

OPEN

## **Highways and Transport Committee**

**19 July 2024**

### **Highway Service Contract**

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**Report of: Tom Moody, Director of Highways and Infrastructure**

**Report Reference No: HTC/16/24-25**

**Ward(s) Affected: All**

#### **Purpose of Report**

- 1 On 3 October 2018 the Council commenced a 15-year contract to deliver highway services with Ringway Jacobs Limited (the “Highway Service Contract” or “HSC”).
- 2 The HSC contains a mid-term break clause which, in general terms, allows the Council to shorten the service period to eight years in specific circumstances. If exercised, the Council must notify Ringway Jacobs by 2 October 2024.
- 3 This report recommends the action to be taken regarding the exercise of the break clause in the context of the potential financial and legal implications of this decision for the Council.

#### **Executive Summary**

- 4 The Council appointed the Future Highways Research Group (FHRG) as an experienced, external peer to undertake a review of the HSC. This review was to inform future decisions regarding the HSC.
- 5 This committee also convened a Member Advisory Panel (MAP) to advise, from a Member perspective, the Director of Highways and Infrastructure on matters concerning the peer review.
- 6 Under delegated authority from this committee, the principal recommendation from the Director of Highways and Infrastructure is that the Council should not exercise the break clause. Further

recommendations are also made on how the Council should proceed with the HSC in support of this decision.

## **RECOMMENDATIONS**

The Highways and Transport Committee is recommended to:

1. Note the findings of the peer review in Appendix 1 report and the views of the Member Advisory Panel in Appendix 3.
2. Approve the contract break clause is not exercised.
3. Delegate to the Director of Highways and Infrastructure to develop and implement a plan to respond to the findings of the peer review.
4. Approve that resources to consider the successor delivery model are included in financial planning from April 2028 to October 2033.

## **Background**

- 7 Cheshire East Borough Council (CEC) is the Local Highway Authority for the Borough of Cheshire East and thus has statutory duties to maintain and manage the public highway under principally the Highways Act 1980, New Roads and Street Works Act 1991 and Traffic Management Act 2004. CEC is also the Lead Local Flood Authority under The Flood and Water Management Act 2010. These statutory duties are predominantly delivered through the HSC.
- 8 In implementing the current contract, the Council adopted a model featuring:
  - (a) A predominantly externalised service;
  - (b) Integrated highway maintenance, management and engineering services;
  - (c) management and oversight through an in-house client team.
- 9 The procurement strategy was approved as a 15-year contract with a break clause at year 8 linked to performance. The contract term sought to maximise the benefit of a longer-term partnership. This was to take advantage of long-term planning to maximise investment in the network, aligning with DfT best practice. The strategy was also validated through market engagement.
- 10 The contract is based on the Highway Maintenance Efficiency Programme's New Engineering Contract version 3 Term Service Contract ("NEC3"), which has been tailored to meet the Council's needs.

- 11 The Council's contract model and procurement has supported the Council in maximising funding from the Department for Transport ("DfT") through the Local Highways Maintenance Incentive Fund.

## **The Peer Review**

- 12 FHRG is a group of 40 highway authorities around the country, linking with Cranfield University and utilising experienced highway maintenance practitioners. The review undertaken by FHRG used its Value for Money Analysis tool. This blends qualitative and quantitative measures to assess the performance of the Council's highway service contract across categories of Economy, Efficiency and Effectiveness.
- 13 The reviewers undertaking the assessment had broad experience of working within highway authorities at a senior level and in analysing public sector highway services delivery. The review provides an in depth understanding of the statutory functions, challenges and limitations placed upon highway authorities supported by a strong analytical analysis of service performance.
- 14 FHRG's report is shown in Appendix 1. There are eight high priority recommendations in section 8, which are (in summary):
- (a) Increasing the capacity of the Council's Highways client team and recruiting appropriate staff.
  - (b) Reviewing the contract governance structure to ensure that it remains fit for purpose.
  - (c) Refreshing the performance management framework to ensure outcome-based metrics and benchmarking externally.
  - (d) Refreshing the asset management policy and strategy to seek a more preventative approach to maintenance.
  - (e) Using the contract break point as an opportunity to review priorities for CEH and consider delivery options for certain services.
  - (f) Developing the approach to external benchmarking to ensure that there is continued evaluation of value for money.
  - (g) Develop longer term, preventative work programmes as part of setting budgets earlier and conducting a zero-base budget exercise.
  - (h) Develop a stakeholder management plan to improve communication about the service and how enquiries are dealt with.

There are also 12 other recommendations across a range of areas.

- 15 An improvement action plan is proposed to be developed for the service to respond to the recommendations. This plan will take time to implement. The action plan will respond to all the recommendations, implementing the measures where appropriate, or where not appropriate explaining how the issue is being taken forward. However, the plan should be expected to demonstrate improvements through repeating the peer review process in around three years' time.

### **The Member Advisory Panel (MAP)**

- 16 The terms of reference and composition of the MAP are shown in Appendix 2. The report of the MAP is shown in Appendix 3.

### **Consultation and Engagement**

- 17 The recommendations of this report have been informed by the cross-party MAP.

### **Reasons for Recommendations**

- 18 The process of undertaking a peer review with oversight by the MAP provides an objective basis for the Council's decision regarding the exercise of the break clause. The review found overall that the Council obtains reasonable value for money for its Highways Service, given the level resource allocated to it. This also compares reasonably to both other authorities within FHRG and those that are similar to Cheshire East.
- 19 The review's findings and the views of the MAP do not support exercising the break clause.
- 20 Accepting the findings of the peer review and implementing an improvement action plan can be considered best practice. Implementing a plan to address FHRG's recommendations will support the Council's Highways service achieving its full potential.
- 21 By implementing the recommendations of this paper, the Council is operating in a transparent, Open and Fair manner.

### **Other Options Considered**

- 22 The options for the Council in respect of this decision are as follows:

<b>Option</b>	<b>Impact</b>	<b>Risk</b>
<b>1. Do nothing:</b> No action is taken to	By default, the contract will continue to term in October 2033.	

exercise the break clause.		
<b>2. Exercise the break clause:</b> The council exercises the break clause and gives notice to terminate the HSC from October 2026.	The contract will terminate in October 2026.	The risks are detailed in the Part 2 report.
<b>3. Not exercise the break clause:</b> The council does not exercise the break clause.	The contract will continue to term in October 2033. Actively taking this decision allows the council to work with Cheshire East Highways on the way forward to 2033.	The risks are detailed in the Part 2 report.

## Implications and Comments

### *Monitoring Officer / Legal*

- 23 Please see confidential Appendix 4: Part 2 Report - Private Information for legal implications and comments on the review of the HSC.

### *Section 151 Officer / Finance*

- 24 Please see confidential Appendix 4: Part 2 Report - Private Information for financial implications and comments on the review of the HSC.
- 25 In taking a decision to proceed with the contract to 2033, the Council should recognise that:
- (a) The delivery model that succeeds this contract in 2033 needs to be considered appropriately in advance of the end of the contract; and
  - (b) This requires dedicated internal (and potentially external) resource in addition to business as usual in operating the HSC.
- 26 The current Medium Term Financial Strategy (MTFS) runs to March 2028. It is recommended that longer term financial planning from April 2028 onwards should take into account the resources required to consider and implement the successor delivery model.
- 27 While many of the recommendations in the FHRG Peer Review can be implemented within existing resources, others have potential financial

implications (e.g. implementing changes to Highways depots to achieve operational efficiencies and increasing the capacity of the Highways Service client team). The action plan developed to respond to the review (recommendation 3 of this report) must take account of decisions needed to implement such recommendations.

### *Policy*

28 The HSC supports the following priorities in the [Corporate Plan](#):

<b>Open</b>	<b>Fair</b>	<b>Green</b>
Support a sustainable financial future for the Council, through service development, improvement and transformation.	N/A	<p>A great place for people to live, work and visit.</p> <p>A transport network that is safe and promotes active travel.</p>

29 As the Corporate Plan is developed from 2025 onwards, opportunities to support the Council's emerging priorities will be considered. This will be reflected in the improvement action plan.

### *Equality, Diversity and Inclusion*

30 An Equality Impact Assessment (EIA) has been conducted and is published under "H" on the [Council's web page](#).

31 The EIA has identified that while the delivery of services under the HSC can have impacts on equality and diversity issues, taking this decision does not fundamentally change the council's approach to the delivery of service in respect of protected characteristics.

### *Human Resources*

32 Please see Appendix 4: Part 2 Report - Private Information for human resource implications arising from the decisions in this report.

33 Implementing the recommendations of the peer review relating to increasing the capacity of the Highways service client team will have human resource implications.

### *Risk Management*

34 Please see Appendix 4: Part 2 Report - Private Information for risk management implications arising from the decisions in this report.

### *Rural Communities*

- 35 There are no specific implications for rural communities arising from the decisions in this report. Any decisions made regarding the Highway Asset Management Policy following on from this will be regarded as a separate decision.

### *Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

- 36 There are no specific implications for children, young people and cared for children or those with special needs arising from the decisions in this report.

### *Public Health*

- 37 There are no Public Health Implications arising from the decisions in this report.

### *Climate Change*

- 38 There are no climate change implications arising from the decisions in this report. In developing the action plan, specific priority actions will be considered in terms of further advancing the Council's carbon neutral agenda.

<b>Access to Information</b>	
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Appendices:	Appendix 1 Peer Review Report Appendix 2 Terms of Reference, Member Advisory Panel Appendix 3 Report of the Member Advisory Panel Appendix 4 Part 2 Report - Private Information
Background Papers:	None