

LIVERPOOL CITY REGION COMBINED AUTHORITY

To: The Metro Mayor and Members of the Combined Authority

Meeting: 29 April 2022

Authority/Authorities Affected: All

EXEMPT/CONFIDENTIAL ITEM: No

KEY DECISION: No

REPORT OF THE MONITORING OFFICER

STAKEHOLDER SUB-COMMITTEE

1. PURPOSE OF REPORT

This report sets out proposals to establish a Sub-Committee of the Combined Authority, known as the Stakeholder Sub-Committee and define terms of reference for this Stakeholder Sub-Committee by amending the Constitution. Such amendments to the Constitution require a unanimous vote of the Combined Authority.

2. RECOMMENDATIONS

It is recommended that the Liverpool City Region Combined Authority:

- (a) consider and approve the establishment of a Stakeholder Sub-Committee and include the terms of reference for this Sub-Committee into the Combined Authority Constitution, as set out in Appendix 1 to this report; and
- (b) note the February 2018 Lawyers in Local Government best practice guidance on the Governance of Local Authority Interests in Companies, as set out in Appendix 2 to this report.

3. BACKGROUND

- 3.1 Following receipt of external legal advice in November 2021, active consideration is now being given to the make-up and arrangements of establishing a Stakeholder Sub-Committee, which will be a Sub-Committee of the Combined Authority, and would provide primary oversight and scrutiny of the companies.

- 3.2 It is anticipated that there will also be oversight of Merseytravel within this Sub-Committee. This issue was referenced at the Audit and Governance Committee on 30 March 2022. This report is also being shared with each of the Monitoring Officers from the Constituent Councils of the Combined Authority.
- 3.3 Currently, the membership of the Combined Authority comprises 8 Members, including 7 Elected Members and 1 Local Enterprise Partnership ('LEP') Member as follows: -

Membership of the Combined Authority shall consist of:-

- (a) the directly elected Combined Authority Metro Mayor ('the Metro Mayor');
- (b) six Constituent Council Members, whereby each of the Constituent Councils shall appoint:-
 - (i) one of its Elected Members (including any directly elected Mayor) as a Member of the Combined Authority; and
 - (ii) another elected Member (including any directly elected Mayor) as a Substitute Member of the Combined Authority to act in the absence of the Member appointed under (i) above, one of whom shall be appointed by the Metro Mayor as Deputy Mayor; and
- (c) the Local Enterprise Partnership (LEP) Member, whereby the LEP shall nominate:-
 - (i) one of its Members to be a Member of the Combined Authority; and
 - (ii) another of its Members as a Substitute Member of the Combined Authority to act in the absence of the Member appointed under (i) above, who shall be a non-voting Member of the Combined Authority.

This is referenced in the Constitution at Part 3 - Section A, paragraph 2.1.

The Lawyers in Local Government – Code of Practice on the Governance of Local Authority Interests in Companies

- 3.4 In February 2018, the Lawyers in Local Government ('LLG') produced a Guidance Note to assist Local Authorities in how company interests are to be governed and how the distinct company commercial activities are to meld with the Local Authority and public body activities (Appendix 2).
- 3.5 This LLG Guidance Note resulted in Codes of Practice for the Governance of Local Authority Interests in Companies, which outlines the particular issues and difficulties faced by Local Authority owned companies and sets out ways in which they can be best managed.
- 3.6 The LLG Codes also outline the importance of utilising a reflection of the company board structure in the form of a Shareholder Group (to be known as the Stakeholder Sub-Committee, as recommended in this report). This will be an effective means of governance, oversight and scrutiny of the companies, because it allows for decision making and discussion in an informed atmosphere.

- 3.7 The LLG Guidance Note clearly demonstrates favouring an executive approach and therefore the establishment of this Stakeholder Sub-Committee is recommended to be a Sub-Committee of the Combined Authority.
- 3.8 It should also be noted that the LLG Guidance Note mentions expert help from appropriate non-executives, to assist with the Sub-Committee and to provide oversight and ensure delivery.
- 3.9 The LLG Codes provide exemplar terms of reference for the proposed Stakeholder Sub-Committee (Shareholder Group). There are provisions in the Combined Authority Constitution in Part 3 – Section A, paragraph 5.2 that cover the establishment of a Sub-Committee and allowing delegations to such a Sub-Committee. Any approved Sub-Committee terms of reference and delegations will need to be incorporated into the Constitution.
- 3.10 Constitutional Amendments
- 3.10.1 Necessary constitutional amendments are required to be made, to ensure national best practice guidance is adopted and to assist in ensuring all our companies are legally accountable and transparent. Recommendations from external legal advisors are also reflected where appropriate.
- 3.10.2 A tracked changes version of the Constitution is available at Appendix 1 of this report, which reflects the below changes cited.
- 3.10.3 The following changes to the Constitution are proposed to be amended as follows:

<u>Section Number</u>	<u>Proposed Amendment</u>
Addition to Part 3, Section A – The Combined Authority 5. Delegation - the following text to be amended as follows:	5.2 (a) [...] <p>The purpose of such arrangements can be found in Part 3 – Section B, which covers the terms of reference for the Stakeholder Sub-Committee.</p> <p>6. Functions</p> <p>[...]</p>
Deletion to Part 3, Section A – The Combined Authority 5. Delegation – the following text to be deleted and amended (will be re-inserted as per the below proposed amendment):	(1) Monitor the performance of a company in relation to its Business Plans and, in particular, the company's performance: <ul style="list-style-type: none"> a. in financial matters; b. against the social goals of the company as set out in the company's Objects, Business Case or Business Plans; and c. against the values of the Combined Authority. <p>(2) Evaluate and monitor:</p> <ul style="list-style-type: none"> a. the financial and social returns on investment (be that shareholding, loans or direct investment); and b. risks and opportunities including those arising

	<p>from joint ventures or new opportunities.</p> <p>(3) Consider matters reserved to the Combined Authority for shareholder and/or guarantor approval, such as:</p> <ol style="list-style-type: none"> a. Varying Articles of Association; b. Varying ownership and structure; c. Variations to shares (number of, rights, etc. or level of guarantor commitment); d. Entering contracts that: <ol style="list-style-type: none"> i. have a material effect on the business of the Combined Authority (including other companies within the group); ii. are outside of the business plan or do not relate to the business; and iii. significant in relation to the size of the business, the business plan, etc. e. Material legal proceedings outside of ordinary business; f. Adopting and amending business plans each year and strategic plans (3 years); g. Appointment, removal and the remuneration of directors (members of the company board); h. Selection of the chair of the board; i. Appointment of auditors; and j. Issue of dividends. <p>as more particularly set out in a company's Articles of Association or Shareholder Agreement.</p> <p>(4) report and make formal recommendations to the Combined Authority, directly meeting as it sees fit;</p> <p>(5) make reports to and consult other committees of the Combined Authority or; and</p> <p>(6) make reports to and consult the Combined Authority's Audit Committee, in relation to that Committee's particular functions.</p>										
<p>Addition to Part 3 – Bodies of the Combined Authority and Responsibility for Functions Section B. Stakeholder Sub-Committee:</p>	<p>PART 3 – SECTION B</p> <p>STAKEHOLDER SUB-COMMITTEE</p> <p>CONTENTS</p> <table border="0"> <thead> <tr> <th>No.</th> <th>Section</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Overview</td> </tr> <tr> <td>2.</td> <td>Membership and Arrangements</td> </tr> <tr> <td>3.</td> <td>Meetings and Procedure</td> </tr> <tr> <td>4.</td> <td>Functions</td> </tr> </tbody> </table>	No.	Section	1.	Overview	2.	Membership and Arrangements	3.	Meetings and Procedure	4.	Functions
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B. STAKEHOLDER SUB-COMMITTEE

1. Overview

- 1.1 The Combined Authority appoints a Sub-Committee, known as the Stakeholder Sub-Committee.
- 1.2 The purpose of the Stakeholder Sub-Committee is to take decisions on behalf of the Combined Authority, to represent the interests of the Combined Authority as shareholder and to ensure the satisfactory performance of any Company (as defined in 1.3 below) to protect the Combined Authority's interests as shareholders.
- 1.3 Any reference in these terms of reference to "Company/Companies" covers the activities of the Combined Authority's subsidiary companies (being any companies or other bodies corporate in which the Combined Authority has a controlling interest) & Merseytravel.

2. Membership and Arrangements

2.1 Composition

The Stakeholder Sub-Committee will be composed of 8 Members drawn from the Combined Authority and will be as follows:

- (a) The Directly Elected Combined Authority Metro Mayor;
- (b) 6 Constituent Council Members; and
- (c) The Local Enterprise Partnership Member.

2.2 Chair

The Metro Mayor or, in his or her absence, the Deputy Mayor/Chair shall Chair all meetings of the Stakeholder Sub-Committee when present.

2.3 Quorum

No business of the Stakeholder Sub-Committee shall be transacted unless at least three Constituent Council Members or substitute Members appointed are present.

3. Meetings and Procedure

- 3.1 The Stakeholder Sub-Committee will conduct business in accordance with the overview and scrutiny rules, meeting standing orders, access to information rules and other standing orders, codes and protocols set out in Part 4 of this Constitution.
- 3.2 The Chief Executive, the Executive Director of Corporate Services, and the Chief Legal and Monitoring Officer will be advisors to the Stakeholder Sub-Committee, in order to provide open and strong advice. The Stakeholder Sub-Committee and/or those Officers may invite additional advisors to attend the meetings as required. An Officer will not act as an advisor to the Stakeholder Sub-Committee in relation to a Company if they are one of its Directors, and an appropriate alternative advisor will be identified.
- 3.3 Non-Executive Members may also be appointed on an ad hoc subject specific basis or be a Standing Member of the Stakeholder Sub-Committee, to assist with providing expert help, oversight and ensure delivery.
- 3.4 It is anticipated that the Directors from any of the Companies will be invited to attend the meetings to present information and to seek advice.

4. Functions

- 4.1 The Stakeholder Sub-Committee will be responsible for the following functions:
- (a) Monitor the performance of a Company in relation to its Business Plan and, in particular, the Company's performance:
 - (i) on financial matters;
 - (ii) against the social goals of the Company as set out in the Company's Objects, Business Case or Business Plan; and
 - (iii) against the values of the Combined Authority.
 - (b) Evaluate and monitor:
 - (i) the financial and social returns on investment (be that shareholding, loans or direct investment); and
 - (ii) risks and opportunities including those arising from joint ventures or new

opportunities.

- (c) Consider matters reserved to the Combined Authority for shareholder approval, such as:
- (i) varying Articles of Association;
 - (ii) varying the nature of the Company's business;
 - (iii) varying ownership and structure (including setting up a subsidiary);
 - (iv) variations to shares;
 - (v) entering arrangements, contracts or transactions that:
 - have a material effect on the business of the Combined Authority (including other Companies within the group); and
 - are outside of the business plan or do not relate to the business of the Company.
 - (vi) any acquisition or disposal of a property interest or substantial part of the Company's assets other than in accordance with the business plan;
 - (vii) material legal proceedings outside of ordinary business;
 - (viii) adopting and amending business plans each year and strategic plans (3 years);
 - (ix) appointment, removal and the remuneration of Directors (Members of the Company Board);
 - (x) selection of the Chair;
 - (xi) appointment of Auditors;
 - (xii) issue of dividends or distribution of any surplus
- as more particularly set out in a Company's Articles of Association or Shareholder Agreement.
- (d) Monitor the performance of any Companies or other corporate entities in which the Combined Authority has a minority or other non-controlling interest and make formal recommendations as to how any voting rights or other powers which the Combined Authority holds should be exercised.
- (e) Report and make formal recommendations to the Combined Authority, directly meeting as it sees fit.
- (f) Make reports to and consult other Committees of the Combined Authority, in relation to the

	<p>Stakeholder Sub-Committee's particular functions.</p> <p>4.2 The Stakeholder Sub-Committee will not have operational control over the Companies. All decisions regarding the day to day operation of each Company, its business developments and commercial opportunities, staff terms and conditions and the development and implementation of its internal procedures, rest with the Directors of each Company.</p>
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4. RESOURCE IMPLICATIONS

4.1 Financial

There are no identifiable financial costs implications directly in relation to the contents of this report.

4.2 Human Resources

There are no identifiable human resources implications in relation to the contents of this report.

4.3 Physical Assets

There are no identifiable physical assets implications in relation to the contents of this report.

4.4 Information Technology

There are no identifiable information technology implications in relation to the contents of this report.

5. LEGAL IMPLICATIONS

There are no identifiable legal implications in relation to the contents of this report.

6. RISKS AND MITIGATION

6.1 By not approving the recommendations within this report, there is a risk that the Combined Authority will not be providing the proper oversight and scrutiny for the companies, in order to enforce governance and risk management.

6.2 Adopting and approving the establishment of the Stakeholder Sub-Committee and the terms of reference that go with it, will ensure there are oversight and scrutiny processes in place, to deal with the activities of the companies and improve their performance.

7. EQUALITY AND DIVERSITY IMPLICATIONS

There are no identifiable equality and diversity implications in relation to the contents of this report.

8. PRIVACY IMPLICATIONS

There are no identifiable privacy implications in relation to the contents of this report.

9. COMMUNICATION ISSUES

Should this report be approved, then the amended Constitution will subsequently be made available for the public domain on the website.

10. CONCLUSION

- 10.1 This report puts forward recommendations to improve the oversight and scrutiny of the Combined Authority's subsidiary companies, and Merseytravel, which will improve accountability of the decisions being made.
- 10.2 The proposed amendment to the Constitution also ensures the Combined Authority is clear as to the functions and duties of the Stakeholder Sub-Committee and how they will deliver the oversight and scrutiny function.

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Appendices:

Appendix 1 – Suggested Stakeholder Sub-Committee Terms of Reference (Combined Authority Constitution – track changes)

Appendix 2 – The Lawyers in Local Government – Code of Practice on the Governance of Local Authority Interests in Companies

Background Documents:

None