

City of Edinburgh Council

10.05am, Thursday, 2 May 2019

Amendment of Transport for Edinburgh Shareholder Agreement and Appointment to the Board of Transport for Edinburgh and Lothian Buses

Item number	7.3
Wards	All
Council Commitments	

1. Recommendations

- 1.1 To recommend that Council:
 - 1.1.1 approves the entering into of an Amendment Agreement amending the Shareholder Agreement between Transport for Edinburgh (TfE) and the Council;
 - 1.1.2 grants delegated authority to the Executive Director of Place (or such other Proper Officer as he may nominate) to enter into the Amendment Agreement on behalf of the Council with such minor amendments as he may consider appropriate and to take all such other actions on behalf of the Council as may be necessary or desirable to implement any ancillary arrangements in relation to the Amendment Agreement;
 - 1.1.3 subject to Council's approval in relation to points 1.1.1 and 1.1.2, approves the appointment of two (2) Non-Executive Directors (NEDs), Daisy Narayanan and Donald Macleod, to the Board of TfE for an initial period of three (3) years, effective from 10 May 2019; and
 - 1.1.4 approves the re-appointment of Steve Cassidy to the Board of Lothian Buses (LB) for the period 6 February 2019 – 30 April 2020.

Paul Lawrence

Executive Director of Place

Contact: Ewan Kennedy, Policy and Planning Manager
E-mail: ewan.kennedy@edinburgh.gov.uk | Tel: 0131 469 3575



Amendment of Transport for Edinburgh Shareholder Agreement and Appointment to the Board of Transport for Edinburgh and Lothian Buses

2. Executive Summary

- 2.1 Approval is sought to enter into an Amendment Agreement, amending the Shareholder Agreement between TfE and the Council to:
 - 2.1.1 allow for a mix of Executive and Non-Executive Directors (NED) up to a maximum of seven, rather than having a fixed number for each category of Director; and
 - 2.1.2 make other minor amendments.
- 2.2 There are currently vacancies on the Board of TfE. In 2018, LB and Edinburgh Trams Limited (ET) considered a number of candidates for appointment to their boards. The TfE Board, acting as the Nominations Committee, considered a number of possible candidates this exercise recommends the appointment of two (2) new NEDs. Subject to Council's approval in relation to the Amendment Agreement, approval is sought for the appointment of these two new NEDs.
- 2.3 Steve Cassidy was appointed as a NED to the Board of LB on 6 February 2014 for a period of three years, and was re-appointed on 6 February 2017 for a further period of two years. Approval is sought for the re-appointment of Steve Cassidy to the Board of LB for a further period of 6 February 2019 – 30 April 2020 to provide continuity through the LB Business Planning process.

3. Background

- 3.1 TfE was established in October 2013 as the parent company for LB and ET. TfE is an Arm's-Length External Organisation (ALEO) wholly owned by the Council. This arrangement is governed by a Shareholder Agreement between the Council and TfE dated 28 October 2013.
- 3.2 An amendment is now proposed to the Shareholder Agreement. A final draft of the proposed Amendment Agreement is set out in the appendix to this report.

- 3.3 Following the retirement of Steve Cassidy from the TfE Board on 17 December 2018 there are vacancies on the TfE Board and, subject to approval in relation to the Amendment Agreement, approval is sought to appoint two (2) new NEDs.
- 3.4 LB is an ALEO which is 91% owned by the Council. This arrangement is governed by a Shareholder Agreement among TfE, the Council and LB, dated 28 October 2013. Approval is sought to re-appoint Steve Cassidy as a NED to the Board of LB.

4. Main report

Amendment to the Shareholder Agreement

- 4.1 The following amendments are proposed to TfE's Board composition:

- 4.1.1 currently the Shareholder Agreement provides that the TfE Board shall comprise four (4) Executive Directors, four (4) NEDs who are Councillors and three (3) other NEDs. Rather than having a fixed number, the amendment will allow for a mix of Executive Directors and NEDs (who are not Councillors) up to a maximum of seven (7). There shall still be four (4) NEDs who are Councillors. As illustrated in the below table:

Category of Director	Before Amendment	After Amendment
Executive Directors	4	No number specified, but a minimum of one who shall be the Chief Executive of TfE.
Non-Executive Directors - Councillors	4	4
Non-Executive Directors - other	3	No number specified, but minimum of one.
		Aggregate number of Executive Directors and Non-Executive Directors – other shall not exceed 7.
Total number of Directors	11	Up to maximum of 11

- 4.1.2 The change to the composition of the TfE Board is recommended for the following reasons:

- 4.1.2.1 it reflects the reality that TfE does not currently have a large number of Executives who could become Executive Directors;
- 4.1.2.2 the Chairs of LB and ET fill two of the current three TfE NED positions, as ex officio appointments. This is entirely appropriate and should endure, but within the current Shareholder Agreement leaves only one NED vacancy to be filled; and

4.1.2.3 the Amendment will allow greater flexibility to appoint a mix of NEDs and Executive Directors to meet emerging requirements for changing skill sets and competencies on the TfE Board as the nature of mobility in, through and around the City continues to develop.

4.2 The following minor amendments are also proposed:

4.2.1 definitions of Chief Executive and Executive Directors have been added; and

4.2.2 clause 3.8 of the Shareholder Agreement will be deleted, which states that TfE would procure that the Board of Directors of ET would be Ian Craig, Bill Campbell, Norman Strachan and Tom Norris (who were the original Board appointees) as Executive Directors.

4.3 All other terms of the Shareholder Agreement will remain the same, including the process for the appointment and removal of Directors by the Council.

4.4 This report:

4.4.1 seeks approval to enter into the Amendment Agreement, which gives effect to the above changes; and

4.4.2 seeks delegated authority in favour of the Executive Director of Place (or such other Proper Officer as he may nominate) to enter into the Amendment Agreement on behalf of the Council with such minor amendments as he may consider appropriate and to take all such other actions on behalf of the Council as may be necessary or desirable to implement any ancillary arrangements in relation to the Amendment Agreement.

Appointments to the Board of TfE

4.5 Subject to Council approval to enter into the Amendment Agreement, approval is also sought to appoint two new NEDs:

4.5.1 **Daisy Narayanan** is a Sustrans employee, currently seconded to the Council until September 2019 to oversee the development of the City Centre Transformation (CCT) Project Blueprint and Business Case. Daisy has significant urban design experience and possesses a skill set that would be highly beneficial to the TfE Board, particularly with regard to her wide reaching, recent, Stakeholder engagement on the CCT Project and her Sustrans experience of Active and Sustainable Travel. Daisy is extremely keen to be appointed as a TfE Board NED. Due diligence has been conducted and there is no impediment to Daisy being appointed; and

4.5.2 **Donald Macleod** is a Tesco Bank employee, with considerable experience in the financial services sector. He was a LB NED for nine (9) years and the Senior NED for two (2) of these, providing significant support to the Chair at a turbulent time. He was Chair of the LB Audit and Risk Committee for much of his tenure. He retired from the Board of LB on 31 July 2018. Donald's financial expertise would bring significant additionality to the TfE Board, particularly in terms of legacy understanding and to the TfE Audit and Risk Committee. Donald is extremely keen to be appointed as a TfE Board NED.

Due diligence has been conducted and there is no impediment to Donald being appointed.

Re-appointment to the Board of Lothian Buses

- 4.6 Steve Cassidy was re-appointed to the Board of LB as a NED on 6 February 2017 for a further period of two years, bringing his total time as an LB NED to five (5) years.
- 4.7 On 11 April 2019 the Board of LB approved a recommendation from the LB Nominations Committee that Steve Cassidy's appointment be extended for the period of 6 February 2019 – 30 April 2019
- 4.8 Approval is sought for the further extension of Steve Cassidy to the Board of LB for a period of 14 months.

5. Next Steps

- 5.1 Further NED recommendations for the Board of TfE will be brought to a later meeting of full Council.

6. Financial impact

- 6.1 There is no specific financial implication arising from this report. TfE NEDs are not remunerated as NEDs.

7. Stakeholder/Community Impact

- 7.1 There are no adverse stakeholder/community impacts arising from this report.

8. Background reading/external references

- 8.1 None.

9. Appendices

- 9.1 Appendix 1 - Amendment Agreement between Transport for Edinburgh and the Council.

DATE: 28 MARCH 2019

AMENDMENT AGREEMENT

Between

TRANSPORT FOR EDINBURGH LIMITED

and

THE CITY OF EDINBURGH COUNCIL

CMS Cameron McKenna Nabarro Olswang LLP
Saltire Court
20 Castle Terrace
Edinburgh EH1 2EN
T +44 131 228 8000
F +44 131 228 8888

TABLE OF CONTENTS

1.	Interpretation	1
2.	Amendment of the Agreement.....	1
3.	General	2

THIS AGREEMENT is made the day of April 2019

BETWEEN:

- (1) **TRANSPORT FOR EDINBURGH LIMITED** (registered in Scotland with company number SC443895) whose registered office is at 55 Annandale Street, Edinburgh, Midlothian, EH7 4AZ (the “**Company**”); and
- (2) **THE CITY OF EDINBURGH COUNCIL**, constituted under the Local Government, etc. Scotland Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG (the “**Council**”),

(together, the “**Parties**”).

RECITALS:

- (A) The Council is a shareholder in the Company. The Parties entered into a shareholder agreement dated 28 October 2013 (the “**Shareholder Agreement**”) which governs the Council’s relationship with the Company.
- (B) The Parties have agreed to amend the terms of the Shareholder Agreement as provided below.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 Expressions defined in the Shareholder Agreement shall (unless the context otherwise requires) have those meanings when used in this agreement.
- 1.2 Headings are used in this agreement for convenience only and shall not affect its interpretation.
- 1.3 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and references to any gender shall include all other genders.
- 1.4 Unless the context otherwise requires, references to any person shall include natural persons, bodies corporate, unincorporated associations, partnerships, governments, governmental agencies and departments, statutory bodies or other entities, in each case whether or not having a separate legal personality, and shall include such person’s successors.
- 1.5 The words “**other**,” “**include**” and “**including**” shall not connote limitation in any way.

2. AMENDMENT OF THE AGREEMENT

- 2.1 On and with effect from the date of this agreement, the Shareholder Agreement shall be amended as follows:
 - 2.1.1 the following definitions shall be inserted into the Shareholder Agreement at clause 1.1:

after the definition of “**Business Plan**” insert a new definition: “**Chief Executive**” means the chief executive officer of the Company appointed from time to time;”

after the definition of “**Encumbrance**” insert a new definition: “**Executive Directors**” means individuals who are appointed as executive directors of the Company;”;
 - 2.1.2 clause 3.1 of the Shareholder Agreement shall be deleted and substituted with the following:

“3.1 The Board shall comprise:

- 3.1.1 Executive Directors, of which one shall be the Chief Executive of the Company;
- 3.1.2 4 Non-Executive Directors who are Councillors; and
- 3.1.3 other Non-Executive Directors.

The aggregate number of directors appointed under clauses 3.1.1 and 3.1.3 from time to time shall not exceed 7.”; and

- 2.1.3 clause 3.8 of the Shareholder Agreement shall be deleted and clause 3.9 renumbered accordingly.
- 2.2 This agreement is supplemental to the Shareholder Agreement and shall be read and construed as one instrument together with the Shareholder Agreement. Except as amended by this agreement, the Shareholder Agreement shall continue in full force and effect.
- 2.3 Notwithstanding any other provision of this agreement, the provisions of this agreement shall be without prejudice to any rights or claims of any Party arising under the terms of the Shareholder Agreement prior to the date of this agreement.

3. GENERAL

- 3.1 This agreement, and any agreements and arrangements between the Parties which this agreement expressly preserves, constitutes the whole and only agreement and understanding between the Parties in relation to their subject matter. Except in the case of fraud, all previous drafts, agreements, understandings, undertakings, representations, warranties, promises and arrangements of any nature whatsoever between the Parties with any bearing on that subject matter are superseded and extinguished; and each of the Parties acknowledges that it is not relying on any warranties, representations, covenants, undertakings, indemnities, promises, forecasts or other statements whatsoever, whether written or oral (and whether implied or otherwise) not expressly set out in this agreement.
- 3.2 This agreement may be executed in any number of counterparts and by the Parties on different counterparts. Each counterpart shall constitute an original of this agreement but all the counterparts shall together constitute one and the same agreement.
- 3.3 This Agreement does not confer on any person other than the Parties any right to enforce or otherwise invoke any term of this Agreement under the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.
- 3.4 No variation to this agreement shall be of any effect unless it is agreed in writing and signed by or on behalf of each Party.
- 3.5 This agreement, and any non-contractual obligations arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with the law of Scotland.

3.6 The Parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to hear and determine or otherwise settle all and any disputes that may arise out of or in connection with this agreement or its subject matter.

IN WITNESS WHEREOF these presents consisting of this and the 2 preceding pages have been subscribed as follows:

Subscribed for and on behalf of)	
TRANSPORT FOR EDINBURGH LIMITED)	
Acting by: George E Lowder)	<i>GE Lowder</i>
At: Edinburgh City Chambers)	Director
On: Thursday 28 March 2019)	

before the following witness

Name of witness: Gill Swan

Signature: *G Swan*

Address: Transport for Edinburgh

9.11, The City Chambers, High Street, Edinburgh, EH1 1YJ

Occupation: Personal Assistant to Chief Executive

Subscribed for and on behalf of)	
THE CITY OF EDINBURGH COUNCIL)	
acting by:)
at)	Proper Officer
on)	

before the following witness

Name of witness:

Signature:

Address:

.....

Occupation: