

Mayoral Combined Authority Board

21 March 2022

Delivering the South Yorkshire Enhanced Partnership

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| Is the paper exempt from the press and public? | No |
| <i>Reason why exempt:</i> | Not applicable |
| Purpose of this report: | Policy Decision |
| Is this a Key Decision? | Yes |
| Has it been included on the Forward Plan? | Yes |

Director Approving Submission of the Report:

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Executive Summary

This report sets out the result of the public and statutory consultation on the Enhanced Partnership Plan and Scheme for South Yorkshire and the recommended next steps. This report seeks approval to 'make' the Enhanced Partnership Plan and Scheme and outlines the principles of the supporting governance arrangements for the Enhanced Partnership Board, who will have responsibility for delivering the Enhanced Partnership Scheme.

What does this mean for businesses, people and places in South Yorkshire?

The proposals set out in the report strengthen the MCA's ability to develop and secure investment in a more effective public transport system in South Yorkshire. Entering an Enhanced Partnership gives access to potential additional funding sources that are expected to be made available by Government and enables collaboration between operators and the MCA through a legal framework. The Enhanced Partnership between the MCA, highway authorities and bus operators is a means of delivering the short-term actions set out in the MCA's recently published Bus Service Improvement Plan.

Recommendations

That the Board consider the results of the public and statutory consultation relating to the proposed Enhanced Partnership Plan and Enhanced Partnership Scheme for South Yorkshire, consider the findings of the Equality Impact Assessment and Competition Test and give approval to 'make' the Enhanced Partnership Plan and Enhanced Partnership Scheme on 1 April 2022.

Consideration by any other Board, Committee, Assurance or Advisory Panel

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14 June 2021
15 November 2021

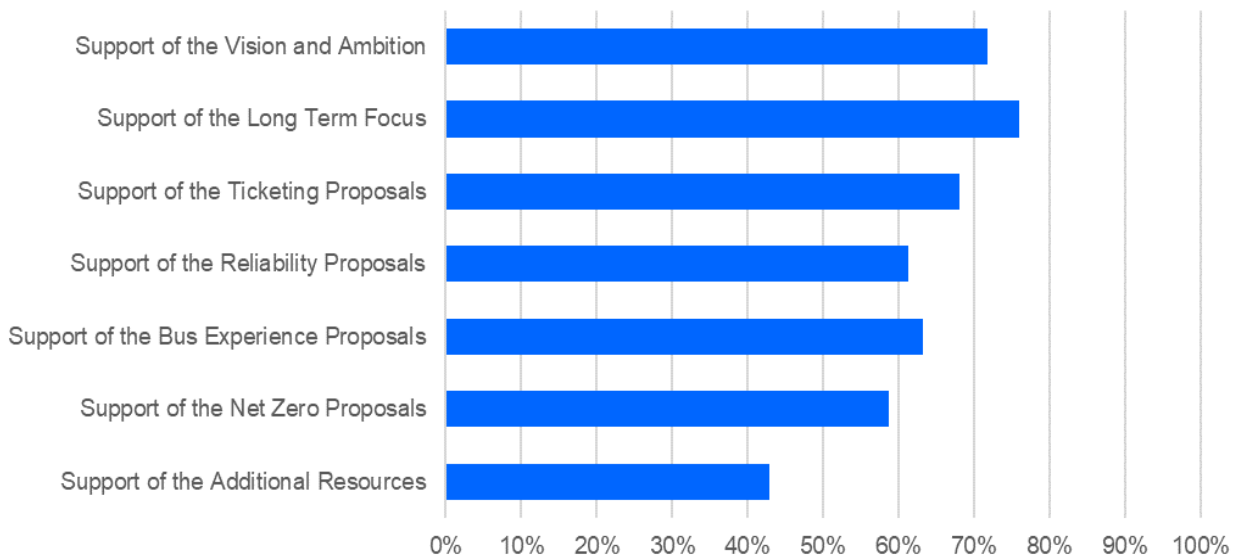
1. Background

- 1.1 The National Bus Strategy, "*Bus Back Better*", required all Local Transport Authorities (LTAs) to prepare a Bus Service Improvement Plan (BSIP) and enter statutory arrangements to be eligible for funding to support and transform bus services. This required LTAs to produce a BSIP by the end of October 2021 and an Enhanced Partnership was agreed by the MCA as the most appropriate means of delivering the initial set of improvements activities, as well as enabling access to future funding from April 2022. As yet, the level of additional funding to be made available by Government is unclear.
- 1.2 At its meeting on 15 November 2021, the MCA approved a draft Enhanced Partnership Plan (EPP) and Enhanced Partnership Scheme (EPS), which was then subject to a 28-day statutory period of bus operator objection. There was one formal objection received from bus operators during the 28-day period – from Arriva Yorkshire – principally relating to the treatment of cross-boundary services in the EPS.
- 1.3 As a result, the draft EPP and EPS approved by the MCA was then subject to a six-week period of public consultation that commenced on 7 January 2022. Views on the draft EPP and EPS have also been sought from a number of statutory consultees, including Transport Focus, and neighbouring authorities. The results of the consultation exercise have been analysed and there is broad public support for the proposed EPP and EPS.
- 1.4 The next stage in the process is the formal 'making' of the EPP and EPS for which this report seeks approval. Guidance on Enhanced Partnerships and the draft EPP identify a need to set up suitable governance arrangements initially in the form of a Partnership Board. This paper includes some of the key principles agreed with partners for establishing the Partnership Board for consideration by the MCA.

2. Key Issues

- 2.1 The process for implementing an Enhanced Partnership is set out in the Transport Act 2000, as amended by the Bus Services Act 2017. This requires statutory consultation with specific consultees and consultation with wider stakeholders following the statutory 28-day period for operator objection. In accordance with this requirement, a public consultation on the draft South Yorkshire EPP and EPS was conducted over a six-week period, commencing 7 January and concluding on 20 February 2022.

- 2.2 Following the conclusion of the public consultation, a report of the responses that were received has been prepared and included at Appendix A. The consultation was conducted primarily as an online consultation via the MCA and Travel South Yorkshire websites, with paper-based documents (the survey, consultation documents and publicity materials) made available at interchanges across South Yorkshire and on request. The consultation drew responses from 1,194 individuals and 22 ticked as groups, the latter representing more than 73,500 members. 97.6% were online responses with 2.4% paper responses received.
- 2.3 The consultation questions were designed to elicit people’s views on the bus service-related ambitions and the proposed approach to deliver these ambitions, as set out in the draft EPP and the EPS, and to identify the level of public confidence in an Enhanced Partnership arrangement to deliver these ambitions. The level of support for each of the ambitions, which is a combination of ‘Strongly Support’ or ‘Tend to Support’, ranged from a high of 76.0% for Long Term Focus to 42.9% for Additional Resources, as shown in the graph below.



- 2.4 Whilst the level of support varied between the different BSIP ambitions, the consultation indicated broad support for the vision and the activities to achieve it described in the draft EPP and EPS. It is therefore recommended that the MCA ‘make’ the Enhanced Partnership Plan and Enhanced Partnership Scheme on 1 April 2022.
- 2.5 Of the statutory consultees, the response from Transport Focus included an assessment of the draft EPP and EPS against the contents of their document “*What passengers want from BSIPs*”, which reflects their national research into bus passenger priorities for improvement with its robust methodology and samples. Many of the core measures feature in the draft EPP and EPS, although Transport Focus do recognise that further detail on commitments around fares and ticketing is subject to Government announcements on potential future BSIP funding.
- 2.6 Guidance states that responses to the consultation should be analysed thoroughly and any essential changes made to the proposals if they would improve BSIP outcomes. At this point, the responses received do not suggest any changes should be made to the draft EPP and EPS and so it is recommended that the Enhanced Partnership be ‘made’

without any changes. For completeness, the EPS is included at Appendix B and the table at Appendix C summarises the components of the EPS.

- 2.7 The Transport Act 2000 requires that a Competition Test as set out in Part 1 of Schedule 10 to the Act must also be applied to determine whether there is likely to be a significantly adverse effect on competition. The statement of application is included at Appendix D, which concludes that, at this point, there will be no significantly adverse effect on competition arising from the EPP and the EPS as recommended for approval.
- 2.8 In determining whether to proceed with the Enhanced Partnership, the MCA is also required to have due regard to the requirements of the Equality Act 2010. An Equality Impact Assessment (EIA) has been undertaken, as included at Appendix E, and this assessment shows that the EPP and EPS have positive equality implications under the Act.
- 2.9 The date of the 'making' of the Enhanced Partnership was indicated in the draft EPP and EPS as 1 April 2022 in order to qualify for potential future BSIP funding from Government. The date that the EPS comes into operation is 70 days after this date, that is, 10 June 2022. The EPS was drafted on this basis in accordance with guidance to enable effective transition and any bus operator registrations to be accommodated.
- 2.10 If events occur between the date of making of the EPS (1 April 2022) and the date for it coming into operation (10 June 2022), the legislation provides some flexibility for an LTA to reconsider this, and the MCA can decide to postpone the date that the EPS comes into operation if they think it is appropriate to do so. A new date for implementation would need to be approved. Such a postponement is subject to prior consultation with all operators of local bus services that would be affected by the postponement of the scheme in question and notice of the revocation would have to be given, along with a statement of reasons for the decision.
- 2.11 Within the EPP, an Enhanced Partnership Board is identified as the body that will oversee the delivery of the EPS. In developing any suitable governance arrangements to be put in place for such a Board, two important considerations have been identified:
- Accountability - Given the importance placed on improving bus services in the Transport Strategy and by the MCA, any arrangements should have a clear and accountable link to current MCA governance structures. This is also critical given that much of the capital funding to deliver the Enhanced Partnership will come through devolved funding allocations.
 - Representation - The National Bus Strategy has a stated intention to improve passenger representation on how bus services can and will be improved and BSIP Activity 20 includes a commitment to seek "wider passenger representation in the development of future bus policy" as well as the delivery of the BSIP.

In developing arrangements for the Enhanced Partnership Board, it is important that both accountability and representation are addressed.

- 2.12 In overseeing the delivery of the EPS, examples of the Board's remit include agreeing the annual work programme of the Partnership each year, considering any proposed changes to the work programme suggested by the Partners and being responsible for publishing the six-monthly update on progress towards the agreed targets. Whilst the Board will be expected to discuss fare rises and service changes, it is important to note that these issues will remain commercial considerations for the bus operators. The Board will also

act as a reference point for the annual update of the BSIP and provide feedback to the MCA as well as escalating risks that could impact on agreed budgets and delivery timescales.

- 2.13 Senior level representation from all parties is required for the Board to discharge these tasks, and numerical parity between the MCA (LTA) and bus operator members of the Partnership is also considered important in the spirit of partnership. Government guidance and the consultation response from Transport Focus indicates that it is crucial that the views of passengers are represented on the Board to ensure their needs are placed at the heart of bus policy.
- 2.14 The initial proposals for the Enhanced Partnership Board will therefore provide representation from the MCA (the Mayor or their nominated representative, the MCA Board Member with responsibility for transport as co-chair of the Transport and Environment Board and a Director of the MCA) and an equal number of bus operator representatives (covering both large and small operators). An independent representative, drawn from the South Yorkshire Bus Partnership Forum, will ensure that wider stakeholder community views are considered. These arrangements for the Enhanced Partnership Board will have a clear link to the MCA's Transport and Environment Board within the existing MCA structure (accountability), but also include the voice of bus users (representation).

3. Options Considered and Recommended Proposal

3.1 Option 1

The MCA consider the results of the public consultation, the findings of the Competition Test assessment and the EIA and agree to the 'making' of the Enhanced Partnership Plan and Enhanced Partnership Scheme on 1 April 2022.

3.2 Option 1 Risks and Mitigations

This option is recommended due to the original requirement in the National Bus Strategy for an Enhanced Partnership to be in place by April 2022 in order to access future BSIP funding and the desire to establish new partnership arrangements to drive improvements in bus services.

3.3 Option 2

The MCA do not agree to the 'making' of the Enhanced Partnership Plan and Enhanced Partnership Scheme as proposed.

3.4 Option 2 Risks and Mitigations

This option is not recommended since a failure to enter into an Enhanced Partnership could jeopardise access to potential additional BSIP funding and create reputational damage following the public consultation which was broadly supportive of the vision of the EPP and the activities contained within it, the first selection of which are included in the EPS.

3.5 Recommended Option

Option 1

4. Consultation on Proposal

- 4.1 Operator, statutory and public consultation have been carried out on the draft EPP and EPS proposals for the region, in line with the Transport Act 2000 and Government guidance regarding the creation of an Enhanced Partnership. Appendix A sets out the results of the statutory and public consultation.

5. Timetable and Accountability for Implementing this Decision

- 5.1 Should the Board decide to 'make' the Enhanced Partnership, this would come into effect on 1 April 2022 and the implementation of the Partnership would be on 10 June 2022. The Enhanced Partnership Board would meet for the first time in May following the Mayoral Election, ready to agree the work programme for the first year of the Partnership once established.

6. Financial and Procurement Implications and Advice

- 6.1 By entering Enhanced Partnership arrangements, the MCA is complying with the guidance and timeline set out by Government in order to access potential future BSIP funding, announced in the National Bus Strategy. The amount of funding available is currently unknown.
- 6.2 In accord with Government guidance, only measures and facilities for which there is confirmed funding available has been included in the EPS.

7. Legal Implications and Advice

- 7.1 Following compliance with consultation and notice requirements set out in the Transport Act 2000 (which have been fulfilled), Section 138G of the 2000 Act enables the MCA to make the EPP and EPS as proposed, or with modifications, if they consider it appropriate. The MCA must have proper regard to the consultation responses when determining whether to make the EPP and EPS. Any modifications to the proposals would require a further minimum 28-day operator objection period.
- 7.2 The EPP may not be made without also making an EPS.
- 7.3 The EPS may not be made unless the MCA is satisfied that the Scheme will contribute to the implementation of the policies set out in the related EPP and their local transport policies, as well as bringing benefits to persons using local services in the whole or any part of the area to which the EPS relates by improving the quality or effectiveness of those services or reducing or limiting traffic congestion, noise or air pollution. The EPP confirms that this is the case and outlines how the components of the EPS will achieve the objectives of improving bus services.
- 7.4 Making the EPS is subject to the competition test in Part 1 of Schedule 10 to the Transport Act 2000. This test has three elements:
- a) is there likely to be a significantly adverse effect on competition? If yes:
 - b) is the exercise of the function being done with a view to securing one or more of the three purposes specified (known as 'bus improvement objectives'), either:
 - to secure improvements in the quality of vehicles or facilities used to provide local services,

- to secure other improvements in local services of benefit to users of local services, or
 - to reduce or limit traffic congestion, noise or air pollution; and
- c) is the effect on competition proportionate or likely to be proportionate to the achievement of that purpose?

Following application of this test, as shown at Appendix D, it has been concluded that there will be no significantly adverse effect on competition arising from the making of the EPS as proposed.

- 7.5 Section 138I of the 2000 Act enables an LTA to postpone the date that a scheme comes into operation if they think it is appropriate to do so. This is, however, subject to consultation with all operators of local bus services that would be affected by the postponement of the scheme in question and notice of the revocation would have to be given giving a statement of reasons for the decision.

8. Human Resources Implications and Advice

- 8.1 None as a result of this report.

9. Equality and Diversity Implications and Advice

- 9.1 The EPP sets out the region's plans for improving accessibility across the bus network and on board our services and the EPS is the means by which these improvements will start to be delivered.
- 9.2 In making the decisions contained in this report, Members are reminded of their legal **duty** under Section 149 of the Equality Act 2010 to have *due regard* to the need to:
- I. Eliminate discrimination, harassment and victimisation;
 - II. Advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
 - III. foster good relations between those who share a protected characteristic and persons who do not share it.

In having due regard to the need advance the equality of opportunity between persons who share a protected characteristic and persons who do not, Members should have *due regard* to the need to:

- a. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b. take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c. encourage persons who share a relevant protected characteristic to participate in public life or in any activity in which participation by such persons is disproportionately low.

It is for Members to determine the weight to be given to the various factors that inform the decision, including the equality impacts and the legal duty under Section 149. However, based on the EIA prepared and included at Appendix E, it is considered that the EPP and EPS have positive equality implications under the Equality Act 2010.

10. Climate Change Implications and Advice

- 10.1 The EPP sets out the scale of change required to meet the region's net zero targets by 2035. At present the region does not have any zero emission buses and the EPP identifies the trajectory, costs and initial projects that could begin the transition from diesel to alternative fuels – some of these initial projects are included in the EPS.

11. Information and Communication Technology Implications and Advice

- 11.1 None as a result of this report.

12. Communications and Marketing Implications and Advice

- 12.1 None as a result of this report.

List of Appendices Included*

(*where applicable Equality and Diversity Impact Assessment, Climate Change Impact Assessment and Risk Management Strategy must be included)

- A Report of Public Consultation Responses
- B South Yorkshire Enhanced Partnership Scheme
- C South Yorkshire Enhanced Partnership Scheme Components
- D Transport Act 2000 Schedule 10 Part 1 Competition Test
- E Equality Impact Assessment

Background Papers

South Yorkshire Bus Service Improvement Plan (Initial Version) – October 2021

<https://southyorkshire-ca.gov.uk/explore/transport>