

Agenda Item No. 11

WEST MIDLANDS REGIONAL ASSEMBLY

Board of Directors - Friday 2nd December 2005

Report of the Chief Executive and Company Secretary

1 Half-Yearly Financial and Performance Report

1.1 Purpose

To advise the Board of the submission to GOWM of the Assembly's half yearly financial and performance report and to note progress against the business plan at the half year point.

1.2 Recommendation

That the Board considers the performance exception report and any issues arising.

1.3 Background

West Midlands Regional Assembly's report to GOWM for April-September 2005 comprises four files - an Introduction, a Performance Exception report, a Progress Report on Work Strands (inc. the Corporate Governance Action Plan) and Financial Tables. The full Half Year report (all four files) are available on the Assembly's website as appendices (A to D) to this report.

This report has been designed to focus on performance exceptions whilst allowing us to provide a progress update for every individual task within the work strands of the Business Plan using a symbol system which is explained in the introduction. This was an approach to performance monitoring agreed by the Assembly's Audit Committee. The Board will be pleased to hear that all tasks with the exception of those in the exception report are either complete or on target. This is no small achievement in view of the range of work within the business plan.

1.4 Financial Tables September 2005 Bid Report

This report provides detail of actual expenditure for the first half of the year (April-September) set against the original budget and bid profile. Data has been analysed as;

- The original budget and allocation across planning and non planning activity
- Actual Planning expenditure compared to budget profile and the identified variance
- Actual Non-Planning expenditure compared to budget profile and the identified variance

This is a report on all financial activity of WMRA, including that funded by other partners. Therefore, a further narrative is included in the table in respect of discrete ODPM funding, the amount of variance, and a brief explanation of the key variances.

Details of the virements approved by the Board at its last meeting were also reported to GOWM.

2 Budget and Business Plan 2006-9

2.1 Purpose

To advise the Board of the approach to setting this year's business plan and budget and agree the timetable for adoption.

2.2 Recommendation

That the Board endorses the submission of a draft budget to GOWM in advance of approval by the Assembly at its meeting on 18th January 2006, in line with ODPM's timetable for the Assembly to submit draft budgets to Government Office by 14 January 2006.

2.3 Background

The Board will recall that last year the Assembly undertook a fundamental review of both its priorities and activities and its business planning process. It agreed a 3 year business plan and budget which was detailed in respect of 2005-2006 and indicative in respect of future years. This is available on the Assembly's website. ODPM's budget and business planning and guidance requires us to prepare a 3 year rolling plan again - this year for 2006/9. Officers are currently working on the detail of this based largely on the existing plan.

2.4 ODPM Business Planning Timetable

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| December 1 | ODPM provides each assembly with indicative allocation for following year.(We will Circulate details of this when received to the Board electronically) |
| January 14 | Deadline for submission to Government Offices - in draft where pending adoption by full Assembly. The budget will be considered by the assembly at its meeting on 18 th January 2006. |
| January 25 | Review of WMRA draft Business Plan with GO |
| February 14 | Deadline for submission of approved plans to ODPM. |

- March 1** Submission to ODPM Ministers for approval.
- March 15** Issue of letters of approval to Assemblies or accounting bodies.

3 Expansion of Coventry Airport-Costs of appearing at a public Inquiry

3.1 Purpose of the Report

To advise the Board of a successful request to ODPM for supplemental funding from their contingency fund to meet the costs of the Assembly as Regional Planning Body (RPB) being asked to attend the above inquiry and to seek approval to a virement within the budget to cover the balance of the costs.

3.2 Recommendation

That the Board approves a virement of up to £12,500 to the legal expenses budget (Strand 29) from the Transport budget (strand 22).

That the Assembly includes a provision in all future budgets for legal expenses.

3.3 Background

Under the Planning and Compulsory Purchase Act 2004, the RPB has a statutory duty to give advice if it thinks that to do so will help achieve implementation of the Regional Spatial Strategy (RSS). As of August 2005 the RPB became a statutory consultee with regard to regionally significant planning applications. However, in advance of this statutory consultee role, the RPB had already adopted and operated a Conformity Protocol setting criteria for the type of applications that should be forwarded to the RPB for an opinion of general conformity with the RSS.

3.4 The Application

In November 2004 Warwick District Council forwarded the RPB a copy of a planning application in respect of the expansion of Coventry Airport. Following agreed procedures, an assessment was undertaken of the application and an opinion forwarded to the District Council within agreed time limits. The response concluded that the application did not generally conform to the West Midlands RSS. An amended application was submitted to the Assembly in September 2005.

As a result of a non-determination of the planning application by the Council, a Public Inquiry is now to be held (to commence in January, 2006) and the Assembly has been invited by the Inspectorate to participate as a Rule 6 party. This is particularly

important given that a number of the issues on which the Secretary of State has requested specific advice from the inquiry directly relate to the Regional Spatial Strategy. It was agreed by the Chairs and Vice Chairs on officer advice that the Assembly should attend the inquiry.

Costs

There is no provision within the Assembly's current budget to cover the estimated costs of £25,000 (representing the costs of both Counsel and the Assembly's expert witness). An application was therefore made to the ODPM contingency fund and we have formally been advised that we will receive an extra payment for half of the costs. The Assembly will need to meet the balance. This will need to be financed by a virement from another area of the planning budget.

4 Regional Planning Body – Conformity Role

4.1 Purpose of Report

To seek the Board's agreement to exploring the feasibility of varying the Assembly's arrangements for the determination of conformity of Local Development Frameworks.

4.2 Recommendation

That the Board approves that legal advice be sought on whether alternative arrangements for managing the Regional Planning Body role of determining the conformity of local development frameworks would remain within the limited liability framework of the Assembly company.

4.3 Report Details

Determining whether or not Local Development Frameworks conform to the Regional Spatial Strategy represents a significant potential risk against legal challenge. Conformity decisions are currently taken by the Chair and Vice-Chairs of the Regional Planning Body/Planning Executive (RPB/RPE) with a minimum of two of those members required to validate any decision.

4.4 In order to mitigate the risks the Board, at its meeting on 8 April, acting on legal advice, agreed that in future the Chair and Vice-Chairs of RPB/RPE should always be Directors of WMRA, thus ensuring that conformity decisions were contained within the Assembly company's limited liability provisions.

4.5 Subsequently a situation has arisen which requires a review of these arrangements. The recently nominated successor for the business sector Vice-Chair of RPB/RPE is not a 'member' of the

Assembly company (generally membership of the RPB does not require membership of the company) and cannot therefore be appointed as a Board Member.

- 4.6 Whilst the most straightforward solution would be for the WMBC to replace one of their 16 Assembly Company members with the new RPB Vice Chair, this is not the preferred action of WMBC as their seats on the Assembly main body are determined by competitive election and this would undermine that process. The Board is therefore asked to consider, subject to legal advice verifying their legitimacy, alternative arrangements for dealing with conformity decisions.
- 4.7 There are provisions in the Assembly Articles of Association which allow the Board to delegate powers to committees or sub-committees whose membership can include persons who are not Directors. There is a requirement that at least one Director is in membership and that such committees or sub-committees are chaired by a Director.
- 4.8 The alternative proposal is therefore for the Board to create an RPB Conformity Panel (effectively managed through the RPB structure) with delegated powers, comprising the Chair, Vice-Chairs and two other members of the RPE. [The increase in numbers seeks to address a separate issue which is the increasing demands on these members as the conformity work expands]. The terms of reference of the Panel would include:-
- Membership must include a minimum of one Director of WMRA.
 - Panel meetings must always be chaired by a Director of WMRA.
 - A minimum of two members are required as a quorum for the Panel.
- 4.9 If the Board agree to explore this alternative legal advice will be sought to establish the validity and legitimacy of such a proposal within the corporate structure of the company.

5 Members Allowances

5.1 Purpose

To seek the agreement of the Board to the terms of reference for the reconvening of the WMLGA/WMRA Independent Remuneration Panel (IRP)

5.2 Recommendation

That the Board approves the terms of reference for the IRP (Appendix E) to reconvene to consider issues of allowances for members of the Assembly

5.3 Background

At the January meeting the Board considered the general issue of member allowances. In addition to agreeing to meet the costs of a Chairman's allowance the Board generally supported the principle of other appropriate allowances. However it was acknowledged that there were particular financial constraints for the 2005/06 financial year and agreed that the IRP should in the first instance consider expenses, with other allowances at a later date.

5.4 The IRP has yet to be recalled and the Board's approval is being sought to the terms of reference to guide its work. The current position on allowances is:-

- the requirement for a scheme to meet expenses for travel and subsistence for instance in attending WMRA meetings, particularly for non local government members, remains an important issue
- Special Responsibility Allowances (SRA's) for senior WMRA officers needs also to be resolved ie whether or not there should be SRAs and at what value for example
 - Non local government Vice-Chairs
 - Chairs of Partnerships
 - Members of the Regional Planning Executive involved in conformity determination
- The inter-relationship between WMLGA and WMRA SRAs, particularly the value of the single Chair position for WMRA/WMLGA which is currently shared (NB remuneration for Directorships have not been included)

5.5 Terms of reference have been drafted for the reconvening of the IRP to include these matters. With an eye on the budget for 2006/07, whilst it is not possible to be accurate about the outcomes of the exercise, it would not be unreasonable to anticipate annual costs of up to £25,000 arising. This compares to the provision of £15,000 in the current year. It needs to be noted that IRP recommendations are not binding on the Board, which must consider them in relation to other budgetary priorities and pressures. Nevertheless if the Board agree to the exercise some preliminary budget provision must be made.

- 5.6 If the Board accepts the terms of reference and financial implications then the IRP will be reconvened as soon as possible.

6. RSS Implementation Event

6.1 Purpose

To seek approval of Board Members to organise a high level event for securing greater buy-in to delivering RSS.

6.2 Recommendation

That the Board agree the proposed RSS implementation event outline as the basis for moving forward.

Background

- 6.3 The Spatial Strategy sets out a very challenging agenda for the whole Region. It aims to co-ordinate public sector activity in the way it affects places, this must engage a broader constituency than land-use planning and encompass social, economic and environmental dimensions. For the Strategy to achieve "take-off" the private sectors need to be energised to tackle the challenges and opportunities the Spatial Strategy provides.

- 6.4 With regard to the local government family, the November meeting of the Regional Chief Executives Group agreed proposals to hold a major Chatham House event on implementation targeted largely at local authority members, chief executives and regeneration portfolio holders but also including others within the Assembly family. The event will provide a safe space to discuss what the Region will be like in 2021 and the big spatial strategy implementation issues to make this happen. It is anticipated that this will take place in June/July 2006.

- 6.5 With respect to the private sector and delivery bodies, an opportunity has arisen to hold an event in the near future in association with Price Waterhouse Coopers. The purpose of this event is to promote the Spatial Strategy and key initiatives that are contributing to its delivery with a view to accelerating their delivery.

Event Proposal

- 6.6 Price Waterhouse Coopers have agreed to sponsor and host this event to our specification. It is proposed that this should be a formal, attendance by invitation only, reception and dinner event for about 50-70. Invites would be extended to the

Assembly Board, major developers, development consultancies, delivery vehicles and government officials.

- 6.7 For maximum impact it could usefully be tied into the national LGA's Delivering Sustainable Communities Conference which will be held at the ICC in Birmingham 13-15 February 2006. This should help attract high level attendance and possibly secure a relevant minister.
- 6.8 The preferred date is the 13th Feb, as the LGA Conference dinner is the following evening. It should be noted, however, that there is also a conference reception at 6pm 13th Feb followed by an "informal social function" hosted by Birmingham City Council. However, it is unlikely that there would be a significant overlap with our target audience.
- 6.9 It is proposed that the dinner is preceded by a short reception at a small staffed exhibition. The exhibition would include, for example, key elements RSS, the Black Country Study, North Staffs Spatial Vision/Core Strategy, "Our City-Region" and Shire initiatives. This could take the market stall format of the recent successful launch of RSS Phase 2 Project Plan at the Centennial Centre in Birmingham.

Next Steps

- 6.10 If this proposal is accepted, further discussions will be held with Price Waterhouse Coopers about the organisation of the event, further work will also be done on firming up the invitation list and liaising with GOWM in order to secure a minister.

7. Audit Commission Study - Regional Governance: Is it delivering for Local Government -West Midlands Case Study

7.1 Purpose

To advise the Board of research into regional governance and whether it is delivering for local government which the Audit commission intends to undertake

7.2 Recommendation

To note the intended Audit commission research and the selection of the West Midlands as a case study

7.3 Background

The Audit Commission have decided to undertake research into regional governance with particular focus on Regional Assemblies in view of the fact that local authorities contribute directly and indirectly to them.

They have asked MORI to survey all local authority leaders and Chief executives on their experiences. In addition they will be undertaking more in depth case studies in 3 regions. The West Midlands is one of the regions selected and more detailed interviews will be undertaken in those regions again with senior local authority figures. There will be a study and analysis of key documents etc.

ERN was consulted on the proposals and expressed concern that it looked in detail at only one limb of regional governance rather than the full picture.

8. High Court Judge Project

8.1 Purpose of the Report

To seek the Board's support for the efforts being made to see the West Midlands and Birmingham become a national pilot for the permanent relocation of High Court Judges to the region.

8.2 Recommendation

Board members are asked to consider supporting the proposal as set out in the report.

8.3 Background

Correspondence has been received from Simon Murphy of Birmingham Forward enclosing a copy of a letter recently sent to Lord Justice Gibbs on behalf of a number of partners regarding efforts to see the West Midlands and Birmingham become a national pilot for the permanent relocation of High Court Judges to the region (Appendix F).

This initiative is supported by Birmingham Law Society, St Philips Chamber, No.5 Chambers, and the Leaders and Chief Executives of the 7 Metropolitan Councils. The Birmingham office of Deloitte have produced the draft report, which will become a final document to be submitted in early January in response to the DCA's Judicial Resources Review consultation paper.

The Assembly's support for the objective of the project - i.e. that a number of High Court Judges are permanently located in the West Midlands is sought.

9. Regional Energy Advisory Board-Request for Board Member and Position of the Regional Energy Advisor

9.1 Purpose

To seek a Board nominee to sit on the Board of the Regional Energy Advisory Board and consider the position of the Regional Energy Advisor (as reported at the last Board meeting).

9.2 Recommendation

That the Board agree a nominee to sit on the Regional Energy Advisory Board and consider the update provided in respect of the position of the Regional Energy Advisor.

9.3 Background

The regional energy office has recently reviewed the membership of its Board and is now offering a place to an Assembly Board member. The Board comprises 12 members and is responsible for driving forward the regional energy strategy available on www.energywm.org.uk. The Board is in fact a partnership rather than a limited liability company. The Assembly is the accountable body with funding coming from the DTI. It meets quarterly at the regional partnership centre at 3.30 pm. Both WMBC and WMLGA have representation on the Board.

An update on the position of the Regional Energy Advisor will be provided to members for the consideration.

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**Proposed Terms of Reference for the Reconvened (Joint WMLGA/WMRA)
Independent Remuneration Panel**

To consider and make recommendations on:-

1. Whether or not WMRA should establish a Special Responsibility Allowance (SRA) Scheme to include senior positions in addition to the Chair (currently the only remunerated position in WMRA). The positions to be considered to include WMRA Vice-Chairs, Chairs of Regional Partnerships and Regional Planning Executive Conformity determination Members.
2. If so what levels of remuneration should apply to these SRAs.
3. The relationship between WMRA and WMLGA SRAs and particularly remuneration protocols that might apply where there are dual roles eg single Chairman of WMLGA and WMRA, WMLGA Portfolio Holders who also chair a WMRA Partnership.
4. A travel and subsistence scheme for WMRA with particular attention to non local government members of the Assembly.

Information which the IRP will need to consider will include:-

- Roles and responsibilities of WMRA office holders
- Roles and responsibilities of WMLGA office holders (for comparison and analysis re duality)
- WMLGA's Members Allowance and Travel and Subsistence Schemes
- Other Regional Assemblies' approaches to allowances
- Evidence and opinion from WMRA/WMLGA members and officers as appropriate

The Hon. Mr Justice Gibbs
Presiding Judge of the Midland Circuit
Royal Courts of Justice
Strand
London WC2A 2LL

8 November 2005

Dear Judge

BIRMINGHAM HIGH COURT PROJECT

Thank-you for your letter of 26 April 2005.

Following a meeting between Lord Justice Thomas and the project team in London on 11 October last and the release by the Department of Constitutional Affairs of its consultation paper entitled “Focusing judicial resources appropriately”, I thought it may be helpful if I set out in summary form our current position in relation to the project, including a brief response to the matters set out in your letter. Our more detailed response to the consultation paper is likely to reflect the themes we set out below.

The overall object of the project is to seek the qualification of the current absolute rule that all High Court judges are appointed to be “resident” or based in London. We do not ask for the complete abandonment of this rule. We simply seek its qualification such that sufficient full status High Court judges are appointed to preside in the Midlands on a permanent, resident basis, to deal with the concerns we list below.

We believe that the qualification of this absolute rule is desirable for the following reasons:

1. Access to Justice

In spite of the best efforts of the full High Court judges who supervise the TCC and Chancery lists, the practicalities of listing before these judges (and the high quality of the local judges) mean that almost all Chancery and TCC cases in Birmingham will be heard by the local s.9 Judges regardless of size or complexity. As matters stand, all Mercantile Court cases are heard by the local s.9 judges regardless of size or complexity in any event. Even if a supervising full High Court judge system was introduced in the Mercantile Court, experience suggests that the overall position is unlikely to change to any significant degree.

Accordingly, as our preliminary report shows, a substantial business dispute between residents of the Midlands heard in Birmingham has a much reduced prospect of being heard and determined by a full High Court judge than the equivalent dispute heard in London. At the moment, the practical impact of this is militated to a significant degree by the dedication and skills of the local specialist senior circuit judges. This of course does not detract from the point of principle concerning the administration of justice by the High Court as an institution.

It should also be noted that the local profession has developed a strong and, we believe, highly successful relationship with the High Court via the local specialist s.9 judges, who provide the Midlands and elsewhere with an excellent service. The irony of course is that this relationship has developed and continues to develop with only marginal involvement from full High Court judges. Accordingly, the High Court's "national status" in relation to businesses in the Midlands is largely due to the skills and abilities of the senior circuit judges who are principally responsible for discharging its functions.

Similar issues exist in other high value civil case, particularly in clinical negligence and complex personal injury case.

Further, even in crime and family where there is in effect a "permanent" visiting full High Court judge system, we understand from discussions with court staff that the visiting system does cause significant inefficiencies in listing, both in terms of utilisation and allocation of full High Court judges.

Finally, there are almost no public/administrative law matters heard in Birmingham. The small level of High Court judicial resources presently made available removes the possibility of any real change in this regard. We have recently surveyed local Councils and other local users of the Administrative Court and believe as a result that there would be sufficient support to establish a permanent Birmingham list.

2. Professional/Regional Development in the Midlands

The fact that the brightest and the best Midlands' practitioners and judges are appointed to a court based in London is a powerful symbol of the disadvantages the current system imposes on the Midlands, creating a brain drain at the top and a blockage at the other end. This impacts directly upon the Bar and local firms, particularly but not only in terms of a loss of talent and leadership. It also impacts upon other professions, e.g., accountants and surveyors, and through them the broader community.

It also appears to us that the local judges would also stand to benefit significantly from better exposure and access to the leadership and experience of full High Court judges if their offices were here rather than at the Strand.

We would add that the project recently received the unanimous support of a meeting of the Chairman and Chief Executives of the West Midlands' Local Authorities held on 27 July 2005 (copy enclosed).

3. Competitiveness

It follows that this rule entrenches a significant competitive disadvantage for the local profession vis-à-vis their competitors in London. At present, Birmingham firms compete with considerable success with their London counterparts for international commercial law work, which work is undertaken in Birmingham. There is no reason why Birmingham law firms and chambers should not be able to compete on an equal footing with their London counterparts for international dispute resolution work.

4. Diversity/discrimination

The current system discriminates against residents of the Midlands, particularly those (statistically, normally women) with significant family commitments.

It is also difficult to see how the current system is consistent with the object of increasing the diversity of the High Court bench.

5. Sustainability/efficiency

It would not appear to be sustainable in the medium to long term for the High Court to be drawing work from the Midlands to London when the only link with London is the judge. Further, as our preliminary report established, it is likely that there would be substantial savings if Midlands' High Court litigation requiring a full status High Court judge was heard here, by a resident judge.

Dealing with the two reasons you have identified why, in your view, regionally based High Court judges are unlikely to be approved:

- (1) It is precisely because the current rule sees all judges, to use your words, “identified with a particular region” that we seek its modification. In our respectful opinion, this rule counters rather than reinforces the “vital national status of the High Court bench”. All of the elements we have identified above illustrate why the present system is unfairly and unjustifiably skewed in favour of London, to the detriment of the Midlands and other regions. Further, it would not appear to be in the High Court’s interest for its relationship with the regions in some areas of law to be largely if not entirely the product of the work of circuit judges (albeit highly competent and committed senior circuit judges).
- (2) We are not seeking necessarily to increase the number of High Court judges but to see the present judges deployed in a more equitable, efficient and effective manner.

I hope that the above is of some assistance in understanding our position. If there is anything you believe you could usefully add to your earlier letter, I would be happily consider it.

Yours sincerely,

Simon Murphy
Chief Executive
Birmingham Forward

cc.

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