

TfW Board minutes November 2020

10:00 – 16:30; 19 November 2020

Attendees

Scott Waddington (SW) (Chair); James Price (JP); Heather Clash (HC); Sarah Howells (SH); Nicola Kemmery (NK); Alison Noon-Jones (ANJ); Vernon Everitt (VE); Alun Bowen (AB); Natalie Feeley (items 1-3); Gareth Morgan (items 2b-2c) and Jeremy Morgan (Secretariat).

Operational update session (Part B): Geoff Ogden (GO); David O’Leary (DOL); Lewis Brencher (LB); Alexia Course (AC); Karl Gilmore (KG); Gareth Morgan (GM) Dave Williams (DW); Clare Cameron (CC) (Item 5a); and Natalie Rees (NR) (item 5e).

Part A – Full Board Meeting

The Chair welcomed all to the meeting and on behalf of the Board expressed thanks to the team for the hard work over the last month, especially in supporting and driving forward the Rail Futures Programme.

1a. Apologies for Absence

Lee Robinson (LR); and Lisa Yates (LY) (both Part B)

1b. Notice of Quorum

A quorum being present, the Chair welcomed everyone to the meeting and declared the meeting open.

1c. Conflicts of Interest

No conflicts of interest were declared.

1d. Minutes & Actions of Previous Meeting

The minutes of the Board meeting 15 October were approved as a true and accurate record subject to minor changes.

The Board discussed progress against outstanding actions.

2a. Safety Moment

Staff briefings in the form of a safety stand-down will be held next week based on lessons learnt from the Margam incident.

2b. Customer moment

A flat tyre problem was dealt with by having a company visit the home where the problem was examined, pictures taken with the faulty tyres taken to the manufacturer and replacements fitted. The company showed customer service above and beyond what was expected and will be used again. Great service often turns into great loyalty.

2c. Safety performance

TfW has taken possession of the new office in Pontypridd with due consideration given to COVID-19 control measures in advance of any occupancy. Work is on-going with the Facilities Management team to ensure adequate and sufficient measures are in place. Risk assessments have been carried out by a handful of staff who still wish to work at South Gate House and Treforest. A further 'check-in' and personal risk assessments with line-managers are scheduled to take place in November as a sense check on staff's wellbeing and home working arrangements.

A hazard workshop is planned for November around the operation of the Cardiff Bus Interchange, which will involve bus drivers. There were no SPADs, accidents or RIDDOR reportable incidents in Period 7.

A discussion took place on banning alcohol from trains but there are issues around the significant amount of time it will take to implement the necessary by-laws. Face-covering compliance is up at 97% and people not wearing one are challenged.

Level crossing and route crime incidents are trending downward, but issues remain that are being managed. Concern was raised over an incident on the Portobello (Taffs Well) crossing which was raised in October's board meeting, but action had not been taken to assess risks. The Board agreed urgent action needs to be taken to assess the risks and to take any necessary appropriate action with an update as part of next month's safety report **[Action GM]**.

The Board discussed the wider point of principle of when it has not received a response to an action and requested written responses as to why there has been no response. The Board also requested December's Health and Safety sub-committee consider how safety arrangements are being factored into TfW Rail Ltd mobilisation.

With the extension of home-working arrangements, a review of staff's personal arrangements has been conducted to ensure compliance with TfW's legal obligation. The review found TfW is complying and the support being offered to staff has gone well beyond what is required. The Board emphasised the need to ensure staff are keeping connected. The Board also highlighted the need to ensure that equipment taken from the office for home working meets the necessary home-working regulations **[Action – GM]**.

3a. CEO report

The Board were updated on JP's take on the business over the last month. A great deal of work has been concentrated on the Rail Futures programme in relation to the novation of the infrastructure contract, mobilisation of TfW Rail Ltd, the proposed joint venture with Keolis Amey, and development of the termination deed.

Novation of the infrastructure contract is progressing well with no significant commercial issues yet identified. Mobilisation of TfW Rail Ltd is also progressing well. However, if IMLR is required, this would prove to be more difficult as it would be implemented by the team currently working on the novation of the infrastructure contract, resulting in capacity issues. Work is also progressing on development of the joint venture with more work to be done to refine the precise role and remit. [REDACTED]

[REDACTED] Good progress is also being made on drafting an agreeing the Termination Deed.

TfW Rail Ltd will require its own Board for administrative purposes and three options will be presented later in the meeting. A discussion took place on Union involvement in relation to the TfW Board and the proposed TfW Rail Ltd

Board. It was agreed that a meeting with the Unions is required to ensure clarity on the strategic approach **[Action - JP]**.

The Board were informed that TfW Rail Services have made changes to the Senior Management Team by appointing an interim Chief Operating Officer until June 2021 and a Mobilisation Director, who is currently working part time for TfW. An exercise to identify a Managing Director for TfW Rail Ltd has commenced. This is a new role and will not displace anyone. Work is also underway to determine TfW executive management arrangements under the new arrangements based more on a matrix management style, as some activities will be lifted out of the ODP and put in at the group level. The merits of establishing an Integration Group are also being explored. The proposed group will look at how the systems on the network fit together, including driver training programmes, infrastructure and rolling stock.

The Board requested an update on bus-related activities to be tabled at each meeting going forward **[Action LR]**. The Trade Unions representative asked the Board to consider strengthening Union relationships and for collective bargaining arrangements to be implemented.

3b. Finance

The Finance function continues to focus upon the emergency measures and planning relating to rail and bus. This activity has had a significant impact upon finance resources. Procurement activity is underway for CVL asset valuation. Supplier tender reviews are complete with notification of the successful supplier imminent. This will ensure work will commence in December 2020.

Claims for VAT recovery on CVL asset programme spend continue through an HMRC audit with the latest requirement to include a detailed view of all the projects and spend within; whilst Section 33E has been adopted, changes for Section 41 bodies will mean that all VAT can be recovered. Discussion is underway with HMRC regarding Section 33E bodies and if there is a differentiation then this could impact upon value for money and plans for the Welsh Government to pass activity to TfW. The Board enquired where Highways England and Network Rail stand in this regard **[Action HC]**.

The Welsh Government gave its approval for the Rail Pension Scheme to be opened for four individuals transferring from the ODP which aligns them to their existing arrangements.

Transition for TfW Rail Ltd is underway with a finance implementation plan. As part of this work there is considerable focus upon novation/future hedging for fuel; tax implications for TfW Rail Ltd and contractual arrangements; net asset settlement; fixed asset due diligence and other key mobilisation activities such as banking and pension arrangements; and a five-year forecast alongside emerging risks and mitigations.

Regarding the fuel hedge, fuel prices have decreased during the COVID-19 outbreak resulting in a deficit of around £8m. However, fuel prices are likely to recover and increase. Engagement is underway with KA's banks regarding the current fuel hedge arrangements, and with new banks to manage it in the future. Papers will be tabled at SLT and ARC on options around new arrangements for managing the fuel hedge. The issue has been discussed with the Welsh Government.

Discussions are ongoing with the ODP on the process and key principles for assessing the assets to be transferred under public sector rail operator. Both virtual and physical due diligence is being undertaken.

The Board noted October 2020's management accounts. In the month (September) resource expenditure was at £31.5 million (excluding non-cash) of which £30.3 million relates to rail, the majority of which is passed through to

the ODP; and that in the month (September) capital expenditure was at £18.8 million of which £13.8 million related to Rail..

3c. Update on sub-committees

The Board were informed that the first meeting of the Major Change Projects Committee recently took place. The meeting was a pathfinder to discuss the role and remit of the Committee and understand more about TfW's major projects. The Committee were assured over progress being made to develop TfW's own project lifecycle process. The committee will now work to determine how it will add value. The Committee will have to carefully manage its workload, but some items such as renewals and enhancements will be looked at annually. CVL and busses are major projects that will feature as standing items, but it was noted that some projects of lower value have reputational risk. The Board was glad to see the committee up and running.

The Remuneration Committee recently met and made some suggested revisions to the Terms of Reference. To comply with the UK Corporate Governance Code, an additional NED is needed on the committee with volunteers asked to approach JM.

3d. Steering Board

The Chair updated the Board on the most recent TfW Steering Board meeting. Items under discussion included Rail Futures, with the Steering Board happy to support October's Board decision on agreeing a deed of termination for the existing Grant Agreement; delivery of rail services through invoking Operator of Last Resort commencing 7 February 2021; a Joint Venture with Keolis Amey; and a step-in contract with Amey Keolis Infrastructure Ltd for infrastructure management and CVL transformation. The Committee also discussed bus and TfW's strategic risk register.

4. Confidential HR matters

[Redacted content]

Part B – Operational update session

LB, AC, LY, GM, KG, DOL and GO joined the meeting.

5a. Cardiff Capital Region

CC joined the meeting to summarise the work of the Cardiff Capital Region and how it works with other key stakeholders in the context of its key goals and priorities.

5b. Rail Futures

The Board were provided with more information on TfW Rail Ltd's mobilisation as public sector rail operator along with an update on novating the infrastructure contract. [REDACTED]

The Board agreed to out-of-committee consideration of approvals for any decisions required before the next Board meeting on 17 December, with a meeting only to be convened in the event of issues materially changing.

A further discussion took place on valuation of assets as TfW is purchasing as part of TfW Rail Ltd mobilisation. Mitigating action to manage any valuation and value-for-money risks is being taken by reviewing the ODP's accounts and a virtual and physical due diligence exercise. The Board inquired as to whether TfW has any protection should the valuation be less than estimated. [REDACTED]

The Board discussed options for TfW Rail Ltd Board membership. The Board agreed option two, whereby JP chairs the TfW Rail Ltd Board with membership comprising TfW's Rail Operations Director, TfW's Finance Director, a non-executive director with significant operational rail safety experience, the TfW Rail Ltd Managing Director and the TfW Rail Ltd Chief Financial Officer. It was agreed that this would provide a degree of integration with the current governance structure, would allow the Board to concentrate on operational issues, and would also allow the TfW Board to hold JP to account for the performance of TfW Rail Ltd, who himself would hold the TfW Rail Managing Director to account. It was emphasised that Board members would need to be comfortable with new personal liabilities for gross negligence manslaughter and the Health and Safety at Work Act, and that training on safety of the railway is required.

5c. Risk Register

The Board considered the strategic risk register. The Board inquired as to why the risk on business failure of the ODP had not decreased. The Board were advised that until the deal has been signed it should remain as it is on the risk register. A detailed review of the risk register will be undertaken in March once the public sector rail operator is up and running.

5d. Shareholdings and Acquisitions

Subject to Welsh Government approval, the Board is to expect a paper at December's meeting outlining plans for legal and financial due diligence to commence in relation to the acquisition of PTI Cymru through the purchase of shares at notional value with assets and liabilities transferred to TfW.

5e. Future Generations letter

NR joined the meeting to discuss the draft response to a letter from the Future Generations Commissioner on her Future Generations Report 2020. The report has acknowledged TfW's work on, amongst other things, renewables and procurement. The draft letter in response outlines how TfW is embedding sustainable development, highlighting on-going and future initiatives including a response to the report's recommendations. The Board approved the letter. It was agreed that sustainable development should be an agenda item at least two to three times per year.

5f. Remit letter and Business Plan

The Board were advised on the process agreeing the business plan to 31 March 2021. It was agreed that it should include a table setting out details of commitments and confirmation from the executives that the programme of work is deliverable with the given resources.

5g. Taffs Well depot

The Board noted a presentation on the Taffs Well depot which is key component to the delivery of South Wales Metro and is being delivered by the ODP. The Board were informed that the budget has increased from £54.8m, as per the Grant Agreement, to £74.2m inclusive of optimism bias and management fees. This increase in cost is due to COVID related delays, subsequent delays in the CVL Programme and changes in design from concept through outline to detailed design.

The ODP requires confirmation from TfW that in the unlikely event of reverting back to the Grant Agreement, the cost difference between budget and current estimate will be met by TfW/Welsh Government. The intent is that the ODP will enter into contract with Amey Rail Ltd (ARL) for the design and build of the depot, which is an immediate requirement as this should have been executed three weeks ago and has resulted in a delay in starting physical works. The Board were advised that if the ODP does not award the contract, it could place them into 'breach', site works would not commence, and TfW would not be able to start the procurement process and recoup lost construction time, resulting in increased costs. The Board noted the recommendation that TfW is accepting of this position and on the probability of risk exposure, recognising that by not entering into a contract now would be detrimental to the CVL programme and import greater risk/cost exposure to TfW and the Welsh Government.

5h. Trackers

The Board reviewed the programme and corporate trackers. The Board discussed integrated ticketing, which the ODP has been awarded roughly £50 million in funding to progress. The Board asked whether there is a clear multi-modal strategy in place. It was agreed that TfW, rather than the ODP, is better placed to deliver this. The ODP's current work has been paused and a review is underway. It was agreed that the Board will be updated on the outcome of the review in either December 2020 or January 2021.

5i. FIT Programme update

The Board approved a recommendation to accept the transfer of the management of the Active Travel Grant function from Welsh Government. The transfer of responsibilities is proposed to take place at the beginning of

December 2020 to align with the start of financial year 2021/22 grant applications from local authorities. The transfer is subject to the formal agreement of the FIT Programme Board, followed by Ministerial approval.

5j. Communications

The Board noted the content of the Communications scorecard. The Board agreed that Communications needs to be directed at restoring giving customer confidence of to get back on public transport. Testing of boarding passes on the Cambrian line has been ongoing for several weeks and this has shown that the technology works and should allow for wider rollout with a marketing campaign. Previous issues with Herefordshire schools and colleges were resolved with the individual leading the complaints thanking TfW through a public letter.

5k. Scorecard

The Board noted the scorecard, with several KPIs still in development.

6. AOB

The Burns Commission has proposed a joint steering group to include TfW representation along with a draft memorandum of understanding for a collaborative agreement between TfW, the Welsh Government and Newport Council for taking forward the recommendations. The Burns report is scheduled for publication next week.

Issues over land access have arisen in Morganstown in relation to CVL transformation, with some local residents voicing concerns. Discussions are on-going.

The Chair thanked all for their attendance and an appreciation of the amount of ongoing work.