

# Cheshire East Council

## Cabinet

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<b>Date of Meeting:</b>	17 <sup>th</sup> January 2017
<b>Report of:</b>	Frank Jordan, Executive Director of Place
<b>Subject/Title:</b>	Connecting Cheshire Phase 3 Gainshare Broadband
<b>Portfolio Holder:</b>	Councillor David Brown, Deputy Leader and Cabinet Member for Highways and Infrastructure

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### 1. Report Summary

- 1.1. Over half of the population in Cheshire East lives in a rural area. Broadband and digital connectivity are essential to support our rural communities and for increasing the productivity of our rural businesses.
- 1.2. Since 2013, the Connecting Cheshire Partnership (a collaboration between Cheshire East Council, Cheshire West & Chester Council, Halton Council and Warrington Council) has delivered fibre broadband to over 85,000 premises across Cheshire, Halton and Warrington, ensuring over 96% of homes and businesses can access high speed broadband.
- 1.3. The Connecting Cheshire Partnership aims to build upon this success and this report seeks Cheshire East Council's approval to bring forward a third project of the programme, referred to "Phase 3 Gainshare", to extend fibre broadband coverage.
- 1.4. The Phase 3 Gainshare project is to be funded by a £3.4m reinvestment fund generated by "clawback" from the Connecting Cheshire Contract 1 between British Telecommunications PLC ("BT") and Cheshire East Council (as Lead Provider to the Connecting Cheshire Partnership). Clawback is derived from excess subsidy that may have been granted to a beneficiary of State Aid. In this case, it is generated from take-up of broadband services exceeding the forecasted level (20%).
- 1.5. Following technical modelling by BT it was reported that an additional 5,387 premises could be connected across Cheshire and Warrington with superfast broadband by June 2018 at a cost of £3.34 from the reinvestment fund.
- 1.6. The Phase 3 Gainshare project will increase the coverage fibre broadband to homes and businesses and has been approved by Broadband Delivery

UK (“BDUK”), demonstrating strong value for money for residents and businesses.

## **2. Recommendations**

It is recommended that the Cabinet

- Approve a contract change to the Superfast Extension Project contract held with BT, which will commit £3.34m from the reinvestment fund to extend the rollout of superfast broadband to an additional 5387 premises by June 2018
- Delegates authority to the Executive Director of Place, in consultation with the Cabinet Member for Highways and Infrastructure and the Chief Operating Officer, to invest any future additional funds accumulated in the reinvestment fund to further the rollout of superfast broadband
- Authorises the Director of Legal Services to enter into any necessary legal documentation to give effect to the above recommendations

## **3. Other Options Considered**

- 3.1. Option 1 – Accept the Phase 3 Gainshare proposal, which forms the basis of the recommendation of this report.
- 3.2. Option 2 - Seek to withdraw funding from the reinvestment fund. The authority will be required to repay BDUK and DCLG their proportions of the capital contributions to Contract 1, reducing funding available to the Connecting Cheshire Partnership by up to 85%.
- 3.3. Option 3 - Do Nothing. The clawback funding would stay in the reinvestment fund until the end of Contract 1 in 2023.

## **4. Reasons for Recommendations**

- 4.1. Access to high-speed broadband is a strategic priority for the councils across Cheshire, Halton and Warrington. The economic and social benefits of good quality high-speed broadband connectivity are significant and are a corner stone of the national agenda to improve productivity and enterprise growth.
- 4.2. The phase 3 Gainshare proposal from BT has been assessed and viewed to be good value for money by BDUK’s assurance board, scoring ‘green’ (good) across the key criteria of the Comparison Report.
- 4.3. The proposal will connect an additional 5,387 premises with Superfast Broadband at speeds of 24Mbps or greater by June 2018 - an average cost of £620/premise. It is estimated that 54% of these premises will be in Cheshire East benefiting over 2,900 premises locally.

- 4.4. The Phase 3 Gainshare project will maximise the positive impact and benefit of monies held in the reinvestment fund, ensuring homes and businesses with poor broadband speeds are upgraded as soon as possible.
- 4.5. The Connecting Cheshire Delivery Team is able to deliver the additional tranche of activity alongside the existing Contract 2 deployment underway, ensuring management and team efficiencies are realised.

## **5. Background/Chronology**

- 5.1. On 7<sup>th</sup> May 2013 Cabinet endorsed the recommendation for Cheshire East Council to enter into a broadband contract with BT to deliver the roll out of fibre broadband in rural areas of Cheshire, Warrington and Halton ("Connecting Cheshire Contract 1").
- 5.2. As part of Connecting Cheshire Contract 1's finance model BT built their solution on an assumed 20% base take-up of service over the contract term, through to 2023. If take-up is higher, or if build costs are cheaper, a clawback mechanism is triggered returning investment to the reinvestment fund to further the rollout of superfast broadband. Currently take up stands at nearly 40%.
- 5.3. Gainshare is the early offer of £3.4m clawback from the Connecting Cheshire Contract 1 with BT. The context is that BT generated c. £129m nationally from phase 1 BDUK projects. It was agreed with BT, BDUK and the European Commission responsible for State aid that this funding is offered back to projects to reinvest into broadband, according to how clawback is treated in the specific contract.

## **6. Wards Affected and Local Ward Members**

- 6.1. The majority of wards stand to benefit

## **7. Implications of Recommendation**

### **7.1. Policy Implications**

- 7.1.1 The original Government policy of 90% superfast broadband coverage across the UK by 2015 was updated as part of the autumn 2013 budget extending coverage targets to 95% superfast coverage by 2017, with the aspiration of 99% by 2018.

The case for investment into high-speed broadband for Cheshire East has been established in the following key policy documents:

- Cheshire East Corporate plan 2016 - 20
- Cheshire East Sustainable Community Strategy: Ambition for All (2010)

- Cheshire Est: Where Rural Communities Matter (2014)
- Cheshire and Warrington Local Enterprise Partnership Strategic Economic Plan (2013)
- Cheshire and Warrington Local Broadband Plan (2012)

## **7.2. Legal Implications**

7.2.1. Section 2 of the Local Government Act 2000 gives Local Authorities power to take steps which they consider are likely to promote the economic, social or environmental well being of their area - or its inhabitants. However, no action can be taken which would contravene any specific statutory prohibition, restriction or limitation. Regard must also be had to the Community Strategy. The actions proposed in this report fall within this power.

7.2.2. Specialist legal advice has been obtained on the proposed reinvestment of the £3.34m in the Council's current contract with BT (Connecting Cheshire Contract 2) by way of a modification to that contract. The Council's advisor has advised that:

- although the procurement process is complex and not entirely risk-free, the risk of a challenge being presented and being successful is low to medium given character and value of contractual change in relation to the existing contracts with BT
- the risk around State aid compliance is low as the investment is to be made in accordance with the provisions of the European Commission's State aid clearance in respect of the National Broadband Scheme for the UK
- they have no reason to believe that the Council would breach the terms of the grant agreement if the gainshare sum is utilised as proposed (especially given the support the reinvestment has received from BDUK). However they did recommend confirming the position with the grant funder (the European Regional Development Fund)

7.2.3. The other local authorities comprising the Connecting Cheshire Partnership (i.e. Cheshire West and Chester Council, Halton Council and Warrington Council) have all approved the Phase 3 Gainshare proposal.

## **7.3. Financial Implications**

7.3.1. The £3.34m funding in the reinvestment fund will be brought into the Connecting Cheshire Contract 2 by means of a change control. With BT contributing £960k, the total capital funding for this project is £4.3m.

7.3.2. There is no new capital investment required by Cheshire East Council as this funding is generated by the contracted clawback mechanism under Connected Cheshire Contract 1. Project delivery costs will be borne from existing budgets

7.3.3. £4.3m is total value of the Gainshare project. Outcomes of the project need to be delivered within this funding envelop.

7.3.4. The Connecting Cheshire Partnership will be entitled to receive any future clawback generated under the Contract 1 through to 2023.

#### **7.4. Equality Implications**

7.4.1. The recommendations do not have any direct equality implications

#### **7.5. Rural Community Implications**

7.5.1. The project will positively benefit rural communities and support the quality of place agenda by upgrading broadband services where speeds are typically not as good as in more urban areas.

#### **7.6. Human Resources Implications**

7.6.1. Project management arrangements in place until April 2017 to support the delivery of Contract 2 will be further extended to July 2018.

#### **7.7. Public Health Implications**

7.7.1. The recommendations do not have any direct health implications.

#### **7.8. Implications for Children and Young People**

7.8.1. There are no direct implications for Children and Young People, although it is well understood good broadband speeds support learning and attainment online.

#### **7.9. Other Implications (Please Specify)**

7.9.1. none

### **8. Risk Management**

8.1. The Connecting Cheshire local authority partners would work together, in accordance with the collaboration agreement, to ensure funding generated from clawback is, wherever possible, reinvested to further extend the coverage of superfast broadband across Cheshire, Warrington and Halton.

8.2. The Phase 3 Gainshare proposal, as an extension to Connecting Cheshire Contract 2, has been endorsed by BDUK and by DCLG.

- 8.3. The Connecting Cheshire project team will work with BT to ensure targets and timescales of the Phase 3 Gainshare project are met.
- 8.4. The Connecting Cheshire project team will work with BDUK and the national state aid competency centre to ensure the rollout is compliant and continues to demonstrate the good value for money.

## **9. Access to Information/Bibliography**

9.1.

## **10. Contact Information**

Contact details for this report are as follows:

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