

# North Tyneside Council

## Report to Cabinet

### Date: 6 April 2021

#### Title: Bus Shelters contract

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<b>Portfolios:</b> Deputy Mayor; Environment and Transport	<b>Cabinet Members:</b> Councillor Bruce Pickard; Councillor Carl Johnson
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#### Report from Service

**Area:** Environment, Housing and Leisure

**Responsible Officer:** Phil Scott, Head of Environment, Housing and Leisure **Tel: (0191) 643 7295**

**Wards affected:** All

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## PART 1

### 1.1 Executive Summary:

'Commercial' bus shelters in North Tyneside, including all those which bear advertisements, are maintained under a concession contract between the Authority and an external supplier.

The incumbent supplier has expressed a wish to have the option to invest in digital advertisement panels at some bus shelters in the borough. This is not possible under the existing concession contract, which covers only traditional poster advertisements, a form of advertising which is in decline.

It is therefore proposed to seek to enter into a new concession contract with the existing supplier. The existing concession contract pre-dates the Concession Contract Regulations 2016, which provide greater clarity in relation to such contracts. A new contract will enable the inclusion of appropriate obligations and procedures to ensure compliance with relevant laws going forward.

Cabinet is therefore invited to approve arrangements to put in place a new concession contract with the incumbent supplier to replace the existing concession contract for the cleaning and maintenance of, and advertising on, bus shelters.

### 1.2 Recommendation:

It is recommended that Cabinet:

- (1) agrees that the Authority's existing concession contract for the provision of bus shelters, including cleaning, maintenance and advertising on bus shelters, may be replaced with a new concession contract with the incumbent supplier;
- (2) agrees that officers continue discussions with the incumbent supplier on this basis; and
- (3) authorises the Head of Environment, Housing and Leisure, in consultation with the Deputy Mayor, the Cabinet Member for Environment and Transport, the Head of Corporate Strategy and Customer Service, the Head of Law and Governance and the Head of Resources, to finalise the details of any new concession contract and if successful to make arrangements for the Authority to enter into the proposed new concession contract which would automatically supersede the existing concession contract.

### **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 5 March 2021.

### **1.4 Council Plan and Policy Framework**

The proposals in this report relate to the following priority in Our North Tyneside, the Council Plan 2020 to 2024:

- Our places will:
  - Have an effective transport and physical infrastructure

### **1.5 Information:**

#### **1.5.1 Background**

The Our North Tyneside Plan sets out the Authority's aim to have an effective transport and physical infrastructure and the North Tyneside Local Plan specifies the objective to provide attractive travel options and deliver a modal shift to more sustainable modes of transport. The North Tyneside Transport Strategy states that the Authority will manage its transport network effectively and support people in using more sustainable forms of transport. Moreover, full Council formally declared a Climate Emergency at its meeting on 25 July 2019.

There were approximately 5.9 million miles of bus journeys made within North Tyneside in 2018/19. Since the onset of the Covid-19 pandemic, buses have continued to provide a vital service for key workers and other essential travel and, outside lockdown periods, for many residents and visitors. Ensuring good provision for bus users will be an important part of supporting the local economy during Covid-19 recovery and securing the continued use of more sustainable, low-carbon transport.

#### **1.5.2 Bus shelters provision**

'Commercial' bus shelters are those which bear an advertising panel. The advertisement faces the street and is visible to road users in general, not only to people waiting at the bus stop. Consequently, the number of bus stops with the potential to be 'commercial' is limited, essentially to sites with substantial numbers of road users passing by, for example, those on heavily trafficked roads.

Commercial shelters in North Tyneside are currently managed under a contract between the Authority and an external supplier, Clear Channel UK. The supplier maintains and cleans the shelter, and holds the advertising rights, allowing the supplier to retain revenue generated through the sale of advertising space. A small number of shelters which do not bear advertisements are also cleaned and maintained by the supplier as part of the contract.

Other shelters which do not bear advertisements, which account for around two-thirds of bus shelters in the borough, are cleaned and maintained by Nexus under existing, separate arrangements, which would not be affected by the proposals in this report.

The existing contract does not have provision to generate revenue for the Authority. It also pre-dates the Concession Contract Regulations 2016, which provide greater clarity in relation to distinct types of contracts where the risk in the delivery of the works or service is passed to the contractor in exchange for potential commercial gain from use of the Authority's publicly owned asset. The existing contract does not include a specific mechanism to maintain ongoing compliance with these regulations.

For these reasons and bearing in mind the supplier's desire to invest in the updating the asset by installing digital advertisements as set out below, it is considered preferable to seek to refresh the contractual arrangements at this stage.

### 1.5.3 Bus shelter advertising

Traditional poster advertisements are the only form of bus shelter advertising covered by the Authority's existing contract. Wider market trends mean that commercial interest in this form of advertising is in decline, with advertisers increased focusing on digital forms of advertising. The incumbent supplier has expressed a wish to have the option to invest in installing digital advertisement panels on bus shelters in the borough.

It is understood that a limited number of bus shelter sites in North Tyneside would have commercial potential for conversion to digital, e.g. potentially 10-20 sites in the borough. It is considered that enabling the possibility of digital advertising could assist in securing the continued provision of the existing shelter estate and may also have the potential provide a small income to the Authority.

Bus shelter advertising is a specialised area, and the number of potential suppliers is very limited. As part of previous discussions on the potential for a joint procurement exercise involving the Authority and three other Tyne and Wear authorities, a market testing exercise was conducted over the period December 2017 to January 2018. This served to demonstrate a lack of commercial interest from potential alternative suppliers, with no suitable respondents other than the incumbent being identified. Recent wider developments in the advertising market post-Covid, with indications of further movement towards digital forms of advertising in preference to traditional poster advertisements, are likely to have further reduced the attractiveness of bus shelters contracts to new bidders.

### 1.5.4 Proposed course of action

Discussions with the incumbent supplier over some time have indicated a likelihood that it would be possible to agree a new contract on new terms. It is anticipated that the new terms would involve the supplier having the possibility to install digital advertisements, subject to its securing any necessary approvals such as planning permission, and to remove poster advertisements, while retaining and continuing to maintain existing

shelters. Replacing the existing contract with a new contract would also support ongoing compliance with relevant procurement regulations.

It is therefore proposed to continue discussions with the incumbent supplier with a view to entering into a new concession contract, on new terms, with the incumbent supplier, which would automatically supersede the existing concession contract.

As the value of the contract may exceed £500,000, Cabinet approval is sought to proceed with the proposal and to provide delegated authority to officers to put the new arrangements in place.

The cleaning and maintenance of shelters not covered by the existing contract would continue to be arranged by Nexus. Nexus currently have contracts in place for this work and would undertake any procurement required to ensure the continued provision of this service on behalf of the Authority.

## **1.6 Decision options:**

The following decision options are available for consideration by Cabinet:

### Option 1

Cabinet approves the recommendations at paragraph 1.2 of this report.

### Option 2

Cabinet does not approve the recommendations at paragraph 1.2 of this report.

Option 1 is the recommended option.

## **1.7 Reasons for recommended option:**

Option 1 is recommended as a new contract for bus shelters cleaning, maintenance and advertising would be expected to have positive outcomes for bus passengers through the continued provision of shelters while supporting ongoing compliance with relevant procurement regulations and has increased potential for income generation compared with current arrangements.

## **1.8 Appendices:**

None

## **1.9 Contact officers:**

Colin MacDonald, Senior Manager Technical and Regulatory Services, 0191 643 6620

John Cram, Integrated Transport Officer, 0191 643 6122

Julie Batey, Procurement Manager, 0781 757 4163

Cathy Davison, Principal Accountant Investment (Capital) and Revenue, 0191 643 5727

## **1.10 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) [North Tyneside Transport Strategy](#) (approved by Cabinet on 8 May 2017)

- (2) [North Tyneside Local Plan](#)
- (3) [Equality Impact Assessment – North Tyneside Transport Strategy](#)
- (4) [Cabinet report 29 June 2020](#) 'North Tyneside Transport Strategy Annual Report'

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

Contract management of the existing bus shelters concession contract is managed within the Authority's existing core staff resource. It is envisaged that actions involving the management of the proposed new contract will continue to be met from existing budgets. Any expenditure which cannot be contained within existing budgets will be reported to Council / Cabinet, as appropriate for a decision before any expenditure is incurred or committed.

Subject to the provisions of the proposed new contract, an income may be received by the Authority in respect of digital advertisements installed by the supplier.

The cleaning and maintenance of non-commercial bus shelters would continue to be arranged by Nexus and funded from the Nexus budget.

### **2.2 Legal**

The Authority, as the highway authority for the borough, manages the arrangements for structures within the public highway, including the provision of bus shelters along bus routes pursuant to the Local Government Act (Miscellaneous Provisions) 1953. The Authority is able to allow a bus shelter provider to advertise on the highway, pursuant to the New Roads and Street Works Act 1991.

Under regulation 32(2)(b)(ii) of the Public Contract Regulations 2015, the negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts where the works, supplies or services can be supplied only by a particular economic operator because competition is absent for technical reasons. As mentioned in paragraph 1.5.3 of this report, market testing was first carried out in December 2017 – January 2018. The conclusion drawn then by Officers and supported by continue observation of the market since was that Clear Channel UK is the only operator able to meet the needs of the contract.

The existing bus shelters contract commenced on 6 February 1998. It included provision to continue in force for ten years and thereafter for successive periods of five years unless or until determined by either party giving notice to the other not less than six months' notice in writing to expire at the end of the said period. However, the Concession Contracts Regulations 2016 clearly indicate that this this type of termination provision is now unsuitable for such contracts, whereby the suggested term is now five years, although this could be extended insofar as the concession contract threshold is not exceeded.

Due to the need for compliance with the relevant concession contract regulations as well as the desire to introduce Digital Advertising into Bus Shelters the current supplier is willing to negotiate a new contract.

The existing contract therefore pre-dates both the Public Contract Regulations 2015 and the Concession Contract Regulations 2016. Unfortunately, the original agreement despite it being a concession contract in subject matter did not give access to the Concessionaire accounts, making it difficult for the Authority to independently calculate the value of the concession. It is proposed to negotiate a new agreement which will address these aspects of the 1998 Agreement and allow the Authority access to the accounts of the Concessionaire in relation to the publicly owned concessions granted. Clauses within the proposed new agreement will allow for termination if the thresholds for the Concession Contract Regulations 2016 are reached. This will ensure compliance with the Concession Contract Regulations 2016 and enable the Authority to ensure a robust exit strategy is agreed and to gather more accurate data on the value of the contract with regard to the changes to digital advertising revenue, which will inform any future procurement exercise.

The proposed contract will also reflect the provisions of the Telecommunications Act 1984 and Telecommunications Code where telecommunications equipment is installed in the highway in order to facilitate the provision by the supplier of digital advertisements.

By virtue of section 9D of the Local Government Act 2000 any function of the Authority is the responsibility of the Executive unless there is a contrary intention expressed in legislation. There is nothing in the Regulations referred to in this section or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 that indicate that the bus shelters contract is not to be a matter for Cabinet.

### **2.3 Consultation/community engagement**

2.3.1 Internal consultation has included the Deputy Mayor, the Cabinet Member for Environment and Transport, the Head of Environment, Housing and Leisure and the Head of Regeneration and Economic Development.

2.3.2 External consultation is not required in respect of the proposed procurement exercise.

### **2.4 Human rights**

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

### **2.5 Equalities and diversity**

There are no equalities and diversity issues directly arising from this report. An Equality Impact Assessment was undertaken at the time of the approval of the North Tyneside Transport Strategy and was reviewed in June 2020 in light of the Covid-19 pandemic.

### **2.6 Risk management**

Risk management will be considered as part of the ongoing management of the proposed new contract.

### **2.7 Crime and disorder**

There are no crime and disorder implications arising directly from this report.

### **2.8 Environment and sustainability**

Putting in place an arrangement for the continued cleaning and maintenance of bus shelters covered by the contract will support bus travel in continuing to be an attractive

option. By helping to secure continued bus use as an alternative to car journeys, this will assist in reducing carbon emissions and air pollution.

### **PART 3 - SIGN OFF**

- Chief Executive  X
- Head(s) of Service  X
- Mayor/Cabinet Member(s)  X
- Chief Finance Officer  X
- Monitoring Officer  X
- Head of Corporate Strategy and Customer Service  X