

Forward Plan reference number: FP/226/11/21

Report title: Enhanced Partnership Plan and Scheme	
Report to: Cabinet	
Report author: Councillor Lee Scott, Cabinet Member for Highways Maintenance and Sustainable Transport	
Date: 15 March 2022	For: Decision
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County Divisions affected: All	

1. Everyone's Essex

- 1.1 Buses benefit everyone. They enable people to get to work, school and training, to the shops, healthcare and to meet friends and family. They also help reduce congestion, improve air quality and mitigate climate change. Supporting a strong bus network is a core part of Essex County Council's (ECC) climate change commitments. Using your local bus service is an investment in your community, in the environment and in your local economy.
- 1.2 ECC and bus operators intend to work together to deliver improvements to bus services through an Enhanced Partnership between ECC and the bus operators. The Enhanced Partnership has two parts: a Plan which sets out the strategic objectives for the partnership and a Scheme which sets out the detailed commitments.
- 1.3 The proposals in the Enhanced Partnership Plan and Scheme provide a framework for quality, lower-carbon alternatives to car travel. We will work with the industry and operators to champion new bus technology in Essex and seek low carbon solutions for our routes. This will have a significant and cost-effective impact to lower carbon emission in the Essex transport sector and thereby support ECC's ambition to be net carbon neutral by 2030
- 1.4 By improving access to sustainable, affordable, and inclusive transport for Essex residents, the proposals will further the Everyone's Essex strategic priorities of:
 - A strong, inclusive and sustainable economy
 - Health, wellbeing, and independence for all ages
 - A good place for children and families to grow.
- 1.5 The proposals in the Enhanced Partnership Plan and Scheme provide a framework for quality, lower-carbon alternatives to car travel. This will have a significant and cost-effective impact to lower carbon emission in the Essex transport sector and thereby support ECC's ambition to be net carbon neutral by 2030.

2. Recommendations

- 2.1 Agree that the Enhanced Partnership Plan and Scheme at Appendix A is made and takes effect from 31 March 2022.

3. Background and Proposal

- 3.1 'Bus Back Better', the Government's national bus strategy, was published on 15 March 2021. It sets out a bold and ambitious vision for the UK's bus network and places significant expectations on Local Transport Authorities (LTA). These included:
- a request that by 30 June 2021 each authority issues a statement of intent to pursue one of two statutory routes provided to enhance the delivery of local bus networks:
 - an Enhanced Partnership (EP); or
 - Network Franchising
 - a request to issue a Bus Service Improvement Plan (BSIP) by 31 October 2021 setting out the Council's vision and timeframes for developing the local bus network in its area
 - a request to publish an Enhanced Partnership Plan and at least one Enhanced Partnership scheme by April 2022. Even if a franchise approach is adopted, an EP is still required as a first step. In January 2022 DfT revised the Enhanced Partnership request so that only a draft need be submitted by 1 April. Given the advanced state of the Essex Enhanced Partnership proposal, the recommendation is that ECC continues with the original timescale and make the scheme on 31 March 2022 as originally planned.
- 3.2 Cabinet decided on 22 June 2021 (FP/063/05/21) to pursue an Enhanced Partnership approach for Essex. The first expectation has therefore been met. Cabinet also agreed to the publication of Essex's Bus Service Improvement Plan on 15 October 2021 (FP/091/06/21), so the second expectation has also been met. This decision relates to the third expectation: the formal making of the Enhanced Partnership.
- 3.3 There is a prescribed process for delivery of an Enhanced Partnership as follows:
- Statement of intent to pursue an Enhanced Partnership – decision made by Cabinet June 2021
 - First statutory 28-day consultation with bus operators – completed 18 October 2021
 - Public consultation – completed 3 December (consultation responses considered as part of decision FP/217/11/21)
 - Second statutory 28-day consultation with bus operators – completed 1 February 2022
 - Enhanced Partnership is made – this decision.

- 3.4 An improved bus network contributes to carbon reduction by enabling more journeys to be made by bus rather than car. Modal shift (shifting your journey from car to bus or another sustainable mode of transport) represents the quickest and most cost-effective way of reducing carbon emissions from the transport sector.
- 3.5 In addition, buses contribute to the following ECC priorities:
- Help people in Essex prosper by increasing their skills
 - Enable Essex to attract and grow large firms in high growth industries
 - Target economic development to areas of opportunity
 - Help keep vulnerable children safer and enable them to fulfil their potential
 - Enable more vulnerable adults to live independent of social care
 - Improve the health of people in Essex
 - Help to secure stronger, safer and more neighbourly communities
 - Help to secure sustainable development and protect the environment
 - Facilitate growing communities and new homes.
- 3.6 The Enhanced Partnership Plan reflects the Bus Service Improvement Plan published in October 2021. This is consistent with central Government advice. Both documents set out ECC's strategy for improving the bus network. In developing the Enhanced Partnership Plan and Scheme, ECC has had regular discussions with all neighbouring LTAs, Southend Borough Council and Thurrock Council. The authorities have progressed with separate plans and schemes but intend to co-operate closely.
- 3.7 The Enhanced Partnership scheme, which is the legally binding part of the Enhanced Partnership, placing obligations on both ECC and operators, has the following key elements, where these are contingent on additional funding that is specified in the scheme:
- It exempts Transport for London commissioned services from the Enhanced Partnership scheme. This is because the wholly different model operated by Transport for London does not fit with all the obligations in the proposed scheme – for example branding. However, ECC and TfL have discussed the Enhanced Partnership proposals and further discussions will include whether a Transport for London specific scheme should be added (Enhanced Partnerships are very flexible and we expect to add to, amend, or increase the number of schemes).
 - It includes recently delivered and in-delivery schemes (annex A to the scheme) to ensure that investment in infrastructure forms a core part of the Enhanced Partnership. It will also allow partners to add obligations that link to the use of that infrastructure (such as vehicle standards) should partners agree that in the future.
 - It commits ECC to seek Government funding for the five Bus Back Better transformation projects set out in the Bus Service Improvement Plan.
 - It commits ECC and bus operators to work together to improve the quality and accessibility of information about bus services, which is one of the

significant barriers to modal shift and important for existing bus passengers too.

- It commits ECC and bus operators to work together on 12 district area network reviews to develop proposals for improving the bus network in each district. This will include everything from bus infrastructure to ticketing to service frequency to routes. The expectation is that further Enhanced Partnership schemes will be developed once these reviews have concluded.
- It commits bus operators to bring forward early Essex-wide ticketing improvements for multi-operator tickets and standardises a minimum age for child fares (with the flexibility to go above)
- It commits operators to reinvest a proportion of efficiency gains delivered through the Enhanced Partnership back into network and service improvements.
- It commits operators to consider the environmental standards of vehicles when investing.
- It sets a governance process for managing the Enhanced Partnership.

3.8 The final statutory operator consultation completed on 1 February 2022. No objections were received to the proposals. Three responses were received. Two indicated that operators were content with the proposals and one confirmed that the operator did not intend to object.

3.9 Where elements of the Enhanced Partnership Plan and Scheme may have an adverse impact on competition, ECC may only make the Plan and Scheme following consideration of the tests set in the Transport Act 2000.

3.10 Competition impacts will be considered lawful where both limbs of the stated test are met. The first limb requires that the measures must be made with a view to achieving one or more of the following:

- Securing improvements in the quality of vehicles or facilities used for or in connection with the provisions of local services
- Securing other improvements in local services of benefit to users of local services
- Reducing or limiting traffic congestion, noise, or air pollution.

Appendix A sets out the proposed Plan and Scheme links to the Bus Service Improvement Plan and the ECC organisational strategy. These elements describe the anticipated benefits of making the Enhanced Partnership Scheme.

3.11 The second limb of the test is that the effect on competition is or is likely to be proportionate to the achievement of that purpose or any of those purposes.

3.12 As a guide, the Competition and Markets Authority (“CMA”) has issued some high-level guidance based upon common themes in plans and schemes that have been submitted to date. Portions relevant to the proposed Plan and Scheme include:

- Appropriate consideration should be given to the state of competition without an Enhanced Partnership and how operators will be impacted, use of transition periods to mitigate impacts, and using outcome-based objectives. The proposed Plan and Scheme have considered the current state of the bus market (as evidenced in the Bus Service Improvement Plan), includes ongoing operator involvement, and includes outcome-based, rather than solely prescriptive, objectives.
- Standard livery and branding requirements should also include clearly visible operator brands with care given to impact on operators of cross-border routes. The branding proposal sits alongside operator branding. In moving forward, ECC will continue to be cognisant of cross-border operations.
- Appropriate consideration should be given to governance arrangements and how smaller operators will be represented. The ECC governance arrangements have dedicated representation for small operators.
- Exemptions should be defined by clear and objective criteria so there is confidence of appropriate application. The sole proposed exemption at this time is for Transport for London services, which is clearly defined.

3.13 The operator obligations established in the proposed scheme fulfil the first limb of the test in that each obligation is made with a view to achieving one or more of the objectives set out in 3.10. However, market operators would not normally be permitted to coordinate service delivery. The second limb of proportionality must also be met.

- **To improve customer information and make bus travel more accessible and attractive.** While there is an obligation to display a single brand, this measure does not remove any operator's own branding. Other actions are focused on providing customers with better access to information and stability of experience by coordinating service change dates and establishing a Bus Passenger Charter. These actions are proportionate in that they do not restrict types of changes that can be made; the coordination of change dates means that customers will have clarity on changes made to their whole journey at once rather than adjusting several times per year. The charter will establish minimum, not maximum standards. Therefore, there is minimal adverse restriction on competition.
- **To work jointly with ECC on the network, ticketing and vehicle standards review.** The proposed obligation is to work with ECC to review the bus services as a whole. The benefit to passengers of having a coordinated review with access to operator insight is significant. Measures are in place to protect confidentiality of individual bus operator information that may be shared as part of this process.
- **To make improvements to ticketing options and information.** This obligation covers both access to information as well as a standardising the minimum child fare age limit. The standardised minimum age limit is proposed with a view to enable older year 11 children to qualify and enable them to make the journey to school. This change will enable equality of access for children in this age/year category. The standardised age limit is proportionate to the benefit of enabling these journeys.

- **Reinvesting in an improved network.** This obligation is a type of in-kind return where the operators will reinvest some of the benefits they may receive from highway network improvements into the services they run. Service users will benefit from this reinvestment and it is proportionate to seek this type of return where public funds have improved the network that the operator's use.
- **Introducing cleaner vehicles.** This obligation introduces a minimum requirement, not a market standard requirement. This is a proportionate measure to reduce air pollution.

3.14 As the actions set out in the proposed Scheme are more fully developed, it will be necessary to continue to review the proportionality of the effect on competition in comparison to achieving the stated purpose.

4. Links to our Strategic Ambitions

4.1 This report links to the following aims in the Essex Vision

- Enjoy life into old age
- Provide an equal foundation for every child
- Strengthen communities through participation
- Develop our County sustainably
- Connect us to each other and the world
- Share prosperity with everyone.

4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:

- Providing lower carbon alternatives to car travel for journeys can have the most significant and cost-effective impact on carbon for the transport sector in Essex which is one of the largest contributors to carbon emissions.

4.3 This report links to the following strategic priorities in 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- A high-quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow

5. Options

5.1 Option 1: (recommended) formally make the Enhanced Partnership Plan and Scheme to come into effect from 31 March 2022

The proposed Enhanced Partnership Plan and Scheme at Appendix A have completed all the required statutory phases of the process. The measures proposed represent a balance between what can be agreed at pace, given the prescribed timescales and current commercial challenges, and what will

deliver real benefits for passengers and residents. No operator objections were received as part of the final 28-day operator consultation period. The recommended option is therefore to proceed to make the scheme.

5.2 Option 2: do nothing (not recommended)

ECC could choose not to pursue an Enhanced Partnership at all. This would risk the loss of substantial levels of funding to both operators and Essex as a result of the failure to meet the deadline prescribed by DfT. It would also mean that the benefits proposed for passengers and residents would not be delivered – or would be delivered more slowly or with less certainty. This option is therefore not recommended.

5.3 Option 3 (not recommended): delay the making of the Enhanced Partnership

Because the deadline for making an Enhanced Partnership has been extended by DfT ECC could delay the making of this one. This would mean ECC would have to repeat parts of the statutory consultation process and the delivery of benefits would be delayed. The recommendation is therefore that ECC proceed to make the scheme to allow the benefits to be delivered. Any additional obligations that are identified can be considered as part of future Schemes and added in due course.

6. Issues for consideration

6.1 Financial implications

6.1.1 The Cabinet decision (reference FP/091/06/21) in adopting the Bus Service Improvement Plan details the funding that has been made available to ECC in terms of developing local bus proposals as outlined in the National Bus Strategy and how these resources are being directed. Namely:

- £100,000 initially allocated as a flat rate to all LTAs
- £776,040 for 2021/22 allocated based on LTA population and Indices of Multiple Deprivation.

6.1.2 To date £627,000 of this funding has been committed to:

- Recruitment of additional LTA staff to undertake the work required;
- Procurement of consultants to support the work required;
- Other activities to support the development of LTA bus plans

6.1.3 The remaining £249,000 is expected to be applied to delivering the Enhanced Partnership arrangements.

- 6.1.4 The requirement for three additional headcount totalling £220,000 has been recognised as a pressure in the Annual Plan and Budget 2022/23 (reference FP/015/03/21) and therefore forms part of the revenue programme within the Annual Plan approved by Full Council in February 2022.
- 6.1.5 The DfT has not yet issued further guidance in respect of future funding. Indicatively, there may be two tranches of further funding; one allocated by formula to all local authorities based on the overall quality of their BSIP, together with other relevant information and a separate tranche of funding for specific larger schemes. However, funding availability has not yet been confirmed by the DfT and further announcements are awaited.
- 6.1.6 The proposed Enhanced Partnership Plan and Scheme sets out discreet packages of expenditure (capital and revenue) which ECC would aim to implement subject to affordability. There is the expectation within these bids that DfT fully fund new burdens arising from development of new services or enhancement of existing services. However, this presents a risk due to the competitive nature of the funding - analysis of bids will be weighted against the ambitions of other local authorities in their BSIPS. If there is a DfT funding shortfall, transformational projects may need to be scaled back accordingly unless alternative funding is identified.
- 6.1.7 Dependent on the outcome of funding bids for the transformational packages of work and adequacy of central government funding, ECC's ambitions within the BSIP may be constrained. This may instigate the need to consider future priorities and choices for funding within ECC. At this stage, it is difficult to expand on this in depth, however, for clarity, the future availability of funding for specific transformational projects that do not successfully achieve 100% DfT funding will require budgetary choices within future years MTRS.
- 6.1.8 Prior decisions (reference FP/063/05/21, FP/091/06/21 and FP/217/11/21) set out ECC's commitment to progress with the development of enhanced quality bus partnerships. The financial implications and associated risks for ECC of the Government's Bus Back Better strategy were set out within these decisions and remain relevant.

6.2 Legal implications

- 6.2.1 The production of an enhanced partnership and scheme has legally binding consequences on the council and on the bus operators and it is important that it is made following the correct statutory process.
- 6.2.2 In addition it is a requirement to consider competition law issues. The majority of the EP Plan and Scheme will not or is unlikely to have a significantly adverse effect on competition, for the purposes of Part 1 of Schedule 10 of the Transport Act 2000.
- 6.2.3 However some items in the EP Plan and Scheme, particularly related to standardisation, route timetabling, and ticketing, may to some extent have an adverse effect on competition. If these effects are significantly adverse then we

need to consider the tests in the Transport Act 2000. Any impact on competition is lawful if they are made with a view to achieving one or more of the following purposes:

- securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services
 - securing other improvements in local services of benefit to users of local services; and
 - reducing or limiting traffic congestion, noise or air pollution; and
- their effect on competition is or is likely to be proportionate to the achievement of that purpose or any of those purposes.

6.2.4 When developing proposals, continuing consideration must be given to the tests set out in Schedule 10 to the Transport Act 2000.

6.2.5 The proposals have been sent to the CMA for the purposes of consultation as required by section 138F of the Transport Act 2000. Receipt has been acknowledged and the CMA has provided some general guidance highlighting key themes they have identified for authorities to consider when progressing with enhanced partnerships schemes and plans. None of the proposals set forth are counter to these identified considerations.

6.2.6 To qualify as an enhanced partnership plan, the plan must:

- Specify the area and period to which the plan relates
- Analyse the local services provided in the area
- Set out policies relating to the local services in the area
- Set objectives pertaining to the quality and effectiveness of local services in the area during the stated period
- Describe how the enhanced partnership scheme is intended to assist in implementing the policies and stating the objectives
- Describe the intended effect of the enhanced partnership scheme on neighbouring areas
- Include information on whether the plan is to be reviewed, how it is to be reviewed, and dates by which reviews are to be completed
- Include plans for consulting local service user representatives with regard to how the plan and related scheme(s) are working

(section 138A(3)1 (4), and (8) Transport Act 2000).

6.2.7 An enhanced partnership scheme must specify:

- the area to which the scheme relates
- requirements for local services that have one or more stopping places in the area
- if, how, and by when reviews are to be completed

(sections 138A(5) and (7)).

6.2.8 The enhanced partnership plan may not be made without also making an enhanced partnership scheme (section 138A(12) TA). The recommended plan may not be made without making a scheme.

6.2.9 In determining whether to make the enhanced partnership scheme, ECC must be satisfied that the scheme will:

- Contribute to the implementation of the policies set out in the related enhanced partnership plan
- Contribute to the implementation of ECC's local transport policies and
- Either:
 - Bring benefits to those using local services by improving the quality or effectiveness of the services or
 - Reduce or limit traffic congestion, noise, or air pollution

(sections 138A(9) and (10) TA).

6.2.10 In establishing enhanced partnership plans and schemes, local transport authorities must cooperate with each other. (section 138A(13) TA). A relevant approach is addressed in the proposal and was described in prior report FP/063/05/21).

6.2.11 Before making an enhanced partnership plan, ECC must have regard to the desirability and appropriateness of making an enhanced partnership plan and scheme jointly with one or more local transport authorities. (section 138A(14) TA).

7 Equality and Diversity Considerations

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. Buses are disproportionately used by older and younger

people; those with a disability and women. Any improvements to the network will disproportionately benefit those individuals in these groups.

8 List of Appendices

Enhanced Partnership Plan and Scheme – Appendix A
EQIA – Appendix B

9 List of Background papers

Essex Bus Service Improvement Plan 2021 to 2026
Bus Back Better, the Government's national bus strategy