

**PUBLIC EXCLUDED**

**Report** PE 2016.446  
**Date** 27 September 2016  
**File** NZBUSN-2005377047-65

**Committee** Council  
**Author** Wayne Hastie, GM Public Transport

## **PTOM Bus – transition arrangements**

### **1. Purpose**

This report:

1. Provides an overview of an agreement reached between GWRC and NZ Bus that will enable continuity of services from July 2017 until the commencement of PTOM contracts in July 2018;
2. Seeks approval of Council to delegate to the Chief Executive the execution of the agreement between GWRC and NZ Bus;
3. Provides an overview of the approach taken in the PTOM bus tendering process in relation to labour market considerations; and
4. Addresses specific points raised by Richard Wagstaff of the Combined Trade Unions in his presentation to the Sustainable Transport Committee on 21 September 2016.

### **2. Public Excluded**

Grounds for exclusion of the public under section 48(1) of the Local Government Official Information and Meetings Act 1987 are:

*Certain information contained in this report relates to information which is subject to a confidentiality agreement between GWRC and NZ Bus. Release of this information by GWRC would be a breach of the confidentiality agreement. GWRC has not been able to identify a public interest favouring disclosure of this particular information in public proceedings of the meeting that would override the need to withhold the information.*

*Other information in the report relates to the PTOM Bus tender process. Release of this information would likely harm the commercial position of GWRC and compromise the integrity of the RFT process. GWRC has not*



COMMERCIAL IN CONFIDENCE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Text covers information which is not related to the tender process.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Text covers information which is not related to the tender process.

[REDACTED]

[REDACTED]

[REDACTED]

#### 4. Labour market considerations

##### 4.1 PTOM tendering approach

The following information is an extract from Council Report RPE2016.284 Procurement of Bus Services under the Public Transport Operating Model. This report presented a summary of the key components of GWRC's tender for bus services under PTOM and recommended, inter alia, that Council authorises the Chief Executive to approve the issue of the RFT to the bus operator market, following the approval of all RFT documentation. The report was discussed at the Council meeting of 29 June 2016 with the Council resolutions consistent with the report's recommendations. The report included the following specific section regarding GWRC's approach to labour market considerations.

##### 4.2 Extract from Council Report RPE2016.284

The PTOM Bus tender does not include arrangements for staff of incumbent operators to be transferred to new operators, or the specification of labour rates and conditions. There is also no contractual requirement for the redeployment of staff from an outgoing operator to an incoming operator at the end of term.

GWRC's objectives in running a competitive tender process for bus services is to enable the testing of best value for money, and is not to achieve a least cost outcome. In using the Price Quality Method (PQM) for tender evaluation, GWRC is able to reward higher quality proposals, striking a balance between quality and price.

The evaluation panel, which has specialist HR expertise, will evaluate and score the following attributes relating to staff:

- How the organisation complies with the "good employer" principles and overarching employment policy, including good faith and other

## COMMERCIAL IN CONFIDENCE

requirements, of the Employment Relations Act 2000 (or similar legislation if an another jurisdiction)

- How their employees would describe the organisational culture
- How staff engagement is analysed and targets set to support a long-term vision of corporate culture
- How their organisation retains staff
- Their organisation's approach to engagement with unions and how effective working relations are maintained
- Their organisation's approach to change management
- Their approach to recruitment, training and staff development
- The value proposition to attract potential staff to join their organisation
- The core elements of their organisation's approach to health and safety

Tenderers will also be scored on staff engagement levels and health and safety outcomes through metrics which include:

- The average annual absenteeism rate for each of the last 3 years
- Key health and safety lead and lag indicators

GWRC will not rely on unsubstantiated claims by tenderers but will verify statements made via reference checks.

The scores received from the staff related attributes will feed directly into the quality score for each tenderer.

GWRC will also oversee the continued welfare of staff by reviewing relevant Operator plans, such as training and health and safety plans, and requiring all plans to form part of the contract. These will be assessed and updated each year through the annual business planning process.

This differs from the approach taken in the PTOM Rail tender process which required the transfer of certain staff (including drivers, train managers, passenger operators and maintenance personnel) to the successful operator, both at the outset (from KiwiRail to Transdev) and at the end of the contract to any new incoming operator.

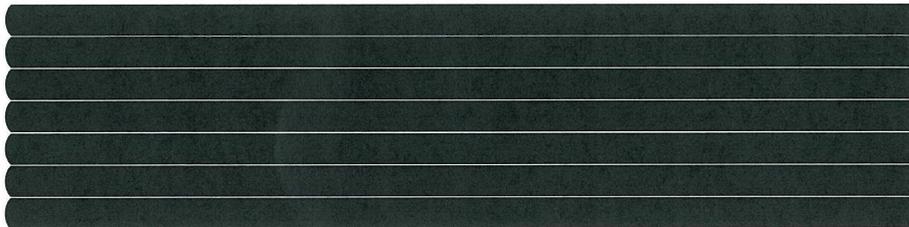
The differences between the rail approach and the bus approach is summarised in Table1 below.

COMMERCIAL IN CONFIDENCE

**Table 1 – Differences between rail and bus tenders in relation to staff transfers**

<b>Rail</b>	<b>Bus</b>
Single operator/employer/union/collective agreement	Several operators/employers/unions/collective and individual employee agreements
One contract	16 bus unit contracts
Staff all dedicated to one contract	No single contract against which staff could be assigned/redeployed
Specialised staff, trained to work on specialised vehicles – rail operator the only employer of those specialties in the Wellington region; dedicated labour pool	Transferable skills with a range of employment opportunities outside contracted public transport operators (eg coach services, charters, school services, freight sector)
New operator would struggle to recruit and train staff during relatively short transition period between contract award and contract commencement (3-6 months)	Transition period of up to 15 months, which is considered adequate for a new operator to recruit and train a pool of drivers and other key personnel
One union, one collective agreement	Several unions, each with at least one collective agreement. Some operators have representation by more than one union and also have staff on individual employment agreements.
Transfer of Tranz Metro business unit from KiwiRail to Transdev in entirety.	The major incumbent bus operators have been allocated Direct Appointed Units and therefore are guaranteed enduring business in the Wellington region which requires retention of some of their current workforce. The incumbent operators will also be tendering and may win other contracts within the region that will also require retention of workforce.

s7(2)(g) - legal



#### 4.3 Issues raised by Richard Wagstaff, Combined Trade Unions

A number of points were raised by Richard Wagstaff, President, New Zealand Council of Trade Unions (CTU), in his presentation to the Sustainable Transport Committee on 21 September 2016. The key points are summarised and addressed below.

**CTU issue:** It is not a unique situation for services to be competitively tendered in NZ, nor is it unusual for those with responsibility to coordinate the process to actively ensure the interests of staff are protected as far as possible. GWRC did just that with the train operations just recently and it's common place within central government tendering to ensure staff are protected.

**GWRC position:** Like the CTU, GWRC is committed to ensuring good conditions for bus drivers who are essential to the provision of a safe and reliable public transport service – and as a result have included specific quality criteria to assess tenderers' approach to staff as part of tender appraisal. The specific quality evaluation criteria, including the weightings applied to each, have been provided to tenderers as part of the RFT documentation. Tenderers have clear visibility on the importance of the criteria and the information required by GWRC to evaluate tender responses. The evaluation criteria specified by GWRC in relation to staff welfare exceeds what other Councils around NZ are doing for staff in their tender processes.

The situation that supported transferring the majority of rail staff to the new operator was unique in a number of ways that make it quite different than the bus situation, and so a different approach has been taken. Refer Table 1 above.

The CTU asserts that the protection of staff is common place within central government tendering. The transfer of staff and protection of conditions does occur, but in limited circumstances. Such transfer is mandated for workers deemed to be 'vulnerable workers', such as cleaning staff, and so may be used when changing from one cleaning contract to another. The transfer of staff usually occurs, as GWRC did in the case of rail, where one single contract transfers in whole from one organisation to another. This may be through a tender process or through a reorganisation such as the change from Crown Health Enterprises to District Health Boards, as an example used by Richard Wagstaff.

However other contracts, such as recent Ministry of Health social services tenders, including a recent tender for telehealth services involving around 200 staff, have not included provisions for the transfer of staff and protection of conditions. While Richard Wagstaff referred, anecdotally, to one example of a tendered NZTA road maintenance contract that resulted in staff conditions being degraded, similar road maintenance contracts are frequently tendered by NZTA and territorial local authorities which do not provide for the transfer of staff. We are unaware that similar issues have occurred in the tendering of other road maintenance contracts.

## COMMERCIAL IN CONFIDENCE

We are also unaware of circumstances in which the transfer of staff is mandated in a multi-contracting process that involves multiple incumbent providers and a mix of directly appointed contracts to the incumbents and several tendered contracts, as we are undertaking with the bus contracts.

**CTU issue:** Engaging with the GWRC in this discussion hasn't been a straight forward process to date. When the tender documents were in draft form I sought a copy of the draft tender documents and a meeting with Greg Campbell. The documents were refused to me – even a request to see the parts that referred to staff transfer on a confidential basis – and we didn't get a meeting till after the tenders went live. This lack of information has made it difficult to engage meaningfully in discussion when the Council has been so secretive.

**GWRC position:** On the basis of probity advice received, GWRC has chosen not to make the tender documents public. This is to allow prospective tenderers to focus on meeting the specifications of the tender free from lobbying from interest groups. If tender information was in the public domain, some parties might take the opportunity to approach and influence prospective tenderers. This would raise the issue of fairness in the tender process, as it is unlikely that parties wishing to influence would approach all tenderers equally.

Deciding not to make the tender documents public was based on a risk assessment of the potential actions of union groups and the effect that they may have on the tender process. The risk assessment was informed by the recent experience of the orchestrated media campaign undertaken by the Tramways Union that openly criticised GWRC and presented information to the public that was misleading and/or out of context regarding matters such as the contracting process, the new network changes, GWRC's fleet aspirations and the future of Supergold entitlements. The potential for the union to influence the tender process through similar statements was deemed to be a significant risk to the process which outweighed the public interest case for releasing the information.

In relation to meetings between GWRC and unions, councillors and officers have met at various times with representative unions, including Tramways, prior to releasing the tender. The statement that officers had previously not met with Richard Wagstaff himself prior to releasing the tender is correct.

**CTU issue:** GWRC asserts that the transfer of staff and protection of conditions is illegal – this is a similar argument we heard about the living wage and it took the unions to produce a considered legal opinion from Matthew Palmer QC to demonstrate it is not in fact a legal problem for the Council to be a good (indirect) employer and ensure continuity of employment and conditions, and pay more than the lowest price for that purpose. We have heard that the Council has a different legal opinion, but we've not seen it and would like the opportunity to do so.

s7(2)(g) - legal

**GWRC position:** GWRC has not asserted that mandating staff transfer and terms and conditions is illegal. [REDACTED]

s7(2)(g) - legal

[REDACTED]

GWRC is not seeking to choose the party with the lowest staff price. GWRC's objectives in running a competitive tender process for bus services is to enable the testing of best value for money, and is not to achieve a least cost outcome. In using the Price Quality Method (PQM) for tender evaluation, GWRC is able to reward higher quality proposals, striking a balance between quality and price. As part of the quality assessment, those operators who can demonstrate strong staff engagement and welfare will be rewarded.

**CTU issue:** GWRC asserts that NZTA and PTOM don't allow for the transfer of staff and protection of conditions. Union representatives have met with the CE of NZTA – Fergus Gammie – and discussed this very point. He informed us that there is no barrier for GWRC to protect staff conditions in the tender process from their point of view.

**GWRC position:** GWRC has not asserted that NZTA and PTOM don't allow for the transfer of staff and protection of conditions. Rather it is a combination of elements that contribute to providing value for money for ratepayers and the Crown. This is consistent with NZTA's response to the CTU. Fergus Gammie advised Richard that the decision was a matter for GWRC and that any such proposition for staff transfers would need to be considered in the context of the value for money offered. Fergus confirmed to Richard that NZTA will not interfere in the current tender process and risk probity challenge and/or a poor outcome. Fergus also expressed NZTA's view that it is the role of individual operators to engage with staff on terms and conditions; and it is not in the interest of operators to short-change staff when they are entering long term contracts where they will not want disputes.

Consistent with the response provided by Fergus to Richard, GWRC maintains that the mix of rates and conditions – which include base rates, penal rates, hours, shift structure, performance pay, entitlements, working conditions; all form part of the employee package and it is up to the combined efforts of the employer, employee and union to come up with the best mix that suits the employer and their employees. GWRC is not in a position to determine what the best mix of rates and conditions should be.

**CTU issue:** GWRC asserts for the transfer of staff and protection of conditions is too complicated – because there are too many unions/ IEAs/ new routes/etc. We understand that there are around 600 - 700 drivers currently, 450+ of which are in a single union (NZ Tramways), and another 50 are members of AWUNZ union. We also understand that the vast majority of the routes are remaining unchanged and only the Johnsonville to Island Bay North/South route is

## COMMERCIAL IN CONFIDENCE

problematic. This suggests that for all but one route terms and conditions of employment and drivers could be maintained as a condition of the tender. And for the remaining North/South route, there is an opportunity to simply find a solution by negotiating with the unions to get something sensible.

**GWRC position:** Advice that we have received indicates up to seven unions represent bus drivers and other employees in the Wellington region. The issue is complicated and intervention in the labour market would certainly impact value for money outcomes.

Addressing the North-South unit as highlighted by Richard – this route is currently operated by both NZ Bus and Mana. Between them, these two companies have separate collective agreements with four unions. Both have agreements with the Tramways Union, giving a total of five collective agreements. The five different agreements provide staff with different terms and conditions, so which terms and conditions would be the ones that we would require the new operator to offer?

For example, the NZ Bus collective has a very hierarchical pay structure, where pay rates generally reflect tenure. It has a high proportion of penal rates but includes split shifts which the union has been trying to negotiate away from. Mana on the other hand has a collective with a very flat rate structure. Most workers are on similar wages, which are higher than NZ Bus's lowest rate but lower than NZ Bus's highest rate. However Mana offers a different shift structure which appears to be more "employee friendly". Other operators, such as Go Bus, which was recently awarded a number of contracts in South Auckland, offers a similar approach to Mana, with comparable pay rates but includes additional performance payments for drivers who deliver good customer service and drive well. Such differences in approach makes it impractical for GWRC to specify which terms and conditions are the best and should be protected.

Furthermore, NZ Bus and Mana will retain a number of employees to deliver their direct appointed units in a similar geographical area. It is impractical for GWRC to intervene and specify which individual employees should be retained by NZ Bus and Mana and which should transfer to a new incoming operator.

#### **4.4 Conclusion**

We are focussed on making buses a more attractive option for customers and to be successful we need happy drivers that are secure in their job. The tendering process seeks a balance between price and quality – it is not about cost reduction.

Our new contracts with operators place more focus on on-time performance, reliability and information – the things that matter most to customers. To deliver on these requirements, operators need skilled, experienced and customer friendly drivers – and they will remunerate, through an optimal mix of pay and conditions, to get them. We are prescriptive in our tender and contract regarding the need for operators to demonstrate, and then deliver on,

## COMMERCIAL IN CONFIDENCE

good employee principles and practices. However we are not in a position to prescribe rates and conditions, as the mix of rates and conditions – which include base rates, penal rates, hours, shift structure, performance pay, entitlements, and working conditions; all form part of the employee package and it is up to the employer, employee and union to come up with the best mix that suits the employer and their employees.

We believe that the measures we have taken in the tendering and contracting process will safeguard driver welfare to the greatest extent practicable – and certainly more so than in any other PTOM tender in the country.

### **5. The decision-making process and significance**

Officers recognise that the matters referenced in this report have a high degree of importance to affected or interested parties.

The matters requiring decision in this report have been considered by officers against the requirements of Part 6 of the Local Government Act 2002 (the Act). Part 6 sets out the obligations of local authorities in relation to the making of decisions.

#### **5.1 Significance of the decision**

Part 6 requires GWRC to consider the significance of the decision. The term ‘significance’ has a statutory definition set out in the Act.

Officers have considered the significance of the matter, taking the Council's significance policy and decision-making guidelines into account. Officers recommend that the matter be considered to have low significance.

The subject matter of this report is in accordance with bus transport objectives set out in the RPTP which was developed with community input and been through a public consultation process in compliance with all statutory requirements.

Officers do not consider that a formal record outlining consideration of the decision-making process is required in this instance.

### **6. Engagement**

Engagement on this matter is unnecessary.

### **7. Recommendations**

*That the Council:*

- 1. Receives the report.*

COMMERCIAL IN CONFIDENCE

2. *Notes the content of the report.*
3. *Delegates to the Chief Executive, the execution of the agreement between GWRC and NZ Bus to enable continuity of services from July 2017 until the commencement of PTOM contracts.*
4. *Notes that in authorising the Chief Executive to execute the agreement between GWRC and NZ Bus the contract for the maintenance of the overhead power network may be extended two months until end of August 2017 or as a contingency four months until end of October 2017.*
5. *Notes the approach and rationale taken in the PTOM tendering process to safeguarding operator employee welfare to the extent practicable*