

CABINET
19 NOVEMBER 2015**WEST MIDLANDS RAIL DEVOLUTION**

Relevant Cabinet Members

Mr J H Smith OBE and Mr S E Geraghty

Relevant Officer

Director of Business, Environment and Community

Recommendation

- 1. The Cabinet Member with Responsibility for Highways and the Cabinet Member with Responsibility for Economy, Skills & Infrastructure recommend that Cabinet:**
 - (a) notes the potential advantages to Worcestershire of joining a consortium of local authorities to influence the West Midlands Rail franchise;**
 - (b) approves the proposed governance arrangements for the development and oversight of West Midlands Rail Limited, 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;**
 - (c) approves Worcestershire County Council joining West Midlands Rail Limited as a member;**
 - (d) approves the appointment by the County Council of the Cabinet Member with Responsibility for Highways as a principal Director on the Board of West Midlands Rail and the Cabinet Member with Responsibility for Economy, Skills & Infrastructure as his substitute Director on that Board, or as subsequently nominated from time to time by the Leader;**
 - (e) authorises the Head of Legal and Democratic Services to agree and enter into or execute such documents as are necessary to give effect to these decisions; and**
 - (f) notes that it is intended that West Midlands Rail Ltd will in due course enter into a formal partnership agreement with the DfT 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:**

- (i) **that agreement will require approval by a 75% vote of West Midlands Rail Limited's members and will be the subject of a further report to Cabinet/Council; and**
- (ii) **any West Midlands Rail Limited member may resign its membership of West Midlands Rail Limited at any time.**

Background

2 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 and the appointment of directors to the Board of West Midlands Rail Limited.

3 West Midlands Rail partner authorities have been developing a proposal for increasing local involvement and influence over the local rail services for approximately two and a half years, in line with Government policy on devolution and evidenced by the benefits experienced elsewhere (e.g. Merseyside) from local control of rail services.

4 In Merseyside, since devolution of rail services, there have been increases in reliability, reductions in rail crime, improvements in punctuality and improvements in train fleet presentation. This has led to a rise in patronage and a notable increase in passenger satisfaction. MerseyRail consistently scores passenger satisfaction scores of over 90% of respondents who consider that the service is good or they are satisfied with the service. The most recent comparative figure for London Midland is 84% (source: Passenger Focus, National Rail Passenger Survey).

5 In order for partner authorities to be active partners in the future management of the West Midlands rail franchise, the Department for Transport (DfT) requires that an appropriate governance framework is in place. This is expected to involve all local authorities including the West Midlands Integrated Transport Authority in the travel to work area of the West Midlands. Partner authorities expected to anticipate are shown below:

Shire and Unitary authorities	Metropolitan authorities
Herefordshire	Birmingham
Northamptonshire	Coventry
Shropshire	Dudley
Staffordshire	Sandwell
Telford and Wrekin	Solihull
Warwickshire	Walsall
Worcestershire	Wolverhampton

6 During September 2014 a Leaders Rail Group was established with senior political representation from each partner authority. This group has expressed a view that a separate body with the purpose of engaging with DfT on the letting of the West Midlands Rail franchise and subsequent participation in the management of the franchise is the preferred approach to provide strong political governance.

7 The most straightforward way to achieve this is to set up a company limited by guarantee, owned by the partner authorities named above. A formal partnership is to be negotiated with the DfT, which will govern the relationship between the two organisations and set out the rights and obligations of both parties.

8 The partnership will have two distinct phases of development. Phase 1 will cover the initial period up to the commencement of the new West Midlands rail franchise in 2017, during which West Midlands Rail Limited and Department for Transport will work together on the franchise design and procurement processes, although the Secretary of State for Transport will retain responsibility for letting the franchise.

9 Phase 2 will follow the commencement of the new West Midlands Rail franchise during which it is expected that the relationship between West Midlands Rail Limited and the DfT will develop into a clearly governed partnership for managing the franchise.

10 The two phase approach has been adopted at the recommendation of the DfT to reduce the risk to all parties. This is due to the size of the rail franchise under discussion (both fiscally and in terms of passenger numbers) and due to the close interface the West Midlands franchise has with other rail franchises such as Virgin Trains West Coast. Merseyrail operates on its own infrastructure and does not interface directly with other train operators.

Summary

11 Partner authorities are seeking greater influence and management over the West Midlands Rail network and the Secretary of State for Transport has made a commitment to work with the partner authorities to achieve these ends. The process for letting the new franchise has recently started and is being developed in partnership with the partner authorities.

12 It is expected that the existing London Midland franchise will be split into two business units early in the new franchise term. One business unit for the West Midlands area rail services and one for the services operated by London Midland along the West Coast Main Line.

13 This has an impact on some rail routes in the West Midlands region that are then operated by the West Coast Main Line business unit, for example Birmingham to Coventry services. Partner authorities expect to be able to contribute to the specification and management of these services.

14 The West Midlands Rail franchise will be let by the DfT and therefore the 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. It is expected that during Phase 2, options for further devolution with transfer of funding and powers will be explored.

15 However, any such increased devolution direct to partner authorities would require the approval of the partner authorities. In the case of changes to West Midlands Rail Limited's expected partnership agreement with the DfT a 75% majority of West Midlands Rail Limited would be required (or nine of the fourteen members).

16 The partner authorities have agreed with the DfT that the Department should lead on specification of the West Midlands Rail franchise with the partner authorities having a strong involvement. This could include staff being seconded to work alongside DfT staff on behalf of the partner authorities and West Midlands Rail.

17 Following the award of the franchise it is expected that West Midlands Rail Limited will jointly manage the franchise in partnership with the DfT. This will allow West Midlands Rail Limited to develop experience and capability in readiness for future full devolution.

18 West Midlands Rail Devolution is not to be confused with Midlands Connect. Whilst there are links, Midlands Connect is a collaboration of Network Rail, Highways England, Local Enterprise Partnerships and Local Authorities across the Midlands who have committed to work together to reach a unified position on what strategic transport interventions are required to maximise the growth potential of the area and of the UK as a whole. A major economic study, the first phase of Midlands Connect, is examining and assessing where connectivity improvements are likely to have the greatest long-term impact on employment and the economy.

Governance

19 The proposed governance structure of West Midlands Rail Limited will work in the following manner. Each of the named partner authorities above will become a member of West Midlands Rail Limited. A 75% vote in favour will be required to admit any further members.

20 Strategic guidance and democratic accountability will be provided by the Board of Directors of West Midlands Rail Limited which will take decisions on behalf of West Midlands Rail Limited not reserved to the members. The Board will be formed of the Leaders or other senior representative appointed by each of the authorities named above (or in their absence by the named substitute). Each Director will have one vote at board meetings and it will also be possible for decisions to be taken in writing (including e-mail).

21 The approval of the Board of Directors and a 75% vote in favour by the members will be required before West Midlands Rail Limited will enter any of the following:

- The envisaged formal partnership agreement with the DfT
- Any other agreement providing for the involvement of West Midlands Rail Limited in the specification, letting process or management of any rail franchise agreement.
- Any further amendment subsequently proposed to any such agreement.

22 It is expected that the seven metropolitan authorities votes will be vested in the Integrated Transport Authority which will then have seven votes out of the total of fourteen.

23 The partnership agreement between West Midlands Rail and the DfT would be held and managed by West Midlands Rail Limited.

Proposed Board of Directors

24 The Leaders Rail Group was set up in shadow form at a meeting in Stafford on 25th September 2014, at which Worcestershire County Council was represented by the Cabinet Member with Responsibility for Highways. Following approval of the governance arrangements set out in this paper and the partner authorities formally joining West Midlands Rail Limited, the Leaders Rail Group will effectively become the Board.

25 The Board of West Midlands Rail Limited are to be responsible initially for determining the desired strategic direction, on behalf of the 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 West Midlands Rail Limited and the DfT.

26 The Board is expected to meet every quarter.

West Midlands Rail Limited

27 West Midlands Rail Limited will be a separate body acting on behalf of the fourteen partner authorities and will be a company limited by guarantee.

28 West Midlands Rail Limited was formally incorporated as a dormant company during 2014 by Centro to preserve the name. At the point that the partner authorities become members of West Midlands Rail Limited, Centro will cease to be a member and the sole director will resign.

29 The advantages to the Worcestershire community of residents, businesses and stakeholders of being part of West Midlands Rail are having a locally accountable contract, proper management of local rail services through incentives for the franchisee, a rail service that is responsive to local needs, a more efficient railway offering better value for the taxpayer and innovative operation of those county railway stations included in the contract (all bar Evesham, Honeybourne and Pershore). This approach will support economic growth in the area through targeting rail investment and creating a rail network that is responsive to the needs of the West Midlands economy.

30 It is envisaged that the new franchise will address the following issues:

- **Capacity**
 - rail passenger numbers have doubled across the West Midlands from 37 million in 2005/6 to 74 million in 2012/13, the highest rail growth of any region across the UK
- **Connectivity**
 - faster journeys on longer regional routes, more frequent/late evening services, earlier/more frequent Sunday services, direct services to Birmingham Airport (and future HS2 Interchange)
- **Customer Focus**
 - punctuality and reliability issues, improved fare structure and passenger offer
- **Clarity**
 - provide a network that is understandable and easy to use, clear information and "Smart" ticketing
- **Cost Effectiveness**
 - move towards a lower-cost, fully electrified regional rail network, replacement of old rolling stock to improve passenger experience and reduce operating costs.

31 Whilst initially the franchise will have no impact on Worcestershire Parkway (existing services are operated by Cross Country and Great Western Rail) there may be

scope in the medium to longer term to deliver new services to the Parkway station using the new West Midlands Rail franchise, if sufficient resources are available.

32 West Midlands Rail Limited's objectives are:

- To improve rail passenger services and associated facilities within the West Midlands and Northamptonshire
- 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 appropriate local authorities or other bodies within that area (acting through West Midlands Rail Limited)
- To manage or 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 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.

33 The rights of the partner authorities to be consulted about the specification for rail franchises is not affected by the existence of West Midlands Rail Limited and will remain. Similarly powers to procure increments from train operators will also remain as at present. West Midlands Rail Limited 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.

34 The longer term role of West Midlands Rail Limited 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 West Midlands Rail Limited members.

35 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.

36 It is proposed that partner authorities join West Midlands Rail Limited and appoint Directors to the Board of West Midlands Rail Limited in advance of the Leader's Rail Group meeting scheduled for 4 December 2015 so that that meeting will become the first meeting of the new Board of Directors of West Midlands Rail Limited.

West Midlands Rail Limited Articles of Association

37 The draft articles of association for West Midlands Rail Limited are available on the Council's website.

Administrative Arrangements

38 Administrative support for West Midlands Rail Limited and the Board of Directors of West Midlands Rail Limited will be provided by Centro.

39 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 West

Midlands Rail Limited and having formally appointed their leaders and/or chosen nominees to the board of directors.

40 Certain important milestones going forward are shown in the table below:

Issue OJEU/PQQ	December 2015
Public consultation	December 2015 to March 2016
Publish invitation to tender	July 2016
Contract award	June 2017
Commence service	October 2017

Legal, Financial and HR Implications

41 As previously supported by the Leaders Rail Group and as applied for 2015/2016, funding for West Midlands Rail is divided between metropolitan districts (75%) and shire/unitary authorities (25%). The 25% is then divided equally amongst the seven shire/unitary partner authorities involved.

42 Future funding requirements will be agreed by the West Midlands Rail Limited Board of Directors and will be divided as described above. For the remainder of the franchise competition period, the agreed budget for 2015/2016 and anticipated costs for the following two years are shown in the table below:

Description	2015/2016	2016/2017	2017/2018 (7months)
Franchise specification	£220,000	£100,000	£0
Department for Transport / West Midlands Rail agreements	£25,000	£15,000	£15,000
Governance and administration	£5,000	£85,000	£80,000
Project support	£135,500	£136,000	£95,000
Contingency (10%)	£38,550	£33,600	£19,000
Total	£424,050	£369,600	£209,000
Worcestershire County Council contribution	£15,145	£13,200	£7,465

43 After the commencement of the West Midlands franchise in October 2017, the expectation is that most of West Midlands Rail operating costs will be met by the DfT and that the requirement for direct partner authority financial contributions should be very modest.

44 In the event that any partner authority was to resign from West Midlands Rail Limited the resigning member would be required to honour its funding commitments for the duration of the applicable fiscal year.

45 A risk workshop involving partner authorities was held in July 2015 resulting in the compilation of a comprehensive risk register. West Midlands Rail project risk is

monitored and managed monthly through the West Midlands Rail Programme Board and Officers' Rail Devolution Group.

46 No financial or contractual risk for the West Midlands franchise will be held by West Midlands Rail Limited 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.

47 Financial liability for each member in the event of West Midlands Rail Limited being wound up through insolvency is limited to £1.

48 Worcestershire County Council has power to join West Midlands Rail Limited and to appoint directors to its board of directors pursuant to Section 1 of the Localism Act 2011.

Privacy Impact Assessment

49 There are no privacy implications arising directly from this report.

Equality and Diversity Implications

50 An Equality Relevance Screening has been completed in respect of these recommendations. The screening did not identify any potential equality considerations requiring further consideration during implementation.

Supporting Information

- Draft Articles of Association for West Midlands Rail Limited – available electronically

Contact Points

County Council Contact Points

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Specific Contact Points for this report

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Background Papers

In the opinion of the proper officer (in this case the Director of Business, Environment & Community) the following are the background papers relating to the subject matter of this report:

West Midlands Rail Vision – Autumn 2014