

Wiltshire Council

Cabinet

22 October 2013

Subject: Local Sustainable Transport Fund – Trans Wilts Rail Service

Cabinet Member: Councillor John Thomson – Deputy Leader and Cabinet Member for Highways and Streetscene and Broadband

Key Decision: Yes

Executive Summary

An improved Trans Wilts rail service between Westbury and Swindon forms part of the Council's Local Sustainable Transport Fund (LSTF) project. However, given uncertainties and risks at the time, Cabinet was not able to approve the procurement of the service at its meeting on 10 September 2012.

The subsequent pausing and eventual termination of the rail franchising process by the Government, including the Great Western franchise, meant that no progress could be made with the incumbent franchisee, First Great Western (FGW), on the Trans Wilts service during late 2012 and early 2013.

In January 2013, the Department for Transport (DfT) extended FGW's existing franchise to 12 October 2013 and started negotiating with FGW to run the franchise initially for a further two years to September 2015 (a subsequent franchise agreement with FGW will take this to July 2016). FGW submitted its proposal for this new franchise (which includes the Trans Wilts service as a 'priced option') on 4 July 2013. The DfT and FGW eventually signed the franchise agreement for the period October 2013 to September 2015 on 2 October 2013.

In anticipation of agreeing the new franchise with the DfT, and in line with its obligations as the incumbent franchisee, FGW has been progressing the necessary preparatory work for the Trans Wilts rail service.

Recently, FGW issued the Council with a draft contract agreement which details an improved Trans Wilts rail service commencing on 8 December 2013 (subject to FGW satisfactorily completing all the necessary preparatory tasks) and running to December 2016 or three years from the service commencement date (whichever is later).

The compensation (subsidy) payment to be made by the Council to FGW to support the improved service for three years operation is to be £595,000 in 2013/14 and £628,000 in 2014/15 (subject to indexation). This payment is included within the LSTF project funding profile and is therefore covered by the DfT's grant payment.

Proposals

That Cabinet:

- (i) Approves the procurement of the improved Trans Wilts rail service from First Great Western Limited and delegates the finalisation and signing of the contract agreement to the Service Director for Highways and Transport in consultation with the Deputy Leader and Cabinet Member for Highways and Streetscene and Broadband.**
- (ii) Delegates detailed operational matters relating to the improved Trans Wilts rail service to the Service Director for Highways and Transport in consultation with the Deputy Leader and Cabinet Member for Highways and Streetscene and Broadband.**

Reason for Proposals

To enable the improved Trans Wilts service to commence and be locally supported for the Department for Transport's minimum three year period prior to being considered for inclusion in the franchise.

Parvis Khansari
Service Director, Highways and Transport

Wiltshire Council

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Cabinet Member: Councillor John Thomson – Deputy Leader and Cabinet Member for Highways and Streetscene and Broadband

Key Decision: Yes

Purpose of Report

1. To enable the improved Trans Wilts service to commence and be locally supported for the Department for Transport's (DfT's) minimum three year period prior to being considered for inclusion in the franchise.

Relevance to the Council's Business Plan

2. Procuring the enhanced Trans Wilts Rail service will help achieve the Business Plan goal of working with our partners to support Wiltshire's communities. It will also contribute to the achievement of the long-term vision outlined in the Wiltshire Community Plan (2011-2026); that is: creating an economy that is fit for the future, reducing disadvantage and inequalities, and tackling the causes and effects of climate change.

Background

3. The Council submitted its bid to the DfT's Local Sustainable Transport Fund (LSTF) on 24 February 2012. As set out in the bid application, the project has three main elements:
 - (i) Support for improved rail services on the Westbury to Swindon line (the Trans Wilts service).
 - (ii) Interchange improvements at Wiltshire's railway stations.
 - (iii) Supporting smarter choices measures.
4. The Council was awarded a £4.25 million grant by the DfT on 27 June 2012. At its meeting on 10 September 2012, Cabinet approved the commencement and delivery of the package of complementary sustainable transport measures but given the uncertainties and risks associated with the implementation of the train service at the time, requested that officers liaise with the DfT, the Great Western franchise bidders and other relevant parties regarding the improved Westbury to Swindon train service, and submit a further report to a future Cabinet meeting.

Great Western refranchising

5. In May 2011, First Great Western (FGW) announced that it would not take up the option to extend its franchise beyond the end of March 2013 (subject to an extension of seven four-week rail periods at the Secretary of State's discretion). As a result of this decision, the DfT commenced a franchise replacement process on 27 July 2012 where an improved Trans Wilts train service was included as a 'priced option'¹. As part of this process, officers met each of the four bidders to discuss their proposed approach to the improved Trans Wilts service.
6. Regrettably, on 3 October 2012, the Secretary of State for Transport announced the pausing of the live franchise competitions, including the one for the Greater Western area. The uncertainty caused by this decision meant that during this period, no progress could be made with the incumbent franchisee, FGW, on the Trans Wilts service.
7. Following a further period of uncertainty as the Laidlaw and Brown reviews were completed, the refranchising process was eventually terminated by the Secretary of State on 31 January 2013. At the same time, the DfT extended FGW's existing franchise to 12 October 2013 and started negotiating with FGW to run the franchise for a further two years to 20 September 2015. FGW submitted its proposal for this new franchise (which again included the Trans Wilts service as a 'priced option') on 4 July 2013. The DfT and FGW eventually signed the franchise agreement on 2 October 2013.
8. As the initial franchise could be for no longer than two years due to procurement rules, the Secretary of State announced in March 2013 that a further franchise would in time be agreed with FGW to cover the period September 2015 to July 2016.

Main Considerations for the Council

9. In anticipation of agreeing the new franchise with the DfT, and in line with its obligations as the incumbent franchisee, FGW has been progressing the necessary preparatory work for the Trans Wilts train service (i.e. securing rolling stock provision, negotiating timetable and track access arrangements, and undertaking train crew recruitment and training). Indeed, a draft timetable for the service for 8 December 2013 onwards is now available in the public domain.
10. Recently, FGW issued the Council with a draft contract agreement for the improved Trans Wilts service. While it is proposed that Cabinet delegates the finalisation and signing of this contract to the Service Director for Highways and Transport, the main principles of the draft contract are as follows:
 - (i) The service commencement date is scheduled to be 8 December 2013 (subject to FGW satisfactorily completing all the necessary preparatory tasks).

¹ Priced options enable bidders to submit delivery plans for specified options over and above the base franchise specification. The incremental price of each option is separately identified by each bidder with a proportion of that price (100% in the case of the TransWilts option) being added to the overall price of the base franchise specification.

- (ii) The service expiry date is scheduled to be December 2016 or three years from the service commencement date (whichever is later)².
 - (iii) FGW will liaise with the Council and the DfT prior to the termination of its franchise with a view to securing the transfer of the contract agreement to the relevant successor operator.
 - (iv) The compensation payment to be made by the Council to FGW to support the improved service for three years operation is to be £595,000 in 2013/14 and £628,000 in 2014/15 (subject to indexation).
 - (v) A compensation excess (i.e. the value of the compensation payment to FGW for the period after the expiry of its franchise in July 2016) will be calculated on a pro rata basis and paid to the successor operator for the period to December 2016.
11. The compensation payment for the improved Trans Wilts service in 2013/14 and 2014/15 is included within the LSTF project funding profile and is therefore covered by the DfT's grant payment. The previous report to Cabinet outlined a further estimated compensation payment of £159,000 in 2015/16; however, the proposed contract offered by FGW has no subsidy requirement in the post-LSTF period (i.e. March 2015 onwards).
12. As highlighted in the previous report to Cabinet, GO-OP, a potential open access train operator, has been working towards running a two-hourly service between Westbury and Birmingham (Moor Street). While this would provide a satisfactory train service improvement, it is now unlikely to be implemented as originally specified given the Trans Wilts proposal and the capacity constraints on the line through Melksham. On 12 September 2013, GO-OP submitted a formal objection with Network Rail to FGW's track access application for the enhanced Trans Wilts service; FGW is currently liaising with Network Rail to respond to this objection.

Safeguarding Considerations

13. There are no safeguarding implications as a direct result of this proposal. The Office of Rail Regulation (ORR) is the national health and safety authority for Britain's railways (<http://www.rail-reg.gov.uk/server/show/nav.1210>).

Public Health Implications

14. The LSTF project, which includes the improved Trans Wilts rail service, should increase the opportunity for people to travel by more sustainable modes such as walking and cycling. **Appendix 1** provides further details on the outcomes of the LSTF project.

² The funding for an improved train service needs to be locally sourced for three years before the DfT would consider incorporating it within the franchise (as detailed in the DfT's 'Conditions Relating to the Funding of New or Enhanced Services Promoted by Local Bodies').
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Environmental and Climate Change Considerations

15. The LSTF project, which includes the improved Trans Wilts rail service, should help reduce carbon and air pollution emissions. **Appendix 1** provides further details on the outcomes of the LSTF project.

Equalities Impact of the Proposal

16. The LSTF project, which includes the improved Trans Wilts rail service, should increase the opportunity for those people without access to a car to travel to jobs and key services and facilities. **Appendix 1** provides further details on the outcomes of the LSTF project.

Risk Assessment

Risks that may arise if the proposed decision and related work is not taken

1.	Improved Trans Wilts rail service would not commence and the opportunity of having it considered by the DfT for inclusion in the franchise after three years operation would be lost.
2.	Negative reputational impact both at a national and local level.
3.	Inability to reallocate and spend all the rail service grant funding in a timely manner within the LSTF period to the end of March 2015. Any unspent grant funding would be lost.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

	Risk	Action to mitigate the risk
1.	Detailed matters in the contract agreement cannot be agreed on both sides.	<ul style="list-style-type: none"> • Liaise with the DfT.
2.	FGW is unable to complete all the necessary rail service preparatory tasks by 8 December 2013.	<ul style="list-style-type: none"> • The contract agreement stipulates that FGW will aim to complete the preparatory tasks by 8 December 2013 and in any event before 1 March 2014. • Liaise with DfT to seek to address any significant issues.
3.	Operation, engineering and other factors significantly impact on the running of the Trans Wilts rail service.	<ul style="list-style-type: none"> • Regular meetings to be held with FGW to discuss these and other relevant matters. • Contract agreement includes clauses entitling the Council to an adjustment to the compensation payment.

	Risk	Action to mitigate the risk
4.	Termination of the contract agreement.	<ul style="list-style-type: none"> • Contract agreement stipulates that a termination notice can only be served following a review meeting to discuss potential alternatives. • Contract agreement includes clauses entitling the Council to an adjustment to the compensation payment.
5.	Failure to secure the transfer of the contract agreement to the relevant successor operator.	<ul style="list-style-type: none"> • FGW is making the Trans Wilts contract agreement a 'key contract' to ensure succession to next franchise period.
6.	Successor operator requiring an additional compensation payment for the period July 2016 to December 2016.	<ul style="list-style-type: none"> • The LSTF bid application specified a cap on the Council's contribution to the train service post-March 2015 of £0.250 million.
7.	Adverse reputational impact of not implementing all the enhancements at Melksham Station by December 2013.	<ul style="list-style-type: none"> • Scheme plan to be drawn up showing those enhancements that can be implemented by December 2013. • Project plan to be drawn up showing other enhancements that can be delivered in the remainder of the LSTF period to March 2015.
8.	Delay to service start as a result of GO-OP's formal objection to Network Rail regarding FGW's track access application.	<ul style="list-style-type: none"> • The contract agreement stipulates that FWG will aim to complete the preparatory tasks by 8 December 2013 and in any event by 1 March 2014. • Representation supporting FWG's application sent to Network Rail on 4 October 2013. • FGW liaising with Network Rail to respond to GO-OP's objection. • Seek advice from FGW, Network Rail, the DfT and the Office of Rail Regulation.
9.	Approval of any track access application submitted by GO-OP.	<ul style="list-style-type: none"> • Seek advice from the DfT and the Office of Rail Regulation. • Maintain good communications with GO-OP. • Acknowledge that the GO-OP proposal would provide an initial satisfactory train service improvement.

Financial Implications

17. As set out in paragraph 9 (v), the compensation payment to be made by the Council to FGW to support the improved service is to be £595,000 in 2013/14 and £628,000 in 2014/15 (subject to indexation). These payments are included within the LSTF project funding profile and are therefore covered by the DfT's grant payment. The previous report to Cabinet outlined a further estimated compensation payment of £159,000 in 2015/16; however, the proposed contract offered by FGW has no subsidy requirement in the post-LSTF period (i.e. March 2015 onwards).
18. As outlined in the risk assessment, however, there is a risk that the successor franchise operator to FGW may require an additional compensation payment for the period July 2016 to December 2016 (or later period depending on the service commencement date). To restrict the Council's liability in such circumstances, the LSTF bid application specified a cap on the Council's contribution to the rail service post-March 2015 of £0.250 million.
19. Due to the uncertainty surrounding the refranchising process it is unclear at the time of writing this report whether there will be a requirement for further subsidy of the rail service post March 2015. Should it become apparent that a successor operator requires further subsidy post March 2015 then there is currently no grant funding or Council budgets earmarked to fund the subsidy. If this situation occurs, officers will prepare a report for Cabinet to detail the funding requirement and work to identify potential budgets for funding this. A decision will need to be made at this point as to whether the contribution requirement placed on the Council is acceptable.

Legal Implications

20. With this type of proposed contract, there is no requirement for it to be tendered. However, notification of it has to be given in the Official Journal of the EU. That would give an opportunity for another economic operator to challenge the contract, if they considered that the required procedures had not been followed. Given the nature of the proposed contract, it is considered that the risk of such a challenge is minimal in this case. It is also considered unlikely that there would be any issues regarding the state aid rules, because of the franchising and funding arrangements involved.

Options Considered

21. To:
 - (i) Not approve the procurement of the improved Trans Wilts rail service from First Great Western Limited. While GO-OP may eventually be in a position to commence its rail service from Westbury to Birmingham (Moor Street), the immediate economic, community and environmental benefits of an improved Trans Wilts service would not be realised. Moreover, the opportunity of having the Trans Wilts service considered by the DfT for full inclusion in the franchise after three years operation would also be lost. Furthermore, in addition to the likely negative reputational impact, it will be difficult to reallocate and spend all the rail service grant funding within the LSTF period to the end of March 2015. Ultimately, any unspent grant funding would be lost.

- (ii) Approve the procurement of the improved Trans Wilts rail service from First Great Western Limited. While there are some risks associated with this option, it is considered that the impact of these risks can be significantly mitigated, either through clauses in the contract agreement or through engagement with the DfT.

Conclusions

- 22. Procurement of an improved Trans Wilts rail service would provide local areas with a number of economic, community and environmental benefits. It also offers the opportunity of the service being considered by the DfT for full inclusion in the franchise after three years successful operation.

Parvis Khansari
Service Director, Highways and Transport

Report Author:
Robert Murphy
Principal Transport Planner
01225 713458
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The following unpublished documents have been relied on in the preparation of this report:

None

Appendices:

Appendix 1 – Summary of LSTF outcomes.