

ABERDEEN CITY COUNCIL

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| COMMITTEE | City Growth and Resources |
| DATE | 26 th September 2019 |
| EXEMPT | No |
| CONFIDENTIAL | No |
| REPORT TITLE | Local Authority Bus Services/Controlled Bus Companies |
| REPORT NUMBER | PLA/19/324 |
| DIRECTOR | N/A |
| CHIEF OFFICER | Gale Beattie |
| REPORT AUTHOR | Chris Cormack |
| TERMS OF REFERENCE | Purpose 2 and 6, Remit 2.2 |

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise members on the current and emerging legislative framework for the Council to operate bus services or control a bus company in relation to the proposed sale of First Aberdeen Limited.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Note the current legislative position regarding Local Authority operated bus services and the current position regarding the sale of First Aberdeen Limited.
- 2.2 Instruct the Director of Resources to monitor the sale position of First Aberdeen Limited and report back to the City Growth and Resources Committee on 6 February 2020 with an update on the proposed sale and recommended next steps for the Council.

3. BACKGROUND

- 3.1 A Motion, by Councillor Laing, was approved at Council on 24th June 2019 which: *“notes the amendments agreed by the Rural Economy and Connectivity Committee at Stage 2 of the Transport (Scotland) Bill, to allow local authorities such as Aberdeen City Council to run their own bus services, either directly or through arms-length companies”*; and to *“instruct the Director of Resources to contact those involved in the proposed sale of First Aberdeen noting the Council’s interest and to report back to the City Growth and Resources Committee or Urgent Business Committee with details of how the Council might make a bid for First Aberdeen.”*

CURRENT LEGISLATIVE POSITION

- 3.2 A report was presented to Council on 21st June 2017 to advise members on the options available to the Council for the operation of bus services. The report can be viewed at:
- <http://councilcommittees.acc.gov.uk/documents/s70420/Bus%20Service%20Options.pdf>
- 3.3 The current legislative position has not changed since the report of 21st June 2017 and changes are reliant on the Transport (Scotland) Bill being passed by the Scottish Parliament.
- 3.4 The report set out that local authorities could only operate bus services themselves under the following circumstances:
- Small Bus Undertakings, where vehicles owned and used by a local authority for providing any service for the carriage of passengers, which requires a Passenger Service Vehicle (PSV) Operators Licence. The Secretary of State would be required to grant such a provision and would limit the number of vehicles to be used. Generally, this is for use to provide school transport services, etc.
 - Provision of services under a section 22 community bus permit in order to operate local bus services, on the basis of the social needs of a community, on a non-profit making basis.
- 3.5 In addition, local authorities can plan and procure services, where there are gaps in the bus network which the local authority deems to be socially necessary but are not commercially viable. The fares, routes and timetables on these services are set and funded by the local authority but services are tendered to external providers.
- 3.6 The Transport (Scotland) Act 2001 also allows for ‘Quality Contracts’. This is where local transport authorities may make a scheme covering their area, or combined area, if this is the only way they can implement their general transport policies and the scheme will do this in an economic, efficient and effective way. A Quality Contract cannot be made unless the authorities have complied with statutory consultation requirements and obtained the approval of Scottish Ministers. This is a franchise type arrangement and authorities can determine what local services should be provided and specify routes, the standard and

quality of services and fares. The authority may then grant a Contract to bus operators giving exclusive rights to operate services on such terms as specified, and these terms may include service frequency, fares and standard of service. This must be done through a competitive tender.

- 3.7 Currently there is no statutory provision which explicitly authorises the Council, as a local authority entity, to take over a bus company.

DRAFT LEGISLATIVE POSITION – TRANSPORT (SCOTLAND) BILL – STAGE 2

- 3.8 The Transport (Scotland) Bill is currently being progressed through the Scottish Parliament. Stage 2 has been completed and several amendments were agreed, with regards to the provision of local bus services by local authorities and local transport authority-controlled bus companies, which will now be progressed to Stage 3.
- 3.9 There is no definitive timescale for Stage 3 of the Bill to be considered, following which the agreed final position of the Bill would be debated, passed and implemented. It is therefore not clear what will definitively be included in the final Bill, once passed.
- 3.10 In terms of the Draft Bill, as it currently stands, further powers for local authorities to run their own bus services are proposed, namely where a local authority considers it appropriate to take action to secure the provision of local services to meet a public transport requirement, which is effectively to operate such services themselves where there is an unmet need. An amendment was also approved which removes the exclusion on the (majority of) local authorities being able to run their own bus services, in general terms. It is unclear at this time how this would work in a deregulated market, as commercial bus operations would remain. This will be subject to legal consideration in advance of Stage 3 and is likely to be debated further at that time.
- 3.11 It is also not clear from the amendment made that a local authority could acquire a bus company in these circumstances, only that under any circumstances a local authority could run their own bus services. It is not considered that such an acquisition is excluded, but as the Bill stands, it is anticipated that guidance or secondary legislation would be required to allow this to be implemented. This provision may provide an ability for the Council to make a bid for First Aberdeen, but it is not clear at this stage how this would work in practice.
- 3.12 A further amendment which was approved, would explicitly allow local transport authorities to control a company that provides local bus services. This would afford local authorities the ability to operate a 'Lothian Buses' type, arms-length operation, by either forming or acquiring a company or using a company already controlled by the local authority. This would present a clearer ability for the Council to make a bid for First Aberdeen. It would be for a local authority to consider how it would establish and fund a commercial bus company.

- 3.13 To enter such an arrangement, local authorities must be satisfied that the provision of services by such a company will contribute to the implementation of their relevant general policies. It is not defined at this stage what policies are being referred to, it is understood however that guidance would be developed for this provision.
- 3.14 Such companies would be required to operate in a deregulated and commercial market and would have to operate in the same way as a commercial bus operator. Advice from the Competition and Markets Authority to the Scottish Government suggested such operations must be arms-length, particularly so such companies were not operating at an unfair advantage. In addition, the Cabinet Secretary for Transport, Infrastructure and Connectivity, speaking to the [Rural Economy and Connectivity Committee 12 June 2019](#), advised that such a company would be required to comply with state aid rules and to do so would require the company to be arms-length. State aid is any advantage granted by public authorities through public resources on a selective basis to any organisation(s) that could potentially distort competition and trade in the European Union (EU).
- 3.15 Out of the 2 significant amendments for local authorities running their own bus services, the second one for controlling a company would, at this stage, present the Council with a clear ability to acquire First Aberdeen. Such operation would be in line with commercial bus services, so supported services would likely still need to be tendered to the open market and the company would be subject to competition rules. It is not clear at this stage how services run from the authority themselves, other than where there is an unmet need, would work in practice and how this would afford the Council the ability to acquire First Aberdeen.
- 3.16 This legislation is only draft at this time and it is not clear when this will be passed and implemented. Until such time, it would be premature to make any bid for First Aberdeen, as it is not clear that the Council has any statutory power to do so, as a local authority entity, and on this basis it is recommended that the Council would be best to await the outcome of the Transport (Scotland) Bill, before further considering the matter.

SALE OF FIRST BUS UK OPERATIONS – INCLUDING FIRST ABERDEEN LIMITED

- 3.17 In relation to the process for the sale of First Bus, as with any sale of this nature, the company have appointed external advisors to facilitate the sale process through the open market. This requires the gathering of a large volume of data that will provide the information for prospective purchasers to undertake their due diligence. This “data room” is unlikely to be available for a number of months. Therefore, the Council is unable to determine an informed position at this juncture.

3.18 In relation to how the business will be sold, the Director of Resources cannot provide any further advice at this stage. This is because there would be a number of options open to the seller (for example a single sale for the whole UK business, a management buyout, small parcels of sales for different parts of the business, etc.).

3.19 As First Bus continue to progress the sale process the Council will continue to monitor the position. At present the Director of Resources has indicated an informal, without prejudice noted interest in the sale.

4. FINANCIAL IMPLICATIONS

4.1 There are no immediate financial implications as a result of the recommendations of this report. If the Council wishes to proceed with a feasibility study and business case for operating bus services/controlling a bus company, following the passing of the Transport (Scotland) Bill, then detailed financial considerations would be required at that time.

5. LEGAL IMPLICATIONS

5.1 There are no immediate legal implications as a result of the recommendations of this report. The Council must adhere to the legislative requirements for bus services as determined by the Transport Act 1985 and Transport (Scotland) Act 2001. If the Council wishes to proceed with a feasibility study and business case for operating bus services/controlling a bus company, following the passing of the Transport (Scotland) Bill, then detailed legal considerations would be required at that time.

6. MANAGEMENT OF RISK

| Category | Risk | Low (L) Medium (M) High (H) | Mitigation |
|------------------|---|--|---|
| Financial | There are no financial risks as a result of the recommendations of this report and further consideration to such risks will be addressed, as required, through the future reports to committee. | L | N/A |
| Legal | There are no legal risks as a result of the recommendations of this report and further consideration to such | L | The Council will continue to engage with the progression of the Transport (Scotland) Bill through the Scottish Parliament to ensure the |

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| | risks will be addressed, as required, through the future reports to committee. | | Council and City's interests are represented. |
| Employee | There is a risk that there is insufficient staff time and resource to fully engage in the Transport Bill and implementation of. | L | The workloads of Officers will be managed by Chief Officers of Strategic Place Planning and Resources to ensure there is sufficient resource to take forward instructions from Committee. |
| Customer | There is a risk that the sale of First Aberdeen may proceed prior to the Transport Bill passing and this may have an impact on bus passengers in Aberdeen. | M | The sale and impact of the sale of First Aberdeen is uncertain at this time. Officers will remain engaged with First Aberdeen and any new company to ensure adequate provision of service. |
| Environment | There are no immediate environmental risks as a result of the recommendations of this report. | L | N/A |
| Technology | There are no immediate technology risks as a result of the recommendations of this report. | L | N/A |
| Reputational | There are no immediate technology risks as a result of the recommendations of this report. | L | N/A |

7. OUTCOMES

| Local Outcome Improvement Plan Themes | |
|--|---|
| | Impact of Report |
| Prosperous Economy | <p>1.3, 2.1 - Investment in infrastructure and economic growth - the recommendations in this report are focussed on improving public transport in the City. A high quality public transport system is important for any thriving economy in transporting people to work and education and directly support the business and education sectors and ensures the workforce can travel effectively and that all have access to appropriate education opportunities and access to all facilities in a cost-effective way.</p> <p>A consistent approach to delivery of public transport in the City will ensure that local environmental factors, changing priorities and customer needs are considered as well as available budgets are considered on a reviewed basis.</p> |
| Prosperous People | <p>3.4, 6.1, 11.1 - People are supported to live as independently as possible - The improvement to public transport links to the Community Plan vision of creating a <i>'sustainable City with an integrated transport system that is accessible to all.'</i> The actions in the Action and Delivery Plan assist in the delivery of actions identified in the Single Outcome Agreement (SOA) 2013, in particular the Thematic Priority – Older People (<i>'Older people in Aberdeen have increased independence'</i>) and the Multi-lateral Priority – Integrated Transport (<i>'Aberdeen is easy to access and move around in'</i>) and the Underlying Principle – (A presumption for community based access to services – <i>'Services are accessible to all citizens in the ways which meet their needs'</i>).</p> |
| Prosperous Place | <p>14.1, 15.1 - People friendly city - the LOIP sets out that we will improve multi-modal access to Aberdeen. The LOIP identifies that transport is a major contributor to carbon emissions and in Aberdeen there is an exceptionally high level of car ownership and usage. It is a circular agreement – poor air quality and poor road safety discourages people from walking or cycling, however reducing reliance on private transport is the best way to improve air quality and a high quality public transport network is critical to this and this is identified in the LOIP which sets out the requirement for a competitive and accessible public transport system.</p> |

| Design Principles of Target Operating Model | |
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| | Impact of Report |
| Customer Service Design | Co-design: Delivery of any future bus services will require considerable consultation and engagement with communities and stakeholders. |
| Organisational Design | Enabling: The Council will be working with Transport Scotland to ensure the Transport Bill delivers improvements to public transport and this will be a collaborative and joint effort. |
| Governance | Transparent: All delivery of actions for bus services following the Transport Bill will be robustly evidenced through studies, assessment of data and public feedback and where actions take place clear measurable evidence of improvement will be required. |

8. IMPACT ASSESSMENTS

| Assessment | Outcome |
|--|--|
| Equality & Human Rights Impact Assessment | Not required as a result of the recommendations of the report. |
| Data Protection Impact Assessment | Not required as a result of the recommendations of the report. |
| Duty of Due Regard / Fairer Scotland Duty | Not applicable as a result of the recommendations of the report. |

9. BACKGROUND PAPERS

- 9.1 CHI/17/143, Bus Service Options:
- <http://councilcommittees.acc.gov.uk/documents/s70420/Bus%20Service%20Options.pdf>
- 9.2 Transport (Scotland) Bill, as amended after Stage 2:
- [https://www.parliament.scot/S5_Bills/Transport%20\(Scotland\)%20Bill/S5Bill33AS052019.pdf](https://www.parliament.scot/S5_Bills/Transport%20(Scotland)%20Bill/S5Bill33AS052019.pdf)
- 9.3 Rural Economy and Connectivity Committee 12 June 2019, Official Report:
- <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12185>

10. APPENDICES

N/A

11. REPORT AUTHOR CONTACT DETAILS

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