

Cabinet Meeting on Wednesday 16 December 2020

West Midlands Rail Ltd Governance Evolution



Cllr Philip White, Deputy Leader and Cabinet Member for Economy and Skills, said,

“West Midlands Rail Ltd has a key role to play in delivering better, unified services across the region far into the future.

Working collectively with other local authorities and The Mayor of the West Midlands we can bring greater power to bear working with operators to deliver better, safer, more reliable services to local stations.”

Report Summary:

Staffordshire County Council has been a Member of West Midlands Rail Ltd since its establishment in 2015. This has enabled the County Council to have significant local influence and involvement over local rail services including the direct management of the West Midlands Rail Franchise.

There is now a desire for West Midlands Rail Ltd to evolve its existing governance arrangements and strengthen its relationship with the Mayor of the West Midlands. This will help to increase its ability to achieve its policy aims, namely continue to deliver local leadership for local rail services by working with the rail industry to deliver a step change in rail services across the West Midlands Rail Ltd geography. The proposed amendments include:

- Changes to the Articles of Association will permit the Mayor of the West Midlands to become a non-Director, non-voting Chair of West Midlands Rail Ltd.
- The creation of two new Vice Chair roles.
- The delegation of the powers that will enable the Mayor as Chair to represent and publicise West Midlands Rail Ltd through lobbying and related activities and survey to advance West Midlands Rail Ltd’s purpose.

As required under the Articles of Association any such changes can only be amended by a Special Resolution of the Members eligible to vote. Under the provisions of the Articles, these Members are defined as the Local Transport Authorities (LTAs). This means the Combined Authority and the seven Shire and Unitary authorities (Staffordshire County Council, Warwickshire County Council, Worcestershire County Council, Northamptonshire County Council, Shropshire Council, Telford and Wrekin Council and Herefordshire Council) and the West Midlands Combined Authority.

Following an approval in principle by the Board of Directors on 15th September 2020, the proposed changes to the Articles are required to be taken through the individual governance requirements of each of the respective Members as defined above.

Recommendations

I recommend that Cabinet:

- a. Approve the changes to the governance arrangements set out in this Report, which in summary permit the Mayor of the West Midlands to become a non-Director, non-voting Chair, and also for the creation of two new Vice Chair roles.
- b. Approve that the powers described in 3.1(i) of the West Midlands Rail Ltd Articles of Association is delegated to the Chair. This is a wide power to represent and publicise West Midlands Rail Ltd through lobbying and related activities and survey to advance West Midlands Rail Ltd's purpose.
- c. Approve Staffordshire County Council to cast its vote in favour of the special resolution that is necessary under the West Midlands Rail Ltd Articles of Association to authorise the proposed changes to their governance.

Local Members Interest
N/A

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Recommendations of the Deputy Leader and Cabinet Member for Economy and Skills

I recommend that Cabinet:

- a. Approve the changes to the governance arrangements set out in this Report, which in summary permit the Mayor of the West Midlands to become a non-Director, non-voting Chair, and also for the creation of two new Vice Chair roles.
- b. Approve that the powers described in 3.1(i) of the West Midlands Rail Ltd Articles of Association is delegated to the Chair. This is a wide power to represent and publicise West Midlands Rail Ltd through lobbying and related activities and survey to advance West Midlands Rail Ltd’s purpose.
- c. Approve Staffordshire County Council to cast its vote in favour of the special resolution that is necessary under the West Midlands Rail Ltd Articles of Association to authorise the proposed changes to their governance.

Report of the Director of Economy, Infrastructure and Skills

Reasons for Recommendations:

Context

1. The principles underpinning the governance of West Midlands Rail Ltd 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. 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 with Department for Transport civil servants and members of the Williams Rail Review team have indicated a reluctance to devolve further authority to a political partnership such as West Midlands Rail Ltd.
3. However, West Midlands Rail Ltd, working with partners 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. The 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.

4. The Combined Authority area, by contrast, whilst home to half of the West Midlands Rail Ltd area's residents, does not feature a sensible geography for the oversight of rail services, but does feature a directly elected Mayor.
5. There is also the risk that the rail priorities of the Mayor and West Midlands Rail Ltd could conflict. 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. Whilst it is difficult to entirely avoid this risk, by bringing together the role of Mayor with West Midlands Rail Ltd through the creation of aligned rail priorities, this risk is minimised and converted into an opportunity.
6. Allied to the other advantages of a closer relationship between West Midlands Rail Ltd and the Mayor – association with a high profile position, direct access to ministers, potentially more access for funding – a properly thought through and implemented evolved governance for West Midlands Rail Ltd would enhance the Board's credibility in the eyes of government and other stakeholders. This would increase the likelihood that West Midlands Rail Ltd will be able to achieve its policy aims, without undermining the political partnership that has been carefully created.
7. Therefore, in early 2020 the West Midlands Rail Ltd Board agreed to explore options to evolve its governance to include a role for the Mayor of the West Midlands and was delegated to a two Sub-Committees to take forward.

Optioneering

8. Two Sub-Committees one comprising of officers and one comprising of directors were established in March 2020 to progress this work and develop a range of options that would meet the following principles:
 - a. 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;
 - b. No change to voting rights – maintaining the existing balance of votes between Shire/Unitary and Metropolitan Boroughs;
 - c. A stronger role for Vice-Chairs;
 - d. Sufficiently flexible to permit for a restoration of the previous arrangements, should this be desired; and
 - e. Does not affect the day to day operation of the Company.
9. The Officers' Group Sub-Committee comprised six officers, drawn equally between the Metropolitan and Shire/Unitary authorities. This mirrored the composition of the Board Sub-Committee, which was created to oversee and steer the Officers' Group Devolution Sub-committee.
10. In total six alternatives were identified, including a Do-Nothing option. Each was evaluated by the Officers' Group Devolution Sub-Committee on the basis of:

- a. What the option was likely to deliver.
- b. The benefits that the option would bring.
- c. The likely disbenefits associated with the option.
- d. Any potential mitigations for the disbenefits

A short summary of each option is provided in Appendix 1 to this report.

11. Option 6 – the Mayor as a non-voting, non-director chair was identified as the preferred option on the basis that this was the option that came closest to meeting the five principles outlined above.
12. Under this Option, the Mayor gains direct and formal influence over local rail services and rail strategy. For West Midlands Rail Ltd, the non-voting nature of the Mayor's involvement means that the delicate political and geographical balance is undisturbed. Furthermore, under Option 6, the Mayor's formal role increases the likelihood that West Midlands Rail Ltd will be able to successfully lobby Department for Transport for greater powers and funding. Finally, the power of the Board is increased through the creation of two more powerful Vice Chair roles.
13. Following endorsement by the Board of Directors Sub-Committee, further detailed work was undertaken by the Officers' Group Sub-Committee to:
 - a. Provide all the necessary legal work in respect of the preferred option (Appendix 2 of Report).
 - b. Provide a role profile of the Vice Chairs which details their responsibilities and the relationship between the Mayor as Chair and the Vice Chairs (Appendix 3 of the Report).
 - c. Provide a Terms of Reference for an 'informal' way of working for the Chair and Vice Chairs (Appendix 4 of the Report).
 - d. Provide a briefing for the 2021 West Midlands Mayoral election candidates on West Midlands Rail Ltd's governance proposals (Appendix 5 of the Report).
 - e. Provide clear timescales for completion of the WMRL governance changes in advance of the purdah period for the 2021 elections (Appendix 6 of the Report).
 - f. Provide legal advice on how powers could be delegated from the Board of Directors to the Chair including which powers may be suitable to be delegated (Appendix 7 of the Report).

Consequences for the Articles of Association

14. The implementation of Option 6, which would enable the Mayor to preside over meetings of the West Midlands Rail Ltd Board of Directors and speak on behalf of the company to key stakeholders (but not be a Director or have a vote), requires an

amendment to the Articles. The addition of the Vice-Chair roles also requires an amendment to the Articles and includes for the Vice-Chairs deputising for the Mayor in presiding over meetings of the West Midlands Rail Ltd Board of Directors. A copy showing the proposed amendments to the Articles of Association is included in Appendix 8 of this Report.

Amending the Articles of Association

15. The West Midlands Rail Ltd Articles can only be amended by a Special Resolution of the Members eligible to vote. Under the provisions of the Articles, these Members are defined as the Local Transport Authorities (LTAs). This means the seven Shire and Unitary authorities and West Midlands Combined Authority.
16. The Special Resolution requires a 75% majority to pass (i.e. six of the eight eligible Members approve it).
17. Whilst not a requirement, West Midlands Rail Ltd Board has recommended that the proposed changes to the Articles of Association be taken through the governance of each of the 14 partner authorities prior to the commencement of the Special Resolution. This recommendation has been made to ensure that each partner authority is given equal opportunity to consider the proposal, and to be consistent with the approach taken to previous Special Resolutions.

Delegating Powers to the non-Director, non-voting Chair

18. West Midlands Rail Ltd's Articles contain the broad powers of the company, which include things like entering into contracts for the provision of rail services, borrowing and raising money, and lobby and related activities to promote West Midlands Rail Ltd's purpose of advancing rail passenger services in the West Midlands and Northamptonshire.
19. The Powers are exercised by the West Midlands Rail Ltd Board of Directors on behalf of the company. Exercise of the Powers is the collective responsibility of the West Midlands Rail Ltd Board of Directors.
20. The West Midlands Rail Ltd Board of Directors are able to delegate exercise of these Powers by a resolution which is passed by 50% or more of the West Midlands Rail Ltd Board of Directors eligible to vote. Any delegation remains subject to the oversight of the West Midlands Rail Ltd Board of Directors as the West Midlands Rail Ltd Board of Directors retain overall responsibility. Any such delegation can be revoked at any time by a further resolution of the West Midlands Rail Ltd Board of Directors.
21. One power has been identified that would be appropriate to delegate to the non-Director, non-voting Chair. This is Article 3.1(i), a wide power to represent and publicise West Midlands Rail Ltd through lobbying and related activities and survey to advance West Midlands Rail Ltd's purpose. Delegating this power would allow the Mayor to represent West Midlands Rail Ltd, but the Mayor would not have the authority to bind West Midlands Rail Ltd, like many of the other powers.

22. Delegating this power would not preclude the Board of Directors of West Midlands Rail Ltd 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 West Midlands Rail Ltd Board of Directors.
23. An analysis of all of the Powers and their suitability to be delegated is provided in Appendix G appended to the report.

Timescales

24. Option 6 and the delegation of Power 3.1(i) were approved in principle by the West Midlands Rail Ltd Board at its meeting on 15th September 2020. Following this approval, each of the WMRE partner authorities has begun taking the proposal through their own governance processes. All 14 partner authorities will have concluded this exercise by the end of December 2020 ahead of an Extraordinary Meeting of the West Midlands Rail Ltd Board on 19th January 2021 where the Special Resolution will be voted on.
25. Once approved, proposed changes to the West Midlands Rail Ltd governance outlined in this Report will not be enacted until after the 2021 elections have concluded and a new West Midland Mayor is formally in position.

Legal Implications

26. Independent legal advice has been sought by West Midlands Rail Ltd from Addleshaw Goddard. The advice provided to West Midlands Rail Ltd has included the drafting of the proposed changes to the Articles of Association, the proposed delegation of powers, the role of the Chair and Vice Chairs and the legal processes which are to be followed to formally enact the changes to the Articles of Association and Delegation of Powers.
27. The amendments proposed to the Articles of Association and Delegation of Power 3.1(i) do not present any unusual risk to the County Council. However, the representatives of the County Council appointed as directors of West Midlands Rail Limited will need to ensure that they are familiar with the contents of the Articles of Association in line with the requirements of the Constitution. The directors also need to understand their rights and obligations in that role in relation to both the Company and the County Council.
28. Further Legal advice regarding the proposal is currently being sought on behalf of Staffordshire County Council to understand whether there are any further legal implications that need to be considered in relation to the execution of the County Council's duties.

Resource and Value for Money Implications

29. There are no direct financial implications linked to the recommendations of this report.

List of Appendices:

Appendix 1 - West Midlands Rail Ltd Governance Evolution Table of Options

Appendix 2 - West Midlands Rail Ltd Governance Evolution Addleshaw Goddard Legal Advice on Making Changes to Articles of Association

Appendix 3 - West Midlands Rail Ltd Governance Evolution Role Profile of Vice Chairs

Appendix 4 - West Midlands Rail Ltd Governance Evolution Chair and Vice Chair Terms of Reference

Appendix 5 - West Midlands Rail Ltd Governance Evolution Briefing to Mayoral Candidates

Appendix 6 - West Midlands Rail Ltd Governance Evolution Timescales for Implementation

Appendix 7 - West Midlands Rail Ltd Governance Evolution Addleshaw Goddard Legal Advice on Delegation of Powers

Appendix 8 - West Midlands Rail Ltd Governance Evolution Proposed Amendments to Articles of Association

Contact Details

Assistant Director: Clive Thomson, Assistant Director for Connectivity and Sustainability

Report Author: Clare Horton
Job Title: Connectivity Strategy Officer
Telephone No.: 01785 276673
E-Mail Address: clare.horton@staffordshire.gov.uk