required under WMR Ltd Articles of Association

- ....*We will enable more healthy low carbon travel options, including walking, public transport, and cycling to reduce congestion, improve local air quality and enhance health and wellbeing...*;

2. **Economy:** Support an economy which builds on the county's strengths and resources

- *Success measure: Increase the number of short distance trips being done by sustainable modes of travel- walking, cycling and public transport*

15 They also support the following Council strategies:

a. Core Strategy (2011-2031):

- Policy SS4- Movement and Transportation;
- Policy HD2- Hereford City Centre; and,
- Policy HD3- Hereford Movement;

b. Local Transport Plan (2016-2031):

- Policy LTP PT 7- rail improvements, through continued engagement and partnership working.

## Environmental Impact

16 There are no direct environmental impacts as a result of the proposed recommendation. However, our ongoing engagement with WMRL is supportive of the environmental objective set out in the Herefordshire County Plan 2020-24:

*"....We will enable more healthy low carbon travel options, including walking, public transport, and cycling to reduce congestion, improve local air quality and enhance health and wellbeing..."*

## Equality duty

17 None Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to

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- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 18 The duties undertaken by WMRL must comply with the duties set out above as the members are all bound by these duties.

## Resource implications

- 19 There are no resource implications as a result of this decision. The financial implications remain unchanged, and the commitment from DfT to fund WMRL for franchise management costs (£500k per year) remains in force. The Council currently contributes £14,200 per annum to be a member of WMRE, however, there are no proposed changes to the level of contribution sought from WMRL partner authorities.

## Legal implications

- 20 The Collaboration Agreement is between the Secretary of State for Transport and WMRL which is a local authority controlled company of which the Council is a member together with other local authorities in the wider region. The Council has representation on the Board of Directors. Those appointed Directors have been briefed on the proposed changes with the benefit of advice from WMRL's external solicitors. The adoption of the new agreements appears to be a matter reserved to the members of WMRL by means of a special resolution (75% of members must vote in favour). As a Director of the company the Cabinet Member should take into consideration the advice he has already received on this issue.
- 21 There are no particular legal implications arising from the report which affects the Council.

## Risk management

- 22 There are no financial risks identified within the recommendations. Financial implications remain unchanged, and the commitment from DfT to fund WMRL for franchise management costs (£500k per year) remains in force. There is no proposed change to the level of contribution sought from WMRL partner authorities.

<b>Risk / opportunity</b>	<b>Mitigation</b>
If the cabinet member decides not to support the recommendations identified, and the proposals do not pass the vote at the Extraordinary meeting in September 2021, there is a risk that WMRL may not enter into the agreement with DfT resulting in the loss of its devolved responsibilities and funding from DfT.	The proposals were considered and agreed on in principle at the Board of Directors meeting held on 15 <sup>th</sup> June 2021. Briefing notes have been provided to the cabinet member for Infrastructure and Transport on these matters prior to this meeting.

## **Consultees**

23 WMRL has consulted with DfT and all member authorities including the Cabinet member for Infrastructure and transport and the Leader of Herefordshire Council.

24 Political Group Consultation has been undertaken and no comments were received.

## **Appendices**

Appendix A: Collaboration Agreement 2

Appendix B: Collaboration Agreement 1 2016

Appendix C: Collaboration Agreement 2 Heads of Terms

## **Background papers**

None

**Please include a glossary of terms, abbreviations and acronyms used in this report.**

AGM- Annual General Meeting

CA- Collaboration Agreement

DfT- Department for Transport

HoT- Heads of Terms

LTP- Local Transport Plan

WMRL- West Midlands Rail Limited

WMRE- West Midlands Rail Executive