

# Cabinet

8 July 2021

## West Midlands Rail Collaboration Agreement

### Recommendations

- 1) That Cabinet notes the new West Midlands Rail Limited/Department for Transport Collaboration Agreement ("CA2") approved in principle by the West Midlands Rail Limited Board in June
  
- 2) That Cabinet endorses the changes made in CA2 and supports the implementation of CA2 from 13<sup>th</sup> September 2021 as outlined in report.

### 1. Executive Summary

- 1.1 The national changes to rail franchising as a consequence of the COVID-19 pandemic mean that the existing Collaboration Agreement between West Midlands Rail Ltd (WMRL) and the Department for Transport (DfT) will terminate in September 2021. Therefore, a new agreement must 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.
  
- 1.2 Warwickshire County Council is a constituent member of West Midlands Rail Limited (WMRL). In accordance with the WMRL Articles of Association, any change to the WMRL relationship with the DfT or substantial changes to that agreement must gain the prior approval of WMR 'Member' authorities by special resolution. As such, the change to the Collaboration Agreement drafting must be endorsed by a minimum of 75% of Member authorities.
  
- 1.3 Although it is not a requirement under the Articles, it is recommended that the proposal to support CA2 be taken through governance at each of the 14 partner authorities for clarity and to ensure all members of WMRL are fully sighted on the proposals. This is consistent with the approach taken to previous Special Resolutions.
  
- 1.4 The WMRL Board Members will consider this issue in advance of September 2021 and Warwickshire's Board member will have a vote.
  
- 1.5 The 2016 Collaboration Agreement (referred to as CA1) between WMRL and the DfT is the primary agreement by which WMRL'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 WMRL approval.

- 1.6 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 via a £500K grant each year; and
  - e) An annual meeting between WMRL Chair and Vice Chair and the Secretary of State or a Minister.
- 1.7 CA1 is coterminous with the West Midlands Franchise Agreement, originally intending to run until March 2026. However, the changes to passenger rail contracting by the DfT in response to the COVID crisis now mean that the Franchise Agreement is expected to terminate on 19 September 2021. Therefore, it is now necessary to negotiate and enter into a successor agreement with the DfT to take effect from the termination of the existing Franchise Agreement.
- 1.8 Discussions between West Midlands Rail Executive (WMRE) and DfT have concluded that in general CA1 has worked effectively and is a solid foundation on which to build. Consequently, the revised Collaboration Agreement (referred to as CA2), represents an evolution of the original Collaboration Agreement.
- 1.9 The main areas of amendment in CA2 reflect the changing nature of rail franchising and the meeting structure between WMRE and DfT. The latter was based on the model used by Transport for the North for the Northern and Trans Pennine Franchises, but experience has shown that it is not as effective for the West Midlands Franchise. There are no proposed changes to the grant WMRL receives from DfT, or to the arrangements in place for the savings account held jointly between WMRL and DfT. A summary of the changes between CA1 and CA2, can be found in appendix A. The proposed draft CA2 (currently being agreed by DfT legal team) is available if required.
- 1.10 The CA2 draft is currently being reviewed by Pannone Corporate, the WMRL external legal advisors. The CA2 was approved in principle by the WMRL Board at its AGM on 15 June 2021. Cllr Butlin, as the Warwickshire Board Member, voted on behalf of Warwickshire County Council, and will have a further vote when the matter is considered in September.

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

## **2. Financial Implications**

- 2.1 The financial implications remain unchanged, and the commitment from DfT to fund WMRL for franchise management costs (£500K per year) remains and it anticipated that this funding commitment will form part of the new Collaboration Agreement. There is no proposed change to the level of contribution sought from WMRL partner authorities, which currently stands at £14,500 per year.

## **3. Environmental Implications**

None.

## **4. Supporting Information**

- 4.1 There is the risk that the proposed CA2 is not agreed by DfT. If this is the case, further work will be required to find a solution both parties are content to move forward with. If further substantive changes are made a further report will be presented to Corporate Board and Cabinet.

## **5. Timescales associated with the decision and next steps**

- 5.1 The WMRL Board approved the new Collaboration Agreement in principle at the meeting on 15<sup>th</sup> June 2021. It is proposed that Members of the Board will have a final vote on the proposed agreement at the September Board meeting. If the vote is in favour of the proposal, it is anticipated that the new Collaboration Agreement will come into effect on 19<sup>th</sup> September 2021 when the existing Franchise Agreement is set to terminate.

## **Appendix**

Summary of Changes made to CA2 from CA1

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## Appendix - Summary of Changes made to CA2 from CA1

### **Commercial Terms for New Collaboration Agreement Between Secretary of State for Transport and West Midlands Rail Limited (hereafter referred to as West Midlands Rail Executive)**

#### Principle

This document is based on the April 2017 Collaboration Agreement, and whilst this will be a whole new agreement between the parties, the principle is that the New Collaboration Agreement will build on the current agreement and unless specified the terms should remain the same for the new contract.

#### Term

The Agreement will start when the new contract between the Secretary of State and the operator for West Midlands Trains commences and will run co-terminus with that contract. This is currently planned for [xx] please fill in September 2021 until [xx] please fill in [March 2026].

#### Changes to Definitions

- (a) All references to either 2017 WM Franchise or 2017 WM Franchise Agreement to be replaced with 2021 WM National Rail Contract
- (b) Change Rail Investment Strategy or HLOS to Rail Network Enhancement Pipeline
- (c) Change WCSBU to read London Northwestern Railway Business Unit (LNRSBU) to include a map as an Annex to the Collaboration Agreement
- (d) Change WMSBU to read West Midlands Railway Business Unit to include a map as an Annex to the Collaboration Agreement
- (e) Add a definition of WMRE area – WMRE to provide definition and map

#### Purpose

Revise purpose to read:

Rail services have a significant impact on the economy and lives of people living and working in the West Midlands. The aim of this Collaboration Agreement is to ensure meaningful local democratic influence over the operation and development of the rail network. The Parties intend to collaborate over the delivery and development of rail services in the WMRE area for the benefit of passengers and the regional economy (Purpose) and the Parties shall each use their respective reasonable endeavours to give effect to the Purpose through the operation of this Agreement.

#### Changes to Section 6 Phase 1 – rename to General Provisions

Remove all drafting and replace with a section titled 'Objectives'. These objectives will be that:

(a) West Midlands Rail Executive (WMRE) to work with the SoS in partnership to manage the WMT rail contract, and in particular lead on non-Reserved Matters regarding the WMSBU.

(b) For the SoS and WMRE to work in a way which promotes rail as part of an integrated transport system in the WMRE area consistent with the objectives of both organisations

(c) WMRE to act as coordinator and enabler of collaboration between all SoS rail contracts and Network Rail in the WMRL area, working in partnership with other DfT officials as appropriate in support of delivery of wider WMRE and SoS objectives and operator contract obligations

(d) Ensure that whilst recognising the constraints of the Reserved Matters, the SoS and WMRE work together throughout the period of the Agreement to enhance the capability of both organisations.

(e) Anything else the parties jointly agree that should be pursued

Strategic Board to be deleted and replaced with a section titled 'Meeting Structure'

All existing drafting to be deleted and replaced with:

(a) The Secretary of State (or Minister) shall meet with the WMRL Board Chair and Vice Chairs on an annual basis to discuss the progress in achieving the Objectives and the Purpose.

(b) A quarterly senior meeting between WMRE and the SoS officials chaired by the Markets Director, North and will include at least: Market Lead, Senior Commercial Manager, Commercial Manager and representatives from Programme Director's team in Rail Infrastructure from the Department for transport and Executive Director WMRE and Lead on WMSBU Management. This meeting will cover at least the following: current performance and forward look to strategically important matters over the forthcoming 12 months

(c) An Annual meeting between the Managing Director Passenger Services and the Chair and Vice Chairs of WMRE to discuss matters relating to the execution of this Agreement, the further development of the relationship between the Parties and any other relevant rail matters in the WMRE area.

(d) A meeting every four weeks of the Management Team. Such items that are discussed shall be agreed by the team.

Reference to Schedule 2 required.

'Franchise Management' to be renamed to 'Commercial and Contract Management'

Changes will be required in this section to reflect the updated Agreement only. There are no fundamental changes.

'Ongoing Engagement' to be replaced with 'Attendance at Governance Meetings'

This section should be replaced with an opportunity to attend, as appropriate, the relevant governance meetings of each party relating to matters of mutual interest (such as WMRL Board, SIAP, SOAP etc.).

Dispute Resolution Procedure

Delete entire section and replace with [to be decided]. To include strengthened WMRL arrangements which will include role of WMCA Monitoring Officer and political leadership.

Notices

Contact information to be revised and updated.

Schedule 1

Remove as superseded by expanded Purpose.

Schedule 2

Remove reference to Joint Strategic Board and retitle to Joint Meeting Structure Responsibilities

Schedule 3

Retain drafting and update .

Schedule 5

Remove year 1 obligations and update remainder