

North Tyneside Council Report to Head of Environment, Housing and Leisure

**Officer Delegated Decision
Report**

**Title: Clean Bus Technology
Fund – Provision of Funding to
Go North East Limited**

Date: 7 February 2019

**Report from Service
Area:**

Public Protection

Report Authors:

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Services**

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Wards affected:

All

PART 1

1.1 Executive Summary:

The Authority has been awarded £1.201m of capital funding from the Clean Bus Technology Fund. This is to be passported through to bus operators to undertake retrofitting of bus engines in order to achieve compliance with the Euro 6 emission standard.

On 25 June 2018 Cabinet authorised the Head of Environment, Housing and Leisure in consultation with the Cabinet Member for Finance, the Head of Finance and the Head of Law and Governance to award the grants on the terms approved by the Head of Law and Governance.

This report seeks approval to award £0.403m of that funding to Go North East Limited on the terms of a Back to Back Agreement to be approved in line with this Report.

1.2 Recommendations:

It is recommend that the Head of Service for Environment, Housing and Leisure:

- (1) Notes the contents of the report and the views of the Cabinet Member for Finance, the Head of Resources and the Senior Manager Legal Services (in the place of the Head of Law and Governance); and
- (2) Approves the award of the grant funding to Go North East Limited outlined in section 1.5.3 of the report on the terms approved by Senior Manager, Legal Services.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 29 June 2018.

1.4 Council Plan and Policy Framework:

This report relates to the following priorities in the 2018-20 Our North Tyneside Plan:

- Our Places will:
 - Provide a clean, green, healthy, attractive, safe and sustainable environment
 - Have effective transport and physical infrastructure.

- Our People will:
 - Be healthy and well

1.5 Information:

1.5.1 Background

As part of the National Air Quality Plan for tackling roadside nitrogen dioxide concentrations the Department for Environment, Food and Rural Affairs (DEFRA) undertook a modelling exercise to highlight local authorities with areas that it is anticipated will be above the legal limit of nitrogen dioxide after 2020. This modelling exercise considered national traffic data rather than local readings and indicated that without the introduction of measures to improve air quality there would be an 800m area of the Coast Road within the Borough that would be marginally in excess of the annual emission limit after that date.

If this emissions limit is not met the Secretary of State has the power to declare a Clean Air Zone which can impose requirements on the Authority such as the need to introduce restrictions on vehicles operating in the designated area.

As a result the Authority was directed to carry out a feasibility study for tackling the reduction in roadside nitrogen dioxide concentrations to identify the options which will deliver compliance with the legal limits for the affected area in the shortest time possible. One of the options identified was the retrofitting of 69 buses which operate within the Borough and using the specified route with Euro 6 compliant engines.

The Authority has been awarded capital funding from the Clean Bus Technology Fund of £1.201m to passport through to bus operators to undertake the retrofitting. The funds are provided directly to the Authority and the Authority has entered into a Funding Agreement with DEFRA in relation to it.

1.5.2 Cabinet decision 25 June 2018

On 25 June 2015 Cabinet resolved that:

- 1) It noted that the Authority has accepted the grant funding from the Department of Environment, Food and Rural Affairs in accordance with the Financial Management Plan considered and approved by Cabinet on 12 March 2018; and

- 2) The Head of Environment, Housing & Leisure, in consultation with the Cabinet Member for Finance, the Head of Finance and Head of Law and Governance to award grants to qualifying local bus operators on terms approved by the Head of Law and Governance.

The reason for that decision was that this will permit the release of funds to qualifying bus operators on appropriate terms as set out in the report. This will also enable compliance with the conditions of funding imposed on the Authority under the funding terms. The qualifying bus operators are required under the agreement to meet the relevant duties and obligations and monitor the delivery and outcomes of the project. The retrofitting of the buses to achieve Euro 6 compliance has been identified as one of the measures to improve air quality by reducing the nitrogen dioxide levels within the identified 800m area of the Coast Road in the shortest possible time. If the Authority fails to take action then it is likely that some form of Clean Air Zone will be imposed that will provide restrictions on vehicles operating in the identified 800 m of the Coast Road

1.5.3 Proposal from Go North East Limited

Go North East Limited has 22 buses operating on their 309, 310 and Q3 bus routes that travel along the A1058 Coast Road and through the exceedance area that do not meet the latest emission standards. Therefore they qualify for the grant funding. Go North East Limited has confirmed agreement to fit accredited Selective Catalytic Reduction (SRC) technology to its 22 buses to achieve the Euro 6 emissions standard within the programme timescales to ensure they comply with the qualifying requirements of the grant funding.

In order to undertake the retrofit of the 22 buses identified Go North East Limited has worked with a manufacturer to fit the appropriate accredited technology. The cost of doing so is £0.403m.

Funding agreement

Under the terms of the funding received from DEFRA, it is for the Authority to determine how the funding is 'passported' through to the qualifying bus operator.

It is proposed that the Authority will pass on the capital funding outlined in section 1.5.3 to Go North East Limited through the formal agreement, the terms of which have been approved by the Senior Manager, Legal Services.

The proposed agreement ensures provision of the funding on a back-to-back basis which will indemnify the Authority against any liability. The terms of the back to back agreement has not been prescribed by DEFRA however a pro forma agreement has been developed together with neighbouring authorities (Gateshead, Newcastle, South Tyneside) who have been awarded funding to provide consistency across the region.

The back to back agreement:

- Specifies the terms and conditions of the funding to be provided to the qualifying bus operator in line with the conditions imposed for the grant funding by DEFRA;
- Requires the qualifying bus operator to meet the relevant duties and obligations imposed on the Authority under the funding terms;

- Requires the bus operator to monitor the delivery and outcomes of the project and provide the Authority with information to enable it to prepare reporting information to DEFRA on the numbers of buses retrofitted in the previous quarter; and
- Requires the bus operator to repay the grant to the Authority in the event that any of the sum of monies paid to the Recipient is subsequently determined by the European Commission or a Court of competent jurisdiction to be an unlawful state aid.

1.6 Decision Options

The following decision options are available for consideration by the Head of Service for Environment, Housing and Leisure:

Option 1

To approve the recommendations set out in Section 1.2 of this report.

Option 2

Not to approve the recommendations set out in Section 1.2 of this report.

Option 1 is the recommended option for the following reasons:

Reasons for recommended option:

1.7

Approval of the recommendations as set out in Section 1.2 will enable the grant to be awarded on the appropriate terms as set out in the report. The qualifying bus operator will be required under the back to back agreement to meet the relevant duties and obligations and monitor the delivery and outcomes of the project, which will enable the Authority to comply with its funding obligations. The retrofitting of the buses to achieve Euro 6 compliance has been identified as one of the measures to improve air quality by reducing the nitrogen dioxide levels within the identified 800m area of the Coast Road in the shortest possible time. If the Authority fails to take action then it is likely that some form of Clean Air Zone would be imposed that would provide restrictions on vehicles operating in the identified 800 m of the Coast Road.

1.8 Appendices:

There are no appendices to this report.

1.9 Contact Officers:

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Claire Emmerson, Senior Manager, Financial Strategy and Planning, Tel: (0191) 643 8109

Emma Simson, Legal Manager, Commercial & Development, Tel: (0191) 643 5375

1.10 Background Information:

- 5.1 The following background papers have been used in the compilation of this report and are available for inspection at the offices of the author of the report.

[Clean Bus Technology fund 2017-2019](#)

[Cabinet report 25 June 2018](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and Other Resources:

The Authority has been allocated a capital grant of £1.201m for the retrofitting of buses operating within North Tyneside. £0.862m has been received and the balance of £0.339m is to be received by March 2019. This was included as part of the Financial Management Report agreed by Cabinet on 12 March 2018, included within the 2017-20 Investment Plan and delegations approved by Cabinet on 25 June 2018 to award the grant.

Distribution of the funding and performance management of it will be administered by the Authority's Technical Services partner, Capita. The associated staffing costs for overseeing the project will be managed within the service area from existing budgets.

2.2 Legal

The Authority has entered into a grant funding agreement with DEFRA in accordance with the Financial Management Report approved by Cabinet in March 2018, in relation to retrofitting buses which operate within the Authority area with appropriate technology to reduce emissions. In accordance with the funding application the Authority will enter into back to back agreements with relevant qualifying bus operators to provide funding to them to undertake the retrofitting works. The back to back agreement will be entered into before any funding is released to the bus operator and will create an obligation on the bus operator (in favour of the Authority) in order to enable the Authority to comply with, the terms of the funding agreement between the Authority and DEFRA.

In the absence of the back to back agreement the Authority will either be unable to deliver the project as proposed and the buses will not be retrofitted, such that the Authority may breach acceptable exceedance limits, or alternatively the funding may be provided without the necessary legal protection to the Authority as to how the works will be completed and ensuring ability to claw back any monies misused or not utilised for the project.

It is considered that the Clean Bus Technology Retrofit project does not involve state aid. The retrofit programme is available to all bus operators operating routes within North Tyneside who will be provided with 100% capital funding for the Selective Catalytic Reduction retrofit technology and bring the bus emissions to meet the highest Euro 6 emissions standard and beyond. As such there is no selective advantage such that state aid is not present.

There is no statutory requirement for the bus operators to retrofit the buses, there is no obligation for the bus operators to take part and the grant will not provide any financial advantage to the bus operators as the retrofit undertaken will increase operating and maintenance costs for the vehicles, a financial burden for the operators.

The funding will 'pass through' the Authority and be applied on a 100% basis to the refitting of buses. No benefit will be retained by the Authority. This reflects the approach taken by other neighbouring local authorities.

2.3 Consultation/Community Engagement:

The Cabinet Member for Finance, the Head of Resources and Head of Law and Governance are in agreement with the recommendation.

2.4 Human Rights:

There are no human rights issues arising directly arising from this report.

2.5 Equalities and Diversity:

There are no equality and diversity implications arising directly from this report.

2.6 Risk Management:

Risks associated with this project are monitored as part of the strategic and operational risk register for the Technical Services Partnership which is overseen by the corporate governance arrangements in place.

2.7 Crime and Disorder:

It is not considered that there are any crime and disorder implications arising directly from this report.

2.8 Environment and Sustainability:

The recommendations outlined in Section 1.2 of the report are aimed at distributing funding to directly address the air quality exceedance in the area identified in Section 1.5 the report.

PART 3 – SIGN OFF

- Chief Executive X
- Head of Service X
- Mayor/Cabinet Member X
- Chief Finance Officer X
- Monitoring Officer X
- Head of Corporate Strategy X