

# Cabinet

10 December 2020

## West Midlands Rail Limited Governance Evolution

### Recommendation

That Cabinet supports the proposed changes to the governance arrangements for West Midlands Rail Limited as set out in this report.

### 1. Executive Summary

- 1.1 West Midlands Rail Limited (WMRL) is a company limited by guarantee, owned by 14 partner authorities, and created with the purpose of specifying and managing rail franchising for the West Midlands. Through a legally binding Collaboration Agreement with the Department for Transport, WMRL has responsibility for overseeing the delivery of the West Midlands Separable Business Unit (WMSBU) of the West Midlands Franchise. It also undertakes rail activity on behalf of Transport for West Midlands (TfWM). The 14 partner authorities are comprised of the seven Metropolitan Boroughs plus the seven Unitary and Shire local transport authorities that surround them. The most senior layer of governance in WMRL is the Board of Directors. This provides local democratic oversight for WMRL.
- 1.2 The Board is made up of Leaders or senior cabinet members appointed by each of the Partner Authorities and provides WMRL with strategic and policy guidance towards developing a new, local passenger rail franchise for the West Midlands, as well as gaining influence over other key routes across the region.
- 1.3 The principles underpinning the governance of WMRL were developed in 2015, before the emergence of the Mayoral Combined Authority. The existence of this senior elected position has, inevitably, led to a political, media and public expectation that the Mayor will intervene on rail matters, as was evidenced during the period of poor rail performance in autumn 2019.

### 2 The Proposed Governance Arrangements

- 2.1 Emerging government policy direction indicates that any further regional rail devolution is to involve a single accountable elected position, most likely a Mayor, and informal conversations between WMRL and central government

have indicated a reluctance to devolve further authority to a political partnership such as WMRL.

- 2.2 WMRL, working with TfWM and trading as West Midlands Rail Executive (WMRE), has developed a strong reputation, and has been effective at promoting and delivering change and investment in the region's rail network.
- 2.3 The WMRL political partnership has proved itself to be both stable and effective, and appropriately maps the geography of both the 'travel to work' area for the conurbation, as well as the network of commuter and regional services over which further local influence and control might be desirable in the longer term. In contrast, the Combined Authority area does not feature a sensible geography for the oversight of rail services, but it does have a directly elected Mayor.
- 2.4 In order to place WMRL in the strongest position to benefit from further devolution, WMRE officers were tasked with developing a range of options that would meet the following principles;
  - A role for the Mayor in the governance of WMRL, enabling the influence of the office to promote investment in rail for the wider region;
  - No change to voting rights – maintaining the existing balance of votes between Shire/Unitary and Metropolitan Boroughs;
  - A stronger role for vice chairs;
  - Sufficiently flexibility to permit for a restoration of the previous arrangements, should this be desired; and
  - Does not affect the day to day operation of the Company.
- 2.5 In total six alternatives were identified, including a Do-Nothing option. Each was evaluated and the option that proposes the Mayor as a non-voting, non-director chair was put forward as the preferred option, on the basis that it came closest to meeting the five principles set out in 3.5 above. All options were developed in conjunction a WMRL Member working group, which included Cllr Butlin.
- 2.6 Key elements of the preferred option proposed are;
  - the Mayor gains direct and formal influence over local rail services and rail strategy via becoming a non-Director, non-voting Chair. The non-voting nature of the Mayor's post means that the delicate political and geographical balance is undisturbed.
  - Two new Vice Chair roles are created, these posts will be filled by Shire and Unitary board members respectively in order to maintain equity. It is important to note, that if a vice -chair is acting as Chair they are still eligible to vote.
  - The delegation of a specific power (as set out in the Articles of Association) to the Chair. Under the proposal, Article 3.1(i), a wide

power to represent and publicise WMRL through lobbying and related activities to advance WMRL's purpose would be delegated to the Chair. Delegating this power would allow the Mayor to represent WMRL, but the Mayor would not have the authority to bind WMRL, like many of the other powers. Delegating this power would not preclude the Board of Directors of WMRL from exercising those Powers themselves, for example speaking on behalf of the company (subject to the terms of the delegation). In addition, any such delegation can be revoked at any time by a further resolution of the WMRL Board of Directors.

- 2.7 This preferred option was approved in principle by the WMRL Board at its meeting on 15 September 2020. Also approved at that meeting was the recommendation that each of the 14 partner authorities would commence the process of taking this option through their respective governance processes. It is expected that all 14 partner authorities will have concluded this exercise by December 2020, ahead of an Extraordinary Meeting of the WMRL Board in January 2021. The Warwickshire Board member vote will reflect the Cabinet resolution on the matter.
- 2.8 The Extraordinary Meeting is necessary as the implementation of changes to the governance requires amendments to the WMRL Articles of Association, which can only be amended by a Special Resolution of the Members eligible to vote. A Special Resolution requires a majority of 75% to pass (a minimum of six votes). A tracked changes copy showing the proposed amendments to the Articles of Association can be found in the Appendix.

### **3 Financial Implications**

- 3.1 The revised governance arrangements for West Midlands Rail, as proposed do not have any financial implications for WCC.

### **4 Environmental Implications**

- 4.1 The further devolution of rail services in the West Midlands will give the WMRL more control over services. In some instances, this will have a positive impact on new connectivity opportunities and frequency of services which may encourage people to switch from car to rail, thereby having a positive impact on the environment.

### **5 Supporting Information**

- 5.1 There is the risk that the rail priorities of the Mayor and WMRL could conflict. However, such disagreement is in neither parties' interest. It would diminish the likelihood of either achieving its goals, and give central government

reason to limit further devolution, or even take back those powers already granted.

- 5.2 Whilst it is difficult to entirely avoid this risk, by bringing together the role of Mayor with WMRL through the creation of aligned rail priorities, this risk is minimised and converted into an opportunity to further improve the rail offer for the region.
- 5.3 Other advantages of a closer relationship between WMRL and the Mayor include the association with a high-profile position, direct access to ministers and potentially more access for funding. Acting now demonstrates a well-considered, evolved governance for WMRL which is likely to enhance the Board's credibility with government and other key stakeholders. This would increase the likelihood that it would be able to achieve its policy aims, all without undermining the existing political partnership that has been carefully created to date.
- 5.4 From a Warwickshire perspective, any further devolution for rail in the West Midlands will enable Warwickshire (via the WMRL Board) to potentially have a greater say and influence over how some rail services are delivered in Warwickshire in the future. There is a small risk that WMRE/TfWM use the opportunity to further advance programmes and projects that benefit the West Midlands conurbation, however the equitable composition of the Board and the creation of two vice chairs will minimise this risk.

## **6 Timescales associated with the decision and next steps**

- 6.1 It is planned that an Extraordinary Meeting of the WMRL Board will take place in January 2021, to allow Members of the Board to have a final vote on the proposed governance arrangements. If the vote is in favour of the proposal, the new governance arrangements will come into effect in May 2021, after the West Midlands Mayoral election.

## **Appendix**

Proposed amendments to the Articles of Association

	<b>Name</b>	<b>Contact Information</b>
Report Author	Victoria Mumford	victoriamumford@warwickshire.gov.uk
Assistant Director	David Ayton-Hill	Davidayton-hill@warwickshire.gov.uk
Lead Director	Mark Ryder	markryder@warwickshire.gov.uk
Lead Member	Cllr Jeff Clarke	cllrclarke@warwickshire.gov.uk

The report was circulated to the following members prior to publication:

Local Member(s): None

Other members: Councillors Peter Butlin and Jeff Clarke