

**JOINT DECISION OF NORTH SOMERSET COUNCIL AND WEST OF ENGLAND MAYORAL COMBINED AUTHORITY**

**DECISION OF:** NORTH SOMERSET COUNCIL ASSISTANT DIRECTOR NEIGHBOURHOODS AND TRANSPORT AND WEST OF ENGLAND MAYORAL COMBINED AUTHORITY STRATEGIC DIRECTOR OF INFRASTRUCTURE AND STRATEGIC DIRECTOR OF CORPORATE RESOURCES.

**WITH ADVICE FROM:** NORTH SOMERSET COUNCIL HEAD OF TRANSPORT, AND WEST OF ENGLAND MAYORAL COMBINED AUTHORITY HEAD OF INTEGRATED TRANSPORT OPERATIONS

**DECISION NO: 2023-BSIP-06**

**SUBJECT:** EXTERNAL SUPPORT FOR ENHANCED PARTNERSHIP

**DECISION:**

To approve the allocation of £95K from the BSIP budget to cover legal and consultancy costs for the Enhanced Partnership, covering the period from 1 April 2023 to 31 March 2025.

**1. BACKGROUND:**

- 1.1. Enhanced Partnerships (EP) were first written into the Transport Act 2000 by the 2017 Act as one of three options available to local authorities to work with bus operators, alongside franchising and Advanced Quality Partnerships (AQPs). The Government's National Bus Strategy (2021) removed the option of AQPs, which had been the popular choice nationally, leading to an almost UK-wide transition to EPs. For authorities allocated Bus Service Improvement Plan (BSIP) funding, making an EP Plan and Scheme and updating it periodically, is a condition for the release of funding year on year.
- 1.2. The EP Plan and Scheme were set up through the statutory procedure laid out in Section 138 of the Transport Act 2000. The scheme is a legally binding set of commitments from Local Transport Authorities (LTAs), Local Highways Authorities (LHAs) and bus operators. This makes EP partners subject to legal challenge should they not comply with the commitments laid out in the EP, or if the EP is not set up or managed as required by law. To implement and operate this relatively new model for managing bus networks and services effectively, efficiently, appropriately for the local context and as Department for Transport (DfT) intended, legal and industry advice will be required.

- 1.3. The West of England EP was made on 9 February 2023 and its first governance meetings were held in March 2023. As the EP begins to operate, emerging legal questions are expected to arise that will need timely advice to resolve.
- 1.4. LTAs and bus operators are expected to agree reinvestment of operational cost savings resulting from LTAs investments (BSIP or other) into the local bus network. In its indicative funding letter (April 2022), the DfT called on an evidence-led approach to calculating the value of such operational savings to be developed and used to support these negotiations, with early considerations detailed in Appendix 6 of the EP Scheme. Guidance from DfT on operational savings calculations is yet to be published.
- 1.5. For more information on the BSIP programme, including contextual information, refer to Appendix 1.

## 2. REASONS:

- 2.1. For the reasons stated in the Background (section 1), expert advice is necessary to reduce legal risk for the LTAs, facilitate timely operation of the EP while in its infancy and deliver a key DfT deliverable; the EP negotiation mechanism and tool.

## 3. OPTIONS CONSIDERED:

- 3.1. Options considered are outlined in the table below:

	<b>Option</b>	<b>Cost</b>	<b>Outcomes</b>	<b>Suggestion</b>
A	In-house legal and commercial resource.	None	Internal expertise and capacity is limited. Inability to meet timescales for EP governance and BSIP could result in legal challenge.	Reject this option
B	External legal and consultancy support to end of EP project (March 2024).	£60K	Expert support available during EP project phase, supporting a smoother transition to business as usual (BAU) but leaving the EP, LTAs and BSIP outcomes vulnerable to risk while BAU funding of the EP is not yet secured.	Reject this option
C	External legal and consultancy support to end of BSIP funding period (March 2025).	£95K	Expert support available for the EP until BSIP funding ends (31 March 2025), by which time BAU funding of the EP should be resolved.	Approve this option

- 3.2. BSIP funding allocations are written into the EP Scheme and the annual release of BSIP funding by His Majesty's Treasury is dependent on updates to the EP Scheme. The ability to resolve legal questions arising from the EP in a timely manner can directly impact the LTAs' ability to draw down and spend BSIP funding.

- 3.3. It is a condition of BSIP funding that a negotiation tool is developed and written into the EP Scheme.
- 3.4. Having a robust EP negotiation mechanism and tool in place will give the LTAs evidence-led leverage to secure counterinvestment from bus operators towards BSIP outcomes, for instance, through lower fares, enhanced frequencies, or higher vehicle standards. North Somerset Council, being the first LTA nationally to deliver BSIP-funded bus infrastructure, is ready to negotiate the reinvestment of benefits to operators from its capital schemes.

**FINANCIAL IMPLICATIONS**

**4. COSTS:**

4.1. The total proposed spend, accounted for in BSIP Programme, is outlined in the table below:

<b>Item</b>	<b>2023/24</b>	<b>2024/25</b>	<b>Total</b>
Legal support	£25,000	£25,000	£50,000
Consultancy support to develop the EP negotiation mechanism and tool	£35,000	£10,000	£45,000
<b>Total</b>	<b>£60,000</b>	<b>£35,000</b>	<b>£95,000</b>

**5. FUNDING:**

- 5.1. These costs will be funded from the “Additional LTA staff resource for delivery and consultancy” allocation from the DfT for the delivery of the BSIP Programme.
- 5.2. Costs fit within the agreed programme budgets.

**6. LEGAL POWERS AND IMPLICATIONS:**

- 6.1. The West of England Mayoral Combined Authority (MCA) Strategic Director of Infrastructure and MCA Strategic Director of Corporate Resources are empowered to make the decision recommended in this Report pursuant to Appendix 12 (Scheme of Delegations) in the MCA Constitution.
- 6.2. Appointment of external legal advisers must be through MCA Legal Services, per the MCA Protocol for Appointment of External Legal Advisers which became effective on 4 September 2023.

**7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS:**

- 7.1. The West of England Climate and Ecological Strategy and Action Plan has three priority environmental themes: net zero carbon by 2030, nature recovery and climate resilience. The BSIP also has a target of 100% zero-emissions buses by 2035, whilst local plans will cover priorities such as air quality.

7.2. This legal and consultancy support could provide contract clauses to ensure the EP provides an opportunity to negotiate better environmental outcomes from the region’s bus services. This work should consider environment clauses for inclusion in the EP Scheme. Such clauses should aim to avoid pollution incidents and poor environmental behaviours, ensure statutory requirements are met, and to contribute to the delivery of regional and local environmental priorities including the provision of data eg on carbon emissions.

**8. CONSULTATION:**

- 8.1. BSIP Programme Managers and Heads of Transport (SROs – Senior Responsible Officers) at the LTAs have been consulted on and support the need for expert external advice and support for the EP.
- 8.2. The DfT recognises that external support is required to deliver the BSIP and, for many, new EP models and approve the use of BSIP funding for consultancy.
- 8.3. In the early days of the EP project, the possibility for Unitary Authorities (UAs) to provide legal support to the EP was explored. The UAs were not able to provide this due to capacity issues.
- 8.4. UAs have been involved in the development of the EP Scheme from inception and were sighted on the early work by KPMG summarised in Appendix 6 of the EP Scheme relating to EP negotiations. The UAs have since been involved in workshops to develop the EP negotiation mechanism and tool and Infrastructure Directors were updated on this work through the EP Board in June 2023. Directors noted the complex and technical nature of this work.
- 8.5. This Director Decision Notice was presented to the BSIP Programme Board in August 2023 for views. The board includes UA Transport Officers and was followed up with a suggestion from Bath & North East Somerset to re-direct the proposed spend to support bus services. The LTAs believe the spend is proportional to the requirements and risks it seeks to address.

**9. RISK MANAGEMENT:**

9.1. The risks are as follows:

	<b>Risks</b>	<b>Mitigations</b>
1	<p>Not approving the allocation of BSIP funding for legal and consultancy support to the EP risks:</p> <ul style="list-style-type: none"> <li>• LTAs being vunrable to legal challenge on EP matters and reputational damage should the LTAs be unable to respond appropriately and in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>• Seek approval for spend as proposed (recommended).</li> <li>• Bring LTA’s legal resource up to speed on EP and BSIP matters as much as capacity allows (recommended in parallel).</li> </ul>

	<ul style="list-style-type: none"> <li>• Reduced engagement and buy-in from bus operators and LHAs in the EP, affecting the potential to lock in additional commitments.</li> <li>• Reduced ability to deliver BSIP outcomes.</li> </ul>	
2	<p>Not approving the allocation of BSIP funding to support the development of an EP negotiation mechanism and tool risks:</p> <ul style="list-style-type: none"> <li>• DfT having reduced confidence in the LTA's ability to deliver, which may affect the release of Year 3 BSIP funding and allocation of future funding streams.</li> <li>• Reduced ability to undertake evidence-led negotiations that secure counterinvestment from bus operators resulting from LTAs investment.</li> </ul>	<ul style="list-style-type: none"> <li>• Seek approval for spend as proposed (recommended).</li> <li>• Continue with the status quo approach to negotiating with bus operators, until DfT guidance on operational savings calculations are published.</li> <li>• Wait to follow other EP's examples.</li> </ul>

## 10. EQUALITY IMPLICATIONS:

10.1. LTA's contracts used to engage external partners include a requirement to comply with the Equalities Act 2010 and not practice any form of discrimination on the grounds of colour, race, ethnic or national origins.

## 11. COMMERCIAL AND PROCUREMENT IMPLICATIONS:

11.1. Possible commercial and procurement impacts include:

- Reduced confidence among bus operators and stakeholders in the EP, resulting in a lack of engagement and inability to deliver BSIP objectives through EP Scheme commitments.
- Potential relationship or reputational damage for the LTAs.
- Exposure of the LTAs and LHAs to legal challenge.
- Reduction or removal of funding from DfT to support future initiatives.

**SIGNATORIES:**

**DECISION MAKER(S):**

**Signed: Gemma Dando, Assistant Director, Neighbourhoods & Transport, North Somerset Council**  
**Date: 21/12/2023**

**Signed: David Gibson, Strategic Director of Infrastructure, West of England Mayoral Combined Authority**  
**Date: 13/12/2023**

**Signed: Rachel Musson, Strategic Director of Resources, West of England Mayoral Combined Authority**  
**Date: 13/12/2023**

