

Transport and Environment Committee

10.00am, Thursday, 12 October 2023

Reform of the Council's Transport companies

Executive/routine
Wards

Executive
All

1. Recommendations

- 1.1 Transport and Environment Committee is asked to:
 - 1.1.1 Approve the approach to the integration of Edinburgh Trams and Lothian Buses as set out in the report;
 - 1.1.2 Agree the closure of Transport for Edinburgh in its current form;
 - 1.1.3 Agree that Council officers should draft revisions to all relevant documentation including the shareholder agreement and operating contract; and
 - 1.1.4 Agree the terms of reference of the Shareholder Forum at Appendix 1, subject to any comments from the minority shareholders. Any proposed changes will be reported back to Committee.

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Executive Director of Place

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Reform of the Council's Transport companies

2. Executive Summary

- 2.1 This report provides a progress update on the reform of the Council's transport companies and sets out the final model for the integrated approach, alongside the creation of a new Shareholder Forum.

3. Background

- 3.1 A report to Policy and Sustainability Committee dated [9 July 2020](#) set out the current arrangements for the management of the Council's Transport Arms Length External Organisations (ALEO's) and highlighted challenges in continuing to manage existing arrangements.
- 3.2 In setting out the current arrangements for management of the Council's Transport ALEO's, the report recognised that inefficiencies within the operating model have led to challenges regarding collaboration and integration across and between the companies.
- 3.3 A short life working group was established to consider how the Council's Transport ALEOs should be reformed, alongside discussion with the minority shareholders and engagement with Trade Union colleagues. A report approved by the Council on [26 August 2021](#) set out the findings of the short life working group and recommended a structure for an integrated public transport group, by making Edinburgh Trams a wholly owned subsidiary of Lothian Buses. The report noted that this would be the optimal route to securing the objectives of reform, with a single board, a single executive team, common HQ functions, and a Chief Executive Officer to be appointed with a job description reflecting the revised arrangements. The report also made clear that the shareholder agreement with Lothian Buses should be revised to give a mandate for multi-modal public transport delivery.
- 3.4 Since then, Council officers have worked with Non-Executive Directors of Lothian Buses and Edinburgh Trams to consider how to implement the restructure of the companies, while protecting the financial position of each company and ensuring that robust governance and decision making is secured. In particular, detailed design work has taken place to ensure any reform does not have any unintended

financial consequences, recognising the different financial positions of the two companies.

- 3.5 This work has been undertaken in line with the transition principles set out in the paper approved by the Council on 26 August 2021.
- 3.6 Discussions have also taken place on the potential terms of reference for a new Shareholder Forum, to enhance elected member engagement with the revised company.

4. Main report

- 4.1 On 26 August 2021 the Council agreed that the Lothian Buses corporate entity should be reconstituted, with an amended Memorandum and Articles of Association, to be responsible for multi modal public transport delivery.
- 4.2 It was envisaged that the reconstituted company would be responsible for delivering all Council-owned public transport modes in the city, rather than being responsible for bus transport alone.
- 4.3 It was further envisaged that the reconstituted company would also be responsible for anticipating and developing new transport modes. Opportunities for growth of public transport within Edinburgh and the wider region should be identified and developed to support and enable policy delivery to ensure a sustainable future for public transport.
- 4.4 It was originally proposed that Edinburgh Trams would be a subsidiary of the reconstituted company in order to give sufficient control to develop multi-modal public transport delivery, and also to avoid multiple boards which has resulted in conflicting priorities in the past.
- 4.5 Following further professional advice, it is now clear that an alternative model which uses an operating contract rather than a subsidiary model would be the preferred approach. This would give Lothian Buses the authority to manage the Edinburgh Trams business contractually rather than via a shareholding interest in Edinburgh Trams. Edinburgh Trams would remain the operator of the tram line, as has always been the case. This approach achieves the integration objectives without exposing Lothian Buses to undue financial risk.
- 4.6 The matter of ensuring, under this model, that the revised Lothian Buses Board will have full multi modal responsibility has been considered. This will be managed and assured through provisions in the updated Memorandum and Articles of Association and in the operating contract with Edinburgh Trams.
- 4.7 In order to minimise any risk of challenge under the Competition Act, it is prudent to interpose a shareholding structure between the Council on the one hand and Lothian Buses and Edinburgh Trams on the other. This would solely be a shareholding entity.

- 4.8 At the appropriate time in the reform process, the existing Board of Transport for Edinburgh will be stood down. Any assets or liabilities of Transport for Edinburgh would be transferred into the Council or Lothian Buses. Thereafter, all appropriate Human Resources (HR) and legal processes will be followed to discharge all obligations to the employees of Transport for Edinburgh.
- 4.9 Other than the replication of the shareholding powers in an Operating Agreement, the provisions set out at paragraph 4.25 of the 26 August 2021 report remain the same and the reform programme will be delivered in line with that.
- 4.10 Consideration has also been given to a new Shareholder Forum which would provide a mechanism for elected members to meet with the company to share information and receive updates. The aim of the Forum would be to enhance ongoing engagement between the company and elected members. Recognising the regional ownership of Lothian Buses, it is proposed that representatives of each shareholder should attend the Forum. A copy of the proposed terms of reference are attached as Appendix 1.
- 4.11 It is not proposed that the Council would nominate a Board member or members to the revised company. This is to ensure continued compliance with the 1985 Transport Act and to sustain the appropriate division of policy (Council) and commercial/operational (Company) responsibilities.
- 4.12 Formal decision making will continue to be made through the established Committee process, or by the company board (as appropriate) maintaining the arms length nature of the transport companies. In this way, the terms of the Transport Act 1985 continue to be complied with while providing a forum for dialogue and enabling a shared understanding of the opportunities and challenges faced in operational delivery.
- 4.13 At officer level, the relationship between the integrated company and the Council will be strengthened by formalising the existing liaison between Lothian Buses and the Council. A formal meeting is already convened monthly between Edinburgh Trams and the Council, and this will be maintained.

5. Next Steps

- 5.1 If committee approves progressing with the operating contract approach:
- 5.1.1 Council officers will work with Edinburgh Trams and Lothian Buses to ensure that all outstanding due diligence work is completed and support all necessary board approvals;
- 5.1.2 Lothian Buses will be asked to commence the recruitment process for a new board following conclusion of their due diligence. Members of this new Board will also become members of the Boards of Edinburgh Trams and the holding company. As has been the case in the past, Lothian Buses will consult with the Council on the recruitment of the Non-Executive Directors and the Council will have final approval of their appointment. The refreshed Board

should meet all current equalities policies and draw members from a wide range of backgrounds and skill sets. Employee representation would also be sustained and enhanced;

- 5.1.3 Thereafter, Lothian Buses will be asked to commence the process to appoint a Chief Executive to the new role of leading the integrated company, following agreed HR policies. Again, Lothian Buses will consult with the Council on the appointment of the Chief Executive;
- 5.1.4 The shareholder agreement and the Memorandum and Articles of Association will be updated in line with legal advice and to provide for the integrated delivery of public transport;
- 5.1.5 An operating contract between Lothian Buses, Edinburgh Trams and the Council will be agreed to ensure that the integrated board has sufficient oversight of the companies to integrate them and for delivery of multi modal integrated public transport;
- 5.1.6 All safety regulations will continue to be met with no change envisaged to current arrangements within either company;
- 5.1.7 Council officers will work with the minority shareholders to agree and establish the Shareholder Forum and to consult with them on the amendments to the Articles of Association;
- 5.1.8 Council officers will update the recognised trade unions; and
- 5.1.9 When the legal documentation is finalised, Council officers will work with the Transport for Edinburgh board and executive to complete any relevant transfer of responsibility and thereafter make arrangements for the winding down of the company, ensuring all relevant policies are complied with.

6. Financial impact

- 6.1 Existing resources of the Council will continue to be utilised to progress with the approach set out in this report, with continued support from the Transport ALEOs to manage the development and implementation of the proposed reform.
- 6.2 It is anticipated that efficiencies can be found through greater integration of the public transport companies through enabling centralisation of resources and closer working operationally. Additionally, it is anticipated that this model enables efficient policy delivery with attendant savings to officer time.

7. Equality and Poverty Impact

- 7.1 Transport was highlighted by the Edinburgh Poverty Commission as a key issue in combatting poverty in the city. The reforms set out in this report will give the Council the opportunity to re-emphasise these issues in a revised agreement with Lothian Buses. Equally, appropriate transport provision is central in delivering on equalities

issues, particularly ensuring everyone can get around the city on an equal basis. Again, these issues will be highlighted and strengthened following the actions sets out in the report.

8. Climate and Nature Emergency Implications

- 8.1 Integration of the public transport companies is an action contained within the City Mobility Plan. Greater efficiency and development of public transport in Edinburgh is key to growth of public transport in Edinburgh, helping to reduce carbon emissions from transport.

9. Risk, policy, compliance, governance and community impact

- 9.1 Risks associated with this project are contained and managed in a risk register which is maintained by the transformation board.
- 9.2 Current top risks identified are as follows:
- 9.2.1 That the due diligence process (which is not yet complete) uncovers an issue which is not anticipated and impacts the model proposed, or which impacts the required board approvals. This is mitigated through the existing knowledge of the position of Edinburgh Trams and the corporate structure proposed; and
 - 9.2.2 Legal advice is incomplete. This is mitigated by legal advice throughout the project to ensure that the structure selected is compliant with regulatory requirements.
- 9.3 As noted above, delivery of this project is one of the actions contained in the City Mobility Plan.
- 9.4 Implementation of the Shareholder Forum will change the current shareholder governance arrangements for the transport companies, by moving from a company board to a forum. This has the advantage that attendees to the forum can also be the transport spokespeople of political parties, without concerns on conflict of interest. Decision making will be through the existing Committee structure.

10. Background reading/external references

- 10.1 Reform of Transport Arm's Length External Organisations [9 July 2020](#).
- 10.2 Reform of Transport Arm's Length External Organisations [12 November 2020](#)

11. Appendices

Appendix 1 – Lothian Group: Shareholder Forum Proposed Terms of Reference

Appendix 1 - LOTHIAN GROUP: SHAREHOLDER FORUM Proposed Terms of Reference

Purpose

- To act as interface between the Lothian Group and its shareholders in order to improve understanding and dialogue.
- The Forum would not form any part of the company or the Councils' formal decision making process.
- The Forum would recognise Lothian Group 'arm's length' operational and commercial status under Transport legislation.
- All shareholders to be represented (the City of Edinburgh Council, East Lothian Council, Midlothian Council and West Lothian Council).
- Strategic and key performance issues to be routinely discussed. Executive operational engagement to be discussed by existing officer fora.

Meeting Arrangements

- There will be three meetings per year: January, May/June (Lothian Group AGM) and September. Provision for additional meeting if required.
- The City of Edinburgh Council's Transport and Environment Convenor to Chair January and September meetings. The Chair of Lothian Buses will chair May/June (Lothian Group AGM) meeting.

Terms of Reference

- To provide a forum that will facilitate dialogue and relationship building between the Lothian Group and its council shareholders.
- Communication of Lothian Group business progress, financial health and business plan achievement.
- Discussion of issues and risks.
- Consideration of key transport policy developments.
- Presentation of accounts and related reports (AGM).

Standing Agenda Items

1. Quorum and Apologies
2. Previous Minutes
3. Business Updates
 - 3.1 Group Highlights
 - 3.2 Business Plan Progress
 - 3.3 Bus
 - 3.4 Tram
 - 3.5 Business Presentations (as required)
4. Issues and Risks
5. Policy Matters

6. AOB

N.B. Additional required AGM agenda items to be added for that meeting.

Representation and Attendees

- The City of Edinburgh Council's Transport Convenor (Chair – other than AGM)
- The City of Edinburgh Council's political group Transport Spokespeople
- East Lothian, Midlothian and West Lothian Councils' Political Transport Leads
- Lothian Group Chair, Senior Independent Non-Executive Director and Chief Executive
- Lothian Group Operations - Bus and Tram Representatives and Finance Director/Company Secretary
- The City of Edinburgh Council's Executive Director of Place and officer Transport Lead
- Minority Shareholder Lead Officer Representative
- Other Council or Company Representatives as required.

Total Representation

The City of Edinburgh Council Political Representatives	5
The City of Edinburgh Council Officials (observers)	2
Minority Shareholder Political Representatives	3
Minority Shareholder Officials (observer)	1
Lothian Group Non-Executive Directors	2 (3)
Lothian Group Executive Directors	4

Circa 18 plus others as required

Appendix - Lothian Group: Arm's Length Governance

Lothian Group's arm's length status is fundamental to its highly successful business model. Shareholder benefits arising from this model can be clearly evidenced;

- In the 10-year period 2007-2017 the total number of bus journey's taken across Scotland declined from 487 million to 388 million a drop of 20%. Over the same period Lothian achieved patronage growth of 5% with customer journeys rising from 114m to 120m.
- Lothian's arm's length status and commercial orientation has enabled profit achievement and shareholder dividend payments. The most recent 2018 (pre-covid) shareholder dividend was a record £7.7m.
- Lothian's status as an early adoption of technical customer focussed innovation. Examples include: Ridacard and Mobile Tickets, the travel apps and most recently capped contactless payments. All of these innovations have been self-funded and extended into Tram operations.
- A coherent fleet capital investment strategy without the necessity of Shareholder support that has established Lothian as having the 'greenest' bus fleet outside of London. This has been further extended through the adoption of a carbon neutral 2035 strategy.
- Lothian's arm's length status also has a statutory basis.
 - ❖ The UK 1985 Transport Act prohibited local authorities from directly operating bus services. Existing operations were required to be transferred into holding companies which were then mostly sold on. Lothian is the remaining Scottish exception.
 - ❖ The Transport (Scotland) Act 2019 has superseded in Scotland certain provisions of the UK 1985 Transport Act. Under this act local transport authorities (LTA's) subject to certain obligations, have the restored power to directly operate bus services. Interestingly Transport Scotland's related guidance makes reference to Lothian....

"The LTA may choose to provide services directly or through an arm's length external organisation. Under the latter scenario, the LTA can provide bus services through an independent commercial organisation with its own management board where the LTA is the shareholder but is not involved in the day to day running of the business. This would be broadly similar to the model under which Lothian Buses currently operates".