

**CARDIFF BUS - LOAN FOR ACQUISITION OF ELECTRIC
VEHICLES**

**FINANCE, MODERNISATION AND PERFORMANCE
(COUNCILLOR CHRIS WEAVER)**

AGENDA ITEM: 8

*Appendix 1 to this report is not for publication under Schedule 12A Part 4
Paragraph 14 of Local Government Act 1972 (as amended) in that it contains
information relating to financial or business affairs of others*

Reason for this Report

1. This report outlines a request received from Cardiff Bus in relation to the Council providing the bus company with a loan of £3.8 million over a three year period for investment in electric vehicles. This would facilitate a grant offer of up to £5.7 million from the Department for Transport.

Background

2. Cardiff City Transport Services (Cardiff Bus) was created following the enactment of the Transport Act 1985 (the 1985 Act) which reformed local authority bus operations by establishing limited companies. The intention was that the municipal companies would operate at arms length but that their shares would be owned by local authorities. This is the case with Cardiff Bus which was created as a wholly owned company of the Council.
3. Under Section 79 of the 1985 Act Cardiff Bus is not able to borrow money from any person other than the Council, except for an overdraft or short term loan. The Council therefore has the power to give a loan subject to being content in respect of the purpose of the loan. The Council has previously provided loans which have been fully paid by the Company.
4. The impact of electric buses in improving air quality has been modelled as part of a package of no charging measures which has been identified as the Council's preferred option to achieve compliance with the EU limit value for nitrogen dioxide and is detailed in full in the Final Clean Air Plan, which is subject of a separate report to be considered by Cabinet. This measure is seen as one of the key measures to deliver compliance, and not being able to fulfil the grant conditions and acquire electric buses could significantly impact on the validity of the Councils preferred option

to deliver compliance for nitrogen dioxide in order to meet the legal requirements of the direction from Welsh Government.

Issues

5. Cardiff Bus, working with Welsh Government and the Council submitted a grant bid to the Department of Transport's Office for Low Emission Vehicles in June 2018. The grant bid was for 36 vehicles and for associated infrastructure. The cost of an electric bus can be more than double the cost of a diesel vehicle and the DFT grant would only cover 75% of the cost differential, the balance to be covered by the Grant recipient along with what would normally be the cost of an equivalent diesel vehicle.
6. The Company and Council were notified of the successful grant bid in February 2019, with a maximum grant of £5.356 million approved for up to 36 electric buses and £341,000 for infrastructure, representing 75% of the additional costs of electric vehicles.
7. **Appendix 1** shows the estimated cost of the vehicles, with the timing and value of payments subject to a procurement to undertaken by Cardiff Bus.
8. Before any grant is payable, the terms and conditions of the grant require the grant recipient: *to provide the Secretary of State with information and evidence, in a form reasonably satisfactory to the Secretary of State confirming that it can defray the balance of the Eligible Costs (that is the share of the costs not being provided by the Secretary of State in the form of this grant)*
9. Whilst the grant has been accepted in principal by the Company, the company needs to confirm they have sufficient funds to meet the cost costs of electric vehicles including the cost differential, of which the loan requested of £3.8 million will support.
10. State aid rules prevent further grant funding being provided to support the costs of electric vehicles in addition to the DFT grant either by Welsh Government or the Council.
11. Despite this, the company itself recognises the:
 - role it can play in reducing emissions on routes
 - benefits of a modern fleet of vehicles to serve the City and its customers
 - opportunity to make this change as part of its own planned vehicle replacement cycle
 - need to accept this unique opportunity to secure significant grant is not lost for the benefit of the City

The company has agreed to pay the cost differential and match funding requirement as part of its fleet replacement programme and a loan of £3.8 million has been requested to support the overall costs of investment.

Loan to Cardiff Bus

12. The Council's capital programme already includes a loan amount of £2 million towards vehicles. However the availability of DFT grant significantly enhances the opportunity to make a significant shift to an electric bus fleet. In order to achieve this, the company require a total loan of £3.8 million over a three year period, i.e £1.8 million over and above the £2 million already approved. As has been mentioned above, regulations mean that the company only has one option to secure loan funding and that is from the Council.
13. The detailed loan terms would need to be confirmed but the principle terms of the loan would be as follows:-
 - Repayable within 12 years, with the first payment in 2023/24 and the last in 2032/33, with repayments profiled subject to cash flows.
 - To ensure that there is no impact on the council tax payer the rate chargeable on the loan would be in excess of that which the Council would access from the Public Works Loans Board (PWLB). It is intended any loan interest will be at a commercial rate taking into account Loan to Value and Debt Service Cover ratios over the period of the loan that are typically used by commercial lenders in arranging loans.
14. It is proposed that a delegation is put in place for officers in consultation with the Cabinet Member for Finance, Modernisation and Performance to conclude the details of the loan agreement. This would be for £2 million initially to allow formal acceptance of the DFT grant and order placed for the first tranche of buses, with a further loan of £1.8 million to be recommended as part of future changes to the Capital Programme.
15. If this additional loan amount were not approved then the number of new buses would need to be reviewed and any grant receivable returned to DFT.
16. The loan instrument will be such that it will make clear the purposes for which the loan can be used in accordance with the 1985 Act. It will identify the terms and security of the loan to ensure that suitable security is identified. It will be for the bus company to satisfy itself that it is in the company's best interests to take the loan, offer the security sought and meet the repayments terms. Previously Cardiff Bus has issued a debenture to the Council and it may be that this route is deemed to be the most appropriate.

Financial Projections

17. In order to support a loan application, the Council has been provided with business overview documentation in respect to future financial

projections of the company. As with any Business Plan financial projections are subject to change and therefore the repayment of the loan and associated interest is subject to risk.

18. The Council is constrained by its own affordability and regulations in providing financial support to the company, but it is deemed that the company can be well placed to:
 - be a key part of the Council's sustainable transport offer
 - take advantage of the growth of the City particularly as part of new developments in the North West and North East of the City
 - be a key part of the City and regions transport infrastructure, complementing wider regional transport improvements such as the metro.
19. The Company has experienced a significant period of financial difficulty in the last few years as a result of reductions in grant competition, increased fuel and staff costs as well reduction in patronage. However it is taking active measures along with employees to implement a financial turnaround plan to ensure the financial viability of the Company and seek a route back to profit. In order to support this and as part of its shareholder review, the Council has recently facilitated the appointment of two new experienced Non Executive Directors to the board of the company.
20. The Council will continue to explore ways in which further investment can be provided for sustainable bus passenger improvements in the City.

Reasons for Recommendations

21. Electric buses is one of the measures of the Air Quality Feasibility Study Final Plan to meet the requirements of the direction from Welsh Government. To consider the request the Council has received from Cardiff Bus in relation to a loan of £3.8 million to support their overall vehicle replacement programme and accept a grant offer from DFT for electric vehicles. The Company cannot take a loan from anyone else apart from the Council.

Legal Implications

22. The authority has the power to make a loan to Cardiff Bus. In considering matters the authority needs to be mindful of any potential issues relating to state aid, competition law and the requirements of the Transport Act 1985 ('the 1985 Act'). It is understood that these issues have been considered by the Council and it is noted that the loan is being considered because the Company, in effect, can only borrow money from the Council. The 1985 Act imposing a duty on the Council to exercise its control over the company so as to ensure that the company, amongst other things, does not borrow money from any person other than the controlling authority with the exception of borrowing by way of temporary loan or overdraft;

23. Legal advice should be sought on the proposed terms of any loan and appropriate professional advice taken on any form of security offered (such as a charge over land) to consider the adequacy of the same. The following points are noted :-

(i) It is vital that the loan from the Council does not amount to State aid (even lawful State aid) given the fact that Cardiff Bus will be in receipt of grant funding (see paragraph 5 of the report) in respect of the same matter (purchase of electrical vehicles). The reason for this is that if Cardiff Bus were to receive aid in excess of the grant funding received (75% maximum) this would put Cardiff Bus in breach of the conditions of the grant funding as to the cumulation of aid. In line with this, whilst the Council clearly has the power to make a loan to Cardiff Bus, pursuant to section 79(4) of the Transport Act 1985 Act, it would not, for instance, be sufficient, from the point of view of State aid, that the Council simply complied with section 79(5), which provides that any loan under section 79(4) must be made on terms, both as to rates of interest and otherwise, which are no more favourable than the terms on which the authority making the loan would itself be able to borrow at the time when the loan is made. The Council would have to go further and ensure that the loan to Cardiff Bus was on terms which would be no more favourable than that which would be granted, under similar conditions, by a private creditor to a debtor undertaking

(ii) the loan terms should make clear that :

the loan is not intended to act as a subsidy for Cardiff bus, thereby giving it an advantage over other operators, the loan funding provided must not be used (directly or indirectly) to subsidise routes and all costs incurred by the Council in respect of granting the loan should be passed on to Cardiff Bus.

24. It is understood that; there will be two loans (one for £2million and one for £1.8 million), that the £1.8 million loan proposed is outside the existing budgetary framework and that provision or not for this proposed loan will be considered as part of a future Council decision in respect of the Council's budget. Appropriate caveats should be included as regards any in principle decision made as regards the further loan of £1.8 million so as not to fetter the Council's decision making in setting its future budget. Further, it should be made clear to Cardiff Bus that the content of this report should not be taken as a commitment by the Council to grant the additional loan in the absence of any Council decision on the budget provision.

Generic legal implications

25. In considering the matters set out in this report regard should be had, amongst other things, to:

(a) The Welsh Language (Wales) Measure 2011 and the Welsh Language Standards,

- (b) Public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are : a. Age; b. Gender reassignment; c. Sex; d. Race – including ethnic or national origin, colour or nationality; e. Disability; f. Pregnancy and maternity; g. Marriage and civil partnership; h. Sexual orientation; i. Religion or belief – including lack of belief
- (c) The Social Services and Well -Being (Wales) Act 2014 and
- (d) The Well - Being of Future Generations (Wales) Act 2015

Well Being of Future Generations (Wales) Act 2015

- 26. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
- 27. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well - being goals. The well - being objectives are set out in Cardiff's Corporate Plan 2018-21:
- 28. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
- 29. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
 - Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:

Financial Implications

30. Cardiff Bus is governed by transport legislation which placed borrowing restrictions on it which means that it is unable to borrow long term from anyone other than the Council. The bus company has therefore requested that the Council consider providing a loan to give Cardiff Bus the ability to invest in its assets.
31. The bus company has prepared financial forecast assumptions which show a longer term recovery and sufficient capacity to repay any loan provided. However, these projections may change and therefore the repayment of the loan and associated interest is subject to risk.
32. The company made a reported financial losses in its 2017/18 accounts, with data for 2018/19 to be confirmed. The forecast is for a return to operating profit for 2019/20 with the company implementing a turnaround plan to resolve issues and work constructively with employees and the Trustees of its pension fund in order to ensure the future sustainability of the Company. Due to the short term losses an overdraft facility is in place, which is intend to be removed as cash balances improve over the next three years. These improved cash balances will also support the investment required for fleet replacement costs and repayment of the Council's loan.
33. Any loan would be capital expenditure and a sum of £2 million is included in the Council's approved capital programme. Repayments would be used to reduce any loan amount, with any interest received shown as revenue income. As identified in its shareholder review, the Council will need to put in place a further more detailed process to allow the Council to regularly monitor performance against company projections.

RECOMMENDATIONS

The Cabinet is recommended to:

1. Approve the granting of a loan to Cardiff Bus from the Council for £2.0 million for the purchase of electric vehicles subject to conclusion of a legal agreement between the Council and Cardiff Bus in respect of the terms of the loan.
2. In line with the Council's Budgetary Framework, seek further Council approval when required and if appropriate, in terms of spend commitments and in line with DFT grant conditions, for a further loan to Cardiff Bus for £1.8 million.
3. Delegate to the Corporate Director Resources in consultation with the Chief Officer for Legal and Democratic Services and the Cabinet Member for Finance, Modernisation and Performance the preparation and

conclusion of the legal agreements between the Council and Cardiff Bus in respect of approved loans.

SENIOR RESPONSIBLE OFFICER	CHRIS LEE Corporate Director Resources
	7 June 2019

The following Appendix is attached

Appendix 1 – Expenditure and Funding (confidential)