

WMCA Board

Date	10 June 2022
Report title	Zero Emission Bus Regional Areas (ZEBRA) Scheme 2021/22 - Acceptance of Grant
Portfolio Lead	Transport – Councillor Ian Ward
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Report has been considered by	WMCA Strategic Leadership Team Strategic Transport Officers Group WMCA Programme Board and Investment Panel

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

1. Approve the acceptance of the £30.383m grant funding awarded through the Government's Phase 2 of the Zero Emission Bus Regional Areas (ZEBRA) 2021-2022 competition announced on 26th March 2022.
2. Approve TfWM specifying two 'red lines' within the grant funding agreement of:
 - a) Open access to the hydrogen refuelling station by other agreed third parties;
 - b) TfWM to be party to the supply agreement, to protect WMCA's interests in the event of an operator exiting the local bus market, or a change in regulatory approach.

3. Note these 'red lines' may result in monies being returned to Department for Transport (DfT) and the scheme not progressing if bus operators are not able to sign-up to these conditions.
4. Note that the revised total value of the project which is inclusive of the £30.383m grant funding from DfT is lower than that approved in in September 2021 due to reduced scope.
5. Approve the delegation/s to the WMCA Monitoring Officer and WMCA Finance Director to enter into the various funding agreements and contracts which would be reasonably required to enable delivery of the project.
6. Note the update on project risks and mitigations and that these will continue to be reviewed and managed as the project progresses.

1. Purpose

- 1.1 The purpose of this report is to update the WMCA Board on the outcome of the application to the Government's ZEBRA scheme. The report seeks Board approval to proceed with the project by accepting the Offer of Grant and details mitigations against identified risks. The original application was approved by Board in September 2021 and the accompanying report to that meeting provided the full background to the purpose and objectives of the scheme.

2. Background

- 2.2 In May 2021, TfWM submitted an Expression of Interest (EOI) on behalf of the WMCA to the ZEBRA Phase 1 (fast track) process. On 24th June 2021, the DfT advised that our Phase 1 EOI had been shortlisted for Phase 2 (standard track) Full Business Case, alongside five other local transport authorities. The original bid was for 234 buses, comprised of 200 hydrogen double decks, 24 articulated 'tram-style' hydrogen buses for the Sprint network currently under development, and 10 battery electric buses for use on subsidised services in Wolverhampton. Following engagement with DfT, the size of the project was reduced to a total of 124 buses (100 double decker and 24 articulated) in the final submission. Despite this reduction in fleet size, the project still represents the largest hydrogen deployment in the world outside of China and as a result is a globally significant opportunity which directly supports national and regional priorities.
- 2.3 DfT expects grant recipients to deliver their projects within two years of the grant award, taking delivery to the end of March 2024. Accordingly, since provisional acceptance of the grant by the Chief Executive in March, TfWM officers have undertaken preparatory work to enable the next steps to proceed rapidly should Board approval be given. This has included soft market testing with bus operators and potential suppliers to gauge the appetite and ability to deliver the scheme, as well as work to identify the most appropriate procurement method. A grant funding agreement will be secured with a bus operator to acquire the necessary vehicles and infrastructure to deliver the scheme.

2.4 The scale of the project brings a number of risks as well as benefits. During the delivery period it may be necessary to review and change the delivery approach to what is currently proposed. The following table sets out the key risks that have been identified at the Final Business Case stage, since award of the funding, and through soft market testing, with proposed mitigations.

Risk	Details / Mitigation
<p>Ownership of hydrogen refuelling station: Under the preferred approach with an operator-led procurement, WMCA would not own the hydrogen refuelling station; ownership would sit with the bus operator or their appointed fuel supplier. This would mean WMCA could have no direct control over its future use and the owner could subsequently modify, mothball, or scrap the asset without consulting WMCA. This could lead to stranded assets (buses part-funded by WMCA unable to be fuelled), the undermining of the envisaged project outcomes, as well as financial loss.</p>	<p>Grant funding agreement shall specify that the bus operator is responsible for funding modifications to their commercial premises in full, and that grant towards building modifications will only be released for costs over and above 25% of the total infrastructure cost. This approach minimises investment by WMCA into commercial premises that could not be recovered and maximises the amount of grant being used for the hydrogen refuelling station, which could be more easily recovered. The grant funding agreement shall specify that in the event of the asset no longer being required, WMCA will have the option to have the asset transferred to it. Precise details of the legal mechanisms to ensure this will be subject to further work by TfWM.</p>
<p>Ownership of land hosting the hydrogen refuelling station: Under the preferred approach with an operator-led procurement, WMCA would be funding an asset that will most likely be located within a bus operator's depot, i.e, privately-owned premises. This presents a risk to WMCA investment should the depot subsequently be sold or the bus operator decide to terminate the lease with the landowner.</p>	<p>The bus operator will be required to demonstrate that they have security over use of land, either by demonstrating a freehold, or a leasehold that covers the lifespan of the project. Where these conditions are not met, WMCA will seek to secure long-term leases or consecutive leases with the third party landowner in advance. Where the site is owned by the bus operator, the grant funding agreement shall specify that in the event of the bus operator disposing of the site, WMCA shall have first preference for any sale and will be entitled to purchase the site at market value prior to the site going on the open market. It shall also specify that in the event of regulatory change to a franchising delivery model, WMCA shall have the option to purchase the scheme's assets.</p>
<p>Ownership of vehicles: The bus operator could choose to use a third party to lease</p>	<p>The grant funding agreement for the Coventry Electric Bus City scheme has</p>

Risk	Details / Mitigation
<p>the vehicles through an 'as-a-Service' agreement and not own the vehicles directly. Should the operator fail, the vehicles would be recovered by the lease company with no ability for TfWM to secure the vehicles, resulting in a loss of vehicles for service, loss of reputation and considerable financial impact.</p>	<p>addressed the same eventuality and can be used as a template for this project. A mechanism will be implemented that provides certainty over the outcomes if this eventuality were to arise. This shall include as a 'red line' WMCA being party to the lease agreement and having the option, but not an obligation, to take over the lease.</p>
<p>Availability of new infrastructure for hydrogen refuelling: Failure to align the delivery of infrastructure setup with new vehicles becoming operational, meaning hydrogen refuelling is not available for the first buses and therefore buses cannot operate.</p>	<p>Single competition to enter into one grant funding agreement with a bus operator who would then be responsible for procuring buses and infrastructure. Tyseley Energy Park provides capacity for refuelling 40 double deck buses. Temporary refuelling could be possible and has been identified as a solution in the short-term through trailer delivery if necessary.</p>
<p>Strengthening of a dominant operator: Installation of fuelling infrastructure at an operator's depot gives them a competitive advantage if vehicles are cheaper to operate. This may make it more difficult for other operators to compete.</p>	<p>Competition will be held to appoint bus operator through fair, open and transparent process. Grant funding agreement will set a 'red line' of requiring open access to the refuelling station by other fleet operators.</p>
<p>Bus operator bids for only part of the project outputs, such as only bidding to operate the double deck buses, but not the articulated buses. This would result in the outputs of the project not being delivered in full and therefore the envisaged outcomes and impacts not being achieved.</p>	<p>Single agreement covering the 100 double decks, 24 articulated buses and hydrogen refuelling station to ensure the appointed operator is responsible for delivering the project in full, with no option for only partial bids.</p>
<p>Bus operator unable to procure buses and refuelling infrastructure: A single grant funding agreement means the same bus operator will be responsible for procuring the double deck buses, articulated buses and infrastructure. Suppliers may not be able to meet the full project requirement</p>	<p>Soft market testing undertaken with bus operators and suppliers in May 2022 indicated the full project requirements could be met through a single bus operator's procurement. The approach proposed of a single grant funding agreement covering both buses and infrastructure is the same as</p>

Risk	Details / Mitigation
<p>resulting in the bus operator being unable to procure the necessary assets. The impact would be a failure to deliver the project or a delay when the bus operator's procurement exercise was re-run.</p>	<p>that used for Coventry Electric Bus City, however it is recognised the risks in this project are higher. TfWM will actively monitor and manage risks to delivery with the bus operator through regular (minimum monthly) steering group meetings and maintaining a joint risk register.</p>
<p>Post-COVID uncertainty: A commercial operator greening its fleet using public funds at a time when the bus sector still faces significant uncertainty over its post-pandemic recovery presents uncertainty over the long-term use of the assets. In the case of a change of structure / ownership of the bus operator, the assets may no longer be available to the region.</p>	<p>Bus operator will be required to demonstrate they have a viable plan to operate the buses in the areas prescribed. The grant funding agreement shall specify that in the event of assets no longer being required, WMCA will have the option to have the assets transferred to it, or for leased assets what safeguards will apply, as addressed in the Coventry Electric Bus City project.</p>
<p>The risk that the scaling up of a green hydrogen fuelled fleet of buses could cause unforeseen technical and/or financial issues that impact the ability of the operator to maintain the network coverage and assure fare (ticket price) commitments. Whilst there is confidence in the viability of the project amongst stakeholders, the limited maturity of this market means that risks remain. The risk to the project and future network is the impacts could result in the need for higher fares or greater subsidy from the LTA.</p>	<p>WMCA will seek assurances from the operators that financial risks associated with the bid will be supported by a Parent Company Guarantee, or performance bond, to ensure that the local operating business cannot expose TfWM (and therefore the WMCA) to greater financial risk, and ensure a clear legal agreement backs off the risk imposed on the WMCA by Government is passported on to the businesses promoting the proposals.</p>
<p>Timescales: Risk that the scale and complexity of the project means the full outputs cannot be delivered within the two year window specified by Department for Transport, meaning the grant has to be returned and the project is shelved.</p>	<p>Engagement with Department for Transport taking place. TfWM have discussed with the DfT that there may be risks due to the complexity which are not yet clear as this is a globally leading project. The DfT have advised that they will consider how to respond to this but that it may not be agreed from Government at this early stage. Regular dialogue and engagement with the DfT will be maintained.</p>

Risk	Details / Mitigation
Financials: DfT grant conditions state that WMCA as the accountable body are responsible for meeting any expenditure over and above the grant award required to deliver the project outcomes.	This will be mitigated through the grant funding agreement with the bus operator, which will ensure that WMCA will not be financially liable for any project cost overruns above the funding awarded.
Further detailed risks being mitigated include: <ul style="list-style-type: none"> • Delivering the Sprint objectives effectively and on time • Ensuring the buses meet the required specifications of DfT and TfWM • Ensuring infrastructure delivery is not delayed by Planning process 	

2.5 The above risk table demonstrates that the project team has sought to understand all potential risks and is mitigating them accordingly, given the unique nature and scale of the project. This approach will be embedded into the project team and will enable TfWM and its delivery partners to focus on the required project outputs and delivery timescales.

3. Financial Implications

3.1 The overall funding and spend for the project can be summarised as follows:

Funding Source (£m)	Vehicles	Depot Infrastructure	Project Management	Total
Department for Transport	24.0	6.4	0	30.3
WMCA	0	0	0.6	0.6
Operators	53.5	2.1	0	55.7
Total	77.5	8.5	0.6	86.6

3.2 The DfT has provided a capital grant of £30.3 million to cover 75% of the additional cost of zero emission buses over diesel equivalents and 75% of the required infrastructure costs. The remaining costs will be funded by the bus operator, totalling £55.6 million of investment into the transport network.

3.3 As a result of the reduced scope, there is no longer a requirement for WMCA capital funding. Project management costs of £0.6m for project delivery staffing, technical expertise, finance, legal, assurance and monitoring & evaluation will be met through existing funding in 22/23 budgets and the Medium Term Finance Plan.

4. Legal Implications

4.1 WMCA Legal notes the key risks identified within the table above, together with the proposed mitigation measures. In light of this, we shall work with project colleagues in order to ensure that those requirements and any others that are identified are reasonably captured within the grant funding agreement to be

entered into with the bus operator(s). This will include any lessons learnt from the Coventry Electric Bus City project.

5. Impact on Delivery of Strategic Transport Plan

- 5.1 The draft Local Transport Plan (LTP) Core Strategy sets out the need to deliver action across '6 Big Moves' to improve accessibility, reduce traffic, and electrify transport. This will help to achieve our 5 Motives for Change within the draft Core Strategy. Continuing to invest in bus fleet decarbonisation and electrification will help to deliver those 6 Big Moves and also reduce our regional carbon emissions, in line with our #WM2041 net zero reduction target.

6. Equalities Implications

- 6.1 An Equalities Impact Assessment has been undertaken for the project which identifies and addresses key equality issues and their mitigating measures. This project provides a positive impact on young people, minority ethnic groups, disabled people and other protected groups, as well as lower socio-economic groups, who are more likely to rely on the bus network to access education, employment and other opportunities.

7. Inclusive Growth Implications

- 7.1 The investment in new zero emission vehicles and associated infrastructure will be positive for inclusive in the West Midlands by supporting the following inclusive growth themes – Economic Growth; Health & Wellbeing; Employment & Skills and Environment. Indeed, delivering these benefits is a primary objective within the Strategic Case and the scheme will be designed with this in mind.

8. Geographical Area of Report's Implications

- 8.1 The project will see hydrogen buses operating in all parts of the West Midlands, with the exception of Coventry which is becoming the UK's first 'all electric bus city'. The learning from this project will help contribute towards the successful future roll-out of zero-emission buses within the wider conurbation and help demonstrate the capabilities of our region to effectively deliver government funds, making the case for further funding for future schemes.

9. Other Implications

None.

10. Schedule of Background Papers

Zero Emission Bus Regional Area Scheme 2021/22 – Phase 2 Full Business Case – Report to WMCA Board meeting 17 September 2021

Full Business Case – ZEBRA 2021/22 – WMCA 11 February 2022:

<https://www.tfwm.org.uk/media/31il4swm/zebra-standard-wmca-fbc-final-for-publish.pdf>