

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	Deputy Chief Executive
Date of Decision:	17th November 2015
SUBJECT:	WEST MIDLANDS RAIL LIMITED
Key Decision: Yes	Relevant Forward Plan Ref: 000615/2015
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s) or Relevant Executive Member for Local Services:	CLLR TAHIR ALI, CABINET MEMBER FOR DEVELOPMENT, TRANSPORT AND THE ECONOMY
Relevant O&S Chairman:	CLLR VICTORIA QUINN, ECONOMY, SKILLS AND SUSTAINABILITY
Wards affected:	All

1. Purpose of report:
<p>1.1 To seek approval for the proposed governance arrangements for the development and oversight of the West Midlands rail franchise through West Midlands Rail Limited (WMR Ltd).</p> <p>1.2 To seek approval for the Council's membership of WMR Ltd.</p> <p>1.3 To seek approval for the appointment of Directors to the Board of WMR Ltd.</p>

2. Decisions recommended:	
That Cabinet:-	
2.1 Approves the proposed governance arrangements set out in this report for development and oversight of West Midlands Rail (WMR) Ltd, 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 specification of the new West Midlands rail franchise being let by Department for Transport (DfT) during 2017.	
2.2 Approves the City Council joining WMR Ltd as a member.	
2.3 Authorises the appointment of the Leader of the Council as a principal director on the Board of WMR Ltd and the Cabinet Member for Development, Transport and the Economy as the substitute director on that Board.	
2.4 Authorises the Director of Legal & Democratic Services to agree and enter into or execute such documents as are necessary to give effect to these decisions.	
2.5 Notes that it is intended that WMR Ltd will, during Summer 2016, enter into a formal partnership agreement with the DfT that will set out the rights and obligations of WMR Ltd in relation to the award of the new rail franchise and related matters and that agreement will require approval by a 75% vote of WMR Ltd's members and will be the subject of a future executive report to Cabinet.	
2.6 Notes that any WMR Ltd member may resign its membership of WMR Ltd at any time, including where the member does not approve the terms of any such agreement.	
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3. Consultation
<p>3.1 <u>Internal</u></p> <p>3.1.1 Consultation has been undertaken with the Leader of the Council, the Deputy Leader of the Council, and the Cabinet Member for Commissioning, Contracting and Improvement upon the content of this report and they support the proposals proceeding to an executive decision.</p> <p>3.1.2 Officers from City Finance and Legal & Democratic Services have been involved in the preparation of this report</p> <p>3.2 <u>External</u></p> <p>3.2.1 No external consultation is being undertaken with regard to the establishment of WMR Ltd as this is considered to be a procedural governance matter. However it is expected public consultation will be undertaken by DfT and WMR regarding the specification of the new rail franchise and it is anticipated this will be the subject of a future executive report during 2016.</p>
4. Compliance Issues:
<p>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p>4.1.1 This report is consistent with the City Council's Business Plan 2015+ policies, including the primary goals for a Prosperous City and a Democratic City.</p> <p>4.1.2 This report is in accordance with the general move towards greater devolution across the UK, including the development of proposals for a West Midlands Combined Authority. More specifically, it is in accordance with the City Council's Business Plan 2015+ 'triple devolution' approach, which specifies issues of strategic planning, transport, and economic development to be addressed at Combined Authority level.</p> <p>4.1.3 The City Council's Birmingham Connected 20-year strategy for improving the City's transport network states that the proposed devolved rail franchise would be a key vehicle to progress improvements to the local rail network.</p> <p>4.2 <u>Financial Implications</u></p> <p>4.2.1 As previously agreed on 19th December 2014 by the West Midlands Leaders Rail Group (LRG), which has senior political representation from each Partner Authority, 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 currently provided through the Centro Levy, and is divided on the basis of population, in the same manner as other activities funded through the Centro Levy. For Shire/Unitary Authorities, the 25% balance is divided equally amongst the seven Authorities.</p> <p>4.2.2 Future funding requirements will be agreed by the WMR Ltd Board of Directors, and will be divided as described in paragraph 4.2.1 above. It is anticipated that funding requirements until 2017 will be associated with the normal operation of WMR Ltd in establishing the company and engaging with the DfT on specification and letting of the new franchise. As per the recommendation in para 2.5 above, WMR Ltd will, during Summer 2016, enter into a formal partnership agreement with the DfT, which will address funding requirements from 2017. This agreement will be the subject of a future executive report to Cabinet, which would include seeking approval for funding contribution from the City Council, should any such contribution be proposed as part of the partnership agreement. It is anticipated that if any contribution was approved in this manner, it would be managed within the Economy Directorate.</p> <p>4.2.3 In the event that any Partner Authority was to resign from WMR Ltd, the resigning member would be required to honour its funding commitments (as referred to in paras 4.2.1 and 4.2.2 above) for the duration of the applicable financial year.</p>

4.3 Legal Implications

- 4.3.1 The current system of rail franchising operates under the Railways Acts (1993 and 2005). For the initial devolved WMR franchise from 2017 this is being managed jointly by the DfT and WMR Ltd (on behalf of the Partner Authorities), by agreement with the Secretary of State for Transport, with the potential for further devolution in the subsequent franchise (subject to further examination by the WMR Ltd Board in the future).
- 4.3.2 The City Council has the powers to join WMR Ltd and to appoint Directors to WMR Ltd's Board of Directors under section 1 of the Localism Act 2011. Under this provision a local authority has a general power to do anything that individuals generally may do.
- 4.3.3 The host authority for the purposes of supporting the requirements of the Company (WMR Ltd), for Company due diligence purposes will be the West Midlands Integrated Transport Authority (WMITA), and then the West Midlands Combined Authority (WMCA) which, when established, will be the WMITA.
- 4.3.4 Regarding contracting/procurement implications, whilst WMR would work with the DfT on the franchising process generally, the DfT would undertake the procurement of a Train Operating Company to, as presently, operate the actual rail services. Network Rail would continue to be responsible for maintaining the rail infrastructure network (track, bridges etc). This would follow the usual procurement process for rail franchises as set out by the Railways Acts (1993, 2005), and in line with European Union procurement legislation. Key actions and timescales for the procurement process are outlined in para 5.11 below.

4.4 Public Sector Equality Duty

- 4.4.1 An initial Equalities Analysis has been carried out (ref EA000834, and is attached at Appendix E. to this report). No adverse effects have been identified from the actions recommended in this report.
- 4.4.2 This report is purely concerned with the proposed governance arrangements for the development and oversight of the rail franchise through WMR Ltd. When subsequent practical issues, such as fares and ticketing, disabled access, and the staffing of stations are considered, these will be the subject of separate Equalities Analysis as appropriate, as part of a future executive report on the public consultation to be undertaken by the DfT and WMR regarding the specification of the rail franchise, during 2016.

5. **Relevant background/chronology of key events:**

Background

- 5.1 West Midlands Rail (WMR) Partner Authorities, including the City Council, have been developing a proposal for increasing local involvement and influence over local rail services, in line with government policy on devolution and evidenced by the benefits experienced elsewhere from local control of rail services – within this context, WMR's objectives for rail devolution are as follows:
- a) Supporting economic growth by delivering more capacity and better connectivity;
 - b) Delivering a better service for passengers, encouraging modal shift, reducing carbon emissions;
 - c) Delivering a more efficient railway which is better value for the tax payer;
 - d) Unlocking the potential of the planned new High Speed Two national rail network; and
 - e) Making the West Midlands rail network more accountable to local people.
- 5.2 In order for Partner Authorities to be active partners in the future management of the WMR 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 WMITA, in the West Midlands Travel to Work Area (full list in Appendix B). The planned initial geographic extent of the rail franchise is shown in Appendix A
- which corresponds with those services currently operated by London Midland. A summary of the proposed WMR governance structure is in paras 5.3-5.7; a fuller description is in Appendix B.

Proposed West Midlands Rail Governance Structure

- 5.3 The proposition that West Midlands Partner Authorities have agreed with DfT for rail devolution includes that the specification of the West Midlands rail franchise will be led by the DfT prior to the commencement of the initial devolved franchise in 2017, with Partner Authorities having a strong involvement. Following franchise award, it is expected that WMR Ltd will, initially, jointly manage the franchise in partnership with the DfT. Partner Authorities, via WMR Ltd, will also have influence over longer-distance passenger rail franchises that provide core services through the region when they are retendered by the DfT.
- 5.4 The primary benefits from the proposed devolution of local rail services in the West Midlands are derived from the guiding strategic influence of local politicians. Consequently, robust governance arrangements that enable each of the participating Partner Authorities to have a voice are considered to be vital.
- 5.5 Leaders' Rail Group (LRG) has therefore been set up in Shadow form since 2014 and, following approval of the governance arrangements set out in this report and the Partner Authorities formally joining WMR Ltd, will in effect become the WMR Ltd Board of Directors. All the Partner Authorities are agreeing to the same recommendations contained in this report. WMR Ltd would be a company limited by guarantee, owned by the Partner Authorities. This Board would provide strategic guidance and local democratic accountability. As is the case for LRG, this Board would be formed of the Leaders or other senior representative appointed by each of the seven constituent Councils of WMITA and each of the seven Shire and Unitary Partner Authorities. For Birmingham these representatives are proposed to be the Leader of the Council, with the Cabinet Member for Development, Transport and the Economy as substitute.
- 5.6 Therefore, each of the Partner Authorities would become a member of WMR Ltd. The Board of WMR Ltd are to be responsible for determining the desired strategic direction for the specification of the West Midlands rail franchise. Going forward, and subject to agreement of each Partner Authority, the Board will oversee strategic policy matters in respect of the envisaged partnership agreement between WMR Ltd and the DfT.
- 5.7 The proposed WMR Ltd governance arrangements are capable of accommodating potential Combined Authorities should such bodies be formally established - more information is shown in Appendix C para 22.
- 5.8 A summary of the proposed Articles of Association (AoA) for WMR Ltd is shown in Appendix C with the full AoA in Appendix D.

Next Steps

- 5.9 Subject to Cabinet's agreement for the City Council to approve the proposed governance arrangements for WMR, join WMR Ltd, and appoint its Directors to the WMR Ltd Board, and providing all other Partner Authorities also agree to do so, it is expected that WMR Ltd will be formally established in December 2015.
- 5.10 The City Council will continue to work with WMR representatives, other Partner Authorities and the DfT to take forward the devolved franchise including the agreement between WMR and DfT and the specification for the franchise (including rail services, stations, and fares).
- 5.11 Subsequent key milestones for the rail franchise are shown below:
- Issue Official Journal of EU Notice/Pre-Qualification Questionnaire: December 2015;
 - Joint DfT/WMR Public Consultation on Franchise specification: Winter 2015/Spring 2016;
 - Publish Invitation to Tender: July 2016;
 - Contract Award: June 2017; and
 - Commence the new franchise: October 2017.

6. Evaluation of alternative options:

- 6.1 To not pursue the devolution of the West Midlands rail franchise, and continue with the current system of rail franchising as controlled by the DfT. However it is considered that this would not achieve the objectives of the Partner Authorities (as stated in para 5.1), and would not fit with the wider devolution agenda (as in para 4.1.2), nor with policies in Birmingham Connected (as in para 4.1.3).

- 6.2 The potential for full devolution of the rail franchise to WMR from the commencement of the initial franchise in 2017 has been explored, however it was agreed by WMR and DfT that a phased process of devolution be adopted. This will allow WMR Ltd to develop experience and capability in readiness for future full devolution, and is consistent with the approach adopted for the devolved Rail North Franchise for the North of England.
- 6.3 The proposed initial geographic extent of the rail franchise (see Appendix A) was chosen as it corresponds to that covered by the existing Franchise operated by London Midland – this is considered to be the most logical approach for a number of geographic, operational, financial, procurement, and other, reasons. However there is potential for additional/amended rail services, subject to business case, affordability and value for money - it is expected that these can be considered through the public consultation on the specification for the rail franchise, and as part of the normal rail industry planning and consultation processes, which the City Council will continue to engage with.
- 6.4 LRG has collectively expressed a view that a separate body with the purpose of engaging with DfT on the letting of the 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. Following analysis of alternative options, including an Association of the Partner Authorities or a Memorandum of Understanding, it was decided by LRG that 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.

7. Reasons for Decision(s):

- 7.1 To approve the proposed governance arrangements for the development and oversight of the West Midlands rail franchise through West Midlands Rail Limited (WMR Ltd).
- 7.2 To approve the City Council's membership of WMR Ltd and recommend the appointment by the Council of Directors to the Board of WMR Ltd.

Signatures	<u>Date</u>
Councillor Tahir Ali, Cabinet Member for Development, Transport & the Economy
Paul Dransfield, Deputy Chief Executive

List of Background Documents used to compile this Report:
<p>“West Midlands Rail Proposition and Business case”: published by Centro on behalf of West Midlands Rail, October 2014.</p> <p>“West Midlands Rail Devolution: Realising the West Midlands’ Rail Vision”: approved by West Midlands Leaders Rail Group, June 2015.</p>
List of Appendices accompanying this Report (if any):
<ol style="list-style-type: none"> 1. Appendix A: Planned Initial Geographic Extent of Devolved West Midlands rail franchise 2. Appendix B: Proposed Governance Structure for West Midlands Rail 3. Appendix C: Summary of Proposed West Midlands Rail Limited Articles of Association 4. Appendix D: Full Text of Proposed West Midlands Rail Limited Articles of Association 5. Appendix E: Equalities Analysis

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

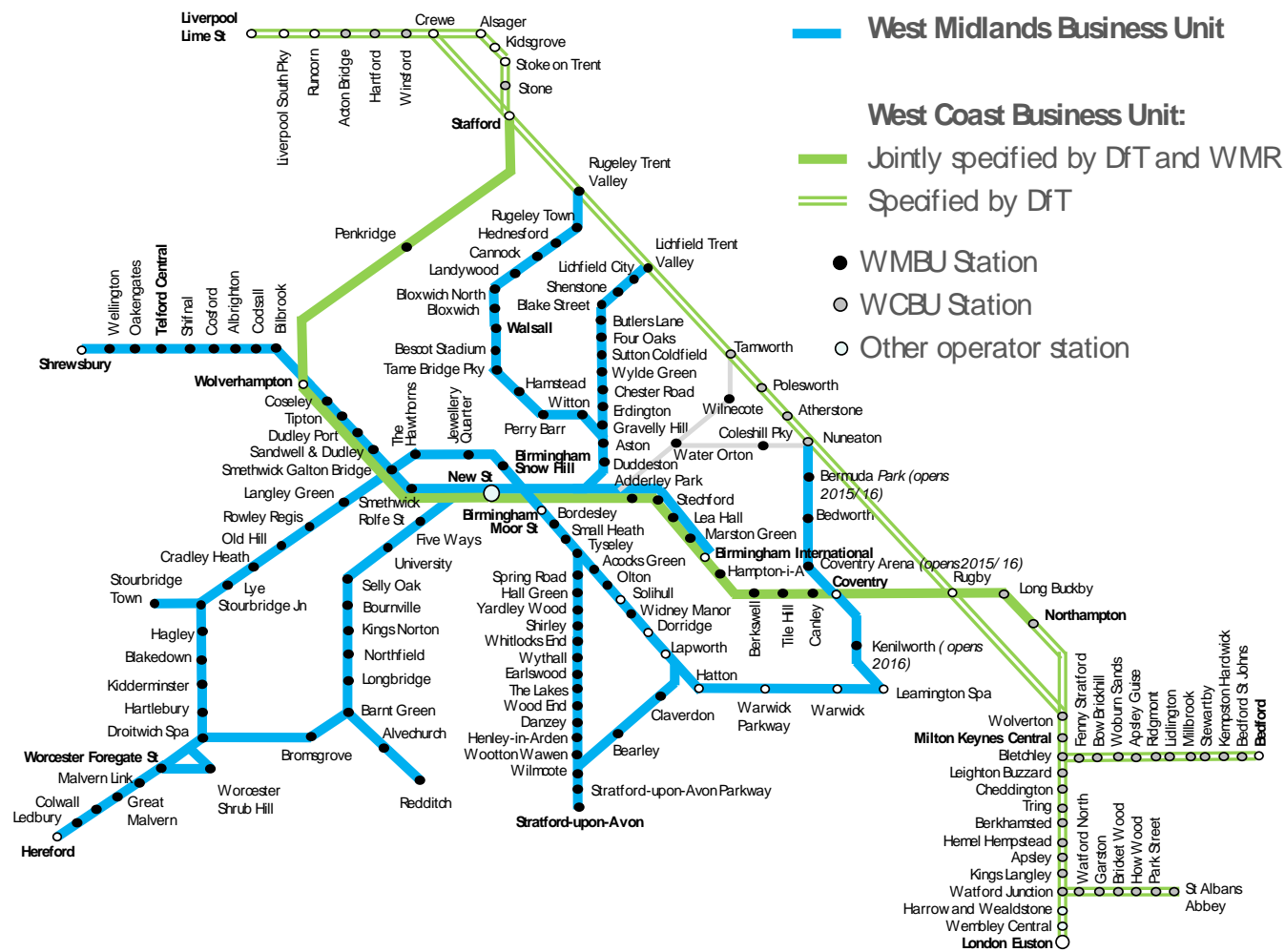
The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none"> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"> (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"> (a) tackle prejudice, and (b) promote understanding.
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none"> (a) age (b) disability (c) gender reassignment (d) pregnancy and maternity (e) race (f) religion or belief (g) sex (h) sexual orientation

Planned Initial Geographic Extent of Devolved West Midlands rail franchise

West Midlands Franchise – Business Units



Proposed Governance Structure for West Midlands Rail

1. The primary benefits from the proposed devolution of local rail services in the West Midlands are derived from the guiding strategic influence of local politicians. Consequently, robust governance arrangements that enable each of the participating Partner Authorities to have a voice are considered to be vital.
1. The principles that the governance is designed to achieve are:
 - Effective, inclusive and transparent decision making between partner authorities
 - Democratic accountability
 - Robust financial management
2. To achieve delivery of these principles the governance structure is proposed to be as follows:
 - a) Each of the Partner Authorities will become a member of WMR Ltd. A 75% vote of the members will be required to admit any further members.
 - b) Strategic guidance and local democratic accountability will be provided by the Board of Directors of WMR Ltd which will take all decisions on behalf of WMR Ltd not reserved to WMR Ltd's members. The Board will be formed of the Leaders or other senior representative appointed by each of the seven constituent councils of the ITA and each of the seven Shire and Unitary Partner Authorities or (in their absence) by substitute directors appointed by each of those authorities. Each Director will have one vote at Board meetings and decisions will also be capable of being taken in writing (including by e-mail).
 - c) The entering into by WMR Ltd of the envisaged formal partnership agreement with the DfT or any other agreement providing for the involvement of WMR Ltd in the specification, letting process or management of any rail franchise agreement, in addition to requiring the approval of the Board of Directors, will require the approval of a 75% vote of the members, as will any substantial amendment subsequently made to any such agreement. Decisions requiring to be taken by WMR Ltd under the envisaged partnership agreement will be taken by WMR Ltd's Board of Directors subject to any consultation or other similar arrangements from time to time agreed between the members of WMR Ltd. The nature of the decisions that can be taken by the WMR Board will naturally be influenced by the nature of the agreement with the DfT.
 - d) Only Partner Authority members who are local transport authorities for their areas will be entitled to vote at members meetings (including at annual general meetings, if WMR Ltd chooses to have these). The ITA will have seven votes to reflect that it represents seven constituent councils and each Shire and Unitary Partner Authority member will have one vote. The ITA's constituent councils will join WMR Ltd as Associate Members without a separate vote in addition to the votes they are able to exercise through the ITA. The ITA will need to agree a process with the constituent councils for determining what their votes would be in advance of the relevant meetings.

e) The Partnership Agreement between WMR and DfT would be held and managed by WMR Ltd.

3. 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	

Table 1 WMR Partner Authorities

WMR Ltd Board of Directors

4. Leaders' Rail Group (LRG) was set up in Shadow form at a meeting in Stafford on 25 September 2014 and, following approval of the governance arrangements set out in this Report and the Partner Authorities formally joining WMR Ltd, will in effect become the Board.
5. Each Partner Authority other than the ITA will be represented on the Board by a principal director or (in the absence of the principal director) a substitute director appointed by that Partner Authority. The ITA will in effect be represented on the Board by the appointees of the ITA's constituent councils. Each Director will have one vote at Board meetings.
6. The Board of WMR Ltd are to be responsible, initially, for determining the desired strategic direction, on behalf of 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 WMR Ltd and the DfT.
7. The Board is expected to meet at least quarterly.

West Midlands Rail Limited

8. WMR Ltd will be a separate body, acting on behalf of the ITA and Metropolitan and Shire/Unitary Partner Authorities and will be a company limited by guarantee.
9. WMR Ltd has already been formally incorporated, set-up by Centro as a dormant company in 2014 in order to preserve the availability of the company name. At the point that Partner Authorities become members of WMR Ltd, Centro will cease to be a member and upon the new directors being appointed the existing sole director will resign.
10. The key objects of WMR Ltd are:

- 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));
 - 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;
 - to improve rail passenger services and associated facilities within the West Midlands and Northamptonshire; and
 - 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.
11. The rights of Partner Authorities to be consulted by the Secretary of State about the specification for rail franchises is unaffected by the existence of WMR Ltd and will remain. Similarly, powers to procure increments from the train operator will also remain, as at present. WMR Ltd 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.
 12. The longer term role of WMR Ltd 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 WMR Ltd members. 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.
 13. It is proposed that Partner Authorities join WMR Ltd and appoint directors to WMR Ltd's Board in advance of the LRG meeting scheduled for 4 December 2015 so that that meeting will become the first meeting of the new WMR Ltd Board of Directors.

West Midlands Rail Limited Articles of Association

14. A summary of the provisions of the WMR Ltd Articles of Association are attached as Appendix C and a copy of the Articles is attached as Appendix D.

Administrative Arrangements

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

Summary of Proposed West Midlands Rail Limited 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).