

WMCA Board

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Report title	West Midlands Rail Ltd Governance Evolution
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Report has been considered by	Programme Board - 26-30 October 2020 Strategic Leadership Team - 14 October 2020 Transport for West Midlands Leadership - 28 September 2020 Strategic Transport Officers Group - 14 September 2020

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Approve the changes to the Articles of Association shown in Appendix B, which in summary permit for the Mayor of the West Midlands to become the non-Director, non-voting Chair of West Midlands Rail Limited (WMRL), and also for the creation of two new Vice Chair roles;
- (2) Approve that the power described in 3.1(i) of the WMRL Articles of Association is delegated to the Chair. This is a wide power to represent and publicise WMRL through lobbying and related activities and survey to advance WMRL's purpose.

1. Purpose

- 1.1 WMRL wishes to evolve its governance arrangements to strengthen its ability to achieve its policy aims, namely delivering local leadership for local rail services by working with the rail industry to deliver a step change in rail services across the region. As a Member of WMRL, WMCA is entitled to vote on any changes to WMRL's Articles of Association.

2. Background

- 2.1 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.
- 2.2 Furthermore, 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 DfT civil servants and members of the Williams Rail Review team have indicated a reluctance to devolve further authority to a political partnership such as WMRL.
- 2.3 Nevertheless, 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. 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.
- 2.4 The Combined Authority area, by contrast, whilst home to half of the WMRL area's residents, does not feature a sensible geography for the oversight of rail services, but does feature a directly elected Mayor.
- 2.5 There is also the risk that the rail priorities of the Mayor and WMRL 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 WMRL through the creation of aligned rail priorities, this risk is minimised and converted into an opportunity.
- 2.6 Therefore, in early 2020 the WMRL Board agreed to explore options to evolve its governance to include a role for the Mayor of the West Midlands. This work was delegated to the Board Devolution Sub-Committee, a group of six WMRL Board members drawn equally from the Shire/Unitary and Metropolitan councils that comprise WMRL. The Board Sub-Committee in turn asked the Officers' Devolution Sub-Committee to draw up options for evolution that would meet the following criteria (the Officers' Sub-Committee also being formed of six members drawn equally from the Shire/Unitary and Metropolitan councils):
 - a) Would include 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) Would involve no changes to voting rights – maintaining the existing balance of votes between Shire/Unitary and Metropolitan Boroughs;
- c) Would provide a stronger role for vice chairs;
- d) Would be sufficiently flexible to permit for a restoration of the previous arrangements, should this be desired; and
- e) Would not affect the day to day operation of the Company

- 2.7 In total six alternatives were identified, including a Do-Nothing option. A short summary of each option is provided in Appendix A. Following several meetings of the Board Devolution Sub-Committee, Option 6 – the Mayor as a non-voting, non-director chair – was agreed as being the preferred option. This was on the grounds that it was the option that came closest to meeting the principles outlined in Paragraph 2.6.
- 2.8 Under this Option, the Mayoralty gains direct and formal influence over local rail services and rail strategy. For WMRL, 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 WMRL will be able to successfully lobby DfT for greater powers and funding. Finally, the power of the Board is increased through the creation of two more powerful Vice Chair roles.
- 2.9 Option 6 was approved in principle by the WMRL Board at its meeting on 15 September 2020. Following that 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 December 2020, ahead of an Extraordinary Meeting of the WMRL Board in January 2021.
- 2.10 The Extraordinary Meeting is necessary as the implementation of Option 6 requires amendments to the WMRL Articles of Association, and the 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 seven Shire and Unitary authorities plus WMCA. 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 Appendix B.
- 2.11 The WMRL's Articles also 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 WMRE's purpose of advancing rail passenger services in the West Midlands and Northamptonshire. On 15 September the WMRL Board approved in principle that Power 3.1(i) - a wide power to represent and publicise WMRE through lobbying and related activities and survey to advance WMRE's purpose – be delegated to the non-Director, non-voting Chair. The WMRE Board of Directors are able to delegate exercise of these Powers by a resolution which is passed by 50% or more of the WMRE Board of Directors eligible to vote. Any delegation remains subject to the oversight of the WMRE Board of Directors as the WMRE Board of Directors retain overall responsibility.

3. Financial Implications

- 3.1 There are no direct financial implication linked to the recommendations of this report. Finance has acknowledged the changes proposed.

4. Legal Implications

- 4.1 Meetings of the Board would ordinarily be chaired by a Director however this is a matter for the Board and the reasons for the proposed change are set out in this report. Whilst the Mayor is not a Director, they will not have a vote and the Directors retain the decision-making power. A Director must always act in the best interests of the company in considering decisions. It would be expected that the Mayor, whilst non-voting and not a Director, will need to keep this legal requirement in mind in the role they perform.

5. Equalities Implications

- 5.1 There are no equality implications in relation to this report.

6. Inclusive Growth Implications

- 6.1 The inclusive growth implications of this shift are focused on how citizen power and influence is brought to bear on local rail services through the elected Mayor, and through the leaders of their respective local authorities. The changes outlined in this report ensure that there is a consistency to WMRL's governance, which enhances the Mayor's influence without disadvantaging local leadership. On implementation of these changes, it will be important for all parties to ensure that citizen voice remains a consistent part of how the Board does business.

7. Geographical Area of Report's Implications

- 7.1 The proposed changes to the governance of WMRL will have implications for all its partner authorities across its entire geographical coverage (Birmingham, Coventry, Dudley Herefordshire, Northamptonshire, Sandwell, Shropshire, Solihull, Staffordshire, Stoke-on-Trent, Telford and Wrekin, Walsall Warwickshire, Wolverhampton, Worcestershire, Cheshire East,) and therefore inherently includes the entire CA area.

8. Other Implications

- 8.1 None.

9. Schedule of Background Papers

- 9.1 None.

Appendix A – Table of Options

Option and description	Deliverables	Benefits	Disbenefits	Mitigations	Compliance with the principles
1 – Do Nothing	Continuation of current arrangements.	No change to composition of Board or articles of association.	DfT preference for devolved control linked to clear lines of political accountability means reduced likelihood of further powers being granted, whilst separation between Mayor and WMRL risks existing powers being reallocated, either to Mayor or back to DfT.	Structured and regular meetings with Mayor and Mayor's office, and with DfT civil servants and Williams review team. Adopt one of options 2 to 6.	<ol style="list-style-type: none"> 1. Expanded influence for WMRL NO 2. No change to voting rights YES 3. Stronger Board governance NO
2 – Mayor as observer	Mayor attends WMRL Board in similar capacity as Chair of TfWM TDC.	The Board and Mayor gain the ability to regular brief one another, share ideas and approaches, and privately deal with any disagreements. No amendments to the articles of association are required.	Informal nature of the Mayor's involvement means that DfT's prerequisite for further devolved control has not been met. Mayor may also be unhappy with subordinate nature of the observer role, and may decide not to attend, thus maintaining separation between WMRL and Mayor. Therefore, disbenefits are similar to option 1.	Structured and regular meetings with the Mayor and the Mayor's office. Strong chairmanship to enable Mayor to make contributions at Board. Adopt one of options 3 to 5.	<ol style="list-style-type: none"> a) Expanded influence for WMRL NO b) No change to voting rights YES c) Stronger Board governance NO
3 – Mayor as non-voting director	Mayor attends WMRL Board as a director, without voting rights.	The Mayor gains a more formal role in WMRL, and as in option 2 both parties benefit from the ability to share and challenge one another in a safe and private environment. Some changes required to articles of association, which would need to create a new category of director not currently provided for.	Although the role of the Mayor in WMRL is more formal than in option 2, it is still marginal, and thus it is unlikely that the DfT would grant an extension of powers on that basis. Like option 2, the Mayor may feel there is little value in participating, thus maintaining the risk of conflict between WMRL and the Mayorality. Such an act could destabilise the political balance of WMRL. Changes to articles of association required to formalise role and set the basis for the Mayor becoming a director.	Structured and regular meetings with the Mayor and the Mayor's office. Strong chairmanship to enable Mayor to make contributions at Board. Redraw articles of association to create a new category of director specifically for the Mayorality. Adopt one of options 4 to 6.	<ol style="list-style-type: none"> a) Expanded influence for WMRL NO b) No change to voting rights MAYBE c) Stronger Board governance NO
4 – Mayor as voting director (similar to Principal Directors nominated by a member authority)	Mayor attends Board as a director with voting rights	Increased engagement from Mayor, as they would have a stake in the future of the WMRL Board and a say in policy. The WMRL Board would in turn be able to influence the Mayor. Greater likelihood that conflict would be avoided, and that the credibility of both the Board and Mayor would increase in the eyes of external parties. This would include from DfT.	DfT may feel that despite the Mayor's formal role, this option still represents distributed accountability, and thus it is disinclined to allow further devolved control to WMRL. Giving the Mayor full voting rights presents several constitutional challenges in respect of quorum, balance of voting and the basis on which the Mayor would become a director, which is not provided by the current articles of association, as the role is nominated by the member authorities.	Like any Principal Director nominated by a member authority, the Mayor could be elected as the Chair, which might address the concerns of DfT. However, this is not guaranteed, and in any case, terms are limited to two years. The constitutional questions could	<ol style="list-style-type: none"> a) Expanded influence for WMRL MAYBE b) No change to voting rights NO c) Stronger Board governance NO

Option and description	Deliverables	Benefits	Disbenefits	Mitigations	Compliance with the principles
			<p>Apart from the need to amend the articles of association, it would give the Mets a build in majority of one, which could undermine the political balance of the Board and encourage block voting. Equally, it could politicise votes.</p> <p>Changes to articles of association required to formalise role and set the basis for the Mayor becoming a director, as well as potential changes to quorum and voting rights.</p>	<p>be addressed by increasing the number of Shire/Unitary authority full members to even out the number of votes, or by vesting all seven of the Met votes in the person of the Mayor.</p> <p>Both mitigations would require considerable changes to the articles of association.</p> <p>Adopt options 5 or 6.</p>	
5 – Mayor as voting director and voting chair	Mayor Chairs the WMRL Board and has one vote, as well as a casting vote as Chair (to break a deadlock).	As per option 4, but with the increased likelihood that WMRL would be able to secure further control from the DfT and utilise the influence of the Mayoral role to promote the objectives of the WMRL Board.	As per option 4 but with the addition that the Mayor could use their casting vote to force the Board into adopting Mayoral policies.	As per option 4.	<ul style="list-style-type: none"> a) Expanded influence for WMRL YES b) No change to voting rights NO c) Stronger Board governance NO
6 – Mayor as non-voting, non-director chair PREFERRED OPTION	Mayor Chairs a strengthened WMRL Board and has no voting powers	<p>Mayor is formally the Chair of the WMRL Board and provides the public face of WMRL. This would address the question of distributed accountability and increase the credibility of the Board in the eyes of DfT and other stakeholders. It would help align WMRL and Mayoral aspirations, thus reducing risk of conflict, and increasing the potency of each other's objectives. The lack of formal voting powers means the political balance, quorum and voting rights of the board are unaffected.</p> <p>The Mayor could also be delegated certain powers of the directors (such as lobbying and dealing with central government) by the directors as opposed to through amendments to the articles of association.</p>	<p>Changes will be required to the articles of association, and each member authority will be required to ratify the changes (exact arrangements differ across levels of membership). Mayor may find lack of voting powers frustrating, and the Board loses the rotating Chair/Vice Chair structure that has helped to maintain a strong cross-party relationship.</p>	<p>Two new Vice Chair roles created – one for the Shire/Unitary partners, and one for the Mets – to support the Chair.</p> <p>Clarify through the articles of association the exact roles and powers of the Chair and Vice Chair positions to avoid overlap and mission creep.</p> <p>Provide mechanism for review and ability to alter arrangements if they cease to be suitable.</p>	<ul style="list-style-type: none"> a) Expanded influence for WMRL YES b) No change to voting rights YES c) Stronger Board governance YES

Appendix B – Proposed Changes to WMRL Articles of Association

17 Chairing Of Directors' Meetings

- 17.1 ~~The Directors shall appoint one of the Directors as the Chair of the Company and one of the Directors as the Vice Chair of the Company, such appointments to take effect (subject to early termination in accordance with article 17.2) either until the next but one annual general meeting of the Company (if the Company holds annual general meetings) or until the start of the first Directors' meeting to take place after the second anniversary of his or her appointment (if the Company does not hold annual general meetings), provided that: The Mayor of the West Midlands (from time to time) shall be the Chair of the Company and shall be entitled to chair (and speak at) Directors' meetings (but, for the avoidance of doubt shall not vote).~~
- (a) ~~where the Chair is a Director appointed by an Associate Member then the Vice Chair must be a Director appointed by an LTA Member (and vice versa); and~~
- (b) ~~the position of Chair and the position of Vice Chair shall alternate between a Director appointed by an Associate Member and a Director appointed by an LTA Member.~~
- 17.2 There shall be two Vice-Chairs of the Company. Each Vice-Chair shall be a Director and one shall be appointed by the LTA Members (other than the Combined Authority) and one shall be appointed by the Associate Members. Each Vice-Chair shall (subject to early termination in accordance with article 17.3) be appointed for a period of two years (eligible for reappointment).
- 17.3 ~~17.2~~ The LTA Members or Associate Members (as case may be) may terminate the appointment of the ~~Chair or~~ Vice-Chair of the Company appointed by them at any time, provided they appoint a replacement under article 17.2.
- 17.4 ~~17.3~~ The Chair (or ~~one of the Vice-Chair~~ Chairs if the Chair is not participating in the relevant meeting) shall chair ~~Director's meetings provided that if neither the Chair nor the Vice Chair is~~ Directors' meetings. If the Chair is not participating and both Vice-Chairs wish to chair the relevant meeting, then the chair of that meeting shall be selected by the Vice-Chairs drawing lots. If there is no Chair or Vice-Chair participating in a Directors' meeting within ten minutes of the time at which it was due to start, the participating Directors shall appoint one of themselves to chair it.
- 17.5 ~~17.4~~ The chair of a Directors' meeting shall not have a casting vote in the event of an equality of votes cast for and against a proposal at the meeting.

35 Chairing General Meetings

35.1 The Chair appointed pursuant to article 17.1 (or if not present and willing to do so, one of the Vice-ChairChairs appointed pursuant to ~~that~~ article 17.2) shall chair general meetings if present and willing to do so.~~35.2 If neither the Chair nor the Vice Chair, if the Chair is not participating and both Vice-Chairs wish to chair the relevant meeting, then the chair of that meeting shall be selected by the Vice-Chairs drawing lots.~~

35.2 If none of the Chair and Vice-Chairs are willing to chair the meeting or are not present within 10 minutes of the time at which a meeting was due to start:

- (a) the Directors present, or
- (b) (if no Directors are present), the meeting, must appoint a Director or Member (or Member representative) to chair the meeting, and the appointment of the chair of the meeting must be the first business of the meeting.