



# West Somerset Railway P.L.C

**The Railway Station, Minehead, Somerset, TA24 5BG**

Telephone: Minehead (01643) 704996

Fax: (01643) 706349

E-mail: [info@wsrail.net](mailto:info@wsrail.net)

Website: [www.west-somerset-railway.co.uk](http://www.west-somerset-railway.co.uk)

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## Letter to Shareholders

### Launch of consultation process on transformation of WSR PLC to create a new parent charitable structure for the railway.

Dear Shareholder,

You will be aware the board of the PLC has recently announced that it intends to consult with shareholders and interested third parties on the recommendations of the recent Bailey report.

The PLC board's initial response, along with a copy of the report, can be found by clicking on the link here: <https://www.west-somerset-railway.co.uk/news/detail/wsr-plc-response-to-sections-4-5-of-the-bailey-report> (or you can request a copy at the address shown at bottom of this letter).

This report recommends that the WSR PLC considers transforming itself into a new structure with a charitable parent and an Operating company working as a 100% owned subsidiary.

There is a full list of principles and terms of reference for the consultation in the Appendix, but the board would *first like to stress a few key points* likely to be of interest to shareholders:

1. It is the boards intention that shareholders in the PLC will become members within the new parent charity, with some voting rights (exact method still to be defined) on matters relating to the business.
2. Any shareholders who currently enjoy travel privileges on the railway will be able to retain those privileges in the same way as they enjoy them today.
3. The primary objective in considering this transformation is the desire to take advantage of the tax benefits of receiving donations to charitable bodies and to attract further outside funding from key charity funds who will only donate to a charitable body.
4. A further objective is to try and create the desired 'one railway' culture with a single focused organisational body instead of the competing interests that exist today.

Even if you have no desire to read the detail of the full consultation terms of reference, the board *would appreciate an indicative reply as to whether you are broadly supportive* of this proposal. To this end, there is a short survey to allow you to do this at the end of this note.

A special e-mail address has been set up to handle responses to this consultation process which is [bailey-response@wsrail.net](mailto:bailey-response@wsrail.net). You may send your consultation responses and *any one-way communications* to this address at any time, but if you have questions on the process itself, please direct those to an appropriate board member or to the chairman of the PLC.

Finally, it should be noted that the WSR PLC Board *broadly recommends proceeding with this transformation* but will not do so without a clear majority from shareholders. Hence, a final vote on this transformation will most likely be submitted at the 2021 AGM, where a majority of 75% will be required to authorise the board to go ahead with this structural change.

### **Consultation Responses**

*The WSR PLC board would welcome responses from all shareholder on this important matter. All feedback will be recorded and included (anonymised) in a summary document of responses which will be forwarded to all shareholders in advance of any future AGM vote.*

*We would appreciate you sending responses in the following format (you can simply copy and paste the format into an e-mail or create a separate document with a similar set of responses):*

I am broadly supportive of the proposed transformation to a Charitable parent body and subsidiary operating company (this is not a formal vote, only an indicative response)

Yes

No

(delete option not applicable)

I would like to submit the following comments in response to this consultation:

Further comments may be submitted directly by e-mail or by attaching a separate piece of paper if sending by regular mail.

Plead forward responses to: [bailey-response@wsrail.net](mailto:bailey-response@wsrail.net) or by postal mail to: *Bailey Response, WSR PLC, The Railway Station, Minehead, Somerset, TA24 5BG*

Thank you.

Mike Thompson – PLC Project Lead

## **Appendix 1 - Principles of the consultation**

**1 The consultation is to consider whether the West Somerset Railway (WSR) PLC should create a new incorporated charity (limited by guarantee) with an operating company as a controlled subsidiary.**

**2** This follows the publication of an independent review by John Bailey, an experienced commercial lawyer and Chairman of the NYMR, on behalf of the HRA, that recommends the creation of a Charity that can act as a clear focus for the railway's core activities, where the Charity owns the physical assets and contracts with a controlled subsidiary to run the railway as a service.

**3** The railway currently has two charities (WSRA & WSSRT) but the objects of two main Charities are currently limited. For example, the Covid-19 crisis has highlighted the inability of the existing Charities to fund general operating costs including the salaries of WSR PLC employees at this time of crisis.

**4** Even if the articles were to be extended, it would still leave the fundamental problem that the capital spending priorities of the business would be determined by an unaligned fundraising body. Therefore, fundraising really needs to be separated from decisions on capital spending priorities of the PLC.

**5** The review recommends that day to day operation of the railway and its business would be delegated by a Services Agreement to the operating company, perhaps by the transformation of the existing PLC into the operating subsidiary. This body would undertake any trading the Charity is legally excluded from. Such an arrangement is permissible under Charity Law.

**6** The Charity Trustees would be accountable to the Charity's members and the Charity Commission for realisation of defined public benefit charitable purposes. The subsidiary's board would be authorised within those objectives, to operate the railway against a requirement to generate annual surpluses to be paid over in their entirety to the charity.

**7** The subsidiary would hold the necessary operating licenses and be accountable to regulators for the safe operation of the railway. A similar structure exists and operates effectively today on the North Yorkshire Moors Railway.

**8** From a funding perspective, operating surpluses are never likely to be high enough to cover the required capital spend, with the shortfall generally covered by grants, donations and bequests. This makes it vital to be able to secure the tax uplift on those through Gift Aid. It might also be applied to fares income, since HMRC has approved this on other railways, with a stringent set of conditions.

**9** As with the current PLC model, surpluses would not result in any dividends being paid to members.

**10** It is also well documented that for nearly 15 years the current structure of separate charities working alongside a legal PLC entity has caused major disruption to activities and fundamental disagreements in the way that the railway should be run, which has projected a negative image to the outside world.

**11** The WSR PLC board believes this has occurred because the existing structure does not offer an optimal solution for the effective funding and running of the railway. There has been a historical trend of parties on both sides of the PLC/Charity divide forming the view that they are in the best position to run the railway. This can result in control of the fundraising being used to pursue such objectives.

**12.** In these situations, it is also confusing for potential donors to know exactly where to direct their funds. Do they fund the PLC directly, via the WSRA to generate gift aid, or into the WSSRT to support specialist areas of activity? There is no simple way of 'donating to the railway' with the current set up. This also implies the WSRA is legitimately able to act as the principal fundraising arm of the WSR which, as Bailey states, is stretching its current Articles beyond reasonable interpretation.

**13** One of the key issues has been attracting enough people with the right skills to act as board members or trustees whilst a raft of disagreements exists. It is not an attractive proposition to those who might be best suited, especially with the organisations themselves having conflicting objectives in their articles.

**14** As a result, most board members or trustees are elected by default, rather than by a well contested list of candidates, simply because there are not enough volunteers to take up these positions. Defining the right qualifications for the board or trustee roles is a critical component in running any railway.

**15** In recent times, the PLC and WSRA has spent huge amounts of time simply debating over how to transfer funds between each other, which has caused much pain and anguish for those involved, as each group tries to ensure it is abiding by the rules governing their financial obligations.

**16** This can negatively result in the Charity appearing to use its privileged tax status to attract funds to benefit a non-Charity. Either the funds are restricted to the very limited objects of the Charity or its Trustees could be committing a criminal offence and be personally liable for mis-applied funds.

**17** We also know that many regular front-line volunteers, who thoroughly enjoy working on the railway, often despair at the way the railway appears externally in the media. Disagreements going back as far as 2008/9 have frequently been aired and usually filled many pages of the popular railway press.

**18** It can be confusing for volunteers to understand who they are volunteering for and managed by. The WSRA can appear to have taken on the main volunteer recruitment role, but the all-important Safety Management System is the PLC's responsibility and should be that of the controlled subsidiary. .

**19** The WSR PLC board feels that this new structure will bring the following benefits to the railway:

- a. The creation of a parent charitable entity with responsibility for ensuring the railway is run for the public benefit, as defined by its charitable objects, .will bring a better focus on key priorities for its operation, with opportunities for the appointed leaders to be held regularly accountable and elected by those who support the railway
- b. It will create a more appealing charitable structure appearance to the outside world, especially encouraging those who feel more comfortable donating to a charity rather than a PLC. It will also crucially allow for donations to have 25% tax relief benefits added to these amounts.
- c. By having a charity own the assets and transferring the 'operating risk' to a subsidiary body, this will also ensure the key assets are better protected from any insolvency risk in the case of unexpected downturns, such as those encountered with the recent Covid-19 pandemic.

- d. It will also create a more coherent message to help improve relations with the local council who have often been caught up in the crossfire of these differences of opinion, resulting in criticisms being aimed at the council in local media and even being subject to local FOI requests.

**20** The board realises this will throw up significant challenges to be overcome before these changes can take place. The most obvious of these is the future role of the existing charities which have raised funds for the railway over 40 years.

**21** Discussions with these parties will form a key part of the ongoing consultation, but it is apparent there may be some form of merger or perhaps a future role for these charities by focusing on specialist areas as defined in their existing articles. This will form a key part of discussions but there is no reason why the charities that currently fundraise for their own limited objects should not continue to do so.

**22** The process of consultation is being started with this letter to all PLC shareholders asking for their views on the proposal as outlined above. The board will also seek external legal and professional advice on the optimal structure and to specifically consider the costs of carrying out such changes.

**23** There will also be discussions with the other WSR charities via the newly re-formed PDG, to seek views on how the structure could work, given the many priorities for the railway. It is hoped that amicable ways forward can be found, perhaps with some existing trustees joining the parent group.

**24** In addition, letters of consultation will be sent out to external parties with a specific interest in the WSR such as Local Councils, HRA, HPC, HLF and the ORR and some other heritage railways. Their responses will form a key part of the decision-making process on how best to move forward.

**25** Any resulting recommendations would then be brought forward for voting on at the next PLC shareholders meeting and if approved, lawyers will then begin the process of creating the new structure with a broad goal to have the new structure implemented during 2022 if all goes to plan.

## **Appendix 2 – Terms of Reference for the Project**

- To analyse the Bailey Report and to produce a “roadmap” of key requirements and guiding principles as a basis for consultation with existing PLC shareholders and stakeholders in WSR.
- To formally consult on proposals with shareholders plus all interested parties and to present these to the PLC Board for consideration to make a recommendation to shareholders.
- To engage with Partnership Development Group (PDG) and to use the feedback from this process to refine and finalise both the content and process for consultation and use PDG as a key Reference Group for the project. This approach has been endorsed by PDG and is commended by PDG to shareholders.
- To establish a formal working group to take forward the work including the appointment of a Project Manager who will work with a lead PLC Director.
- To establish a project plan and timetable with critical milestones including external approvals required and key decision points along the way.
- To present final proposals to the PLC Board, shareholders, WSR and external stakeholders for approval and, if shareholders approve, implement a formal project to move forward with the preferred approach.