

WEST MIDLANDS REGIONAL ASSEMBLY
Assembly Board of Directors – 15 January 2010

Proposal for Winding Up the Regional Assembly

1. Purpose

- 1.1 To consult the Board on a proposed process for winding up the West Midlands Regional Assembly and other related issues.
- 1.2 The Assembly auditors Clement Keys will be in attendance to provide the Board with an opportunity to seek their advice and agree the most appropriate method for wind up.

2. Recommendation

- 2.1 The Board is asked to approve the process for winding up the affairs of the Assembly as set out in this report and;
- 2.2 Agree the approach for winding up as either:
(a) Members Voluntary Liquidation or
(b) Voluntary Striking Off and;
- 2.3 Delegate to the Chief Executive in consultation with the Chairman and Vice Chairs any general decisions arising during the process of winding up including whether to put in place run-off insurance and;
- 2.4 Pass a resolution not to enter into any new contracts after 1 April 2010 in preparation for winding up the affairs of the Assembly

3. Background

- 3.1 At the end of this financial year (31.3.10) the funding for the Assembly will cease and steps must be taken to formally wind up the company that is West Midlands Regional Assembly.
- 3.2 There has been significant progress in putting in place new arrangements as required by the Local Democracy, Economic Development and Construction Act 2009; the West Midlands Leaders Board is now in place and operational, it is working strategically with AWM through the Shadow Joint Strategy & Investment Board and

work is already underway on the mechanisms for developing an integrated Strategy for the West Midlands.

- 3.3 However, the process to establish the future resource needs for WMLB and related transfer of staff from the Assembly, has taken a little longer than we would have liked, as it required the formal enactment of the LDEDC Bill to give clarity around statutory requirements, a need for the WM Leaders Board to meet and set out their priorities and ambitions, and most significantly an indication from Government as to the funding levels available for statutory activities in 2010. This means that whilst every effort will now be made to finalise a new structure and carry out a consultation process with staff, it may not all be entirely concluded by 31 March 2010.
- 3.4 It is necessary therefore to set out a plan of phased activity that enables us to take necessary and timely action as required, to ensure a smooth transition to the new arrangements. At the same time we must ensure all obligations of the Assembly are met and concluded prior to winding up.
- 3.5 The Board is asked to consider and agree on the preferred option for winding up; the proposed options are either a Members Voluntary Liquidation or a Voluntary Strike Off. We have attached Companies House guidance booklets on both options for information (**Appendix A and B**).

4. Option 1: Members Voluntary Liquidation

- 4.1 The Assembly will need to cease trading on 1st April 2010 but the company can only be formally wound up when all related and necessary business has been concluded. The Assembly Board will therefore need to pass a resolution not to enter into any new contracts after 1 April 2010 with a view to winding up the affairs of the company within the year.
- 4.2 The Assembly can then enter into a Members Voluntary Liquidation. A majority of the Assembly directors must make a "statutory declaration of solvency" in the 5 weeks before a resolution to wind up the company is passed and this could be done in June ahead of a final meeting of the Board in July when the Board will adopt the final accounts, pass a resolution to enter into a 'Members Voluntary Liquidation' and appoint a Liquidator.
- 4.3 The Liquidator will then take over the process to wind up the company's affairs. Our auditor cannot act as the liquidator, but can offer a list of firms who could carry out this service on our behalf and we would need to invite them to quote for their services in this matter; selection will be in accordance with our procurement policy.

- 4.4 In order to ensure timely decision making within the overall process for transfer and wind up; the Board is asked to delegate responsibility to the Chief Executive in consultation with the Chairman and Vice Chairs.
- 4.5 The Finance and Audit Committee can act as a consultative body on behalf of the Board in respect of any issues that may arise during the process and FAC will also be asked to meet in June to consider the final Audited Accounts ahead of a final Board meeting in July.
- 4.6 As the process evolves we will provide the Board with email updates at key stages to ensure that the Directors are aware of progress and that their responsibilities are being met.
- 4.7 The MVA option does incur the cost of a liquidator but it is recommended by the auditors as the best option for the Assembly as it offers greater overall protection for the Directors and a finite end to Assembly affairs.

5. Option 2 – Voluntary Strike Off

- 5.1 An alternative option is for the majority of the Assembly's directors to apply for a voluntary striking off from the register and dissolution, provided that the company has not traded at any time in the previous 3 months. There is a nominal fee of £10 and the process can be handled by the company's officers and auditor and does not require the services of a liquidator.
- 5.2 However, an interested party such as a person who had a contractual relationship with the company or who has a potential legal claim can apply to the Court to have the company restored to the register. If restored the company is deemed to have continued in existence as though it had not been dissolved.
- 5.3 Whilst this is a simple and more cost effective option, it does not provide any protection for Directors. Due to the fact that the Assembly has operated significant budgets, employed a number of staff and entered into a great many contracts during its life, the auditor believes that the MVL option is a more 'belt and braces' approach and ensures the Assembly is wound up with no possibility of restoration.
- 5.4 Should the Board decide on this option then [4.4 – 4.6] would still apply and we would still work to the timetable set out at [7].

6. Assembly Obligations and Responsibilities

Staffing

- 6.1 The staff of the Assembly are already employed and contracted to WMLB. WMLB is in the process of agreeing a new structure and the required level of resources for 2010 and beyond. WMLB will take steps to formally accept transfer of those staff required within the new structure, from the Assembly at an appropriate date and no later than 1st April 2010.
- 6.2 However, the Board is aware that not all of the functions will be required in the future and that WMLB has the difficulty of delivering future work programmes with a reduced financial envelope; this means that there a real risk of some redundancies.
- 6.3 The WMLB (supported by the Human Resources team) will ensure that policies and procedures are robustly followed in relation to this difficult process, with a view to having identified the number of posts and people funded by the Assembly that will be lost. Identifying the severance costs cannot be concluded until we have completed the redeployment process around the new structure and we should have a clear idea by early April at the latest of the related cost to be met from CLG funds.
- 6.4 We are in regular dialogue with Government Office, who fully appreciate the difficulties and challenges we have had to face within this process and we are seeking approval from CLG for a contingency arrangement whereby we identify related costs that fall beyond 31st March that will need to be met from 2009-10 funding.

Directors Liabilities

- 6.5 We are keen to take all necessary and reasonable steps to safeguard the Directors of the Assembly; including establishing any appropriate run-off insurance policy to provide protection for directors for a period beyond 31st March 2010 if the Board determine this to be necessary.
- 6.6 We are in the process of obtaining a proposal and cost from our insurers Zurich Municipal and propose that the Board delegates responsibility to the Chief Executive in consultation with the Chairman and Vice Chairs to make a final decision as to whether this will be necessary.

Projects - Accountable Body Responsibility

- 6.7 The Assembly acts as the accountable body for three projects that will continue beyond 31 March 2010; EU Connects is funded to 31 December 2011, Living Well West Midlands is funded to 31 December 2010 and the OPEN Project until 31 January 2011. WMLB

will take responsibility for these projects with effect from 1 April 2010 and we will liaise directly with the funding bodies to implement this transfer.

- 6.8 The senior management and financial management of these projects are already provided by WMLB, so the transfer of overall responsibility should have minimum impact on the projects themselves.

Partner Funds held by the Assembly

- 6.9 At 1st April 2009 the Assembly was holding some funds on behalf of projects/partners; these are described below together with our intended course of action during 2009-10 to either conclude or transfer.

Project and Value	Value 1.4.09	Proposed Action
Rural/Forestry Framework	£76,021	Transfer to WMLB to continue the project in 2010-11
Housing Partner Funds (4 pots)	£144,887	Transfer to WMLB to continue the project in 2010-11
DaSTS Project	£18,470	Fully utilised in 2009-10
Energy West Midlands	£2,500	Transfer to WMLB for 2010-11
Health Programme	£559	Reclaimed in 2009
Waste	£17,195	Transfer to WMLB for 2010-11
European	£1,474	Fully utilised in 2009-10
Transport	£1,900	Fully utilised in 2009-10
Social Inclusion	£5,427	Fully utilised in 2009-10
Culture WM	£63,170	Fully utilised in 2009-10
Sustainable Housing	£6,198	Fully utilised in 2009-10

7. Suggested Timetable of Activity

- 7.1 We believe the following timetable to be realistic in terms of the work that needs to be done, but it may need to vary to accommodate any unforeseen issues that may delay the overall process.

- 7.2 End April – Final Report to CLG:
The WMRA 2009-10 Year End Report will need to be submitted to GOWM/CLG at the end of April with a review meeting taking place around 2-3 weeks later. Whilst we have reverted to six monthly reporting in this final year, we have opted to hold a quarter 3 review

meeting with GOWM in January to ensure our actions in the final months in relation to the business plan and transitional activities meet with the approval of CLG.

7.3 End May - Closure of Accounts:

Our aim is to close the final accounts of the Assembly by 31st May 2010 having carried out all reasonable activities to ensure we are in receipt of all invoices and charges, and any other appropriate documentation to enable us to discharge all known liabilities and to conclude the formal business of the Assembly. As the Assembly does not have any lease commitments and does not directly employ staff, we believe this to be a reasonable deadline.

7.4 June – Audit & Solvency Declaration:

The final audit will conclude in June, with all creditor payments having been made and debtor receipts banked so as to arrive at a final figure in respect of the remaining assets of the Assembly. This process will also confirm a figure of funds (if any) that may need to be repaid to CLG under the 2009-10 funding agreement. We aim to present the draft audited accounts to FAC towards the end of June, and we will facilitate an electronic 'Board declaration of solvency' or 'Board decision to apply for strike off' based on the audited accounts.

7.5 July – Final Board Meeting:

A final meeting of the Board will be held in July to;

- Adopt the Financial Statements at 31.3.10
- Pass a resolution for a Members Voluntary Liquidation and appoint a Liquidator, OR
- Agree to apply for Voluntary Striking Off

7.6 August/September – Liquidation Process:

We will file a Corporation Tax return for 2009-10, the Annual Return and final Accounts to Companies House as soon as is practicable after the Board meeting in July and within required deadlines. In the case of MVL a further final Corporation Tax return will be filed by the Liquidator at the conclusion of the winding up process.

8. Other General Matters

8.1 The intention is to transfer all remaining assets/liabilities to the WMLB and we are seeking formal confirmation from CLG that this is an acceptable course of action to Government; particularly as the WMLB takes over the contingent liabilities for staffing and statutory responsibility. Outcomes will be communicated to the Auditor for drafting of Financial Statements and to the Liquidator if appointed who will carry out all necessary actions to conclude the winding up process. The bank accounts of the Assembly will be closed following final transfer of funds.

- 8.2 Whilst we will carry out our own year end audit to provide the basis for the winding up process, we have also inquired as to whether DCLG intend to carry out their own audit, particularly in view of the abolition of assemblies and we have yet to have a response on this.
- 8.3 We will of course take advice from CLG, our accountants (Clements Keys), our legal representative (Eversheds) etc, as may be necessary during this process to ensure we meet all statutory and legal requirements.

Olwen Dutton
Tel: 0121 678 1031
email: o.dutton@wmra.gov.uk