

# CABINET MEMBER DECISION

04 JANUARY 2021

## PROPOSED CHANGES TO THE GOVERNANCE OF WEST MIDLANDS RAIL EXECUTIVE

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### Relevant Cabinet Member

Ken Pollock

### Relevant Chief Officer

Strategic Director for Economy and Infrastructure

### Local Member(s)

N/A

### Recommendation

- 1. The Cabinet Member with Responsibility for Economy and Infrastructure is recommended to agree proposals to amend the governance of West Midlands Rail Limited as set out in this report, relating to the Mayor of the West Midlands Combined Authority being appointed as non-voting Chair of the WMRL and the delegation of lobbying activities to the Chair.**

### Background

2. 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).
3. The County Council is one of the 14 partner authorities. The most senior layer of governance in WMRL is the Board of Directors. This provides local democratic oversight for WMRL. The Board is made up of Leaders or senior cabinet members appointed by each of the Partner Authorities. The Board 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.
4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Work was undertaken to draw up options for evolution that would meet the following criteria:

- 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;
- Would involve no changes to voting rights – maintaining the existing balance of votes between Shire/Unitary and Metropolitan Boroughs;
- Would provide a stronger role for vice chairs;
- Would be sufficiently flexible to permit for a restoration of the previous arrangements, should this be desired; and
- Would not affect the day to day operation of the Company

11. In total six alternatives were identified, including a Do-Nothing option. A short summary of each option is provided in Appendix A. Following detailed consideration, 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.

12. 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.

13. Option 6 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 Option 6 through their respective governance processes.

14. 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.

15. 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.

## **Legal, Financial and HR Implications**

16. The Council joined West Midlands Rail Limited and appointed directors to its Board pursuant to Section 1 of the Localism Act 2011.

17. Members of the Company are bound by its Articles of Association and governance requirements.

## **Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments**

A **joint impact assessment (JIA)** screening was undertaken and concluded -

The JIA screening did not identify any potential considerations requiring further assessment during implementation.

## **Supporting Information**

- Appendix A – summary of governance options considered
- Appendix B – proposed amendments to the WMRE Articles
- Appendix C – joint impact assessment screening report

## **Contact Points**

### County Council Contact Points

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### Specific Contact Points for this report

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## **Background Papers**

In the opinion of the proper officer (in this case the Strategic Director for Economy and Infrastructure) the following are the background papers relating to the subject matter of this report:

Reports to Cabinet on 14 November 2015 and 29 September 2016.