



CABINET

12 JULY 2016

CORPORATE DIRECTOR FOR PLACE COMMISSIONING: TONY CIABURRO

CABINET MEMBER WITH RESPONSIBILITY FOR TRANSPORT, HIGHWAYS AND ENVIRONMENT: COUNCILLOR IAN MORRIS

Subject:	West Midlands Rail Ltd – Collaboration Agreement
Recommendations:	<p>That Cabinet:</p> <ol style="list-style-type: none"> 1. Notes progress being made by West Midlands Rail Ltd towards meeting the objectives of the company; 2. Agree that the Council (as a Member of West Midlands Rail Ltd) votes 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 (included with this report as appendix A), whether that resolution is passed in writing or at a general meeting of the Company.

1. Purpose of Report

1.1 The purpose of this report is to seek authorisation for Northamptonshire County Council to 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 setting out the relationship between WMR Ltd and the Department for Transport (DfT) in relation to the management of the forthcoming West Midlands Rail franchise and further rail devolution in West Midlands.

2. How this decision contributes to the Council Plan

The Council’s vision is to make Northamptonshire a great place to live and work. This is achieved through increasing the wellbeing of your county’s communities and/or safeguarding the county’s communities.

This initiative specifically delivers increased wellbeing and/or safeguarding by:
<ul style="list-style-type: none"> • Contributing to creating prosperous communities • Creating a Sense of Place • Getting people involved
And Through:
<ul style="list-style-type: none"> • Intelligence Led Services • Next Generation Working • Ambitious Partnerships • Commissioning and Market Developments

3. Background

- 3.1 West Midlands Rail partner authorities, including Northamptonshire County Council, 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.
- 3.2 Following approval by the partner authorities, including the Northamptonshire County Council Cabinet report in November 2015, West Midlands Rail Limited, owned by Partner Authorities was formally established in December 2015 with the following objectives:
- 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 West Midlands Rail 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.
- 3.3 The West Midlands franchise competition led by the Department for Transport (DfT) to replace the existing London Midland franchise, which covers all passenger rail services serving Northampton and Long Buckby stations, in October 2017 is well underway. West Midlands Rail is already working in close partnership with the competition team, including the secondment of two employees from the West Midlands Combined Authority to the Department for Transport, and additional direct input to the Joint Project Board for competition.
- 3.4 The franchise will be let by the Department for Transport and as such, financial and contractual risk for the franchise will remain with central government. However, it is a longer term aspiration of the West Midlands Rail Limited partner authorities that future rail franchises for local services within the West Midlands might be entirely devolved to local control, as is the case on Merseyside, and it is expected that during the next franchise term, the options for increased devolution with transfer of funding and powers will be explored. Any such changes to the Collaboration Agreement in the future, to enable such advancement of devolution would require a special resolution of West Midlands Rail Limited to approve under Article 8.3.
- 3.5 The proposition that West Midlands Rail Limited has agreed with the Department for Transport for rail devolution in the West Midlands includes the following features:
- a) The existing London Midland franchise will split into two separable business units after the new West Midlands Rail Franchise is let in 2017; a West Midlands Separable Business Unit and a West Coast Separable Business Unit.

Services to Northampton and Long Buckby, being through services from London to Birmingham, will form part of the West Coast Separable Business Unit (see map in Appendix 2).

- b) The specification of the West Midlands Rail Franchise is being led by the Department for Transport, with West Midlands Rail Ltd having a strong involvement. Following franchise award it is expected that West Midlands Rail Ltd will jointly manage the franchise in partnership with the Department for Transport. This will allow West Midlands Rail Ltd to develop experience and capability in readiness for future full devolution.
- c) Partner Authorities, via West Midlands Rail Ltd, will also seek influence over franchises that provide core services through the region when they are retendered.

4. Progress update

4.1 In recent months, demonstrable progress towards achieving the West Midlands Rail Ltd objectives has been made:

- A joint Department for Transport/West Midlands Rail public and stakeholder consultation for the new franchise, led by a West Midlands Rail secondee has been carried out, with a substantial number of public and stakeholder events held across the region. All West Midlands Rail partner authorities responded to the consultation;
- Agreement has been reached with the Department for Transport that two separable business units will be created in the West Midlands franchise enabling local control and management of local services in the West Midlands;
- The Department for Transport has given approval for West Midlands Rail to specify the name, identity and brand guidelines for the West Midlands Separable Business Unit. The identity, which was approved by the West Midlands Rail Board of Directors at their meeting in March 2016, will provide a brand identity that is 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; and
- The drafting of a Collaboration Agreement (the subject of this report), setting out how the Department for Transport will work with West Midlands Rail to further rail devolution for the region, and provide an influential and meaningful role for West Midlands Rail in the active management of the West Midlands Separable Business Unit.

4.2 At the time that Cabinet approval sought to establish West Midlands Rail Ltd in November 2015, it was anticipated that a formal agreement outlining the collaboration with the Department for Transport would be required. The Collaboration Agreement,

which has been drafted by West Midlands Rail and the Department for Transport, is intended to govern the relationship between the two organisations, and sets out the rights and obligations of both parties.

5. The Collaboration Agreement

5.1 The Collaboration Agreement has been drafted in stages by the Department for Transport and West Midlands Rail. In March 2016, the West Midlands Rail Board of Directors 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 1 of this report for approval, was approved in principle by the West Midlands Rail Board of Directors in June 2016.

5.2 In summary, the Collaboration Agreement sets out:

- a) The role for West Midlands Rail during the period until the creation of the West Midlands Separable Business Unit;
- b) The role for West Midlands Rail 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. The Strategic Board will consist of four members ; two each for the Department for Transport and West Midlands Rail Ltd and may in addition include an independent chair. To be quorate for the purpose of making decisions by majority t least one person from each organisation must be present and vote in favour of the relevant matter. The role of the Strategic Board will be to oversee the management of the West Midlands Separable Business Unit, 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 to be undertaken by a West Midlands Rail Ltd employee (employed by West Midlands Combined Authority as the host authority). The costs for this employee will be met by the Department for Transport and West Midlands Rail Ltd as set out in clause 9.1 of Appendix 1;
- e) The ability for West Midlands Rail to propose and require cost-reducing, self-funding or West Midlands Rail-funded changes to passenger services and fares, subject to there being no adverse financial consequences for the Secretary of State and the agreement of the Franchisee where required under the Franchise Agreement.. 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 West Midlands Rail Ltd after the commencement of the 2017 West Midlands Franchise, which include for the majority of funding to be provided by the Department for Transport (see clause 9.1 of Appendix 1);

- g) How further devolution will be taken forward, including the option for West Midlands Rail 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 West Midlands Rail 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 the 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 and any other specific actions that may be required under the Railways Act 2005. The Secretary of State is entitled to update the Reserved Matters from time to time.;
- j) The Collaboration Agreement is expected to remain in force until superseded or terminated. The Secretary of State may terminate the agreement where West Midlands Rail Ltd ceases to be substantially representative of the local transport authorities within the West Midlands Rail area or in advance of the award of the 2017 West Midlands Franchise should Government policy change. (Provision for the County Council or any other partner authority to withdraw from West Midlands Rail Ltd is contained within the company's Articles of Association, as appended to the November 2015 Cabinet report).

6. Timescales

6.1 The table below outlines the key milestones going forward:

Publish Invitation to Tender	July 2016
Signing of Collaboration Agreement by West Midlands Rail Ltd and Secretary of State	September 2016
Contract Award	June 2017
Franchise Commencement	October 2017

7. Consultation and Scrutiny

As noted in section 4.1, an extensive stakeholder and public consultation has been carried out jointly by West Midlands Rail and the Department for Transport. This will be used by the Department for Transport to set out the specification for the new franchise in the Invitation for Tender which is expected to be published in July 2016.

8. Equality Screening

- 8.1 An Equalities Impact Assessment was completed alongside the cabinet report in November 2015, and remains current. The Assessment can be found at <http://www.northamptonshire.gov.uk/en/councilservices/Council/equalities/Pages/eqceia.aspx>

9. Alternative Options Considered

The Collaboration Agreement is a requirement of the Department for Transport to allow devolution to proceed, and therefore no alternatives have been considered.

10. Financial Implications

- 10.1 Currently, West Midlands Rail Ltd is funded entirely by contributions from Partner Authorities. As previously agreed by the West Midlands Rail Board, and as applied for 2016/17, funding for West Midlands Rail is divided between Metropolitan districts (75%) and Shire/Unitary authorities (25%). For Shire/Unitary authorities, the 25% balance is divided equally amongst the seven authorities, and amounts to £13,200 per authority, met from existing transport budgets.

- 10.2 It is recognised by the Department for Transport that West Midlands Rail partner authorities are not funded to undertake rail franchise management, although it should be noted that the economy of the region is expected to benefit from the improvement rail services that are expected to result from local involvement in specification and management. Discussions with Department for Transport to agree funding have resulted in the majority of funding to be provided by Department for Transport (up to £500,000), with a minimum £140,000 contribution from West Midlands Rail Ltd member authorities. It is expected that the split of funding will continue to be determined as described above.

- 10.3 It is therefore anticipated that the ongoing cost to the County Council of membership of West Midlands Rail Ltd will be significantly less than the £13,200 in 2016/17. However, West Midlands Rail 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 West Midlands Rail Board in due course.

11. Risk and Business Continuity Management

- 11.1 As noted in paragraph 8, financial and contractual risk is initially with Department for Transport. It is possible that risk could pass to West Midlands Rail Ltd (but West Midlands Rail Members would only share in that risk in accordance with such arrangements as they agree at the time, given West Midlands Rail Ltd's limited liability status) in either of the following ways:

- a) Where West Midlands Rail Ltd enters into arrangements where it has funded a service enhancement as referred to in clause 10.1 of Appendix 1, in which case it would be liable to continue to pay for this;
- b) Where there is a transfer of powers/funding to West Midlands Rail Ltd, as referred to in clause 11 of Appendix 1. However, any such transfer would

constitute a “substantial amendment” to the Collaboration Agreement and would therefore require a special resolution of West Midlands Rail Ltd to approve under Article 8.3 of the company’s Articles of Association.

11.2 It remains the case that should any West Midlands Rail Member (including the County Council) not be content with any amendments to the Collaboration Agreement, they can at any time resign from membership of West Midlands Rail Ltd under Article 30.1 of the company’s Articles of Association, although it should be noted that the Department for Transport have a right to terminate the Collaboration Agreement in the event that West Midlands Rail ceases to be “substantially representative of the local transport authorities within the West Midlands Area”.

11.3 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 West Midlands Rail Officers’ Rail Devolution Group and reported to the West Midlands Rail Board.

a) Risk(s) associated with the proposal

Risk	Mitigation	Residual Risk
County Council is committed to wider partner aspirations which it does not support	County Council has the right to withdraw from West Midlands Rail Ltd	Green
Ongoing financial impact of the proposal	Proposal includes majority of funding being met by DfT	Green

b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
Devolution will not take place, and benefits of local specification will not be realised.	Amber

12. List of Appendices

Appendix 1 – Collaboration Agreement

Appendix 2 – Map of West Midlands franchise

Author:	Name: Chris Wragg Team: Northamptonshire Highways
Contact details:	Tel: 01604 364411 Email: cwragg@northamptonshire.gov.uk
Background Papers:	
Does the report propose a key decision is taken?	YES
If yes, is the decision in the Forward Plan?	YES
Will further decisions be required? If so, please outline the timetable here	Not apparent at this time.
Does the report include delegated decisions? If so, please outline the	NO

timetable here	
Is this report proposing an amendment to the budget and/or policy framework?	NO
Have the financial implications been cleared by the Strategic Finance Manager (SFM)? Have any capital spend implications been cleared by the Capital Investment Board (CIB)?	YES Name of SFM: Rosemary Pallot N/A
Has the report been cleared by the relevant Director?	YES Name of Director: Tony Ciaburro
Has the relevant Cabinet Member been consulted?	YES/NO Cabinet Member: Councillor Ian Morris
Has the relevant scrutiny committee been consulted?	NO Scrutiny Committee: Environment, Development and Transport
Has the report been cleared by Legal Services?	YES Name of solicitor: Karen White Solicitor's comments:
Have any communications issues been cleared by Communications and Marketing?	YES Name of officer: Liam Beasley
Have any property issues been cleared by Property and Asset Management?	N/A Name of officer:
Are there any community safety implications?	NO. None apparent.
Are there any environmental implications:	NO. None apparent.
Are there any Health & Safety Implications:	NO. None apparent.
Are there any Human Resources Implications:	NO. None apparent.
Are there any human rights implications:	NO. None apparent.
Constituency Interest:	Countywide