

Decision maker:	Cabinet member Infrastructure and transport
Decision date:	Monday, 14 December 2020
Title of report:	West Midlands Rail Executive Governance Changes
Report by:	Senior Transport Planning Officer

Classification

Open

Decision type

Key

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Wards affected

Countywide

Purpose

To agree the Council's response to proposed changes in the governance of West Midlands Rail Limited (WMRL) and make a decision as to whether to support those changes.

Recommendation(s)

That the Cabinet member:

- (a) Supports the changes to the governance of WMRL set out in this report and:**
- (b) Instructs the Council's representative to vote in favour of the amendments to the company's Articles of Association as set out in Appendix B at the Extraordinary Meeting of the company on 19 January 2021 (or such other alternative date fixed for that purpose)**

Alternative options

1. Six alternative options have been reviewed by the West Midlands Rail Executive (WMRE) to seek to address governance issues and political accountability. These are set out in Appendix A to this report and includes commentary of the benefits and dis-benefits of each option. The WMRE has confirmed a preferred option – the Mayor of the West Midlands Combined Authority chairs the West Midlands Rail Limited Board with no voting powers or directorial position.
2. The cabinet member does not support the changes proposed to the WMRL governance. This is not recommended as the proposed changes would increase the likelihood that WMRL will not be able to successfully lobby DfT for greater powers and funding. In addition, the proposal includes proposals which will retain the balance of interests between rural partners (such as Herefordshire) and the metropolitan partners through the creation of two more powerful Vice Chair roles one of which will be allocated to a rural county.

Key considerations

3. The West Midlands Rail Limited was set up in the anticipation that government would progress its plans to devolve management of rail franchises (such as West Midlands Rail) to regions, bringing about more local control over services delivered by a franchise. Herefordshire Council determined to join membership in 2015.
4. The WMRE Board is made up of Leaders or senior cabinet members appointed by each of the Partner Authorities. In 2015, a cabinet member decision was approved whereby the Leader of the Council was appointed as a director of the company and the cabinet member for transport and roads was appointed as substitute. The Cabinet members role on the Board is to provide WMRE 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.
5. 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.
6. 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.
7. WMRL, working with Transport for West Midlands (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 regions rail network.
8. The Combined Authority, by contrast, whilst home to half the WMRL areas residents, does not feature a sensible geography for the oversight of rail services, but does feature a directly elected Mayor.
9. There is also the risk that the rail priorities of the Mayor and WMRL could conflict. Such disagreement is in neither parties' interest.

10. 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.
11. 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:
 - 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 desired; and
 - e) Does not affect the day to day operation of the Company
12. 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 above.
13. Under this option, the Mayoralty gains direct and formal influence over local rail services and rail strategy. For WMRE, 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.
14. Option 6 was approved in principle by the WMRL Board as its meeting on 15th September 2020. Also approved at that meeting was the recommendation that each of the 14 partner authorities would commence the process of taking Option 6 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 company on 19 January 2021.
15. 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 can be found in Appendix B.
16. On 15 September 2020, 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 WMREs 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

Community impact

17. The recommendations set out in this report support the following ambitions and success measures set out in the Council's County Plan 2020-24:
1. **Environment:** Protect and enhance our environment and keep Herefordshire a great place to live:
 -*We will enable more healthy low carbon travel options, including walking, public transport, and cycling to reduce congestion, improve local air quality and enhance health and wellbeing...*;
 2. **Economy:** Support an economy which builds on the county's strengths and resources
 - *Success measure: Increase the number of short distance trips being done by sustainable modes of travel- walking, cycling and public transport*
18. They also support the following Council strategies:
- a. Core Strategy (2011-2031):
 - i. Policy SS4- Movement and Transportation;
 - ii. Policy HD2- Hereford City Centre; and,
 - iii. Policy HD3- Hereford Movement;
 - b. Local Transport Plan (2016-2031):
 - iv. Policy LTP PT 7- rail improvements, through continued engagement and partnership working.

Environmental Impact

19. There are no direct environmental impacts as a result of the proposed recommendations, however, it is important for the Council to continue to have an influence over rail services in the county and support the policies and objectives set out in the Local Transport Plan.

Equality duty

20. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
- A public authority must, in the exercise of its functions, have due regard to the need to -
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
21. The duties undertaken by WMRL must comply with the duties set out above as the members are all bound by these duties.

Resource implications

22 There are no resource implications as a result of this decision

Legal implications

23 The legal issues have been identified and addressed correctly in this report.

Risk management

24. There are no financial risks identified within the recommendations

Risk / opportunity	Mitigation
If the cabinet member decides not to support the recommendations identified, this could risk damaging Herefordshire Council's reputation amongst WMRE and the wider West Midlands rail community as it would suggest that the Council are not supportive of the governance changes which WMRE believe will help them gain direct and formal influence over local rail services and rail strategy, which could benefit Herefordshire.	The various options and subsequent preferred option were considered and decided on in principle at the Board of Directors meeting held on 15 September 2020. Briefing notes have been provided to the cabinet member for Infrastructure and Transport on these matters prior to this meeting
If the cabinet member decides not to support the recommendations identified, and the proposals do not pass the vote at the Extraordinary Meeting on 19 January 2021, this could have an effect on how WMRE can influence local rail services in Herefordshire and the wider West Midlands region.	The various options and subsequent preferred option were considered and decided on in principle at the Board of Directors meeting held on 15 September 2020. Briefing notes have been provided to the cabinet member for Infrastructure and Transport on these matters prior to this meeting.

Consultees

There has been no consultation undertaken on this matter.

Appendices

Appendix A: WMRL governance tables of options

Appendix B: The amendments to the WMRL Articles of Association

Background papers

None

Please include a glossary of terms, abbreviations and acronyms used in this report.

DfT- Department for Transport

LTP- Local Transport Plan

TfWM- Transport for West Midlands

WMRL- West Midlands Rail Limited

WMRE- West Midlands Rail Executive