

CITY OF PLYMOUTH

Subject: Plymouth CityBus Limited Shareholding
Committee: Council
Date: 30 November 2009
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Ref:

Part: I

Introduction

In June 2009 the Council established a project to “seek, and negotiate proposed terms with, potential purchasers of shares in Plymouth CityBus subject to the full Council approving of any final recommendation for sale”. The purpose of this paper is to outline the action taken and events since 2 June 2009 and to recommend to the Council the sale of its shares in Plymouth CityBus Ltd.

The Project Board appointed Go-Ahead Holding Ltd as the preferred bidder on 29th October 2009. Details of the company are included in Appendix 5. This report identifies the major commercial aspects of the deal and the Council’s success in achieving a consideration greater than the estimated enterprise value in March 2008 of £15m - £17.5m.

The Council will have completed a competitive bidding process by the date of the Council meeting.

1 Financial Terms

The preferred bidder has offered a consideration of £20.2m for 100% of the shareholding subject to adjustments as described in the Financial Implications.

The adjustments, including for debt and other payments to the Council, result in the Council receiving £19.58m. The funds would be paid on the completion of the sale, which it is expected would be in the week commencing 30th November 2009.

The consideration is higher than that reported for recent disposals in Chester (c£2m), Preston (c£6.4m), Eastbourne (c£3.7m) and Bournemouth (c£13.8m).

2 Transport strategy delivery

At the start of the project, the Council identified a number of key issues of importance to it which were delivered through the ownership of Plymouth CityBus. These were:

- The continued delivery of an extensive route network. The Council sought assurances that the bidders would maintain routes.
- There are a significant number of commercial bus routes operated by Plymouth CityBus that assist school children to get to their schools ("scholars' routes"). The Council sought to ensure that these routes continued to be run
- That the name of Plymouth CityBus was known in the City and represented a clear branding. The Council sought assurances that the bidder would continue using the name of the company.

The preferred bidder has responded to these three issues in a positive manner and has offered to maintain the route network that has historically been run by Plymouth CityBus for a minimum period of six months with no changes. They have also agreed that the Council will be provided with 90 days notice of any proposed changes to these routes.

Up to March 2008 all local authorities published statistics on the level of bus patronage within their local area. In the markets in which the Go-Ahead Group operated, bus patronage grew by 5.3%. during the four years to 31 March 2008; by comparison in Plymouth patronage grew by 3.6%. This statistic suggests that Go-Ahead do seek to encourage growth and patronage.

The preferred bidder has agreed to maintain the scholars' routes for a minimum period of three years as currently operated by Plymouth CityBus.

The preferred bidder wishes to continue the name of the company and has provided outline details of a possible livery that it will use to refresh the fleet. . The bidder has a long track record of operating stand alone companies that retain their local identity. Examples include Oxford Bus Company, Brighton & Hove Buses and Metrobus.

3 Customer focused services

The transport requirements of the Council in this transaction were identified to the bidders. The preferred bidder has responded as follows:

- Go-Ahead will reduce the average age of the bus fleet to 8 years by March 2011; the fleet age is currently approximately nine years. The fleet replacement programme will see the elimination of step entrance vehicles on front line services operated by Plymouth CityBus by 31March 2011 and

subsequently not exceed the average fleet age (outside London). This is a major capital investment programme of c£6.7m and low floor access is particularly important to those with a disability and passengers with pushchairs.

- The preferred bidder is a leading advocate of the development of smartcards in the Public Transport industry. The preferred bidder introduced their own commercial smartcard product “The Key” in their Oxford division. So far this has been very well received with over 20,000 registered users and they have funding secured to extend the concept within the division.

PCB already operates a smart card product but the preferred bidder will upgrade the smartcard to ensure full ITSO (Integrated Transport Smartcard Organisation) compliance and compliance with its corporate systems.

- The preferred bidder is very supportive of Green travel plans and incentive schemes to encourage workers to switch to public transport. The preferred bidder would also like to use their experience in these types of schemes to encourage other employers to embrace the green travel pass scheme.
- PlusBus is a partnership scheme bringing together all major bus and rail companies in the UK to encourage integrated through ticketing between modes. Go-Ahead are strong supporters of PlusBus and would actively promote it in Plymouth. In the first instance Go-Ahead would place more introductory information at Plymouth rail station.
- The Council has been a local government leader in introducing Real Time Passenger Information (RTPI) and developing a “check that bus” page on its website as well as a text service which gives live times of buses. The preferred bidder has demonstrated significant experience of delivering RTPI and leads on the installation of the current system used in Brighton and Hove. The preferred bidder will look to meet existing commitments whilst seeking to improve the service for customers.
- South West Public Transport Information Ltd is a company set up in partnership between all bus operators and Local Authorities in the South West to proactively manage travel information through the regional ‘Traveline’ system. Partners pay a fee to partake in the services and are represented on the Board. Go-Ahead see the benefit in this partnership and are committed to continuing membership.
- Off bus tickets are season or day tickets that are purchased in shops or at a Plymouth CityBus office. The preferred bidder is committed to the use of off bus ticketing sales as they develop customer loyalty and speed up boarding times at bus stops. The preferred bidder believes this could be really important for Plymouth with the likelihood of two principal operators. In such an environment multi operator travel cards, through tickets between operators and interchangeable singles tickets become very important for the customer and the preferred bidder believes that these are achievable even in a

competitive environment. If there is a demand from customers for a point of sale in City Centre they have undertaken to operate such a facility.

- Plymouth CityBus operates a number of contracted services on behalf of various companies, councils and educational establishments. The preferred bidder has committed to operating these.

4 Background and Context

The Council has, over the last four years, undertaken a systematic review of its assets via the Council's Asset Management Plan and Capital Strategy. In the first instance this has been focused on land and property. The Council now has in place a planned programme of investment in assets via its five year capital programme which is in part funded from a planned series of asset disposals.

The Council also has a number of assets which are effectively investments but which are not simply land, property or financial investments. Included in this category is the Council's shareholding in Plymouth City Bus Ltd ("Plymouth CityBus"). The Council has been assessing options for its ownership of the company.

It should be noted that the Council owns all but one share in Plymouth CityBus. The one share is held by Barry Keel on Trust for the Council. This is legally documented under a Declaration of Trust given by Barry Keel in favour of the Council. This one share represents 0.00008% of the total issued share capital of the company (one share out of 1,290,000). Therefore references in this report and in the update report to the sale by the Council of "its" shares or "the Council's 100% shares" should be taken to refer to the shares owned both by it directly and indirectly via the share held on Trust by Barry Keel.

Plymouth CityBus has a high level of fixed costs associated with running a transport network and hence a small reduction in patronage has a detrimental impact on profitability. The company has experienced a 5 per cent decline in turnover in the six months to 30th September 2009. It is noticeable that the majority of councils which owned bus companies have sold them, currently only thirteen remain in public ownership.

Historically the Council has received an annual dividend from Plymouth CityBus. The level of dividend possible is dependent on the financial performance of the company. To date the dividend to the Council has averaged £270,000 per annum over the life of the company. This dividend cannot be guaranteed going forward because the company's financial performance is subject to market competition, turbulent fuel prices, uncertain patronage levels, changes to the regulatory environment and the performance of the overall economy.

The national economic future is very uncertain and the major political parties are expecting to introduce significant cuts in public expenditure after the next election. No political party has stated they will protect funding to local

government; hence the Council needs to be prepared for an uncertain economic future. Central government has announced that they are seeking to realise £16bn of asset sales in the near future to reduce debt. Of these £11bn are local government assets and it has been suggested by ministers that councils will sell industrial estates, airports and other assets. Councils will be expected to realise the maximum value from the assets they hold.

5 Process to date

In June 2009 the Council established a project to “seek, and negotiate proposed terms with, potential purchasers of shares in Plymouth CityBus subject to the full Council approving any final recommendation for sale”. The process followed is set out in detail in Appendix 1.

The key dates and events in the project have been:

<i>2009</i>	<i>Event</i>
2 nd June	Cabinet Meeting - Approved the commencement of the project
3 rd July	Advertised for expressions of interest (EOI)
22 nd July	Deadline for expression of interest – 11 received
10 th August	Bid document issued to shortlisted companies
11 th September	Five bids received
23 rd September	Three companies invited to submit second stage bids
22 nd October	Second stage bids received
29 th October	Preferred bidder selected

Throughout, the Project Board has been advised by the Project Team which comprised the project manager and officers from the estates, transport, legal and finance functions of the Council. External advice has been provided by KPMG LLP (financial), Bevan Brittan LLP (legal) and Burro Happold Consulting Ltd (Transport strategy). Deloitte LLP provided financial due diligence services to the Council.

6 Democratic Oversight

The key dates and events in the democratic oversight of the project are set out below in chronological order. Further detail on the democratic processes is contained at Appendix 2.

<i>Date</i>	<i>Meeting/Event</i>
2 nd June	Cabinet Meeting
10 th June	Resources & Performance Scrutiny
11 th June	Overview & Scrutiny Commission
24 th June	Overview & Scrutiny Commission
2 nd September	Overview & Scrutiny Management Board
1 st October	The Joint Growth & Prosperity and Support Services Task & Finish Group
26 th October	Council meeting
27 th October	The Joint Growth & Prosperity and Support Services Task & Finish Group
20 th November	Cabinet meeting
30 th November	Council meeting

In conclusion this project will have taken six months from June to November 2009 and in that time has been the subject of two cabinet reports, six scrutiny debates and two full Council meetings.

On the 1st October there was an adjournment debate in the House of Commons (Westminster Hall) on Plymouth CityBus and sustainable transport. All three Plymouth MPs took part in that debate and the Parliamentary Under-Secretary of State for Transport (Chris Mole) said that "Decisions on local bus services are best made by those locally elected to take them".

7 Office of Fair Trading (OFT) and Competition Commission (CC)

The Office of Fair Trading is referring the operation of the national bus market (excluding London and Northern Ireland) to the Competition Commission which will then conduct a detailed public investigation and reach its own conclusions about the market. The Competition Commission has the power to impose remedies. At the current time there is no timetable for the conclusion of the competition enquiry; however the enquiry is not expected to commence before December 2009. The investigation by the Competition Commission is not specific to any particular company or transaction. It is expected that the enquiry will take 18 months to conclude i.e. summer 2011. In short it is not expected to impact on the situation here in Plymouth.

Further detail on the Office of Fair Trading and the Competition Commission is contained at Appendix 3.

8 Competition in Plymouth

Currently operating in the bus market in Plymouth there are two main providers with some other limited competition. The principal providers are Plymouth CityBus and First Group, who between them have approximately 98% of the market. Target Travel, Stagecoach and Western Greyhound are operating a small number of services in the city. Target Travel has increased the number of subsidised service routes that it is contracted on but it is not anticipated that this will have a significant impact on the aggregate 98 per cent market share of Plymouth CityBus and First Group.

First Devon & Cornwall commenced new services on routes historically operated by Plymouth CityBus on Sunday 11th October. Plymouth CityBus started a new service to Plymstock and increased frequencies on their Ernesettle and Saltash services.

First Devon and Cornwall (FDC) may be attempting to strengthen its market position before a new, potentially national operator enters the City. The move from First Devon and Cornwall confirmed many of the potential risks that led to the Council looking into a possible sale of shares. There are clearly examples in other parts of the country of large transport groups underwriting losses in a subsidiary until such time as a target company is forced to withdraw from the market.

It is very important to note that there will continue to be competition in Plymouth if the Council decides to sell Plymouth CityBus to the preferred bidder.

9 Current Trading Position and Fleet Investment

Drop in revenue - Due to the high fixed cost base of running the company, profitability and cash are highly sensitive to turnover growth rates. There has been a drop in turnover of approximately 5 per cent in the six months to September 2009. This drop in turnover has been offset by lower than expected insurance, fuel and coach operation costs. It must be stressed however, that these reductions in operating costs should be considered “one off” savings and must not be expected in future years. The position going forward is very difficult to predict and involves a lot of risk for the Council as owner. It is very important that members are aware of this.

Threat to investment - As set out in the report of 2nd June, in order to comply with future legislative standards Plymouth CityBus has identified that it will need to replace 51 buses of differing types and 12 coaches and refurbish 38 low floor vehicles. So as to protect its business base and encourage future use, the company intends to invest £6.8m in 50 vehicles over the next four years.

This long term investment must be generated either from either external borrowing e.g. leased vehicles or profits generated by the company. The drop in turnover has increased the risk that the investment required cannot be met from the company's profits and will have to be externally funded. It should be noted that if this were to arise the management of the company would re-profile the timing and funding of the investment requirements. The investment would therefore be delayed.

Additional Competition Risk - The projected downturn in revenue identified above does not reflect the impact of any increased competition due to the recent registrations by First Devon & Cornwall. This competition and the company's response may have a significant impact on the company's profits. It should be noted that it was competition from another bus company that drove the disposal of Preston, Chester and Eastbourne Bus companies for relatively modest values. As identified above, the risk of significant competition was always a risk for the bus company.

Pensions Liability - Additionally the Council has now identified a further significant liability in the Company's pension scheme. This deficit is not due to any failure by the company management but rather the turbulent performance of the stock market together with the age profile of the funds members. It is estimated that the company will have to pay an additional £550,000 per annum into the scheme for the next 10 years to make up the deficit. Such a payment would probably reduce future dividends to the Council, making the required investment in vehicles very difficult to achieve (see section 8 below).

10 Recent disposals of Bus Companies

Since deregulation of the Bus industry in 1986 there has been a gradual reduction in municipally owned Bus companies. In 1986 there were 45 Council owned bus companies plus seven large businesses owned by the metropolitan authorities (PTEs), which were themselves amalgamations of a

large number of municipal companies. Currently there are thirteen left with a probability that two of those will be sold shortly to a major bus company.

Over the last five years, five municipally owned bus companies have been sold to private companies and there have been consistent rumors around several others. The significant disposals were in Blackburn, Bournemouth, Chester Eastbourne and Preston (an employee owned company). There is further detail on these disposals in Appendix 4 to the report.

Many Councils were forced to sell due to the mounting losses being incurred by their bus companies or significant competition. Chester Council delayed its sale process to litigate against Arriva who had entered into competition. The delays contributed to Chester making a net loss of £700,000 (reported receipt c£2m) on the sale process. Blackburn, Eastbourne and Preston all sold under competitive pressure from other bus companies. This competitive pressure resulted in relatively low receipts for Preston (c£6.4m) and Eastbourne (c£3.7m). Bournemouth however sold their Yellow Bus brand for £c13.8m.

11 Valuation of Plymouth CityBus

In March 2008 the Council obtained an estimate of the value of its 100% shareholding in Plymouth CityBus of £15m to £17.5m. The valuation was on an enterprise and debt and cash free basis.

12 Dividend Comparison

The report to Cabinet on 2nd June 2009 looked at three different dividend scenarios and the extrapolated value of them over a 20 year period adjusted to present value. However it was using limited base data (the average of 4 years of dividends), and it is now considered more appropriate to look at a longer period (25 years) and use actual dividends received.

For this purpose officers have used the historic dividends received over the life of the company (23 years) and 2 years (as of April 2009) forecast dividends. The dividends have been adjusted to give their present value which is £9.3m over 25 years.

This comparison presumes that the dividend income will continue for the next 25 years as it has done for the last 25 years. In the light of the pension liability position of the company it is unlikely that the dividend income will match that achieved for the last 25 years. However the use of the model demonstrates that the Council has exceeded the 25 years dividends by £10.9m.

13 PCB Staff

Plymouth CityBus employs 485 staff of whom approximately 320 are drivers. Currently c.70% of employees participate in the Company's pension schemes. There are two pension schemes: a defined benefits pension scheme with circa 40 members and a defined contribution scheme.

The 40 staff referred to above are in the Local Government Pension Scheme (LGPS). The preferred bidder intends to retain LGPS membership for these staff; this is an important benefit for those staff affected by this transfer. All other staff will continue to enjoy the same rights under the defined contribution scheme.

It is expected that on the 20th November a paper will be considered by the Investment Committee of the LGPS pension scheme requesting continued membership of the scheme.

The preferred bidder has undertaken that there will be no compulsory redundancies of local (i.e. those operating commercial services) bus drivers for 12 months for reasons within the Company's control. They have stated that they wish to continue coach and engineering operations subject to them demonstrating on-going profitability.

There is an employee share ownership scheme in operation in the Go-Ahead group and Go-Ahead have indicated that Plymouth CityBus employees will be able to join that scheme. Additionally they will continue to operate the engineering apprenticeship scheme.

14 Pension Liability

Plymouth CityBus currently pays an employer's contribution rate of 9.2% and as of 31st March 2009 had a deficit of £2.2m. The Plymouth CityBus scheme operates on a closed basis and does not allow new members. Currently there are 40 active members in the scheme. These members have an average of 8 years until they become 65. The preferred bidder intends to retain LGPS membership for these staff.

The Devon Pension Scheme actuaries were asked to undertake a review that would assess the rates that a new employer would pay upon admittance to the fund. Additionally they have been asked to assess the deficit attributable to the fund at 31st December 2009.

The deficit has increased substantially since the March 2009 valuation. The deficit would not be recognised in Plymouth CityBus accounts until their next pension valuation in 2010.

Based on the information available, regardless of the Council decision to sell shares or not, the Bus Company will probably have a contribution rate of 20.8% for staff (an increase of £70,000 per annum) and a deficit of £4.9m with minimum deficit payments of £620,000 for 10 years.

This results in the company having to find an additional £620,000 to pay into the pension scheme every year.

Based on the information now available, regardless of whether a sale of shares is taking place or not, the Company's costs will probably rise by circa £0.62m per annum for pensions.

The Council has a choice of retaining the historical deficit of £4.9m on the Council's account or insisting that the preferred bidder accepts the liability. Should the bidder accept the liability then the deficit is netted off the consideration received. There are a number of advantages in the Council retaining the deficit on its own accounts as follows:

- The Council can manage the deficit flexibly over a period of time and/or make lump sum payments.
- There is no impact on the capital receipt for the Council from the disposal of the shares.

It is recommended that the Council retains the deficit for the reasons stated.

The Council currently guarantees any liability that the Company cannot meet in relation to its LGPS liabilities. This position will change if the shares in the company are sold. The negation of this on-going long term liability generates an estimated one-off pension adjustment of £0.7m for the Council.

If the Council decides to proceed with the sale of its shares in the Company then it will be liable for the pension deficit and any transfer costs at the point of transfer which it is estimated together total £5.6m. This would be a revenue payment which would be considered as part of the Council's overall review of its pension position (next review March 2010) and is estimated to increase the employers annual contribution rate by 0.2% equivalent to £0.225m (this would be reflected in revised contribution rates from April 2011 onwards).

15 Depot

The company is based in Milehouse on a 10 ¾ acre site consisting of a mixture of modern and old buildings. The Council could choose to leave the land in the ownership of the company or seek to extract the land prior to sale and rent it back to the company at a market or peppercorn rate.

Throughout the bid process the bidders have been asked for their opinion on the future of the site. All have been quite clear that they wish to retain it as a bus depot because of its excellent facilities, location in the centre of town and on a major arterial route.

A planning appraisal has been carried out that indicates it is unlikely that the site would receive planning approval for retail development, which would be the most financially beneficial. Under current guidance and policy it is unlikely there would be approval for any development apart from residential with some limited retail usage.

It is estimated (April 2007) that a seven acre replacement site with hard standing and similar depot facilities would cost in the region of £8.2m prior to the purchase of any land.

In September 2007 a valuation estimated the Milehouse site to be worth £5.4m as a residential mixed use site. The valuation presumes that the site is free of significant contamination and stressed that should contamination be identified that it could have a significant impact upon the site value because significant remediation costs that would be incurred to prepare the land for residential development.

The depot at Milehouse is owned by Plymouth CityBus. There is no economic reason why the Council should have the land transferred across to it from Plymouth Citybus. Any rental income stream would reduce the price for the shares.

A further valuation of the Milehouse site was undertaken in November 2009 which valued the land at £3.0m. The valuation states that "at the present time we consider that the value of the site in its existing use is in excess of that as a redevelopment opportunity".

In the bidding process bidders' agreement was sought to a sharing of any future receipt if the land were sold. The preferred bidder offered an arrangement where, should there be a sale of the current depot in the next 30 years then any uplift in value between the current market price and the future sale price is shared between the Council and the preferred bidder, with the proportion due to the Council declining over 30 years.

The Milehouse site has a long history of being used as a transport depot. The site is currently well managed, with pollutants being managed in accordance with legislative standards. The preferred bidder will not accept any liability for any historical pollution on site; this is a rational and commercially sound position. It is prudent to insure against any such risk retained by the Council. Officers are currently considering the cost and benefits of insurance cover for this risk which is estimated to be approximately £50,000 for five years cover; although cover may be required for a shorter period.

The proposal from the preferred bidder in relation to the property is specifically recommended to members as part of the overall transaction.

16 Sale and Purchase Agreement and Legal Documents

There are a number of legal documents which are needed to effect a sale of shares in a transaction of this nature. Appendix 6 sets out a brief summary of the main documents and their provisions.

17 Concessionary Fares

The concessionary bus fares scheme is a nationwide system of ensuring free bus travel for people aged 60 and over and people of any age who qualify under the categories listed in the Transport Act 2000.

Those eligible get free travel on local buses from 9.30am until 11pm on weekdays, and all day weekends and bank holidays, across England. They may also receive any other further concessions which their local authority might choose to offer on top of that.

Plymouth CityBus successfully appealed to the Secretary of State for Transport in relation to the rate of reimbursement from the Council. This led to the Council amending its scheme so that all operators are reimbursed in line with the Department of Transport's preferred methodology for reimbursement. Apart from the annual adjustment to reimbursement rates contained within this mechanism the scheme for operators is not set to change prior to 2011. The DfT is expected to consult on changes to reimbursement rates, with any changes taking effect in operator reimbursement rates from April 2011.

Based on a continuation of the current concessionary fares scheme it is predicted that the value of concessionary travel to Plymouth Citybus in the period 2009/10 is £3.4m and in 2010/11 will be circa £3.6m.. Plymouth CityBus have been increasing the claim for concessionary fares annually. It is not expected that the change in ownership will impact on the reimbursements already made by the Council.

18 Budget

On the 2nd June 2009 Cabinet approved a budget of £946,000 split into the three stages. It is expected that the project costs will be within this budget at completion.

19 Conclusion

The report to Cabinet on 2nd June examined the impact that a sale of all or part of the shareholding in Plymouth CityBus could have on the following four areas:

- The future of Plymouth CityBus
- Plymouth CityBus staff

- Generation of income
- The reduction of risk to the Council.

19.1 The Cabinet report identified that Plymouth CityBus holds risks in terms of increasing competition and the risk of sufficient capital investment.

The concerns expressed in that report were that Plymouth CityBus was coming under pressure from other operators who were beginning to compete with Plymouth CityBus in its traditional marketplace. Since that report First Devon and Cornwall have registered a number of services on core routes operated by the Company.

The report noted that the capital investment requirements of £6.8m would need to be funded from profits. The Part 1 report identifies that the Company's turnover prior to any impact from First Devon & Cornwall has reduced by approximately 5%. While this has been offset by reductions in costs those cannot be relied upon in the long term, therefore the self-funded capital is unlikely to be available. In contrast the preferred bidder has committed to invest in a new fleet to deliver the 100% low floor access and an average fleet age of eight years by March 2011.

19.2 Plymouth CityBus staff have generally been opposed to the sale of the Council's shareholding. However they would no doubt acknowledge that the future of the Company and their employment is dependent on the Company's financial performance. The commitment in relation to future employment for local bus drivers is more than they benefit from now under Council ownership. Additionally it is anticipated that Go-Ahead's approach in relation to pensions will be welcomed.

The preferred bidder has stated that they want to review the operation of the coach business and the engineering services operated by the company, and if that, those are demonstrated to be profitable, they foresee no reason to change the company's commitment to these services.

19.3 As noted above in Paragraph 5 the receipt from the sale of the shares in Plymouth City Bus is greater than that estimated in March 2008 of £15-£17.5m. The sale of shares generates a significant receipt. Based on the historical dividends received by the Council it would take over 50 years to achieve the price being offered to the Council for the shares.

19.4 The Cabinet report on the 2nd June identified possible risk to the Council as being reductions in the level of dividend income in the future, the potential need for a capital injections into the Company from the Council, and the risk of reductions in value of the Council's shares in the Company. Should the Council decide to sell its shares in the Company these risks would be removed.

Plymouth CityBus operates an efficient interconnected bus service. It does so in the interests of the Company and the Council does not direct it to do so.

Because of Plymouth CityBus's efficient interconnected services it is expected that a sale of shares would result in no decrease in the level of service received by its customers; indeed Go-Ahead has given a commitment in relation to retention of the current network for a period of six months.

The preferred bidder has a history of expanding networks and encouraging utilisation in partnership with local authorities. In fact with increased investment it may be able to expand Plymouth CityBus network coverage and develop new routes.

20 Corporate Plan 2009-2012:

The Council has identified 'improving access across the city' and 'providing better value for money' as two of its fourteen corporate improvement priorities within the corporate plan. This paper impacts on those and it is considered that the achievement of these two corporate improvement priorities would be supported by any decision to sell the Council's shares in Plymouth CityBus.

Implications for Medium Term Financial Plan and Resource Implications: Including Finance, Human, IT, Legal and Land

Finance Implications

The adjustments for net agreed debt (£1.245m) and loan repayments, dividends and reimbursements due to the Council (0.825m) will result in the Council receiving £19.6m the majority of which will be treated as a capital receipt.. The funds would be paid on completion of the sale, which it is expected would be in the week commencing 30th November 2009.

If the Council decide to proceed with the sale of its shares in the Company then it will be liable for the pension deficit and any transfer costs at the point of transfer which are estimated at a total of £5.6m. This would be a revenue payment which would be considered as part of the Council's overall review of its pension position (next review March 2010) and is estimated to increase the employers annual contribution rate by 0.2% equivalent to £0.225m (this would be reflected in revised contribution rates from April 2011 onwards).

HR Implications

Aspects relating to Plymouth CityBus staff are covered in Paragraphs 7 and 8 above. There are none for the Council.

IT Implications

None

Legal Implications

The Council owns shares in Plymouth CityBus under the provisions of part IV of the Transport Act 1985 (as amended).

Section 75 (2) of the Act states that any authority owning shares in a public transport company has the power to dispose of shares “in such manner as they think fit”.

Section 80 of the Act requires an authority when disposing of any shares under Section 75 (2) not to do anything which would inhibit competition in the provision of bus services.

The proposed terms of the sale of the Council's shares to the preferred bidder comply with the council's obligations under the Transport Act.

It should be noted that the Council continues to have responsibilities as Transport Authority under this and other transport legislation and these statutory obligations would continue unaffected by the proposed sale of the council's shares in Plymouth CityBus.

In considering the recommendations in this report and in the open report, members must also be aware of their ongoing fiduciary duty to the rate payer of the City given the significant financial implications of the decision.

Land Implications

Covered in Paragraph 4 of this report

Other Implications: e.g. Section 17 Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment, etc.

Community Safety has been considered and this project has no impact. An Equalities Impact Assessment has been carried out and the conclusion is that there should be positive implications from the enhanced nature of the fleet

21 Recommendations

- (1) The Cabinet notes the content of this Report and the Update Report
- (2) The Cabinet having considered the contents of this report and the update report recommends the following to Council

The Council

1. Approves the sale of 100% of the shares in Plymouth CityBus Limited held by Plymouth City Council and Barry Keel on Trust for the Council to Go-Ahead Holding Ltd on the terms set out in the Conditional Sale and Purchase Agreement (“the SPA”) entered into between (1) the Council and (2) the Preferred Bidder (“the recommended terms of sale”) subject to the satisfaction of the condition in the SPA

Reason: The sale of the council's shares in Plymouth CityBus on the terms proposed secures value for the taxpayer.

2. Authorises the Director for Corporate Support or any other officer authorised by him) to make any drafting or other amendments required to the recommended terms of sale to address any issues arising prior to completion, provided that such amendments do not affect the core terms of the sale and provided that such amendments are made following consultation with the Project Board.

Reason: This allows for any unforeseen issues to be addressed prior to the finalisation of the legal documents provided this does not affect the core terms of the proposed sale

3. Authorises the Director for Corporate Support (or any other officer authorised by him) to take all necessary steps for and on behalf of the Council that may be required in the SPA or in any of the documents referred to in the SPA or relate to the wider transaction contemplated by the SPA which shall include the documents listed in the Annex to this Part1 and Part 2 Report ("Transaction Documents").

Reason: This enables officers to implement the decision to sell the shares

4. Authorises the Head of Legal Services (or any other officer authorised by him) to agree and execute all documents required to effect the sale.

Reason: This authorises officers to finalise all legal documents needed to complete the sale

5. Authorises the Director for Corporate Support (or any other officer authorised by him) to act as Authorised Officer for the purposes of Article 7 of the Articles of Association of Plymouth CityBus Limited.

Reason This enables the Council's powers and responsibilities as shareholder of Plymouth CityBus (until the sale of the shares takes effect) to be exercised if this is needed to effect the sale

6. Instructs all Council-nominated Non Executive Directors of Plymouth CityBus Limited to resign at the next meeting of the Board of Plymouth CityBus Limited or at such other time as required by the Director for Corporate Support and instructs Barry Keel to transfer the share held by him in Trust for the Council as directed by the Director of Corporate Support

Reason This will ensure that the resignation of the Council Non Executive Directors is timed correctly to tie in with the sale of shares and change of control of Plymouth CityBus and that all shares are transferred.

Alternative options considered and reasons for recommended action:

The alternative options are:

1 To retain the current shareholding in Plymouth CityBus.

This would result in the Council retaining the risks of:

- reductions in the level of dividend income in the future particularly given the additional costs that will have to be incurred by the Company in relation to pension liabilities;
 - the potential need for a capital injections into the company from the Council; and
- the risk of reductions in value of the Council's shares in the company, Additionally the Council would forgo a significant receipt during the current financial year.

2 To sell only part of the Council's shareholding.

Of the five bids received no bidder offered the option of purchasing a minority shareholding.

Background Papers

Minutes & Reports to:

1. Cabinet - Monday 2nd June 2009
2. Resources & Performance Scrutiny – Wednesday 10 June 2009
3. Overview and Scrutiny Commission - Thursday 11 June 2009
4. Overview and Scrutiny Commission - Wednesday 24 June 2009
5. Overview & Scrutiny Management Board – Wednesday 2 September 2009
6. Growth and Prosperity Overview and Scrutiny Panel - Thursday 1 October 2009
7. Growth and Prosperity Overview and Scrutiny Panel - Thursday 29 October 2009

Sign off:

Head of Fin	CDR/ CAPF 91000 06a/1 91109	Head of Leg	DVS	Head of HR	X	Head of AM	X	Head of IT	X	Head of Strat Proc	X
Originating SMT Member John Cremins, Head of Strategic Procurement											

Appendix 1

Process to Date

2.1 Cabinet approval

On the 2nd June 2009 Cabinet decided to

1 Seek, and negotiate proposed terms with, potential purchasers of shares in Plymouth CityBus subject to the full Council approving of any final recommendation for sale.

2 Delegate to the Director for Corporate Support approval for the use of up to £946,000 for the project from the TCP Budget.

3 Authorise the project manager (John Cremins or any successor) and his project team to discuss any potential transfer of Plymouth CityBus assets as part of the dialogue with any parties interested in acquiring all or part of the shareholding.

4 Establish a Project Board to oversee the delivery of this project, comprised of:

- Leader
- Deputy Leader
- Cabinet Member for Finance, Property, People and Governance¹
- Director for Corporate Support (Project Sponsor)
- Assistant Director Transport & Highways
- Project Manager

5 Delegate to the Director for Corporate Support, in consultation with the Project Board members, authority for the following matters through the bid stages of the project:

- Agreeing the basis for the short-listing of bidders interested in purchasing shares
- Short-listing bidders
- Approving the issuing of bid documents
- Making recommendations for any transfer of Plymouth CityBus assets as part of the sale process
- Conducting negotiations with bidders
- Taking any other action necessary in connection with the project to enable the Council to be in a position to make an informed decision in due course on in relation to the disposal or otherwise of Plymouth Citybus shares
- Making a recommendation to Cabinet in due course as to what recommendation Cabinet should make to Council on the disposal of

¹ The portfolio holder stepped down after declaring an interest in July 2009 prior to the first project board.

any or all of the Council's shareholding in Plymouth CityBus, and on the terms of any such disposal.
(Noting the review requirements in section 6)

6 Request that the Director for Corporate Support undertakes reviews, in consultation with the Project Board, as to whether he considered that the project should be continued or not - at each of the following points in the project:

- End of Stage 1 ('Advertise for interest in acquiring shares and invite bids'); and
- End of Stage 2 ('Assess bids., negotiate and invite final bids'); and
- Reports to Cabinet in the event that, having undertaken either review, he considers that the project should not be continued.

2.2 Expressions of Interest

On the 2nd and 3rd July 2009 advertisements were placed in 2 trade presses (Route 1 and Local Transport Today) and The Evening Herald stating that "Plymouth City Council is considering disposing of part or all of the equity shareholding of Plymouth Citybus Limited" and that "Expressions of interest in acquiring part or all of the equity shareholding are therefore sought from principals who, on an individual basis or in consortium, can demonstrate that they have the skills and resources to commit to the future growth of bus transport in the area."

The deadline for submitting expressions of interest was the 22nd July 2009.

2.3 Pre Qualification

The advertisement inviting expressions of interest in acquiring all or part of the equity shareholding was published in the local and trade press on 2nd and 3rd July. 11 expressions of interest were received and all subsequently sent a Pre Qualification Questionnaire (PQQ) to determine their suitability to enter into the bidding process. Of the 11 companies that registered an expression of interest 10 submitted the PQQ and supporting documentation by the deadline.

2.4 First stage bids

As part of the pre-qualification process all bidders signed confidentiality agreements in respect of the information they were to receive. The PQQs were subsequently assessed by the Project Manager with support from the Project team and the Project Board approved the issue of the bid documents to ten companies.

A commercially confidential bid document known as an "Information Memorandum" was issued to the shortlisted bidders, on 10th August. This

provided information on business operations, the Plymouth market, opportunities for growth, company assets, suppliers, customers and financial information. On the 19th August First Group plc wrote to the Council stating that they were not going to submit a bid.

Bids were due by the 11th September 2009. In total five companies submitted offers, some of the bids had alternative offers included and all of them were for 100% shareholding in Plymouth CityBus. A variety of reasons were given for the withdrawal of bidders (including that they could not bid in the time given; Plymouth was too remote from their other operations). However not all those who did not bid provided reasons.

The Project team reviewed the bids and recommended that three companies were invited to submit second stage bids. The Project Sponsor (Director for Corporate Support) undertook a review, in consultation with the Project Board, as to whether he considered that the project should be continued or not. The outcome of that review was that the project should continue.

2.5 Second stage bids

Second stage bidders were provided with access to a data room and two vendor due diligence reports, prepared by independent legal and financial advisers. The bidders had previously signed agreements that ensure that the information provided remains confidential. The financial due diligence report gave a business and market overview with detailed information on assets, cash flows, projections, taxation and pensions. The legal due diligence reports provided information on the contracts entered into together with the assets and liabilities of the company. Together these reports were comprehensive. A data room provided further information such as copies of monthly accounts etc. about the company.

During this stage a number of meetings were arranged between the bidding companies and the management team of Plymouth CityBus. Additionally bidding companies had the opportunity to visit the main Milehouse site and had discussions with the project team.

The deadline for the return of second stage bids was to be the 21st October 2009, but at the bidders' request this was extended to the 22nd October.

The Project Manager with assistance from the Project Team reviewed the bids and made recommendation to the Project Board to appoint as preferred bidder Go-Ahead Holding Ltd. Further details on the offer received from the preferred bidder are contained in the Part 2 report.

The Project Sponsor (Director for Corporate Support) undertook a review, in consultation with the Project Board, as to whether he considered that the project should be continued or not. The outcome of that review was that the project should continue.

2.6 Current Stage

On the 27th October the Project Board approved the recommendations from the Project Manager and the process entered Stage 3 (Negotiation and closing) as set out in the report to Cabinet on 2nd June 2009. The purpose of this current stage is to negotiate the best terms with the bidder, prepare contracts setting out the full commercial terms of the transaction that can be submitted to full Council for approval.

On the 2nd November Heads of Terms were agreed with the preferred bidder and signed on the authority of the Director for Corporate Support.

At the time of writing this paper (11th November 2009) negotiations are on-going and it is therefore not possible to release commercially sensitive information as a final position has not yet been agreed. The Part 2 paper will set out the proposed commercial terms.

Appendix 2

Democratic Oversight & Scrutiny

Following the request by Cabinet on the 2nd June 2009 to scrutinise the process, it was placed on the Resources & Performance Overview and Scrutiny Panel for the 10th June. This scrutinised the allocation of funds from the TCP Reserve to the project.

Overview and Scrutiny Commission considered the item on the 11th June and recommended that “the progress of the project be monitored by the Growth and Prosperity Overview and Scrutiny Panel who could consider inviting the Chair and Vice Chair of the Support Services Overview and Scrutiny Panel”

The project was then called-in under our procedures and was considered at the Overview & Scrutiny Commission on the 24th June 2009. The following reasons were given for the call in:

- The process by which the decision was made was deficient.
- The decision-maker failed to consider alternative courses of action.
- The decision-taker failed to take account of relevant factors.

After debating the above issues the matter then moved to a vote on whether to refer for further consideration; the commission voted against referring for further consideration and the project continued as agreed at Cabinet on the 2nd June 2009.

A petition with 20,328 signatories was received by the Council in August 2009. The petition reads “We the undersigned, wish to demonstrate our objection to, and oppose any move to sell Plymouth CityBus Ltd by Plymouth City Council. The leader of the Council accepted the petition on the 3rd August 2009 prior to full Council.

On 2nd September 2009 the Overview and Scrutiny Management Board approved the PID regarding monitoring of ‘Plymouth CityBus Limited Shareholding project’ a copy of which is attached to this report. The Aim was to ensure that the process set out in the original decision is adhered to (2nd June Cabinet Report).

The Joint Growth & Prosperity and Support Services Task & Finish Group (JGPSSTF) met on the 1st October 2009 to consider the process to the end of Stage 1 which had been completed on the 11th September 2009. At that meeting it was confirmed that the Council had received a number of bids well in excess of £10.0m.

The Joint Growth & Prosperity and Support Services Task & Finish Group (JGPSSTF) subsequently met on the 29th October 2009 to consider the process to the end of Stage 2 which had been completed on the 27th October 2009. At that meeting it was confirmed that the Council had appointed a preferred bidder and entered into stage 3 of the project.

The subject was also debated at the Extraordinary General Meeting of the Council on the 26th October 2009.

Terms of Reference for Scrutiny Task & Finish Group

1	Title of Work Programme Item	Plymouth City Bus Shareholding		
2	Responsible Director	Adam Broome Director for Corporate Support		
3	Responsible Officer	John Cremins, Project Manager		
4	Aim	To ensure that the process set out in the original decision is adhered to (2/6/09 Cabinet Report).		
5	Objectives	To ensure adequate monitoring of the project.		
	Benefits	Demonstrable oversight of the process.		
	Beneficiaries	The Scrutiny Panels with oversight responsibility.		
6	Criteria for Choosing Topics	Key decision for the Council.		
7	Scope	Process as set out in report of 2/6/09.		
	Exclusions	Commercially confidential information relating to prospective bidders or the operations of Plymouth CityBus.		
8	Programme Dates	Phase 1 – Meeting date 1st October Phase 2 – Meeting date 2nd November		
	Timescales and Interdependences	Milestones	Target Date for Achievement	Responsible Officer
		Receipt of bids for shareholding	11th September	John Cremins
		Phase 1 Meeting	1st October	John Cremins
		Phase 2 Meeting proposed	2 November	John Cremins

9	Links to other projects or initiatives / plans	Corporate Improvement Priorities 11 (Improving access to the city) and 14 (providing better value for money)
10	Relevant Overview and Scrutiny Panel	Growth & Prosperity/Support Services
11	Lead Officer for Panel	Gill Peele/Simon Arthurs
12	Reporting arrangements	7 October/4 November Management Board.
13	Resources	Project Manager and staff support for Task and Finish Group.
14	Budget implications	Contained within current budgets.
15	Risk analysis	To demonstrate due process.
16	Project Plan / Actions	As Above

Appendix 3

Office of Fair Trading (OFT) and Competition Commission (CC)

In August 2009 the Office of Fair Trading published a national investigation into the local bus services market. They have identified that:

- Across the country there is often monopoly or near-monopoly at the route, local and regional level.
- There are barriers to new operators offering services, including aggressive response to competition that is intended to damage the incoming rival.
- There are higher fares in those areas where operators are not challenged by a large well resourced rival.
- That the concessionary fares regime (which is paid for by the tax payer) may be distorting the market. The OFT have concerns that bus operators have been able to manipulate the regime to increase the amount they are paid for providing concessionary services.
- That in some areas supported services receive low numbers of bids in response to tenders.

The Office of Fair Trading is referring the operation of the national bus market (excluding London and Northern Ireland) to the Competition Commission which will then conduct a detailed public investigation and reach its own conclusions about the market. The Competition Commission has the power to impose remedies. At the current time there is no timetable for the conclusion of the competition enquiry; however the enquiry is not expected to commence before December 2009. The investigation by the Competition Commission is not specific to any particular company or transaction. It is expected that the enquiry will take 18 months to conclude i.e. summer 2011.

The Office of Fair Trading paper says that where there is no competition between national companies fares are 9% higher. The OFT found no evidence that smaller bus operators impacted on the prices charged by national operators.

The bus industry has experienced a number of situations over recent years in which a concerted effort by one operator has had a seriously detrimental effect on another operator. The Competition Commission has investigated some of the recent acquisitions and disposals of small bus companies that arose as a result of this type of action in both Preston and Eastbourne.

The Competition Commission released its preliminary findings in August 2009 stating that the two acquisitions reduced competition significantly, however on the 22nd October 2009 after further evidence was put forward and more analysis undertaken they changed their decision with regards to Eastbourne and concluded that they do not consider that the merger of Eastbourne Buses and Cavendish Buses has substantially lessened competition

So far the Competition Commission has not ruled on Preston and if the acquisition is found to be anti-competitive a number of remedies could be considered including a requirement for Stagecoach to sell parts of the acquired businesses, measures to encourage new entry of other operators, as well as controls on fares and requirements to maintain service levels.

It is unlikely that there would be any significant referral to the Office of Fair Trading should the shares be sold to the preferred bidder as their nearest operational base is in Swanage, Dorset. If there was a referral this is at the risk of the preferred bidder not the Council.

Appendix 4

Recent Disposals of Bus Companies

Since deregulation of the Bus industry in 1986 there has been a gradual reduction in municipally owned Bus companies. In 1986 there were 45 Council owned bus companies plus seven large businesses owned by the metropolitan authorities (PTEs), which were themselves amalgamations of a large number of municipal companies. Currently there are thirteen left with a probability that two of those will be sold shortly to a major bus company.

Over the last five years, five municipally owned bus companies have been sold to private companies and there have been consistent rumors around several others. Below is a short explanation of the sale processes of municipally owned Bus Companies over the last five years.

Bournemouth

Bournemouth Yellow Bus (100% owned by the local council) was sold to Transdev in late October 2005. Since the sale, a significant investment has been made in developing the routes, services and marketing, including a new £8.9 million depot. Patronage has been increasing an estimated 20 per cent year on year.

There was a perceived need to modernise the fleet and a realisation that full privatisation would better equip the operator to overcome the increasing competition it was facing from Wilts & Dorset, the council offered the company for sale.

The sale has been reported as having generated approximately £13.8m for the Council.

Blackburn

Blackburn Transport, which was wholly owned by Blackburn with Darwen Council, was sold to Transdev in 2006, with the deal being finalised on 22 January 2007. The proceeds have not been disclosed.

The Blackburn business had been struggling for some time, with an elderly fleet, and intense competition from a number of small operators over several of its core routes.

Transdev amalgamated the Blackburn business with its Lancashire United operations that had previously been acquired from Blazefield Holdings, and which had originated with Stagecoach. Transdev has extensively modernised the fleet, as in Bournemouth, and has re-launched the network under the "Spot On" brand.

Chester

In August 2006 Chester City Council announced that 12 companies had registered interest in purchasing ChesterBus. In September 2006, Arriva registered a network of services due to commence in January 2007, which duplicated the majority of ChesterBus's routes.

On 11 October 2006, ChesterBus and Chester City Council commenced an action in the High Court against Arriva, claiming that the registrations were anti-competitive under the Competition Act 1998, and asking for an injunction requiring Arriva to de-register them.

In November, most of the registrations were cancelled, though revised registrations for the 1/1A and 15A were made (considered the best of ChesterBus's routes), these were held until after the judgment by the High Court.

The claim had centred on the allegation that Arriva were abusing a dominant position, but in a judgment dated 15 June 2007, it was held that Arriva had not been demonstrated to hold a dominant position, and the claim was therefore dismissed.

The agreement of the sale to First was announced on 21 June 2007. The sale created a net loss for the Council (estimated at around £700,000) after realising the Net debt of ChesterBus and the court costs which exceeded £2m.

Preston

During the privatisation process that followed deregulation in 1993 the company was bought from the local authority by its employees, and became a limited company. In 2006, Preston Bus was subject to some high profile competition from national operator Stagecoach Group through their Stagecoach North West subsidiary. Competition escalated into a bus war with Stagecoach offering lower fares on the busiest routes.

On 10 June 2008, both companies agreed to a code of practice imposed by the traffic commissioner. The competition continued, with Stagecoach operating routes within Preston and Preston Bus operating a route between Preston and Penwortham.

On 30 December 2008 it was reported that Preston Bus had agreed in principle to an acquisition by its rival operator, Stagecoach North West. On 23 January 2009, Preston Bus was sold to Stagecoach in an estimated £6.4 m deal.

In November the Competition Commission decided that the merger reduced competition and potentially harmed the interests of passengers. Stagecoach have been told to sell Preston Bus Limited to a competing company, The sale will include a bus depot, other assets and a network of routes, including

services formerly run by Preston Bus but since transferred to Stagecoach following the acquisition.

Eastbourne

In November 2008, local press reports had indicated that the company was to be sold by the end of the year to either the Go-Ahead Group or Stagecoach Group. This relatively small business was subject to intense competition over much of its network from a private operator, Cavendish Motor Services, and had been losing money since 2004. It was also the case that the French transport group Keolis, which had earlier purchased a minority stake in Eastbourne Buses from the Council, wanted to exit.

The employees' trade union, Unite, wrote to Eastbourne Borough Council to ask the Council to sell to the Go-Ahead Group, because of work conditions and a superior fleet.

On 25 November 2008, it was announced that Stagecoach was the preferred bidder. The sale was concluded in December 2008.

Stagecoach made a simultaneous purchase of the Cavendish business; the Competition Commission examined the mergers in 2009 and initially concluded that they substantially lessened competition, but later reversed its decision.

There has also been criticism of the low sale price for the company - revealed at £3.7 million. It has been reported that the proceeds were utilised to clear the historical pension deficit of the company.

Rossendale

Rossendale entered into a similar process to that of Plymouth City Council earlier this year. After receiving first stage bids for the company the decision was taken not to progress further into the process as the offers received were not of a sufficient value to represent Value for Money

Islwyn Borough Transport

The sale of Caerphilly Council owned Islwyn Borough Transport to Stagecoach has been agreed this month. The sale is subject to Office of Fair Trading clearance and no price has been disclosed. Islwyn is comfortably the smallest of the remaining municipally owned businesses.

Appendix 5

Information on Go-Ahead

Go-Ahead is one of the UK's largest providers of passenger transport services operating in the bus, rail and aviation services sectors. It employs around 27,000 people across the country, with almost 1 billion passenger journeys on bus and rail services each year. It operates in three main sectors of rail; buses and aviation services.

The company was initially formed as the Gateshead-based Go-Ahead Northern when the management team acquired The Northern General Transport Company during the privatisation of the National Bus Company in 1987.

Early expansion saw the acquisition of a number of smaller competing bus operators in the North East, with their first major acquisition in the bus industry being the acquisition of Brighton & Hove in November 1993. This was quickly followed by the acquisition of Oxford Bus Company in March 1994. The bus division turnover was £585m for the year to June 09 and the operating profits were £66.6m. They carried 600m passengers and had a fleet of 3,519 vehicles. The average age of the fleet is 6.4 years.

Today its bus division is split into 6 operating companies:

- Go-Ahead London
- Go North East
- Go South Coast
- MetroBus
- Brighton & Hove Bus and Coach Company
- Oxford Bus Company

Go-Ahead have stated that they intend that Plymouth City Bus will remain as a separate operating company and continue to use the name.

The rail division is 65% owned with the other 35% owned by Keolis. It generates annual revenues of £1552m (operating profit £61.5m). The main rail companies are:

- Southern
- South Eastern
- London Midland

Go-Ahead have invested heavily in new buses and technology to reduce emissions, they were the first UK operator to introduce buses powered by Euro IV and Euro V engines.

Go-Ahead have also invested in 'black box' engine monitoring technology and driver training schemes, which it hopes will increase fuel efficiency by around 5%.

An emissions report by the TAS Partnership, a leading independent public transport consultancy, confirmed that Go-Ahead has the youngest and greenest bus fleet of the major UK operators. The study, which examined 118 bus fleets, took into account the minimising of carbon monoxide, hydrocarbon and nitrogen oxide in vehicles, Go-Ahead's Oxford bus came out on top in the report with another Go-Ahead company Brighton & Hove placed second in the report.

That report also highlighted that Go-Ahead had the youngest average age of any of the major operators at just 6.4 years old compared to an average of 8.1

This continued commitment to high standards of corporate responsibility has been recognised externally. In 2008 they became the first and only UK public transport company to be officially certified with the Carbon Trust Standard after taking action on climate change.

On 12th November the Go-Ahead subsidiary Brighton & Hove Bus and Coach Company won the national premier award of UK Bus Operator of the Year 2009. Amongst bus operators in the UK, the UK Bus Operator of the Year is the major national award.

The award citation was as follows:

"The company has an enviable reputation in the local community it serves. It is perhaps the best example today of how partnership with local authorities and other stakeholders can grow patronage and encourage modal shift consistently over many years.

With their partners, Brighton & Hove were at the forefront of industry developments (e.g. real time information, and catering for people with disabilities) which are now commonplace, but they have not rested on their reputation and have continued to move forward with innovative marketing, clever ticketing, and a passion for excellent customer service to support their network of high frequency services provided by a very modern fleet.

Our mystery traveller found Brighton & Hove's reputation for excellence fully justified: "The real-time information is one of the best in the country, with clear, well-maintained displays that actually work.". The company's ambitious flat fare system (with helpful short-hop fares available, too) makes for simplicity and speeds up boarding. Feedback from customers is not only acted on and taken seriously (often at managing director level), it is actively encouraged. Driver skill is good, too, both in terms of customer care and smooth driving.

"Fleet presentation is excellent, with buses looking smart and clean, and self-promotion of the company's products - indeed of the whole idea of bus travel

being a good thing for the city - on the outside of the fleet is done with wit, style and pzazz."

Appendix 6

Sale and Purchase Agreement and Legal Documents

There are a number of legal documents which are needed to effect a sale of shares in a transaction of this nature. This section sets out a brief summary of the main documents and their provisions.

The Sale and Purchase Agreement (SPA) is the principal document governing the sale and purchase of the shares in Plymouth Citybus Limited. It sets out the full terms of the sale, including:

- the price to be paid for the shares;
- the conditions of the sale;
- the mechanics of the sale, including the operation of the Company during the period between the date the SPA is signed and completion of the transaction, the resignation of directors, the repayment of Company loans, and the pre-sale dividend;
- the contractual protections for Go-Ahead and the Council, and the limitations of liability; and
- the undertakings given by Go-Ahead in relation to the operation of the Company post-completion.

The **disclosure letter** is a letter from the Council to Go-Ahead setting out information in relation to the Company. It is read in conjunction with the various warranties in the SPA which provide assurances to Go-Ahead in relation to the Company's business, assets and operations. Its effect is to limit the Council's liability under the warranties.

The SPA contains a number of statements (known as **warranties**) which are given by the Council to Go Ahead. These warranties are designed to give assurances to Go Ahead in relation to the Company's business, assets and operations.

In summary, the warranties cover the following matters:

- the Council's legal capacity to enter into the contemplated transaction;
- the shares in the Company which are proposed to be sold
- the Company's accounts and changes to the Company's finances since the last filed accounts;
- the Company's material assets,
- the material contracts of the Company and the effect of the proposed sale on these contracts;
- the intellectual property and information technology owned or used by the Company;
- the Company's insurance and health & safety policies and procedures;

- the liabilities of the Company or of others in relation to the Company and any litigation the Company is or has been involved in;
- the Company's directors, officers and employees;
- the Company's pension schemes;
- the properties used by the Company;
- the pension schemes operated by the Company;
- environmental matters; and
- tax.

If a warranty given by the Council proves to be untrue, Go Ahead may be entitled to make a claim for damages against the Council for breach of warranty. Any such claim will be subject to the limitations of liability set out in the SPA.

The **tax deed** is an agreement between the Council and Go-Ahead which allocates tax liability arising in the Company. Tax liabilities arising on all activities in the period of the Council's ownership are payable by the Council and the Council indemnifies Go-Ahead accordingly. Any tax liability arising during the period of Go-Ahead's ownership will be payable by Go-Ahead with a reciprocal indemnity to the Council.

Following the sale of the shares held by the Council the Company will cease to be a "deemed scheduled body" for the purposes of Local Government Pension Scheme ("**LGPS**") and, in particular, the Devon County Council Pension Scheme within the LGPS. The **pension deed** sets out the obligations on the Go-Ahead to seek admitted body status for the Company once it is owned by Go-Ahead or to provide applicable employees with a broadly comparable pension scheme if such status is not granted. The pension deed also allocates the pension liabilities and other pension costs arising in connection with the transaction.

The **overage deed** is entered into by the Council and the Company in order to ensure the Council benefits from any future disposal or development of the Milehouse Depot. If, within 30 years of completion, the Milehouse Depot is either sold by the Company, or a long lease over the site is granted by the Company, or there is a change in use (with the relevant planning permission being obtained), the Council is entitled to receive a specified percentage of any profit or financial benefit made or received by the Company.

Ancillary documents which are also needed include stock transfer forms, directors resignation letters, extracts from Council minutes for the meeting approving the transaction, discharges of various debentures granted by the Company to the Council and changes to the Company bank mandates.