

Cabinet Agenda

Date: Tuesday, 22nd August, 2017
Time: 2.00 pm
Venue: Committee Suite 1, 2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and in the report.

It should be noted that Part 1 items of Council decision-making meetings are audio recorded and the recording will be uploaded to the Council's website.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**
2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Questions to Cabinet Members**

A period of 20 minutes is allocated for questions to be put to Cabinet Members by members of the Council. Notice of questions need not be given in advance of the meeting. Questions must relate to the powers, duties or responsibilities of the Cabinet. Questions put to Cabinet Members must relate to their portfolio responsibilities.

The Leader will determine how Cabinet question time should be allocated where there are a number of Members wishing to ask questions. Where a question relates to a matter which appears on the agenda, the Leader may allow the question to be asked at the beginning of consideration of that item.

5. **Minutes of Previous Meeting** (Pages 5 - 8)

To approve the minutes of the meeting held on 26th July 2017.

6. **Safer Routes to Primary Schools** (Pages 9 - 16)

To consider a report on safer parking for communities around schools.

7. **Transport for the North - Membership of Cheshire East Council** (Pages 17 - 52)

To consider a report which sets out the process and governance arrangements for Transport for the North to become a statutory body, and which seeks Cabinet approval for Cheshire East Council to confirm its membership of Transport for the North.

8. **Transfer of the Fairerpower Contract to The Skills & Growth Company** (Pages 53 - 64)

To consider a report that proposes that the Fairerpower Contract is transferred to, and modified by, The Skills & Growth Company to enable the expansion of the Fairerpower scheme in the North West and Midlands Region to support the Council's energy objectives and ensure the scheme is viable and sustainable in the longer term.

9. **Exclusion of the Press and Public**

The report or a part thereof relating to the remaining item on the agenda has been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matter may be determined with the press and public excluded.

The Cabinet may decide that the press and public be excluded from the meeting during consideration of the item pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 and the public interest would not be served in publishing the information.

PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT

10. **Transfer of the Fairerpower Contract to The Skills & Growth Company** (Pages 65 - 76)

To consider the appendix to the report.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Cabinet**
held on Wednesday, 26th July, 2017 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor Rachel Bailey (Chairman)
Councillor D Brown (Vice-Chairman)

Councillors A Arnold, P Bates, J Clowes, JP Findlow, P Groves, D Stockton
and G Hayes

Councillors in Attendance

Councillors S Corcoran, M Deakin, L Durham, S Gardiner, B Moran,
G Williams and B Walmsley

Officers in Attendance

Kath O'Dywer, Peter Bates, Mark Palethorpe, Jan Willis, Dan Dickson, Sean
Hannaby and Rachel Graves

21 APOLOGIES FOR ABSENCE

Apologies were received from Cllr L Wardlaw.

22 DECLARATIONS OF INTEREST

There were no declarations of interest.

23 PUBLIC SPEAKING TIME/OPEN SESSION

No members of the public present wished to speak.

24 QUESTIONS TO CABINET MEMBERS

Councillor S Corcoran asked, in relation to the government money for
business rate relief, if the Council would follow the example of Cheshire
West and Chester Council by setting up a scheme to direct the money
towards small and local businesses.

Councillor P Bates responded that this had been discussed and proposals
for a scheme were being put together.

Councillor M Deakin spoke in relation to the installation of a shared space
scheme in Alsager and referred to consultation on social media in which
objections had been raised. He asked that Cabinet support him in
objecting to the shared space scheme and in pursuing an alternative traffic
management strategy that was safer for the residents of Alsager.

Councillor J Clowes responded that she was aware of concerns about shared space schemes in general and would want to know more detail. Councillor D Brown referred to a report by a House of Lords special committee, which had recommended that shared space schemes should not be used any more. Cllr P Bates referred to a hybrid system in Congleton which was acceptable to all users.

25 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 11 July 2017 be approved as a correct record.

26 CHESHIRE EAST LOCAL PLAN

Cabinet considered a report on the adoption of the Cheshire East Local Plan.

The report recommended that Council approve the adoption of the Cheshire East Local Plan Strategy as part of the Council's Statutory Development Plan. If Council decided to adopt the Local Plan Strategy, the adoption would be effective from the date the decision was made (i.e. 27 July 2017). From that date, the Local Plan Strategy would immediately form part of the Statutory Development Plan, replacing the a number of 'saved' policies from the existing Local Plans.

The Strategic Planning Board and the Cabinet had each been invited to consider the report and make recommendations to Council.

The minutes of the Strategic Planning Board's meeting of 24 July 2017 setting out the Board's recommendations to Council were circulated at the meeting.

RESOLVED

That Council be recommended to adopt the Local Plan Strategy, as submitted to the Secretary of State on 20 May 2014, subject to the inclusion of:

- (i) the Main Modifications recommended by the Inspector necessary to make the Plan sound (Appendix 1c);
- (ii) the schedule of Additional Modifications (Appendix 2).

27 TOUR OF BRITAIN

Cabinet considered a report on a proposal to secure the hosting of a stage of the Tour of Britain 2018.

Following the success of the Tour of Britain Stage 3 in 2016, the Council had expressed an interest in hosting a future stage of the cycle race. The report set out a proposal to secure a stage in 2018 and outlined the potential benefits and an approach to hosting the cycle race, utilising lessons learnt in 2016.

RESOLVED:

That Cabinet

- 1 agree that a submission should be made to secure the hosting of a stage of the Tour of Britain 2018 in the Borough.
- 2 authorise the Executive Director Place, in consultation with the Portfolio Holder for Highways and Infrastructure, to
 - a) engage with the event organisers to host a stage of the Tour of Britain in 2018;
 - b) negotiate and enter into a contract with the organisers on terms to be agreed by the Director of Legal Services;
 - c) to take reasonable and prudent steps to attract sponsorship, negotiate and enter into sponsorship arrangements to off-set costs incurred;
 - d) to enter into any other legal agreements required for the delivery of the event (e.g. trademark agreement);
 - e) exercise various other ancillary powers (road closures for example).
- 3 approve the use of the Investment (Sustainability) Earmarked Reserve for expenditure that is required in 2017/18 (£70K).
- 4 note that the budget requirements for the costs in 2018/19 will need to be built into the Medium Term Financial Strategy (£230K).

28 DELAYED TRANSFER OF CARE REVIEW

Cabinet considered the report of the Health and Adult Social Care and Communities Overview and Scrutiny Committee, which detailed the key findings and recommendations following a two day spotlight review of Delayed Transfer of Care across Cheshire East.

RESOLVED:

That Cabinet

- 1 receive the Health and Adult Social Care and Communities Overview and Scrutiny Committee's Report;
- 2 note the recommendations, as detailed on page 24 onwards of the Report.

The meeting commenced at 9.30 am and concluded at 10.32 am

Rachel Bailey (Chairman)

Cheshire East Council

Cabinet Report

Date of Meeting:	22 August 2017
Report of:	Frank Jordan, Executive Director of Place
Subject/Title:	Safer Routes to Primary Schools
Portfolio Holder:	Cllr David Brown, Highways and Infrastructure

1. Report Summary

- 1.1. The 2010/11 School Census reveals that 21% of high school pupils are driven to school, with the figure for primary schools, which are principally in residential areas, being significantly higher at 45%. Since this Census the impacts of parking around our primary schools has been highlighted as an issue by some residents and communities owing to the pressure it places on the local highway infrastructure.
- 1.2. The Corporate Overview and Scrutiny Committee set up a Task and Finish Group (“the Group”) to review Safer Parking for Communities around Schools in November 2015. The Group’s remit was to review the approach to safer parking for communities and identify initiatives the Council could consider to improve the outcomes for local communities around schools.
- 1.3. The Group’s findings and recommendations were presented to Cabinet on 11 July 2017 and it is intended that Cabinet will respond to the Group’s findings at its October meeting.
- 1.4. Whilst Cabinet is yet to respond formally to the Group’s report, it is noted that the Group highlighted the need to have proactive policies and a programme of work to address both the root causes of congestion and parking around primary schools as well as action to manage its direct impacts.
- 1.5. In terms of any proposed policy changes in response to the Group’s findings, it is recommended that this is undertaken as part of the refresh of the Council’s Local Transport Plan. This will ensure that the Council has a coherent programme of activity that will all contribute to reducing the impacts of school travel.
- 1.6. In terms of potential work programmes, whilst the findings of the Group are still under consideration, it is recognised that the Group recommended

consideration of introducing off highway parking and drop-off areas within schools.

- 1.7. This type of measure could have both positive and negative impacts, which need to be properly evaluated to inform the approach to policy development in this area.
- 1.8. However, Cabinet are asked to note that discussions and work has been undertaken with the Berkeley Academy ("the Academy") to deliver such a project.
- 1.9. Cabinet are also asked to note that in the climate of a policy vacuum on such initiatives whilst the work progressed, an undertaking has been given to the Academy that the Council will make a £70,000 contribution to the scheme. That undertaking must be honoured.
- 1.10. The purpose of this report is to seek Cabinet agreement to delegate to the Executive Director of Place the authority to make that grant funding award subject to conditions that are designed to maximise the benefits of that scheme on the formation of policy in this area.
- 1.11. This report also outlines an approach to the formation of policy which would enable similarly innovative and bespoke proposals to come forward to address congestion issues at other primary schools.

2. Recommendation

That Cabinet:

- 2.1. Notes the outline approach in respect of Safer Parking for Communities around Schools in advance of its full response to the Scrutiny Committee's Task and Finish Group recommendations.
- 2.2. Notes that discussions and work has been undertaken with the Berkeley Academy and that an undertaking has been given that the Council will make a £70,000 contribution for an off highway parking facility.
- 2.3. Authorises the Executive Director of Place to make an award of grant funding of up to £70,000 (to be funded by virement from the highways and linked access fund capital programme allocation) to the Berkeley Academy to be used for the purposes of piloting a safer drop off facility at the school in order to inform the development of Council policy in this area, upon such terms the Executive Director of Place considers prudent.
- 2.4. Authorises the Executive Director of Place in consultation with the Director of Legal Services and the Portfolio Holder for Corporate Policy and Legal Services to dispose of any requests received for reimbursement of additional expenses reasonably and properly incurred by the Academy which is considered the Council may be liable to reimburse flowing from action taken in connection with the undertaking given.

3. Reasons for Recommendation

- 3.1 As part of the Group's work all Ward Members were sent a questionnaire to ascertain their views on parking problems around schools. 27 responses were received, of which 96% raised specific issues outside schools. The most common issues related to managing the impacts around schools.
- 3.2 The Group did propose the reintroduction of a Safer Routes to Primary School Programme and the preparation of a Sustainable Modes of Travel to School Strategy. This work would involve a more active interface with schools with the aim of encouraging them to develop School Travel Plans and to promote sustainable travel options as an alternative to travelling to school by car.
- 3.3 The Council is currently in the process of refreshing its Local Transport Plan. The Plan should address travel to school and ensure that the policy incorporates an integrated approach to walking and cycling that also reflects the needs of journeys to schools. The refresh would also provide the platform to engage with the schools. As such it is proposed that a consultation takes place to invite primary schools to submit proposals to the Council that would improve sustainable travel and reduce the school impact on its local community.
- 3.4 If the schools' work programmes are to be accelerated by the Council it is worth reflecting on experience from elsewhere which suggests that successful outcomes are more likely to be achieved where schools have an incentive in the form of the ability to bid against a grant funding allocation made available to implement proposals in a Travel Plan that might not otherwise be affordable. In this circumstance more schools get engaged in developing and running a Travel Plan. A supporting Investment Plan could be made available to bid against in order to deliver measures in and around schools that are identified in school Travel Plans as likely to deliver demonstrable changes that would encourage children and parents to adapt their travel behaviours to benefit the community.
- 3.5 To support this process, Cabinet could consider as part of its overall response to the Group's recommendations making an allocation from the 2017/18 and 2018/19 Local Transport Plan capital programme to support a Safer Routes to Primary School Investment Plan.
- 3.6 A set of criteria and guidelines would have to be developed to enable any proposals submitted by schools to be prioritised. Where proposals involve spend within a schools boundary it is recommended that Academy schools will be expected to make at least a 50% contribution to the cost of the works.
- 3.7 It is envisaged that such a consultation could involve the Council writing to all the primary schools in the Borough informing them of the introduction of such a programme. In this letter it is proposed that schools are invited to develop or update their School Travel Plans and submit an expression of

interest which outlines proposals that they believe address the significant impacts travel to school has on their neighbouring community, in particular measures that promote travel by sustainable modes of transport.

- 3.8 The criteria which will be used to assess these proposals would be attached to a letter to the schools. These criteria will clearly set out what outcomes the funding is being directed towards and how bids will be prioritised into an annual programme.
- 3.9 The Task and Finish group recommended consideration of introducing off highway parking and drop-off areas within schools as an example of one such proposal. This type of measure could have both positive and negative impacts. They could relieve parking and congestion problems around a school but they could also encourage more children to be driven to school. Equally such a measure could be expensive to deliver if pursued at a number of schools each year and would significantly impact on other highway programmes. Further developing, implementing and managing such a facility would take considerable time and resource and as such place a significant burden on a school.
- 3.10 In certain circumstances where other measures have been implemented and on going resources still have to be spent on managing the impacts, such a measure may provide an alternative long term solution. Indeed at some newly built schools where drop off facilities have been implemented it is considered that the impacts of the school travel and parking have been contained.
- 3.11 As such a pilot project could be considered which can test the community benefits and disbenefits described above and inform whether this type of measure should be included as part of the Council's overall policy approach.
- 3.12 If the pilot concluded an overall beneficial outcome, it could be advised that this measure would only be supported from the programme when all other School Travel Plan options have been exhausted and that a set of implementation and management requirements have been satisfied and delivered by a school.
- 3.13 In relation to this initiative, the Council has held several meetings with The Berkeley Academy in Wistaston. The school has delivered measures in the past, particularly to encourage walking to school. Furthermore, the school has put in place the necessary consents to deliver this type of facility.
- 3.14 Given the policy vacuum and the work of the Task and Finish Group, in April 2016 an undertaking was given to the school for the Council to make a £70,000 contribution to the scheme. This contribution must be honoured but would be subject to the Academy providing at least 50% match funding to complete the works as proposed at paragraph 3.6 and other terms as the Executive Director of Place may consider prudent.

4. Other Options Considered

- 4.1. Parking outside schools at drop-off and pick-up times is a recognised, long standing problem at many sites in the Borough.
- 4.2. It is not just a safety issue but a problem of traffic congestion and nuisance to local residents. The issue is complex and varies by location and school. Over many years attempts by local authorities to tackle the issues have been implemented, with varying degrees of success.
- 4.3. The Department for Education (DfE) funded a school travel planning programme which ended in 2011. As at March 2010, all primary, secondary and special schools in Cheshire East had a completed travel plan. However, since the DfE funding ceased, there have been limited resources to sustain this development
- 4.4. The Council's current proactive initiatives being delivered are therefore predominantly focussed on managing the impacts of traffic outside schools and include:
 - Development and implementation of parking restriction schemes
 - Advisory 20mph zones outside all schools in Cheshire East
 - Road Safety education which is delivered annually to all schools in Cheshire East
 - Parking Enforcement Officer visits to all schools in Cheshire East
 - Keep Clear markings are refreshed and enforced at all schools
 - Provision of guidance on the website to assist schools in developing travel plans and safer routes to primary schools projects
- 4.5. Potential further initiatives to tackle the parking issues recommended in the Scrutiny Task and Finish group report include:
 - Support for discussions with schools around the provision of safer school parking or drop-off zone
 - Re-introduction of the Safer Routes to Primary Schools programme
 - Preparation of a Sustainable Modes of Travel to School Strategy*
 - Amendments to the school road safety education programme provided by Cheshire Fire and Rescue Service*
 - Introduction of walking to schools with heroes campaign
 - Increased parking enforcement*

** Already being delivered*

- 4.6. Cabinet is yet to respond to the Group's recommendations. It could decide to note the recommendations of the Task and Finish group and carry on with its current response to managing the impacts of school travel on the local communities. If this approach were adopted this would not require the development of any policies such as the reintroduction of a safer routes to primary school programme or seeking to develop safer school parking and drop off facilities in discussion with our local schools.
- 4.7. However, given both the scale of the problems being reported by local ward councillors at some schools and the links to other Corporate policy areas, such as health and well being, it is considered that, on balance, Cabinet should consider adopting a broader approach to addressing school travel through the Local Transport Plan refresh.
- 4.8. Cabinet could await the outcome of policy development in this area before piloting any projects in schools, however in light of the undertakings given to and work undertaken by the Academy, in conjunction with the anticipated benefits on informing policy development in this area, it is recommended that the proposed grant award be made and that pilot scheme progressed in parallel with wider policy formation.

5 Background/Chronology

- 5.1 Set out in the body of the report.

6 Wards Affected and Local Ward Members

- 6.1 All wards and ward members are potentially affected by the proposal.

7 Implications of Recommendation

7.1 Policy Implications

- 7.1.1 This report is recommending the development of a policy approach to articulate the actions which the Council could utilise to achieve a reduction in the number of children driven to school, supported by the implementation of a pilot scheme. This supports the Council's Local Transport Plan (LTP) to ensure a sustainable future by increasing the use of sustainable modes of transport, as well as the Council's Cycling Strategy which seeks to enable more people to cycle safer, more often and with confidence for everyday and leisure journeys.

7.2 Legal Implications

- 7.2.1 The proposal to make a contribution to the Berkeley Academy scheme amounts to the award of a grant because whilst there are considered to be community benefits arising from the same, it is nevertheless a

funding contribution to a wider scheme to be undertaken by the Academy on its private land.

7.2.2 As a grant funding contribution in excess of £50,000 rule E.25 of the Council's Finance and Contract Procedure Rules require the decision to be taken (or expressly delegated) by full Cabinet.

7.2.3 It is understood that a claim has been intimated in respect of wasted costs of the Academy flowing from actions taken in connection with the undertaking given. Delegated authority to dispose of any such costs reasonably and properly incurred and payable should be sought for expedience.

7.2.4 The proposal itself would require a number of consents relating to the proposed use of the land which will be addressed in the ordinary course of events if the proposal proceeds.

7.3 Financial Implications

7.3.1 The funding for this grant will come from a virement of part of the existing capital funding allocation for the Linked Highways and Access Fund.

7.4 Equality Implications

7.4.1 Better managed school parking and promotion of more sustainable travel modes could benefit all children although it is recognised that children with particular needs may have to be accommodated separately. All proposals submitted by schools will be subject to an equality impact assessment before they are agreed.

7.5 Rural Community Implications

7.5.1 Given the larger catchment areas associated with rural schools, these do create a tougher challenge in terms of encouraging modal shift towards walking and cycling.

7.6 Human Resources Implications

7.6.1 None.

7.7 Public Health Implications

7.7.1 The Public Health England 'Everybody Active, Every Day' strategy recognises that walking and cycling are good for our physical and mental health and the many ways the built and natural environment impacts on the choices people are able to make. It emphasises that by developing 'active environments' that promote walking and cycling, we can help to create active, healthier, and more liveable communities.

- 7.7.2 Walking to and from school helps children achieve the recommended government targets of physical activity. Physically active children are more alert, ready to learn, do better in tests and achieve better grades than children who are driven to school.

7.8 Implications for Children and Young People

- 7.8.1 Modern lifestyles and concerns regarding children's safety and security have led to increased car use as a mode of traveling to school. Measures to increase walking and cycling as a mode of choice need to be evaluated, together with management measures to encourage greater use of sustainable travel modes. Incorporating physical activity into a child's daily routine is a good way to promote a healthy and more active lifestyle.

7.9 Other Implications

- 7.9.1 None.

8 Risk Management

- 8.1 Lack of a formal Policy approach could lead to increased pressure on existing services in managing the impacts of traffic outside schools.

9 Access to Information/Bibliography

- 9.1 The Corporate Overview and Scrutiny Task and Finish group report and covering Cabinet Report, July 2017.

10 Contact Information

Contact details for this report are as follows:

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Cheshire East Council

Cabinet

Date of Meeting:	22 August 2017
Report of:	Frank Jordan, Executive Director for Place
Subject/Title:	Transport for the North – Membership Of Cheshire East Council
Portfolio Holder:	Cllr David Brown, Highways and Infrastructure Portfolio

1. Report Summary

- 1.1. This report sets out the process and governance arrangements for TfN to become a statutory body, and seeks Cabinet approval for Cheshire East Council to confirm its membership of TfN.
- 1.2. Transport for the North (TfN) is the proposed sub-national transport body (STB) serving the north of England; comprising all the northern city regions, local transport authorities and Local Enterprise Partnerships. Members were briefed at Informal Cabinet on 30th August 2016 (Appendix 1) and a letter of support (Appendix 2) from Cheshire East Council was provided to TfN to progress to this stage. The Secretary of State for Transport has now responded to TfN with a proposed timescale for making statutory regulations (Appendix 3) and Cheshire East Council are being asked to consent to the making of statutory regulations that will underpin the creation of the sub-national transport body.
- 1.3. The TfN Partnership Board has adopted a vision for economic transformation, with transport as a key enabler for growth. Transport for the North's spring report sets out this vision as follows:

“Our shared vision is for a vibrant and growing economy across the north of England which builds on its unique economic strengths, attracts and retains the brightest and best talent, and plays globally in terms of its research, development, and business activities. The North will be one of the world's most competitive regions, playing host to successful and innovative global and local companies, offering its skilled workforce to businesses, and using its advanced transport connectivity to link clusters of thriving businesses – across the North, across the United Kingdom, and globally”

- 1.3 Since the Cabinet Briefing in 2016, TfN has made significant progress in putting in place preparatory work that will enable it to fulfil the role of a sub-national transport body, including:

- Production of a draft set of statutory regulations for consideration by the Secretary of State;
- Preparation of an evidence base to support a new Pan-northern Transport Strategy covering the strategic road and rail networks across the north
- Developing the business case for enhanced investment in the north's strategic transport infrastructure, a major roads network and Northern Powerhouse Rail.
- Development of proposals for a pan-northern Smart Ticketing architecture for public transport
- Mobilisation of new rail franchises for both Northern and Trans-Pennine (under the auspices of Rail North).

1.4 It is considered that Transport for the North and Rail North have both demonstrated what benefits can be derived from all parts of the North of England working together to achieve transformational improvement in both transport infrastructure and services across the North of England and beyond to neighbouring regions. It is considered vital that Cheshire East Council takes up membership of Transport for the North to ensure that the Borough continues to secure improvements to its transport infrastructure and services.

2. Recommendation

2.1 Cabinet is recommended to:

- i. Note progress made by Transport for the North in securing Government approval to become a statutory Sub-National Transport Body.
- ii. To agree that the scope of the powers which are being sought by Transport for the North is acceptable to Cheshire East Council, these being:
 - a) The preparation of a Northern Transport Strategy;
 - b) The provision of advice on the North's transport priorities, as a Statutory Partner in the Department's investment processes; and
 - c) The coordination of regional transport activities, (such as smart ticketing), and the co-management of the TransPennine Express and Northern rail franchises through the acquisition of Rail North Ltd..
- iii. To note and consent to Rail North (which the Council is already a member of as agreed by Cabinet at its meeting held on 2nd September 2014) being subsumed into Transport for the North and that its powers to specify and let rail franchises for the North of England are proposed to be unaffected by it being subsumed into Transport for the North.
- iv. To note that the transfer of Rail North Limited to TfN so that it can be subsumed within TfN will require the signing of a new Rail Franchise

Management Agreement with TfN. This agreement will replicate as far as possible the current Rail North Limited Members Agreement.

- v. To agree that Cheshire East Council should continue its payment of the current funding for Rail North Limited to TfN after its inauguration.
- vi. To agree that Cheshire East Council should become a member of Transport for the North – this will require the making by the Secretary of State of Regulations under section 102E of the Local Transport Act 2008 to establish Transport for the North as a Sub-National Transport Body.
- vii. To note that the taking up of this membership is subject to the making of regulations to be put before Parliament in the Autumn of 2017.
- viii. To delegate the final decision to accept the regulations and confirm the Council's membership of Transport for the North to the Chief Executive in consultation with the Leader of the Council, the Portfolio Holder for Transport, the Executive Director for Place and the Director of Legal Services, once the final version of the regulations is available – this is anticipated to be in September 2017.
- ix. To agree that Cheshire East Council will appoint a Council Member to represent the authority on the TfN Board and that this representative will seek prior Cabinet or Council consent to any decision which is to be made by voting of TfN's Constituent Members, where this decision:
 - a) requires the unanimous decision of TfN members,
 - b) affects the transfer or sharing of functions,
 - c) makes any financial commitment for Cheshire East Council or is a matter affecting the land ownership or land interests of Cheshire East Council.

3. Other Options Considered

- 3.1. The option of not joining Transport for the North has been considered. This option has been discounted as not joining TfN would be likely to reduce the Council's influence over major strategy and investment decisions affecting the North's transport networks. Being outwith TfN is expected to reduce the chances of Cheshire East receiving its fair share of funding awarded for major transport improvements across the North of England.

4. Reasons for Recommendation

- 4.1. Getting transport right is central to achieving the Northern Powerhouse ambition which is itself central to a successful UK industrial strategy. A world class transport system linking towns and cities across the North will create a unified economic area, attracting new business, improving productivity in the North and thereby rebalancing the UK economy.

- 4.2. There has been long-term under-performance of the Northern economy when compared with other parts of the UK. There is a significant economic performance gap between the North and the rest of the UK economy – a difference in income of £4,800 per person in 2014, compared with the national average, and £22,500 compared with London. Having been on a downward trend since the early 2000s, the gap has widened since the 2008/09 recession.
- 4.3. Productivity accounts for the largest proportion of the ‘performance gap’, driven by an underdeveloped skills base, under-investment by the private sector and low enterprise rates. This has worsened since the recession, in part due to out-migration of skilled workers to the southern regions where employment prospects are better.
- 4.4. Poor connectivity is central to understanding the economic challenges of the North. There is disproportionately low investment in the North compared with London and other city regions across Europe. A series of studies have shown how investing in transport infrastructure can unlock the economic potential of the North.
- 4.5. The Independent Economic Review of the Northern Powerhouse shows the scale of the benefits to the UK of closing the productivity gap. Advances in productivity, driven by key sectors of digital technologies, health innovation energy and advanced manufacturing have the potential to transform the North of England’s economy adding £97 billion and 850,000 jobs by 2050.
- 4.6. Without Transport for the North, the North has no way of agreeing strategic priorities, with the responsibility for transport divided over many organisations at different geographical levels. This has made it hard to properly consider and prioritise the right strategic transport interventions to transform economic growth at the regional scale. As a result, the North has been unable to speak with one clearly evidenced voice to Government on its transport priorities in Spending Rounds or rail and road investment plans.
- 4.7. In 2014 Local Transport Authorities and Local Enterprise Partnerships across the North of England came together in partnership with the Department for Transport and the National Transport Agencies to form Transport for the North (TfN). Together they have developed an ambitious pan-northern transport strategy to drive economic growth in the North. The purpose of TfN is to transform the transport system of the North of England and the aim of TfN is to plan and deliver the improvements needed to truly connect the region with fast, frequent and reliable transport links, driving economic growth and creating a Northern Powerhouse.
- 4.8. The ambition of TfN over time is to achieve significant devolution of transport responsibilities for the North of England and specifically to:
 - Develop and deliver a multi-modal, integrated strategic transport plan that drives transformational economic growth in the North;

- Set the strategic outcomes, outputs and priorities for the North of England's rail infrastructure and strategic road network; and
 - Determine specifications and contracts for future rail service franchises in the North of England.
- 4.9 As part of this programme of improvements and devolution of transport strategy to a more local level these Local Transport Authorities came together to form Rail North Limited a company whose objectives include the management of the TransPennine Express and Northern Rail Franchises on behalf of the Secretary of State for Transport.

5. Background/Chronology

- 5.1. Cheshire East Council has played a full role in both TfN and Rail North and has worked closely alongside the Cheshire and Warrington Local Enterprise Partnership and Cheshire West and Warrington Councils to best represent Cheshire and Warrington's interests. To date, the Council has been represented at TfN's Partnership Board by Cllr Terry O'Neill (Warrington Council) and Christine Gaskell (Cheshire & Warrington LEP) under arrangements agreed by the Cheshire & Warrington Local Transport Body. Cllr David Brown, Deputy Leader of Cheshire East Council has provided Cheshire & Potteries representation on the Rail North Board. Subject to confirmation of the statutory regulations that will establish TfN as a sub-national body, the Council will need to agree to an updated constitution which is expected to review arrangements for Member authorities representation.
- 5.2. In October 2016, with the agreement of all the Constituent Authorities, TfN submitted a proposal to the Secretary of State for Transport that TfN should be established as the first Sub-national Transport Body (STB) under the provisions of section 102E of the Local Transport Act 2008 as amended by the Cities and Local Government Devolution Act 2016.

The 19 Constituent Authorities of TfN are:

- Greater Manchester Combined Authority
- Liverpool City Region Combined Authority
- North East Combined Authority
- Sheffield City Region Combined Authority
- Tees Valley Combined Authority
- West Yorkshire Combined Authority
- Cumbria County Council
- Lancashire County Council
- North Yorkshire County Council
- Blackburn with Darwen Unitary Authority
- Blackpool Unitary Authority
- **Cheshire East Unitary Authority**

- Cheshire West and Chester Unitary Authority
- Warrington Unitary Authority
- City of York Unitary Authority
- East Riding of Yorkshire Unitary Authority
- Hull Unitary Authority
- North Lincolnshire Unitary Authority
- North East Lincolnshire Unitary Authority

5.3. The Secretary of State has now formally responded to the Proposal (Appendix 3) and has indicated that he is minded to make Regulations creating TfN as the first Sub-national Transport Body with the following functions:

- The preparation of a Northern Transport Strategy;
- The provision of advice on the North's priorities, as a Statutory Partner in the Department's investment processes;
- The coordination of regional transport activities, (such as smart ticketing), and the co-management of the TransPennine Express and Northern rail franchises through the acquisition of Rail North Ltd.

5.4. Regulations are currently being drafted which will reflect the terms of the Proposal in so far as they have been agreed by the Secretary of State and will give TfN the statutory powers to carry out these functions.

5.5. It will be these regulations which then form the basis of secondary legislation to be taken through the Parliamentary approval process. These regulations are current only available in draft form (unpublished) at the time this report is submitted for approval. It is proposed that the decision as to whether to accept the final regulations should be delegated to the Chief Executive and Council Leader, in consultation with the Portfolio Holder for Transport, the Executive Director of Place, and the Director of Legal Services.

5.6. Before the Secretary of State may make these Regulations by putting them before Parliament, each of the Constituent Authorities must consent to the making of the Regulations. It is anticipated that the Secretary of State will send a letter to each of the Constituent Authorities in September 2017, requesting formal consent to the making of the Regulations. The letter will request a response within 14 days.

6. Wards Affected and Local Ward Members

6.1. All Wards in Cheshire East.

7. Implications of Recommendation

7.1. Policy Implications

7.1.1. A Draft Constitution has been drawn up which includes provisions which reflect and implement the Submission Proposal. The Constitution contains the following Provisions:

Articles

7.1.2. The Articles sets out the statutory basis for TfN and its membership. TfN is made up of representatives from the 19 Constituent Authorities who are the Transport Authorities for the North of England. TfN will operate through a delegation to its Chief Officers of all its functions other than those specifically reserved to TfN.

7.1.3. The Articles contains an overview of the functions of TfN and the major partnerships through which it will exercise these functions in particular its role as Statutory Partner in determining priorities for road and rail investment and its role in managing the TransPennine Express and Northern Rail Franchises.

7.1.4. TfN will establish a Partnership Board with representatives of all the Constituent Authorities, representatives of the other Authorities who were members of Rail North Limited, representatives of the 11 LEPs and representatives of the Department for Transport and of other Government Agencies. This Board will be responsible for setting the strategic agenda for transport in the North of England.

7.1.5. TfN will also engage with its partners in the Rail North Partnership Board setting the strategic priorities for rail investment and in the Highways North Board setting the strategic priorities for road investment.

7.1.6. TfN will co-manage the TransPennine Express and Northern Rail Franchises through a Committee which will include representatives of all the other Authorities who were members of Rail North Limited.

7.1.7. The TfN Constitution will require the unanimous agreement in the exercise of voting rights to be adopted by TfN once the Regulations are made through the parliamentary process becoming Secondary Legislation.

Voting

7.1.8. The Articles provide for weighted voting in accordance with a matrix which gives the representative of each Constituent Authority a vote which is weighted to reflect the population of the area of the Constituent Authority.

7.1.9. A decision to approve the Budget, to approve the Constitution or to adopt the Transport Strategy will require an increased majority of 75% of the weighted votes and a simple majority of the Members of TfN.

7.1.10. It is proposed that TfN should be entitled to co-opt Members and that such co-opted Members should have voting rights. It is further proposed that those Authorities which are members of Rail North Limited but which will not be a Constituent Authority of TfN (the Rail North Authorities) should each be entitled to appoint a representative to be a co-opted Member of TfN with a right to speak and vote on rail franchise matters. The voting in relation to rail franchise matters shall be weighted in accordance with a voting matrix which reflects the voting arrangements for Rail North Limited.

7.1.11. Further information on the proposed governance arrangements for TfN is provided in Appendix 4 and Appendix 5 of this report.

7.2. Legal Implications

7.2.1 The Cities and Local Government Devolution Act 2016 provided for the establishment by secondary legislation of sub-national transport bodies. A Sub-National Transport Body is a Body Corporate and consists of two or more combined authorities and/or local authorities.

7.2.2 The process for establishing a Sub-National Transport Body is that the constituent authorities (the combined authorities and/or relevant local authorities) are required to make a joint proposal to establish a Sub-National Transport Body and all constituent authorities are required to consent.

7.2.3 The Transport for the North proposal can only be submitted with the agreement of the authorities which, if the Sub-National Transport Body is established, will be its constituent authorities. The Transport for the North proposal sets out the powers and functions that are being requested by Transport for the North. These include general functions, functions to be exercised concurrently with local authorities, and powers devolved from Government.

7.2.4 The proposal does not include a mechanism for any local authority functions to be carried out by Transport for the North instead of a local authority.

7.2.5 The proposal includes a requirement for constituent authorities to make statutory contributions towards the costs of Transport for the North apportioned on the basis of resident population. The proposal also sets out the decision-making and voting arrangements that Transport for the North will adopt.

- 7.2.6 TfN is funded by the DfT until 2020 and there are currently no provisions for funding thereafter and it is envisaged that they will bid for renewed central funding or seek funding from constituent members.
- 7.2.7 For Cheshire East, any funding contribution would be limited under the current proposals to a maximum of 2.4 % of the costs, proportionate to the weighted voting rights of CEC. A decision to invoke such statutory funding rights would require a unanimous decision of the TfN membership. It is recommended therefore that any representation appointed to the TFN Board has restricted voting in respect of any matter requiring a unanimous decision or involving any financial commitment and or an transfer or discharge of rights, interests, functions or responsibilities of this Council (see paragraph 2.1 (ix) above).
- 7.2.8 The submission of a proposal by the authorities seeking to form a Sub-National Transport Body is required before the Secretary of State can make regulations to form such a body. If the Secretary of State accepts the proposals, the Council would then be asked to consider and provide consent to the regulations that would establish Transport for the North as a Sub-National Transport Body.

Consent to the Regulations

- 7.2.9 Regulations are being drafted to create TfN as a Sub-National Transport Body. Before the Secretary of State may make these Regulations each of the Constituent Authorities must consent to the making of the Regulations. It is anticipated that the Secretary of State will send a letter to each of the Constituent Authorities at the beginning of September 2017 requesting formal consent to the making of the Regulations. The letter will request a response within 14 days.
- 7.2.10 TfN have prepared a Frequently Asked Questions briefing which provides a summary of the powers it is seeking – this is attached for information as Appendix 5.

7.3 Financial Implications

- 7.3.1 There is currently a contribution payable by Cheshire East to Rail North Limited, for 2017/18 this amounts to some £772.58 per annum – this figure is determined on Cheshire East's share of rail passenger numbers travelling on the Northern and TransPennine rail franchises across the North of England (2.1%). This is unaffected by the securing of Sub National Transport Body status by TfN.
- 7.3.2 There is no requirement for financial contributions to be paid to become a member of TfN. Any contributions made would be on a voluntary basis – it is not anticipated that these will be required in the foreseeable future.

- 7.3.3 One of the main objectives of TfN is to look for the North of England to secure a greater proportion of available funding to deliver improvements in transport provision across the whole of this area. This may lead to opportunities for the Council to look to secure funding for schemes, potentially in partnership with TfN – where this is anticipated to have any financial implications this would be subject to a separate approval process.
- 7.3.4 TfN is funded through government grant until 2020 and future funding beyond that has not been established. However, whilst decisions will remain the responsibility of the government at the time, establishing TfN in statute enhances the case to Government for long term financial support to TfN.
- 7.3.5 At present the Constituent Authorities and the Rail North Authorities make the Rail North Support Payment and the Authorities in receipt of rail administrative grant make the Rail North Supplemental Payment to support Rail North Limited. Upon TfN assuming the responsibilities and functions of Rail North Limited these payments will continue to be made to TfN to enable it to continue to support rail franchise management.
- 7.3.6 The Submission Proposal provides that the Constituent Authorities may all agree to contribute to the costs of TfN in the future. However a decision to raise such contributions and the amount would require a unanimous decision of the Constituent Authorities.
- 7.3.7 Unless unanimously agreed otherwise, the apportionment of any financial contributions would be determined on the basis of the Resident Populations of each of the Constituent Authorities.
- 7.3.8 TfN would be entitled to accept voluntary contributions towards its costs from any of the Constituent Authorities. Typically, these contributions may take the form of in-kind support from member organisations, such as where particular staffing skills and knowledge may be offered to assist TfN in delivering its services.

7.4 Equality Implications

- 7.4.1 Should Transport for the North be successful in leveraging greater investment into the North of England's transport networks, this is expected to have beneficial implications for the opportunities arising from enhanced connectivity across the North. The strategy to promote economic growth will be expected to contribute to reducing the impacts of economic and social inequality, including with reference to opportunities available in other regions of the UK.
- 7.4.2 At this stage, no specific equalities issues have been identified relating to TfN's future investment programmes. As would be expected, TfN's

intended programmes will be accompanied by a full Equalities Assessment in due course.

7.5 Rural Community Implications

7.5.1 Transport for the North is expected to have beneficial implications for the opportunities arising in Rural Communities from enhanced connectivity across the North. The strategy to promote economic growth will be expected to contribute to reducing the impacts of economic and social isolation, including with reference to opportunities available in other regions of the UK.

7.5.2 At this stage, no specific rural issues have been identified relating to TfN's future investment programmes. As would be expected, TfN's intended programmes will be required to take account of the Social and Distribution Impacts that arise, and relevant assessments will be completed at the appropriate time.

7.6 Human Resources Implications

7.6.1 There are no human resource implications identified.

7.7 Public Health Implications

7.7.1 There are no public health implications identified.

7.8 Implications for Children and Young People

7.8.1 There are no Children and Young People implications identified at this stage.

7.9 Other Implications (Please Specify)

7.9.1 None at this stage.

8 Risk Management

8.1 TfN maintains a detailed Risk Register where all identified risks are monitored and actions taken as agreed to mitigate these risks. This is unaffected by the securing of Sub National Transport Body status by TfN.

8.2 The risks to Cheshire East Council of not joining TfN would be likely to include a reduction in the Council's chances of being able to receive its fair share of funding awarded for major transport improvements across the North of England.

8.3 Additionally, were any Local Transport Authority not to consent to the making of these regulations, this is likely potential prevent TfN securing

statutory status owing to constraints of Parliamentary time. The impact would significantly reduce TfN's ability to influence Government on future funding support for the North of England. It would also put at risk the future of Rail North and the opportunity to secure further improvements to rail services via the Northern and TransPennine franchises.

- 8.4 Consenting to the making of these Regulations will ensure that Cheshire East Council is able to influence the content and delivery of strategically important transport improvements, through the TfN constitution and governance. This will assist the Council in seeking resources to address the need for transport improvements within the Borough.

9 Access to Information/Bibliography

- 9.1 Documents are held on file at:

\\ourcheshire.cccusers.com\East\LTPEast\TfN\MembersAgreement

10 Contact Information

Contact details for this report are as follows:

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CHESHIRE EAST COUNCIL

BRIEFING NOTE: Informal Cabinet

Date of Meeting: 30th August 2016

Report of: Andrew Ross, Director of Infrastructure & Highways

Subject/Title: TRANSPORT FOR THE NORTH

Portfolio Holder: Cllr David Brown, Deputy Leader of the Council; Highways & Infrastructure Portfolio Holder

1.0 Report Summary

- 1.1 This briefing provides Members with an update on the emerging proposals for Transport for the North (TfN) and seeks backing for the Portfolio Holder to send a letter of support to TfN which will be sent on to the Government.

2.0 Background

- 2.1 TfN is the proposed sub-national transport body (STB) to serve the north of England comprising all the northern city regions, Local Enterprise Partnerships, Highways England, Network Rail and HS2 Ltd. It has been commissioned by the Government to drive forward the delivery of transformational Northern Powerhouse transport investment projects.
- 2.2 To date the Council has been represented on the Transport for the North Partnership and Executive Boards by Warrington Borough Council and the through the Cheshire & Warrington Enterprise Partnership.
- 2.3 Following a major Independent Economic Review, the TfN Partnership Board has adopted a vision economic transformation, with transport as a key enabler. Transport for the North's spring report sets out this vision as:

"Our shared vision is for a vibrant and growing economy across the north of England which builds on its unique economic strengths, attracts and retains the brightest and best talent, and plays globally in terms of its research, development, and business activities. The North will be one of the world's most competitive regions, playing host to successful and innovative global and local companies, offering its skilled workforce to businesses, and using its advanced transport connectivity to link clusters of thriving businesses – across the North, across the United Kingdom, and globally".

2.4 From the perspective of Cheshire East, the key pan northern transport issues that are of sufficient influence to be prioritised in a Northern Transport Strategy include;

- HS2 Crewe Superhub,
- HS2 Northern Gateway Growth Strategy, including strategic road links to M6 at Jct. 16 and Jct 17.
- Rail connections to be improved to support the Northern Gateway Outcomes from the SEMMMS re-fresh linked to Airport growth and access plans,
- Support on cross-boundary dialogue with Midlands Connect (the sub-national transport body for the Midlands) and,
- Support on negotiations for strategic rail franchises including Intercity West Coast, London Midland and Wales franchises.

It is proposed that TfN should aim to support the prioritisation of these strategic transport improvements. TfN have provided a template letter of support to local authorities (see Appendix 2). Members are asked to consider whether a letter of support for TfN's bid for powers from Cheshire East should also reference these projects.

3.0 Transport for the North Priorities

3.1 The Transport for North Partnership Board has considered a draft business plan for 2016/17. The Business Plan priorities are:

- To establish TfN as a statutory body through the Cities and Local Government Devolution Act 2016.
- To successfully position TfN as the client body for Government on setting investment on pan-northern transportation infrastructure and services in the north of England, over and above the needs of individual authorities. This means that TfN will, in coordination with local transport authorities, become the client body, and through its transport strategy, to: -
 - i. Set the specification and development of strategic rail infrastructure across the north of England for Network Rail's Control Period 6;
 - ii. Set the specification of highway infrastructure across the north of England's Strategic Road Network i.e. Highways England's motorways and trunk roads Route Investment Strategy process;
 - iii. Ensure successful management of the Northern and TPE rail franchises through Rail North Ltd and
 - iv. Deliver Smart and Integrated ticketing options integrated across The North.

4.0 Transport for the North Governance and Legislation

- 4.1 Royal Assent has been granted for changes to primary legislation to allow TfN to progress to its aim of being a statutory STB by the end of 2016.
- 4.2 The Act to establish TfN as a STB does not create the powers for it to operate. The Act enables the functions of the STB to be derived from a limited number of sources including:
- General functions provided for in section 102H of the Local Transport Act 2008, including the preparation of a transport strategy and powers to advise, coordinate and make proposals;
 - Other public authority functions (i.e. including functions of the Secretary of State) to be exercisable either instead of by, or jointly (but not concurrently) with the public authority;
 - Local transport functions (i.e. functions of Combined Authorities, Local Transport Authorities or Passenger Transport Executives) exercisable instead of by, or concurrent with, the Combined Authority, Local Transport Authority or Passenger Transport Executive.
- 4.3 It is envisaged that an effective TfN, in its final form, would have the responsibility to set the strategic pan northern transport objectives for Highways England and Network Rail, in addition to fully devolved responsibility for specifying franchised rail services. This model follows similar principles of devolution in Scotland and Wales where transport investment priorities are determined by devolved bodies, rather than national government, according to economic priorities.
- 4.4 The above would require certain powers that are currently exercised by central government to be exercised by TfN instead. These powers include:
- Setting the objectives and priorities for the Rail Investment Programme;
 - Determining the franchise rail service specification; and
 - Setting and varying the objectives and priorities for the strategic Road Investment Programme.
- 4.5 It is envisaged that the journey to fully devolved status would include an interim 'co-decision' making role with government as the capacity and capability of TfN matures. This is similar in the way that Rail North and government's relationship has evolved.
- 4.6 It is not intended that the use of any concurrent powers would reduce the powers available to local areas, and the intention is that TfN would only exercise these powers with the explicit agreement of the Local Transport Authority in question. It is important that this limitation is contained within the Order.
- 4.7 The elements of the constitutional arrangements upon which TfN would be established are also being developed and would include the following key principles:
- Voting arrangements;
 - Integration of Rail North;
 - Local accountability and operating model; and

- Funding.

It is proposed that TfN could seek statutory contributions with the unanimous support of its constituent authorities.

- 4.8 Because northern transport authorities differ so much in their size, it is proposed to introduce a weighted system of voting. TfN anticipate that issues should be resolved by consultation and consensus, rather than through formal voting, but it is a required element of the statutory arrangements that some provision is made for voting if required. There are a number of options for voting structures, but an appropriate option could be to assign weights based on population. This would avoid any bias between urban and rural authorities, and reflect the ambition that TfN should be representative of all the citizens of the North of England. Safeguards to protect both the largest and smallest members would be required.
- 4.9 It is proposed that most issues be determined on a simple majority of votes in line with the appropriate metrics once consensus is agreed. However, certain decisions such as agreeing the strategy and budget would require a super-majority vote.
- 4.10 It is proposed that Rail North would be incorporated within TfN once it has been established as a SRB. Rail North Partnership Board currently operates on a model of voting weighted by the share of each authority in the overall rail patronage of those services. It is proposed that, for Rail North matters, this voting mechanism is retained.
- 4.11 The Council will be consulted on the proposed governance and legislation proposals for TfN. It is suggested that key considerations during this consultation will be, as follows:
- Local Transport Authorities must be consulted on the draft order/scheme/detailed proposals in advance of any submission to Government.
 - TfN should articulate clearly the case for any concurrent powers over the (more inclusive) model of each Local Transport Authority exercising its own power to the same effect.
 - Private sector gets little mention, and LEPs should be asked to consider whether they consider the business engagement proposals adequate.

In addition, more Local Transport Authority /LEP involvement and debate in the development of TfN would be beneficial and TfN should be asked to consider how to facilitate this as the current quarterly meeting schedule is insufficient to ensure sufficient clarity, transparency and buy-in.

- 4.12 Further details on the proposed governance arrangements for TfN as a sub-national body are included in the Appendices to this paper.

5.0 Additional information

The attached weblink is to the Transport for the North web pages, which provide further information on the Partnership and strategic priorities of TfN.

<http://www.transportforthenorth.com/>

6.0 Recommendations

- a. That a letter is sent from the Portfolio Holder supporting the direction of travel for Transport for the North in seeking powers as a statutory sub-national body for pan-Northern transport. The letter of support should reference the priority projects of importance to Cheshire East (see Paragraph 2.4).
- b. That any future proposals to transfer of powers from the Council to Transport for the North, including any proposals for concurrent powers, be subject to full consultation and agreement through a report to full Cabinet.
- c. That Cheshire East Council, in the absence of a Combined Authority for Cheshire and Warrington, shall be represented at any meetings of the TfN Partnership Board.

Appendices

TfN proposals for a Statutory sub-national transport body; paper from TfN Executive Board, June 2016.

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Our ref: DB/RH/842

5 September, 2016

Dear David

Transport for the North – Sub-National Transport Body Proposal

I write with reference to the Sub-National Transport Body proposal which was endorsed by Transport for the North's (TfN) Partnership Board and the Association of Rail North Authorities on the 9th June. I am now pleased to confirm, on behalf of Cheshire East Council, our support for the submission of this proposal to Government and we welcome the further opportunities for consultation on the draft regulations in the autumn.

Through Rail North and collaboration with DfT, transport authorities across the North have recently demonstrated the economic successes and improvements for transport users that can be achieved through a co-ordinated approach to strategic transport planning and investment, informed by local expertise, analysis and decision making. We firmly believe that the establishment of Transport for the North will provide the region with the necessary tools to realise further transformational enhancement for transport networks across the North and drive economic growth and productivity.

The prize for the North and the UK as a whole is significant; a better performing, more unified economy that is able to compete with the most successful global regions. As the recent Independent Economic Review has identified, with the right investment and focus on the region's prime economic capabilities, and development of the strategic transport infrastructure to support them, we could collectively add 1.56 million new jobs by 2050 and an expected productivity (GVA) improvement 15% higher than currently which, in itself would represent a major step-change for the North. To do so will require long term planning and investment periods, robust and stable governance, supported by funding commitment from HM Treasury.

From the perspective of Cheshire East, the key pan northern transport issues that support the economic ambition and should be influenced through cooperation with TfN and the group of pan-Northern local authorities include;

- HS2 Crewe Superhub
- HS2 Northern Gateway Growth Strategy, including strategic road links to M6 at Junctions 16, 17 and 18 and improved regional rail connections
- A SEMMMS re-refresh linked to Airport growth and access plans
- Support on cross-boundary dialogue with Midlands Connect (the sub-national transport body for the Midlands) and,
- Support on negotiations for strategic rail franchises including Intercity West Coast, London Midland and Wales franchises.

We look forward to continued support in pursuing the prioritisation of these strategic transport matters.

We look forward to a continued strengthening of the partnership between the region's transport authorities, through the formation of Transport for the North as a statutory body, and the opportunities this affords to identify to Government, the strategic transport investment priorities that will benefit the region's businesses and local communities.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Brown', written over a light blue horizontal line.

Councillor David Brown

Deputy Leader of the Council & Portfolio Holder for Infrastructure and Highways



Department
for Transport

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Thank you for your proposal to formally establish Transport for the North (TfN) as a Sub-national Transport Body (STB), which I received on 14th October 2016. I am pleased to be able to respond and confirm my agreement to establishing TfN as a statutory body.

I would like to take this opportunity to congratulate you on all that TfN and its northern partners have achieved to date. Collaboration on this scale, between 19 local authorities, is a clear indication of the passion and willingness of the North's leaders to embrace opportunities and to work together to deliver the Northern Powerhouse. As a single voice for the North TfN's establishment as a statutory body will be essential in developing an increasingly prosperous future for the region, and for ensuring that transport interventions not only improve journeys but are also targeted at unlocking the economy's true potential.

As you highlighted in your letter to me, your early work has done much to develop the evidence base for the Northern Powerhouse initiative. I noted that your Independent Economic Review has demonstrated not only the current economic importance of the North to the UK as a whole, but also captured its as-yet untapped potential. The opportunity for an additional 850,000 new jobs and an extra GVA of £97bn by 2050 means improved opportunities for all, higher living standards, and a more balanced economy. This is a prize I know we are all committed to achieving.

With respect to the STB Proposal that you submitted I am satisfied that the necessary statutory tests have been met, and that TfN meets the qualifying criteria to be established as an STB. I have therefore given significant consideration to each of the individual requests made in your proposal based on the extensive analysis that my officials have undertaken to

understand their legal and practical implications. In taking my decisions I have been mindful that the establishment of an STB must demonstrate clear benefits and that any changes ensure that:

- Decisions are being taken at the right level and geography;
- Democratic accountability is maintained;
- The coherence of our national networks is maintained;
- Demonstrable improvements for passengers and transport users are delivered.

On this basis I have decided that the key functions for TfN as the inaugural STB will be:

- The preparation of a Northern Transport Strategy;
- The provision of advice on the North's priorities, as a Statutory Partner in the Department's investment processes;
- The coordination of regional transport activities, (such as smart ticketing), and the co-management of the Transpennine Express and Northern rail franchises through the acquisition of Rail North Ltd.

The implementation of these functions will require bespoke mechanisms through which TfN will engage with my Department to ensure that the North's priorities are understood and recognised in national decision making. My officials are already working with you to establish these arrangements so that the value of TfN's expertise and analysis can be formalised as soon as possible. For your information I have attached an annex to this letter containing more detail of my decisions and the supporting rationale.

I believe that establishing TfN with these functions strikes the right balance between national and regional priorities. It will ensure that a strategic approach to transport is taken across the North and that its priorities for investment are fully understood and rigorously considered at all stages of decision making. This unprecedented access to investment decision making is only possible as a result of TfN's unique role as the single voice for the North and the legitimacy that statutory status will give it to prioritise potential investments across the region. You're setting an example that others will follow and I have every confidence that these new arrangements will produce better outcomes for passengers and transport users across the North.

I look forward to working with you over the coming months and years as we work to deliver the Northern Powerhouse, with a strong TfN at its heart.

Yours sincerely,

Rt Hon Chris Grayling MP

SECRETARY OF STATE FOR TRANSPORT

Annex

The Legislative Requirements

In assessing TfN's STB Proposal, the Department has – first - to be mindful of the statutory tests that must be met before an STB can be established. These tests require that Ministers are satisfied that:

- a) Establishing TfN as an STB would facilitate the development and implementation of transport strategies in the North; **and**
- b) That the objective of economic growth in the area would be furthered by the development and implementation of such strategies.

In assessing TfN's proposal the Department noted that TfN, in its shadow form, is already actively involved in developing a Strategic Transport Plan and has completed analysis such as the Northern Powerhouse Independent Economic Review and the already published Northern Transport Strategy to feed into the development and rationale of their long-term plan. In addition, their proposal also provides a sound rationale for the economic benefits for the North of agglomeration, long-term strategic planning and integrating those plans with regional economic and spatial objectives.

It was on this basis that officials advised that these two statutory tests have been satisfied and that establishing TfN would lead to the development of a transport strategy for the North that would further economic growth.

Infrastructure Investments: TfN's Advisory Role

The Department agrees that as a statutory body, and single voice for the North, TfN requires a strong, formal role in the Department's investment process insofar as they relate to the North, over and above that which is available to individual local or combined authorities. Therefore, TfN should become a statutory partner in both the road and rail investment processes, TfN would be responsible for the setting of the North's objectives and priorities in regards to strategic road and rail investments. Whilst the SofS would remain the final decision maker, as a statutory body, decisions relating to the North would have to take account of TfN's priorities.

Rail Franchising

The Department is highly supportive of TfN's desire, once it becomes a statutory body, for the ownership of Rail North to be transferred to TfN. It sees the creation of one organisation with responsibility for promoting/delivering transport services will affirm TfN's ability to speak with one voice for the North across modes and services. To this end, and to ensure that TfN and Rail North can be effective in their role, the Department agrees that TfN should be consulted in relation to franchise agreements for services to, from, or within its area, and to enter into agreements with the SofS or franchisees in relation to such services.

Local Government Powers

The Department's assessment of TfN's requests for local authority powers and the supporting rationale provided has resulted in the Department agreeing that TfN should have the following powers (to be reflected as appropriate in statutory provisions):

- Smart ticketing powers – Enabling TfN to carry out the necessary work to drive forward multi-modal smart ticketing in the North.
- Power to pay capital grants – Enabling TfN to support the funding and delivery of joint projects.
- The local road powers and the Transport and Works Act powers– Enabling TfN to promote, coordinate and fund transport schemes.

The Department also considered TfN's request to be granted the power to promote the economic, social or environmental well-being. Whilst the Department is supportive of TfN being able to carry out the sort of activities which might be envisaged by this power, its legal assessment showed that TfN do not require the explicit power in order to carry out these functions. This is because the primary legislation that allows for the creation of STBs already provides them with a functional power of competence. The Department believes that this would enable an STB to do anything it considers appropriate for the purposes of the carrying out of any of its transport functions, including anything an STB could do under the wellbeing power (relating to its functions).

The Department recognises that TfN remains concerned about this issue and will work with them throughout the drafting of the Statutory Instrument to ensure that the necessary reassurances are provided.

Funding

As an STB the role of TfN will be to operate between the Department and the North's local authorities, undertaking analysis and providing advice to both parties on strategic transport interventions that will help transform the economy of the North. This is a key role and the Department recognises that long term central Government support for TfN will be needed.

At present the Department has committed funding to support the administration of TfN up until the end of this Parliament. Whilst future funding decisions will inevitably remain the responsibility of governments at the time, the Department recognises the value that STBs such as TfN will bring to transport decision making and ensuring that passengers and transport users get the best return for the taxpayer's investment.

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Appendix 4 : Further information on the proposed arrangements for TfN as a statutory sub-national body.

The powers and functions which will be given to TfN through the Regulations and by legislation. These are as follows:

- To prepare a Transport Strategy for the Combined Area in accordance with section 102 of the Local Transport Act 2008;
- To provide advice to the Secretary of State about the exercise of the transport functions in the Combined Area;
- To be a Statutory Partner with the Secretary of State in both road and rail investment processes and to be responsible for setting the objectives and priorities for strategic road and rail investments in the Combined Area;
- To be consulted in relation to rail franchise agreements for services to and from or within its area;
- To co-manage with the Secretary of State the TransPennine Express and Northern Rail Franchises;
- To co-ordinate the carrying out of specified transport functions that are exercisable by its different Constituent Authorities with a view to improving the effectiveness and efficiency of the carrying out of those functions;
- To promote and co-ordinate road transport schemes;
- To make proposals to the Secretary of State for the transfer of transport functions to TfN;
- To make other proposals to the Secretary of State about the role and functions of TfN;
- To undertake Smart Ticketing within the Combined Area;
- To promote and oppose local or personal bills in Parliament;
- To pay Capital Grants to support the funding and delivery of joint projects;
- To exercise the powers of a highway authority to acquire land and to construct highways.

In carrying out these functions, TfN will be a statutory partner of the Department for Transport, devolving responsibilities from the Secretary of State and speaking to the Department with a strong, single voice for the North. It is not intended that TfN should take responsibilities away from the Constituent Authorities, instead exercising a coordinating role

in relation to specified transport functions and continuing to work in partnership with members. It is not the intention that TfN becomes a Highway Authority.

TfN have prepared a Frequently Asked Questions briefing which provides a summary of the powers it is seeking – this is attached for information as Appendix 2.

Concurrent Functions

Before exercising any transport powers or functions it holds concurrently with any of the Constituent Authorities or Highways Authorities within the TfN area, TfN will consult those Authorities and enter into a Protocol covering the way in which those functions will be exercised. It is therefore recommended that the agreement to any future protocol is reserved to Cabinet and Cabinets formal decision would authorise the appointed Member in the direction of voting for the authority on the TfN board for protocols (see paragraph 2.1 (ix) above).

Responsibility for Functions

The Membership of TfN will together be responsible for approving the Budget, the Constitution and the Transport Strategy.

Officers of TfN will have delegated responsibility to carry out all of TfN's day to day functions and to implement the strategic decisions made by TfN.

In carrying out these functions TfN and its officers will have due regard to the views and advice of the Partnership Board, DfT and other Statutory Agencies.

Audit and Governance Committee

TfN will appoint an Audit and Governance Committee to provide independent review and assurance to Members on governance, risk management and control frameworks. It oversees financial reporting, the Annual Governance Statement process and internal and external audit, to ensure efficient and effective assurance arrangements are in place.

Scrutiny Committee

Each of the Constituent Authorities will be entitled to appoint a representative (and a substitute) to the Scrutiny Committee.

The role of the Scrutiny Committee will include:-

- reviewing the decisions of TfN and of officers of TfN under the scheme of delegations;
- making reports or recommendations to TfN with respect to the discharge of the functions of TfN and on transport matters that affect the TfN area.

The Rail North Committee

TfN will establish a Rail North Committee which will advise on TfN's statutory Partner role in relation to rail investment and will have oversight of the management of the TransPennine Express and Northern Rail Franchises.

Officers

TfN will appoint its 3 Statutory Officers, the Chief Executive as the Head of Paid Service, the Monitoring Officer and the Finance Director as its Chief Officers to whom it will delegate day to day operations of TfN.

Chief Officers will have due regard to the recommendations of the Partnership Board, the Rail Partnership Board and Highways North in carrying out their functions.

Procedure Rules

This section sets out the procedures which shall apply to meetings of TfN. The Rules of Debate reflect the nature of the business of TfN and that most decisions are expected to be consensual without the need for formal debating procedures.

Scrutiny Procedure Rules

These set out the role of Scrutiny within TfN.

The Scrutiny Procedure Rules provide for Scrutiny Committee to set up smaller Scrutiny Panels to review discreet topics and to allow these Panels to invite representatives of outside bodies to attend to inform their Reviews.

Financial Procedures

This section sets out the financial rules and controls which will govern all expenditure by TfN. It also contains the Contract Procurement Rules which will govern how TfN tenders and awards contracts.

It is expected that more detailed financial controls in relation to individual projects will be set out in the Funding Letter from the Secretary of State.

Codes and Protocol

It is not intended that TfN should have its own Code of Conduct for Members but Members will be expected to adhere to the Code of Conduct of their appointing Authority in the conduct of TfN's business and any Standards issue would be referred back to the appointing Authority by the Monitoring Officer.

The section includes the Codes of Conduct for Officers of TfN, the Protocol on Member/Officer Relations, the Code of Corporate Governance, the Anti-Fraud and Corruption Policy and the Whistleblowing Policy.

Although TfN is not required to adopt its own Code of Conduct for Members it will need to have a separate Disclosure of Interests by each Member in respect of their interests within the whole of the TfN geographical area.

The Code of Conduct for Officers sets out the standards of behaviour expected from TfN's officers.

The Protocol on Member/Officer Relations sets out guidance on the mutual respect which should exist between officers and Members and the way in which they should interact with each other.

The Code of Corporate Governance sets out the core principles and values which will govern the way in which TfN operates.

The Anti-Fraud and Corruption Policy sets out the measures that TfN will put in place to avoid and address fraud and corruption in any of its dealings.

The Whistle blowing Policy sets out the ways in which whistle-blowers may bring their concerns to management and the protections that are in place to ensure that whistle-blowers are not victimised or discriminated against.

Role of the Partnership Board

TfN has evolved over the years from the inception of Transport for the North as a partnership representing all those with an interest in the improvement of transport in the North of England to the creation of TfN as the first Sub-Nation Transport Body. Although TfN as a corporate body will consist of the representatives of the 19 Constituent Authorities there is an aspiration that it will continue to operate through the Partnership Board taking decisions in partnership with the representatives of the 11 LEPs as representatives of the business community and with representatives of the Department for Transport and other Government Agencies and will continue to have an independent chair.

The Draft Constitution reflects the legal requirements for decision making within TfN as a corporate body but it will be open to TfN to operate these constitutional arrangements in a way that is consistent with continuing the present arrangements of the Partnership Board if Members so agree.

Rail North Limited

One of the drivers for the creation of TfN as a Sub-National Transport Body was to create a body which could speak with one voice on all transport matters affecting the North of England. To achieve that, it is proposed that TfN should take over ownership of Rail North Limited and subsume all of its functions directly into TfN.

Rail North Limited would be replaced by a Committee of TfN on which the former Rail North Member Authorities would be represented and have the same voting rights as under the Memorandum and Articles of the Company.

Before this can be achieved all the current members of Rail North Limited will need to formally agree to the proposals for the transfer of Rail North Limited to TfN.

The Rail Partnership Board

A Rail Partnership Board will be set up which will include representatives of the Department for Transport. This Board will make recommendations in relation strategic priorities for rail investment and in relation to existing and future rail franchises.

The Highways North Board

TfN will participate in the Highways North Board with representatives of the Department for Transport and Highways England. The role of the Board will be to make recommendations in respect of the future Roads Investment Strategy and competitive major roads funding programmes.

The Chief Executives Meeting

The Chief Executives or their representatives will continue to meet to provide oversight of the activities of TfN and review draft Board papers and advise on policy and strategy proposals (this currently operates as the TfN Executive Board).

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Appendix 5: Transport for the North – FAQs

1. What are constituent authorities consenting to?

The constituent authorities of TfN are consenting to the making of the regulations by the Secretary of State (102F(3) of Local Transport Act 2008). The regulations will then be laid before Parliament in the form of a statutory instrument.

2. When will we see a ‘final’ version of the regulations?

A final version of the regulations will not be available until the statutory instrument has been passed through Parliament. In terms of updates on the current set of draft regulations, these will be shared with constituent authorities as and when they are available. TfN is in regular communication with DfT as we recognise the importance of having available the most up to date version of the regulations. Constituent authorities have already been sent the latest draft of the regulations.

3. Why does TfN need consent to the making of the regulations by 9th September?

There is a limited window of opportunity for the statutory instrument, establishing TfN as a statutory body, to be considered and approved by Parliament. Given the desire to ensure a smooth and orderly Brexit, there is a very tight embargo on non-Brexit legislation between February 2018 and March 2019 (with only legislation such as tax changes being allowed) and therefore should TfN miss the legislative window of opportunity this year, they may have to wait until well after Brexit is concluded to become a statutory body.

It is therefore critical to the successful implementation of the TfN SI that the deadline for parliamentary consideration is adhered to - any delay to consent could impact negatively on this process. As such, consent from each authority will need to be received by the Department for Transport by the 9th September to enable the SI to be laid before Conference recess.

4. What functions are being proposed for TfN?

In an undated letter to John Cridland, TfN’s independent Chair, from the Secretary of State for Transport, Rt. Hon Chris Grayling MP, the main functions of TfN were proposed to be:

1. The preparation of a Northern Transport Strategy;
2. The provision of advice on the North’s priorities, as a Statutory Partner in the Department’s investment processes; and
3. The coordination of regional transport activities, (such as smart ticketing), and the co-management of the TransPennine Express and Northern rail franchises through the acquisition of Rail North Ltd.

In line with this letter, which was circulated to Partnership Board and Executive Board members ahead of the Partnership Board meeting in March, and TfN’s proposal to become a Sub-national Transport Body last year, the draft regulations cover the below functions:

- a) **To prepare a Transport Strategy for the TfN area** (i.e. the combined area of the Constituent Authorities) – this will set the priorities for transport investment in the North and will be approved by TfN after full consultation with the Partnership Board. This is the Strategic Transport Plan, for which engagement on the evidence base is currently being undertaken.
- b) **To advise the Secretary of State about the exercise of transport functions** through the Rail North Partnership Board and the Highways North Board. Recommendations will be made to the Secretary of State on future rail and road strategic investment decisions, taking into account the priorities set by TfN through the Strategic

Transport Plan. Through this role, TfN will have a strong and formal voice in influencing future funding decisions of the Secretary of State relating to the North.

- c) **To co-ordinate the carrying out of transport functions exercisable by different Constituent Authorities** – TfN will have a co-ordinating role in relation to major pan-Northern investment projects funded by the Secretary of State. This will be exercised to smooth out difficulties in cross-boundary projects.
- d) **Ticketing Schemes (sections 134C (1) and 135(1) of the Transport Act 2000)** – TfN is engaged in developing SMART Ticketing across the region which should enable smart ticketing across the region and the use of smart technologies to enable the purchase of tickets with mobile devices.
- e) **To co-manage the TransPennine Express and Northern rail franchises** – this continues the current arrangements whereby Rail North Limited manages these rail franchises on behalf of the Secretary of State.
- f) **Highways powers** – these have not yet been defined in the current draft regulations. TfN has made representations to the DfT that the powers should be ones delegated to TfN by the Secretary of State. Particular care is being taken by the drafts person to reflect these principles. It is not the intention for TfN to dilute any of its constituent authority member's ability or opportunity to address local transport issues through, for instance, bidding for funding from funding programmes. In contrast, the intention is that any input TfN provides to future Road Investment Strategies or other competitive major road funding programmes would be to enhance constituent authority member's business cases through identifying links to pan-northern, strategic priorities.

5. Why does TfN need concurrent powers?

The two main concurrent powers TfN will need to exercise are related to Smart and Integrated Ticketing and highways. For Smart ticketing, it is important that TfN can utilise concurrent powers to ensure people can travel seamlessly across the region. While some individual areas are currently working on their own initiatives, in the long-term these will be able to be integrated into Transport for the North's platform.

With regards to highways, TfN is not seeking to become a Highway Authority and any decisions on investment within a particular area regarding highways would have to be done with the consent of relevant highway authorities. Transport for the North is developing a transport strategy based on economic growth through which individual authorities priorities are incorporated. Therefore, TfN should not impact on any individual applications for funding by local authorities to address pinch points, or local improvement schemes, and in many cases may help support the case for constituent authority funding applications.

The exercise of concurrent powers will be governed by a protocol agreed between TfN and its partner authorities.

6. When will the constitution be adopted?

There is a legal requirement that the constitution of TfN be adopted at its inaugural meeting. The date for TfN becoming a statutory body will be set out in the regulations. Early drafts of the constitution have already been shared with both partnership board, executive board and the constituent authorities.

7. How was the voting matrix developed?

The voting matrix was developed and approved by all of the constituent authorities when the proposal to become a Sub-national Transport Body was submitted in October 2016. The voting matrix was developed to ensure that the larger authorities could not out-vote all of

the smaller ones, and vice-versa. This reflects how TfN is to act as a collaborative organisation, and a strong voice to Government that represents all areas of the North.

8. What happens if an authority wants to leave TfN?

Section 102Q of the Local Transport Act [DATE] states that the Secretary of State, may by regulations, change the area of an STB by either adding the area of a relevant authority to an existing area of an STB or by removing the area of a constituent authority from an existing area of an STB.

9. Can TfN provide assurances of funding long-term?

Transport for the North is funded until 2020. The level of funding will remain the responsibility of the government of the day, but TfN will constantly seek reassurances of funding commitments going forward, when possible. There is strong cross-party support for TfN, both locally and nationally, and this bodes well for any future funding, although this cannot be guaranteed.

In terms of any future contributions from individual authorities, the draft constitution states that such contributions shall require a unanimous decision of the Constituent Authorities and may only be taken after written consent to the proposal has been received from each of the Constituent Authorities.

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Cheshire East Council

Cabinet

Date of Meeting: 22nd August 2017

Report of: Frank Jordan - Executive Director of Place

Subject/Title: Transfer of the Fairerpower Contract to The Skills & Growth Company

Portfolio Holder: Cllr Don Stockton (Cabinet Member for Regeneration)

1. Report Summary

- 1.1 The purpose of this report is to propose that the Fairerpower Contract is transferred to, and modified by, The Skills & Growth Company to enable the expansion of the Fairerpower scheme in the North West and Midlands Region to support the Council's energy objectives and ensure the scheme is viable and sustainable in the longer term.

2. Recommendation

2.1. It is recommended that:

- a. Cabinet approve the novation of the Fairerpower contract between the Council and OVO Energy Limited dated 12th December 2014 ("the Contract") to the Skills and Growth Company, and delegate authority to agree the terms of the novation agreement to the Executive Director of Place in consultation with the Director of Finance and Procurement, Director of Legal Services and the Portfolio Holder for Regeneration.
- b. Cabinet agree that the preferred option for the operation of Fairerpower is to provide a multi-energy supplier offering in the North West and Midlands (Option D) as it best meets the Council's commercial principles of eliminating future subsidy.
- c. Cabinet authorise the Executive Director of Place in consultation with the Director of Finance and Procurement, Director of Legal Services and the Portfolio Holder for Regeneration to agree any future changes relating to the contract for Fairerpower.
- d. Cabinet authorise the Executive Director of Place in consultation with the Director of Finance and Procurement and Portfolio Holder for Finance and Communities to approve a loan on commercial terms from the CERF reserve to fund setup costs and cash flow requirements, subject to appropriate due diligence.

- e. Cabinet authorise the Executive Director of Place in consultation with the Director of Finance and Procurement, Director of Legal Services and the Portfolio Holder for Regeneration to determine the terms on which the Skills & Growth Company may enter into contracts with other Local Authorities for the supply of energy.
- f. Cabinet authorise the Executive Director of Place to take any and all necessary or consequential actions, arising from the above recommendations, in consultation with the Director of Finance and Procurement, Director of Legal Services and the Portfolio Holder for Regeneration.

3. Other Options Considered

- 3.1. Appendix 1 summarises the various options that have been considered in relation to the scope of Fairerpower, see Appendix 1. The options considered were; do nothing and continue (A), managed exit (B), restricted local offer (C), multi supplier local offer (D), multi supplier national offer (E) and finally a national supply licence (F). With the exception of Options A and B the options are not mutually exclusive and there is a natural progression in terms of scope, commercial value and risk arising from options C through to F.
- 3.2. Option D is recommended to be the preferred option. Option D is to provide a multi supplier local offer which offers medium risk levels, it was decided this was a reasonable risk level.

4. Reasons for Recommendation

- 4.1. The recommendation provides the best fit to deliver the Fairerpower scheme. The Skills and Growth Company have the experience in delivering the scheme on behalf of the Council and also have the required skills to develop the scheme and provide synergy with other energy initiatives that are being developed with the Council.
- 4.2. The Skills and Growth Company has developed a business plan for the future development of the scheme, including financial forecasts. The decision to operate in the current OJEU tendered area of the North West and Midlands is viewed as a medium risk level.

5. Background/Chronology

5.1. Background

- 5.1.1. The Fairerpower scheme was established in 2014 to support delivery of the three key aims of the Council's Energy Vision:
 - Developing affordable energy options for local residents and businesses
 - Developing a local energy economy
 - Developing secure decentralised and locally managed energy services.

- 5.1.2 OVO Energy was appointed as the Council's energy supply partner. Currently, the Skills & Growth Company manages the delivery of Fairerpower on behalf of the Council under an operating agreement.
- 5.1.3 To date, the Fairerpower scheme has secured more than 7,500 customers, each of whom are estimated to have saved an average of £250 after switching. This equates to a total saving to local households of c£2.1m. OVO have also invested in energy efficiency measures in the Cheshire East area, which will help to reduce household energy expenditure in the long-term.
- 5.1.4 Notwithstanding these achievements, the full potential of the Fairerpower scheme has not been realised due to contractual issues between the Council and OVO Energy. Contractual changes were agreed by the Council in 2016 to address these concerns, under which OVO has been released from unfulfilled contractual obligations and the Council receives consideration for the same. The Council is also freed from its obligation to pay for ongoing contract management and marketing and instead pays a fixed referral fee per customer signed up.
- 5.1.5 A review of the Fairerpower contract has been conducted which has responded to the following questions, as follows.

To what extent has the Fairerpower scheme achieved its original objectives?

- 5.1.6 Although Fairerpower has secured more than 7,500 customers to date this falls significantly short of the target of 6,000 customers per annum set out in the original business plan. This is, in large part, due to the fact that OVO have not been proactively marketing the offer or servicing key sub-markets, including businesses and registered social landlord (RSL) void properties. An empty property without a tenant is referred to as a void. The market potential for voids is significant; across the Midlands and North West there are over 900,000 RSL homes. Should the Skills and Growth Company procure a supplier to deliver a voids solution to RSLs across the region it would provide a large market opportunity for generating bulk customer numbers.
- 5.1.7 In 2015, a potential of 4500 void properties were secured for transfer to Fairerpower from three housing associations, on an annual basis for the next three years. Unfortunately, this was an area of the contract that OVO could not fulfil. Attempts by the Fairerpower commissioning team to sign up strategic partners have also been frustrated by the ongoing contractual difficulties. Little progress has been made against the objectives of developing a local energy economy or independent energy supply sources and it is clear that different contractual arrangements will need to be put in place if the wider objectives of the Fairerpower scheme are to be delivered going forward.

Are the objectives still relevant in view of developments in the energy market since the scheme was set up in 2014 and the Council's current priorities?

- 5.1.8 Since 2014, there have been a number of new entrants to the energy supply market including not for profits such as Bristol Energy, Robin Hood Energy and ENGIE Energy offering affordable energy products for residents and businesses in direct competition with Fairerpower. Greater Manchester, Birmingham City Council and Cornwall Council are also reviewing options for

entering the energy supply market. Local residents, including low income households, now have access to a much broader range of affordable energy services, including pay as you go options and new products for the business segment are also starting to emerge. To that extent, it is arguable that the original objective of developing affordable energy options can be left to the market.

- 5.1.9 The objectives to develop a local energy economy and independent, locally managed energy services remain relevant in the context of delivering the Council's Energy Vision.

Is the ambition to leverage the Fairerpower brand for commercial purposes? If so, what is the scale of that ambition and appetite for risk and what are the prospects for commercial success?

- 5.1.10 Although not originally conceived as a commercial venture, there is considerable potential for Fairerpower to generate additional revenue which could either be returned to the Council as a dividend or reinvested to deliver other Skills and Growth Company services. Financial modelling completed by Skills and Growth Company suggests that additional revenues could be generated over the next 5 years if Fairerpower were to enter the North West and Midlands domestic energy supply market. The size of the opportunity with other market segments and products factored in (option D Appendix 1) is considerably greater and there is also potential to leverage the Fairerpower brand to sell a broader range of non-energy products.
- 5.1.11 With greater opportunity also comes greater risk. Fairerpower tariffs have consistently been below the national average of the Big Six suppliers over the contract period and pre-payment tariffs among the lowest. However, the tariff pricing offered by OVO Energy is not as competitive as it was when the contract was first signed and it is unclear what impact the entry of local authority backed energy supply companies, and actions taken by the energy regulator OfGem, are likely to have on the future profitability of Fairerpower.

5.2 Governance

- 5.2.1 The Fairerpower Tariff Board will become a quarterly briefing group to receive information on the scheme's performance and to provide oversight to become a key element of the governance structure for Fairerpower. To date all changes and developments have been discussed and ratified by the board and where required Officer Decision Notices have been completed. The contract amendments will be led by the Skills and Growth Company and reported to the Fairerpower quarterly briefing group, and where required Cabinet members.
- 5.2.2 An operating document for agreements on working arrangements with Cheshire East and the Skills and Growth Company and a draft trade mark licensing agreement have been prepared. A draft monitoring information report has been produced to meet reporting and transparency requirements.

The commissioning arrangement will be strengthened in the Place Directorate to ensure effective oversight of the Fairerpower scheme. Cheshire East Residents First group (CERF) will also receive information through the Skills and Growth Company reporting mechanism.

5.3 Local Authority Partnerships

- 5.3.1 The Skills and Growth Company plan to enter into a contract with another Northwest local authority to deliver Fairerpower opportunities in that region. In order to enter into this contract, the current contract between OVO and Cheshire East Council requires novation to the Skills and Growth Company. It is hoped that this will be the first of many contracts to assist local authority partners to deliver energy supplies to their residents to support initiatives of fuel poverty reduction.

6. Wards Affected and Local Ward Members

- 6.1. All wards

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1 The Council's partnership with the Skills and Growth Company to supply energy will enable competitive energy pricing for all residents, but with the added benefit of supporting those in fuel poverty, who are currently unfairly penalised by their circumstances. This offering is proposed to be provided across the Midlands and North West as previously tendered in October 2014.
- 7.1.2 Aligned to the Council's goal of helping people live well and for longer, a reduction in energy bills will also increase disposable income contributing to the goal of creating a stronger and more resilient community.
- 7.1.3 By addressing fuel poverty amongst residents, the project will also help to improve the resilience of communities in the context of rising energy prices and insecurity of energy supply. In addition to this, the reduction of fuel poverty is also an outcome measure within the corporate performance framework
- 7.1.4 The Skills and Growth Company will build on the initial vision, aims and objectives as approved by Cabinet to include a wider geographic coverage to enable our fellow local authority residents to benefit from the scheme and also to provide additional services, subject to procurement, for energy supplies such as oil and LPG for rural communities, and services for business, registered social landlords and new developments.
- 7.1.5 The development of a wider geographic coverage will enable the scheme locally to be viable outside the Cheshire boundary but within the Midlands and North West. Fairerpower services could be scaled to other regions or nationally if successful in the Midlands and North West.

7.2. Legal Implications

- 7.2.1. A confidential appendix to this report contains legal advice in relation to the contractual arrangements proposed.

7.3. Financial Implications

- 7.3.1 As part of the annual management fee payable to The Skills & Growth Company, the Council currently pays £140,000 for the management and operation of Fairer Power
- 7.3.2 Following novation to The Skills & Growth Company, Fairer Power would be able to make money by receiving fees from its energy supply partner when customers switch. Estimates have illustrated that by extending Fairer Power to areas in the North West and Midlands (Option D – Multi-supplier local offer), operating viability could be achieved over the medium term and prospects for sustainability much improved.
- 7.3.7 Option D is recommended as providing an opportunity to remove the need for subsidy from the Council; and provide The Skills & Growth Company the opportunity to extend its offer into other areas, via engaging other Councils as strategic partners.
- 7.3.9 This will require provision of a loan to the Skills and Growth Company, to cover costs including additional procurement, contractual and marketing expenditure, in relation to new suppliers, new partners, and marketing to new customers. However, the loan would obviate the need for the £140,000 annual subsidy via management fee, and repayment of the loan would be covered from revenues made from extending the brand to new areas.

7.4. Equality Implications

- 7.4.1. No specific equality issues.

7.5. Rural Community Implications

- 7.5.1. The increased service offering that is recommended for procurement will provide additional services to rural communities with the potential to offer more cost effective energy solutions for residents who are currently off the gas grid.

7.6. Human Resources Implications

- 7.6.1. n/a

7.7. Public Health Implications

- 7.7.1. Opportunity to improve heating in cold homes and reduce energy costs for vulnerable residents.

7.8. Implications for Children and Young People

- 7.8.1. Opportunity to improve heating in cold homes and reduce energy costs for vulnerable residents, children and young people.

8. Risk Management

- 8.1. The Skills and Growth Company has completed an analysis of risk and identified the recommendations as the most beneficial to Cheshire East Council, balancing risks and opportunities.
- 8.2. Effective governance arrangements are in place with the council to ensure the contract is delivered in accordance with the terms.
- 8.3. Charging and trading risks are reduced by novating to the Skills and Growth Company.
- 8.4. Financial risks to CEC are reduced as the contract is novated to the Skills and Growth Company.
- 8.5. Operational risks are minimised by transferring to the Skill and Growth Company as they already manage the contract on CEC's behalf.

9. Contact Information

Contact details for this report are as follows:

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APPENDIX 1

	Option	Description	Geographical Scope	Implications	Commercial Value	Risk
A	Do Nothing	Ovo contract not novated and no further action taken until the end of the contract period.	N/A	Council would not compensation for buy-out costs or referral fees and would continue to bear running costs of the scheme. No further commercial or social value derived from the contract. Reputational risk to Council if existing customers not offered an alternative fair contract by a reputable supplier at the end of the contract.	Nil	Medium
B	Managed Exit	Ovo contract novated. S&GC run contract and managed exit planned, including soft landing for existing customers requiring selection of a suitable alternative energy supplier.	North West & Midlands	Reputational risks partially mitigated. Potentially Fairerpower could “sell on” existing customers to a new provider, but may be offset by exit costs. Continued CEC subsidy until closure	Low	Medium/ High
C	Restricted local offer	Ovo contract novated to S&GC. Energy supply offer for electricity and gas to domestic market marketed to end of the contract period.	North West & Midlands	Delivers some additional commercial and social value. regional deals could not go ahead. Likely to require continued CEC subsidy given restricted scope.	Low	Low

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APPENDIX 1

	Option	Description	Geographical Scope	Implications	Commercial Value	Risk
D	Multi-supplier local offer	Ovo contract novated to S&GC. Ovo payments reinvested to procure suppliers for RSL voids, developments, businesses and off-grid supply.	North West & Midlands	Delivers additional commercial and social value including addressing rural fuel poverty. Addresses wider aims of the Fairerpower scheme can be expanded across the Midlands and North West. Continued council subsidy would not be required.	Medium	Medium
E	Multi-supplier national offer	As for option D but wider geographical scope.	National	Maximises commercial and social value. Continued CEC subsidy would not be required. More complex procurement but a larger number of strategic partners would offer economies of scale. S&GC could work with LA's, RSLs and developers to maximise financial return.	High	High

APPENDIX 1

	Option	Description	Geographical Scope	Implications	Commercial Value	Risk
F	New national supply licenses	Ovo contract novated. Notice served to terminate at original break point. S&GC apply for full energy supply licences for gas and electricity supply to domestic and non-domestic markets. Local energy supply company (ESCo) developed to procure other non-regulated energy service and off-grid fuel supply.	National	Significant procurement exercise. Puts Fairerpower on equal footing with other market competitors. Would require major investment and entails high commercial risk.	Very high	Very high

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By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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