Date: 31 May 2019

Subject: TfGM Executive Board Membership

Report of: Andy Burnham, Mayor of Greater Manchester, Portfolio Lead for Transport and Eamonn Boylan, Chief Executive, TfGM

PURPOSE OF REPORT

To consider the options set out in the report in relation to the membership of the TfGM Executive Board.

RECOMMENDATIONS:

Members are recommended to:

i) consider the options in relation to the membership of the TfGM Executive Board as set out in the report;

ii) approve the appointment of the GMCA Treasurer as an ex-officio member;

iii) approve the extension of the appointments of Non-Executive Directors, Mr Edward Pysden and Mr Les Mosco for 1 year and 2 years respectively, as set out in Option B; and

iv) approve the recruitment of an additional Non-Executive Director, to replace the recently retired Non-Executive Advisor, as set out in Option D.

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1 INTRODUCTION

1.1 The GMCA, in consultation with TfGM’s Chief Executive, is responsible for the appointment of members to TfGM’s Executive Board under Section 9(2) of the Transport Act 1968. Section 16(b) of the SELNEC Order 1969 also confirms that:

‘The Executive for a passenger transport area consists of —

(a) a Director General appointed in accordance with Part II of Schedule 5 to this Act by the Authority; and

(b) not less than two, nor more than eight, other members so appointed by the Authority after consultation with the Director General.’

1.2 Therefore, the GMCA may appoint up to eight members to TfGM’s Executive Board in addition to the Director General (nine members in total).

1.3 TfGM is governed by different legislation to Local Authorities. In particular, the Transport Act 1968 and its subsequent Orders, which established TfGM, recognises the requirement for TfGM to operate and to negotiate, on behalf of the GMCA, in a manner typical of a private sector environment. The Transport Act 1968 constituted TfGM to resemble the governance arrangements of a large, not-for-profit, private sector company, in such a way as to facilitate the most effective negotiating position with private sector providers.

1.4 Although the Executive Board could, in line with provisions of the Transport Act 1968 and the SELNEC Order 1969, be constituted with executive officers only, TfGM has, for many years adopted the Financial Reporting Council’s UK Corporate Governance Code (the UK Code), which sets out Government policy in relation to how organisations should be governed in the best interests of its stakeholders. The use of fixed term appointments for Non-Executive Directors, and the composition of the Board is in line with Principle 11 of the UK Code which states that “at least half the Board, excluding the chair, should be Non-Executive Directors whom the Board considers to be independent.” Non-Executive Directors and Advisors have been members of the TfGM Executive Board since approximately 2003.

1.5 The above arrangements mirror other large public body organisations, including, for example, Manchester Airports Group which has a number of Independent Non-Executive directors from both the private and public sector.

2 THE CURRENT TfGM BOARD COMPOSITION

2.1 TfGM’s current Executive Board comprises six members, who are:

- the joint GMCA/TfGM Chief Executive (as Director General);
o the Finance and Corporate Services Director;

o the Chief Operating Officer;

o the GMCA Treasurer;

o two Independent Non-Executive Directors; and

o until April 2019, an Independent Non-Executive Advisor.

2.2 There is no legal distinction between the duties of those members who are permanent appointments to TfGM (the Chief Executive, Finance and Corporate Services Director, and Chief Operating Officer) and the Independent Non-Executive Directors, who have the same fiduciary duties and the same duty of skill and care as the Executives.

2.3 All members of the Board must act in the way they consider would be most likely to promote the success of TfGM. In doing so, the Independent Non-Executive Directors must, when performing their role, have regard to (among other matters): the likely consequences of any decision in the long term; the impact of TfGM’s operations on the community and the environment; and TfGM maintaining a reputation for high standards of ‘business conduct’. The Independent Non-Executive Directors must also satisfy themselves that TfGM has appropriate financial reporting and risk management procedures in place.

2.4 The Independent Non-Executive Directors work on behalf of the GMCA to provide constructive challenge to the Executive Directors, and to offer independent assurance in relation to, inter alia, the integrity of TfGM’s financial information, and that TfGM’s internal controls and systems of risk management are robust and defensible.

2.5 In accordance with the UK Code, TfGM’s Audit and Risk Assurance Committee is chaired by, and wholly composed of, Independent Non-Executive Directors. The Audit and Risk Assurance Committee has a particular role to act independently from management to ensure that the interests of financial stakeholders (including GMCA and others) are properly protected in relation to financial reporting and internal control. This arrangement also provides a formal process to ensure the independence and effectiveness of the internal and external audit functions; and provides assurance that TfGM’s risk management policies and procedures are appropriate to determine the nature and extent of the principal risks that TfGM should accept in order to achieve its, and GMCA’s, long term strategic objectives; and that those risks are appropriately and systemically managed and controlled.

2.6 As members will be aware, TfGM is responsible for delivering a wide and complex range of transport services and infrastructure on behalf of the GMCA, including a budgeted capital programme of approx £193 million in 2019/2020, and management of a c£1.8 billion asset portfolio. TfGM does not contract out through PFIs or PPPs, but owns the project management and risk profile of its capital programme and asset portfolio. In addition, TfGM is also leading on a number of large, complex ‘change programmes’ including, for example, the development of an Assessment in relation to Bus Reform for Greater Manchester; and the development of the Clean Air Plan on behalf of the 10 Local Authorities.
2.7 The TfGM Executive Board meets once a month and the Audit and Risk Assurance Committee meets once a quarter.

2.8 The salary / fee paid to each of the Independent Non-Executive Director who is also the Chair of Audit and Risk is £29,300. The other Independent Non-Executive (and the previous Independent Non-Executive Advisor) is £28,000 per annum. The average hours that the current Non-Executive Directors spend on TfGM Executive Board and Audit Committee work is estimated to be circa 3.5 days per month. This equates to a day rate of circa £700.

2.9 Although the Independent Non-Executive Directors do not have any executive responsibilities, the commercial experience that they bring and the specialist advice that they provide to TfGM is extremely valuable in helping the Executive Team to develop policy propositions and steer TfGM in respect of contractual risk. The TfGM delivery model relies on a large number of contracts with 3rd parties (KAM for Metrolink being the largest single one) and the commercial, financial and legal expertise of the current and recent Non-Executive Directors has given the organisation support and challenge.

3 OPTIONS FOR CONSIDERATION

3.1 There are a number of options that Members are asked to consider:

A. Not to extend the current contracts with the existing two Independent Non-Executive Directors board members and to reconstitute the TfGM Executive Board, such that it consists of executive members and potentially other appointees, including for example the GMCA Treasurer (see below).

Mr Richard Paver, the current GMCA Treasurer, holds the position of a Non-Executive Director of TfGM. The GMCA has previously approved the re-appointment of Mr Paver as a member of TfGM’s Board for a fixed term, which will expire on the 30 June 2019. Recognising that Mr Paver is due to retire this year, it is proposed that the role holder of the GMCA Treasurer is appointed as a formal ex-officio member of TfGM’s Board, without a fixed term to the position.

B. Retain the current Board membership, with the current two Independent Non-Executive Directors’ tenures being extended for between one to two years, as set out in section 4 below. This would allow a phased recruitment process to begin to enable the replacement of the current Non-Executive Directors at the expiry of their terms.

C. Retain the current Board membership, with the current two Independent Non-Executive Directors’ tenures being extended for a shorter period of six months; and commence a recruitment process to replace the incumbent Independent Non-Executives, following the appointment of a recruitment firm to undertake the recruitment.
D. In both of the above options (B and C), to consider replacing the recently retired Non-Executive Advisor with either an additional Independent Non-Executive Director or an additional Independent Non-Executive Advisor.

4 EXTENSION TO APPOINTMENTS OF NON-EXECUTIVE DIRECTORS

4.1 The following section sets out potential options in relation to Option B above.

4.2 The UK Code (which TfGM follows for governance) was recently revised in 2018. It no longer restricts the term of a Non-Executive Director, but requires an organisation to consider the composition of its Board on an annual basis, with regard to the skills and experience that the Board needs; and with full regard to the benefits of regularly refreshing the membership and ensuring a diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.

4.3 The annual assessment of a Board’s composition could be achieved by timing the length of tenure of the two Independent Non-Executive Directors (and if relevant) the Non-Executive Advisor to the Board, such that each position is held for e.g. a three year period, with one position expiring in each of the three years.

Mr Edward Pysden, Independent Non-Executive Director

4.4 The GMCA has previously approved the re-appointment of Mr Edward Pysden as an Independent Non-Executive Director of TfGM’s Board for a fixed term, which expires on the 30 June 2019.

4.5 Mr Pysden is a corporate lawyer and former Managing Partner of the solicitors Eversheds. He has previously served as the Chair of Manchester Airports Group and the Halle. Mr Pysden is TfGM’s Senior Independent Non-Executive Director, and is the Chair of TfGM’s Audit and Risk Assurance Committee. He was originally appointed to TfGM’s Board by the GMCA in 2012 following an open recruitment process.

4.6 Mr Pysden has served seven years as a Non-Executive Director of TfGM. To the extent that option B above is the preferred option, it is proposed that he would be re-appointed for one further year.

Mr Les Mosco, Independent Non-Executive Director

4.7 The GMCA have previously approved the re-appointment of Mr Les Mosco as an Independent Non-Executive Director of TfGM’s Board for a fixed term, which expires on the 30 June 2019.
4.8 Mr Mosco has 40 years’ experience in the Banking, Oil & Gas, Rail and Renewable Power sectors and in Central Government. He was appointed to TfGM’s Board in 2015 by the GMCA following an open recruitment process.

4.9 Mr Mosco has served four years as a Non-Executive Director of TfGM. To the extent that option B above is the preferred option, it is proposed that he would be re-appointed for a further two years.

The Independent Non-Executive Advisor

4.10 TfGM have recruited an Independent Non-Executive Advisor to its Board for more than 10 years, with the position appointed to by TfGM’s Chief Executive. TfGM has considered the Independent Non-Executive Advisor to be contributing, albeit in a non-statutory manner, in the same way the Independent Non-Executive cohort.

4.11 The Independent Non-Executive Advisor has the influence of a Non-Executive Director and is remunerated as if he/she was a Non-Executive Director, but does not have the same statutory duties and cannot sit on the Board’s Committees, including the Audit and Risk Assurance Committee.

4.12 The fixed term of the incumbent Independent Non-Executive Advisor expired at the end of March 2019. The incumbent was Mr Charles Monheim, who also held the Chair of Edinburgh Trams. He previously held the roles of Chief Operating Officer at New York State Metropolitan Transportation Authority; and Director for Oyster Card at Transport for London (TfL).

4.13 To the extent that the Independent Non-Executive Advisor role was replaced with a Non-Executive Director role, there would (based on current remuneration) be no additional cost to do so. This would allow GMCA the oversight of the appointment, and would provide resilience to TfGM for its appointments to its Audit and Risk Assurance Committee, which currently relies on the availability of both of its two Independent Non-Executive Directors to achieve being quorate.

4.14 To the extent that the role was recruited to, it would following the process set out in section 5 below, with particular regard to the need to increase the diversity on TfGM’s Board, and to replace the loss of independent experience of complex transport operations following the recent retirement of Mr Monheim.

5 RECRUITMENT PROCESS

5.1 It is recognised that the Executive Board needs to have a range of skills and experience to support TfGM’s functions. Therefore, any recruitment would need to be conducted, and selection made, on merit, against objective criteria and with due regard to the benefits of diversity on the Board.
5.2 Any recruitment, in relation to options B, C and D, would be subject to open recruitment process with the support of an executive search agency that would utilise advertising and targeted search activity to identify a ‘long list’ of individuals.

5.3 The subsequently shortlisted candidates would be interviewed by a panel made up of TfGM’s Chief Executive and other senior stakeholders. Any decision to appoint would be subject to GMCA approval.

6 RECOMMENDATIONS

6.1 Members are recommended:

i) to consider the options in relation to the membership of the TfGM Executive Board as set out in the report;

ii) approve the appointment of the GMCA Treasurer as an ex-officio member;

iii) approve the extension of the appointments of Non-Executive Directors, Mr Edward Pysden and Mr Les Mosco for 1 year and 2 years respectively, as set out in Option B; and

iv) approve the recruitment of an additional Non-Executive Director, to replace the recently retired Non-Executive Advisor, as set out in Option D.

Eamonn Boylan
Chief Executive, TfGM