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Cabinet

26 November 2015

**Name of Cabinet Member:**

Cabinet Member for Policy and Leadership, Councillor Mrs Lucas

**Director Approving Submission of the report:**

Executive Director Place

**Ward(s) affected:**

All

**Title:**

Establishment of and Appointment of Directors to West Midlands Rail Limited

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**Is this a key decision?**

Yes – It is anticipated that the proposals within the report would result in a significant impact on residents and/or businesses across the whole of the City.

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**Executive Summary:**

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 (WMR Ltd) and to approve the Council's membership of WMR Ltd and the appointment of Directors to the board of WMR Ltd.

WMR Ltd will be an arms-length company that will work with Government and the Department of Transport (DfT) to specify the contract for the operation of the West Midlands Rail network, which is proposed to be a variant of the current London Midland network that will be split into different business units. This will provide local influence over issues like the specification of rail service frequencies, destinations, fares and integration of rail ticketing with other public transport ticketing and staffing at stations.

WMR Ltd will not be responsible for letting the West Midlands Rail Franchise contract, but will have roles and responsibilities alongside DfT for the development and management oversight of it. WMR Ltd therefore will not be subject to direct financial risks arising from the resulting contract with the train operating company. Additionally it will not be responsible for the day to day operation of the train services, which would be undertaken by the train operating company.

The establishment of WMR Ltd is highly likely to happen irrespective of whether Coventry becomes a member or not. The West Midlands Integrated Transport Authority will become a member. If Coventry does not join it will not have the opportunity to gain a level of formal influence on specification of rail services in the West Midlands, which it does not currently benefit from. If Coventry joins it will gain direct influence and the ability to the franchise holder to account for their performance. Whether Coventry is a member or not, the level of control which members of public perceive it has over the rail industry would be unlikely to change, and in the

future as now, a train operating company would be responsible for delivering services, managing staff and day to day operation.

**Recommendations:**

1. Approve the proposed governance arrangements set out in this report for the development and oversight of the West Midlands Rail 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 the specification of the new West Midlands rail franchise being let by the Department for Transport (DfT) during 2017.
2. Approve Coventry City Council joining West Midlands Rail Ltd as an Associate member.
3. Approve the appointment by the Council of the Cabinet Member for Policy and Leadership as a principal director on the Board of West Midlands Rail Ltd and the Deputy Cabinet Member for Business, Enterprise and Employment (Transportation) as their substitute director on that Board.
4. Authorise the Executive Director of Resources or his nominee to agree and enter into or execute such documents as are necessary to give effect to these decisions.
5. To note 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 Ltd in relation to the award of the new West Midlands Rail Franchise and related matters, and that:
  - a) the agreement will require approval by a 75% vote of West Midlands Rail Ltd's members and will be the subject of a future report to Cabinet/Council; and
  - b) any West Midlands Rail Ltd member may resign its membership of West Midlands Rail Ltd at any time, including where the member does not approve the terms of any such agreement.

**List of Appendices included:**

Appendix A - West Midlands Rail Schematic Map

Appendix B - Summary of West Midlands Rail Ltd Articles of Association

Appendix C - West Midlands Rail Ltd Articles of Association

**Other useful background papers:**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No:

**Will this report go to Council?**

No

**Report title: Establishment of and Appointment of Directors to West Midlands Rail Limited**

**1. Context (or background)**

- 1.1 To date there has been limited local influence on the provision of rail services. This has led to a disjoint between local transport provision and rail service provision, for example in the way stations are operated or fares policies are set. This has been a concern because whilst rail is a relatively small proportion of mode share, rail use is growing fast and it has been shown to have a very significant impact on the economic activity and regeneration.
- 1.2 As a consequence, over the last 2 to 3 years a group of Local Authorities from across the Midlands have come together to seek greater influence and management over the West Midlands local rail network. This was initially being done through informal working groups of Members and Officers, working through a Regional Rail Forum and more recently through a Leader's Rail Group, comprising Leaders from 14 Shire and Metropolitan Authorities and supported by Centro.
- 1.3 The most significant opportunity to influence rail services provision and quality in the current model of privatised railway operation is when service franchises are re-let. Two major franchises – West Coast Mainline (Virgin Trains) and London Midland – are due to be re-let in late 2017 and Government procurement work for these has now started. The initial objective for an improved West Midlands rail network has been to directly influence this process in a meaningful and tangible way.
- 1.4 In response to these aspirations the Secretary of State for Transport has made a commitment to work with Partner Authorities and the process for the letting of a new West Midlands Rail Franchise is now underway, and is already being developed with the Partner Authorities.

**1.5 Proposed West Midlands Rail Franchise**

- 1.5.1 It is expected that the existing London Midland franchise will be split into two business units early in the new franchise term. One of these will be for the West Midlands local rail network of services, and the other those operated predominantly on the West Coast Main Line.
- 1.5.2 Some important local routes, in particular on the Birmingham – Stafford and Birmingham – Coventry – Northampton routes will be operated by the West Coast Main Line business unit, and Partner Authorities are also expecting to be able to contribute to the specification and management of these services. However, it is clear that because of the significant interfaces with other franchise service groups, for example with services into London from the North the level of influence will be more limited.
- 1.5.3 The franchise will be let by the DfT and as such, 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 could be entirely devolved to local control, as is the case on Merseyside. It is expected that during the next franchise term, the options for increased devolution with transfer of funding and powers will be explored. However, any such increased devolution direct to Partner Authorities would require the further approval of the Partner Authorities and any changes to WMR Ltd's partnership agreement with the DfT would require the approval of a 75% majority of WMR Ltd members.

1.5.4 The proposition that Partner Authorities have agreed with DfT for rail devolution in the West Midlands includes the following features:

- The existing London Midland franchise will split into two business units after the West Midlands Rail Franchise is let in 2017; a West Midlands Rail Local Business Unit and a West Coast Business Unit (see map in **Appendix A**).
- The specification of the West Midlands Rail Franchise will be led by the DfT, with Partner Authorities having a strong involvement, including staff from West Midlands Passenger Transport Executive (Centro) on behalf of the West Midlands Integrated Transport Authority (WMids ITA) and some Partner Authority and/or Centro staff being seconded to work alongside the DfT's team on behalf of the Partner Authorities and WMR Ltd. Following franchise award, it is expected that WMR Ltd will jointly manage the franchise in partnership with the DfT. This will allow WMR Ltd to develop experience and capability in readiness for future full devolution.
- As a formal rail industry stakeholder Partner Authorities, via WMR Ltd, will also have some influence over the specification of franchises that provide core services through the region when they are retendered.

## 1.6 Governance of West Midlands Rail

1.6.1 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 WMids ITA in the West Midlands Travel to Work Area. Partner Authorities expected to participate in WMR are shown in Table 1, below:

<b>Metropolitan Authorities</b>	<b>Shire and Unitary Authorities</b>
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

1.6.2 The creation of a separate body with the purpose of engaging with DfT on the letting of the West Midlands Rail Franchise, and subsequently participating in the management of the Franchise, has been identified by DfT and the Leaders Rail Group as the preferred vehicle for providing strong governance.

1.6.3 No appropriate existing bodies or joint committees could be identified which adequately reflected the geography for the relevant local rail services, which incorporates a broad and disparate group of local authorities from across the East and West Midlands. The expedient approach acceptable to the Department for Transport was to set up a company limited by guarantee, owned by the Partner Authorities, as addressed by this report. This has advantages over a Joint Committee in terms of being ready for any future potential contracting role within the franchise re-letting process.

1.6.4 A formal Partnership Agreement is to be negotiated between WMR Ltd and DfT which will govern the relationship between the two organisations, and will set out the rights and obligations of both parties.

1.6.5 The Partnership will have two distinct phases of development:

- Phase 1: The period between now and the commencement of the new West Midlands Rail Franchise in 2017, during which WMR Ltd and DfT will work collaboratively on the franchise design and procurement processes although the Secretary of State for Transport will retain responsibility for letting the franchise; and
- Phase 2: The period following the commencement of the new West Midlands Rail Franchise, during which it is expected that the relationship between WMR and DfT will develop into a clearly governed partnership for managing the franchise.

1.6.6 The principles that the governance is designed to achieve include:

- Effective, inclusive and transparent decision making between partner authorities
- Democratic accountability
- Robust financial management for aspects of the contract managed on behalf of DfT.

1.6.7 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 WMids 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 can also be taken in writing (including by e-mail).
- c) In addition to Board approval, a 75% vote of the WMR Ltd members will be required for any agreement involving WMR Ltd in the specification, letting process or management of any rail franchise agreement.
- 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).
- e) The WMids ITA will have seven votes at member meetings to reflect that it represents seven constituent councils and each Shire and Unitary Partner Authority member will have one vote.
- f) The WMids ITA's constituent councils will join WMR Ltd as Associate Members without an individual vote, because their vote at member meetings would be exercised through the WMids ITA. However, they would exercise individual votes through their representative Board Directors of WMR Ltd on matters that were not reserved for member meetings.
- g) The Partnership Agreement between WMR Ltd and DfT would be held and managed by WMR Ltd.

## 1.7 **Proposed West Midlands Rail Limited**

1.7.1 WMR Ltd will be a separate body, acting on behalf of the WMids ITA and Metropolitan and Shire / Unitary Partner Authorities and will be a company limited by guarantee.

- 1.7.2 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.
- 1.7.3 The key objects of WMR Ltd are:
- a. to promote where appropriate the devolution of responsibility for rail passenger services and associated facilities in the West Midlands and Northamptonshire to local transport authorities or other appropriate local authorities or bodies;
  - b. to manage or to assist in managing the performance of rail passenger services operating within the West Midlands and Northamptonshire in-line with the relevant agreements made with WMR Ltd;
  - 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.
- 1.7.4 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 incremental service improvements 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.
- 1.7.5 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 will require agreement by 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.

## **1.8 WMR Ltd Board of Directors**

- 1.8.1 Following approval of the governance arrangements set out in this Report the Partner Authorities formally joining WMR Ltd will in effect become the Board.
- 1.8.2 Each Partner Authority (other than the WMids 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 WMids ITA will in effect be represented on the Board by the appointees of the WMids ITA's constituent Councils, as appointed by each constituent Council. Each Director will have one vote at Board meetings.
- 1.8.3 Initially the Board of WMR Ltd are to be responsible for determining the desired strategic direction for the specification of the new West Midlands Rail Franchise. Going forward, and subject to the further 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.
- 1.8.4 The Board is expected to meet at least quarterly.

## **1.9 West Midlands Rail Limited Articles of Association**

- 1.9.1 A summary of the provisions of the WMR Ltd Articles of Association are attached as Appendix B and a copy of the Articles is attached as Appendix C.

## **1.10 Administrative Arrangements**

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

## **2. Options considered and recommended proposal**

- 2.1 There has been detailed discussion at length with the Department of Transport around options to increase local influence on rail services in the West Midlands. Initially these centred on a model where the franchise would be entirely procured and managed locally using funding devolved from central Government. As an option this was discounted by the Secretary of State and instead the arrangement set out in this report is the only option for change available to the area.
- 2.2 It would be possible for Coventry not to join the West Midlands Rail Ltd, in which case the other 14 authorities involved would be likely to continue to pursue the proposals. However, Coventry's lack of involvement would undermine the integrity of the arguments for local devolution from central Government and require an alternative proposal to be identified that enabled the WMids ITA to participate, but for Coventry City Council (a constituent member of the WMids ITA) to not participate. Any such discussion is likely to take time, which may well prejudice the ability to engage fully in the most immediate opportunity to influence the West Midlands Rail Franchise specification.
- 2.3 Without involvement in West Midlands Rail Ltd, or a body substantively similar, Coventry's ability to influence the rail industry will remain similar to how it has been in the last 10-15 years or more. This period has seen Coventry's rail needs and the materialisation in Coventry of some of the highest rail patronage growth in the UK largely overlooked by the rail industry. More recently some progress has been made with future rail planning, with the importance of reinstating direct Coventry-Leicester services starting to be recognised in the long term planning process. However, on-going issues with industry planning and delivery to support local investment in Coventry-Nuneaton services highlights the challenges which arise from having no formal influence over the rail industry or ability to hold organisations to account.
- 2.4 There is significant further benefit to progressing Coventry's aspirations for improved rail connectivity to be gained from formally increasing levels of meaningful influence in rail industry planning and delivery.
- 2.5 Membership of West Midlands Rail Limited is recommended because it can only assist this, with no material negative implications at this stage. Decisions on the future role of West Midlands Rail Ltd in the direct letting of contracts, or other key decisions which could have significant implications, would be subject to further Cabinet and/or Council approval, as appropriate. In such an event, Coventry would have the opportunity to leave West Midlands Rail Ltd if it did not wish to participate further.

## **3. Results of consultation undertaken**

- 3.1 A consultation will be undertaken jointly with DfT commencing in December 2015 on the franchise specification. No other specific public consultation has been undertaken on the proposals for West Midlands Rail.

- 3.2 Leaders, or their delegates, of the Authorities involved have been consulted on the development of the proposals through the Leaders Rail Group and for Coventry through the WMids ITA.

#### 4. Timetable for implementing this decision

- 4.1 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 WMR Ltd and having formally appointed their Leaders and/or other chosen nominees to the Board of Directors.
- 4.2 The main milestones going forward are shown in Table 2 below:

Issue OJEU/PQQ	December 2015
Public Consultation	Winter 2015 / Spring 2016
Publish ITT	July 2016
Contract Award	June 2017
Commence Service	October 2017

Table 2 West Midlands Franchise Key Milestones

#### 5. Comments from Executive Director of Resources

##### 5.1 Financial implications

As previously agreed by Leader Rail Group 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 provided through the Centro levy. For Shire/Unitary authorities, the 25% balance is divided equally amongst the seven Partners.

Future funding requirements will be agreed by the WMR Ltd Board of Directors, and will be divided as described above.

For the remainder of the franchise competition period, the agreed budget for 2015/16 and anticipated costs for the following two years are shown in table 3, below:

Description	2015/16	2016/17	2017/18 (7 Months)
1. Franchise Specification	£220,000	£100,000	£0
2. DfT/WMR Agreements	£25,000	£15,000	£15,000
3. WMR Governance and Admin	£5,000	£85,000	£80,000
4. Project/Programme Support	£135,500	£136,000	£95,000
5. Contingency (10%)	£38,550	£33,600	£19,000
<b>Total</b>	<b>£424,050</b>	<b>£369,600</b>	<b>£209,000</b>



Although it is yet to be confirmed, it is anticipated that costs for the Met Districts after 2015/16 and in the run-up to the commencement of the franchise will continue to be met through the Centro Levy. Currently proposals are being developed by Centro to meet their targets for continuing to reduce the levy and these will be considered by the WMids ITA in due course. Therefore it is not expected that Coventry City Council will have to pay an increased Centro levy as a result of this proposal, although this will not be confirmed until the levy for future years is agreed.

After the commencement of the West Midlands franchise in October 2017, the current assumption is that most WMR operating costs will be met by the DfT, and that the requirement for direct Partner Authority financial contributions should be very modest.

In the event that any Partner Authority were to resign from WMR Ltd. in accordance with, the resigning member would be expected to honour its funding commitments for the duration of the applicable financial year

## **5.2 Legal implications**

The Council has the power to join WMR Ltd and to appoint a director and substitute director to its Board of Directors under its general power of competence under section 1 of the Localism Act 2011. As a company limited by guarantee, WMR Ltd will need to operate in accordance with the Companies Act 2006 and any other relevant legislation.

Members should be clear that because the City Council is not a local transport authority, it will only have voting rights through the Director it appoints in its role as a member of the WMids ITA. As an Associate Member, it will have no voting rights.

## **6. Other implications**

### **6.1 How will this contribute to the Council's priorities?**

<http://www.coventry.gov.uk/councilplan>

Coventry has invested heavily in rail improvements by building a new local station at the Arena and in pursuing a major upgrade to Coventry Station. Membership of West Midlands Rail Ltd would provide a further opportunity to influence investment in the rail services and network serving Coventry, so helping support Coventry's economic regeneration.

### **6.2 How is risk being managed?**

A risk workshop involving Partner Authorities was held in July 2015 resulting in the compilation of a comprehensive risk register. WMR project risk is monitored and managed monthly through the WMR Programme Board and Officers' Rail Devolution Group.

No financial or contractual risk for the West Midlands franchise will be held by WMR Ltd 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 separate agreement by individual Partner Authorities.

Financial liability for each member in the event of WMR Ltd being wound up through insolvency is limited to £1.

**6.3 What is the impact on the organisation?**

Beyond any attending meetings of WMR Ltd there are no direct impacts on the organisation.

**6.4 Equalities / EIA**

No implications arising directly from this report.

**6.5 Implications for (or impact on) the environment**

No implications arising directly from this report.

**6.6 Implications for partner organisations?**

Coventry's main partner organisations impacted by the proposal are Warwickshire County Council and the other Metropolitan Districts, all of whom are taking similar reports to this through their respective approval processes with a recommendation to join West Midlands Rail Ltd.

**Report author(s):****Name and job title:**

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Cllr Maton	Cabinet Member for Business Enterprise and Employment	Coventry City Council	4/10/11	10/11/15
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Finance: Graham Clark	Lead Accountant	Resources	20/10/15	22/10/15
Legal: Carol Bradford	Lawyer	Resources	20/10/15	22/10/15
Director: Martin Yardley	Executive Director	Place	26/10/15	27/10/15
Members: Cllr Mrs Lucas			4/10/11	10/11/15

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[www.coventry.gov.uk/meetings](http://www.coventry.gov.uk/meetings)

## Appendix

## West Midlands Franchise – Business Units



## **Appendix B**

### **Summary of WMR Ltd 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 WMids 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 WMids 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 WMids ITA, the WMids 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 WMids 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 WMids 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 WMids ITA.
22. It would be possible for the WMids 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 WMids ITA /combined authority). However, under applicable company law, all of those votes would need to be cast by one representative acting for the WMids 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 WMids ITA and for other potential changes. In particular, provision is made for the WMids 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 the Combined Authority having a majority of votes at members' meetings and it's constituent councils between them also appointing a majority of the Directors.

## **Miscellaneous**

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)