

Environment and Prosperity Scrutiny Committee

Agenda

Date: Monday, 1st October, 2012
Time: 10.00 am
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 at the foot of each report.

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. **Declarations of Party Whip**

To provide an opportunity for Members to declare the existence of a party whip in relation to any item on the agenda.

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

A total period of 15 minutes is allocated for members of the public to make a statement(s) on any matter that falls within the remit of the Committee.

Individual members of the public may speak for up to 5 minutes, but the Chairman will decide how the period of time allocated for public speaking will be apportioned, where there are a number of speakers

For any apologies or requests for further information, or to give notice of a question to be asked by a member of the public

Contact: Katie Smith
Tel: 01270 686465
E-Mail: katie.smith@cheshireeast.gov.uk

5. **Call-in of Key Decision CE12/13-18 Inclusion of Streetscape and Parking Maintenance Activities Within the Highway Services Contract** (Pages 1 - 16)

To give consideration to the above call-in

CHESHIRE EAST COUNCIL

ENVIRONMENT AND PROSPERITY SCRUTINY COMMITTEE

Date of meeting: 1 October 2012
Report of: The Borough Solicitor and Monitoring Officer
Title: Call-in of Key Decision CE12/13-18 Inclusion of Streetscape and Parking Maintenance Activities Within the Highway Services Contract

1.0 Report Summary

This report sets out the procedure for the Call-in of the decision of the Cabinet made on 17 September 2012.

2.0 Recommendations

- 2.1 That the Scrutiny Committee considers whether or not it wishes to offer advice to the decision maker in response to the Call In.

3.0 Wards Affected

- 5.1 All Wards

4.0 Local Ward Members

- 4.1 All Members for the above Wards.

5.0 Policy Implications

- 5.1 Contained within the attached report.

6.0 Financial Implications

- 6.1 Contained within the attached report.

7.0 Legal Implications

- 7.1 Contained within the attached report.

8.0 Risk Assessment

- 8.1 Contained within the attached report.

9.0 Background and Options

- 9.1 In accordance with Scrutiny Procedure Rule 12.3, any 8 or more Councillors can call in a decision. In this case, 9 Members have called in the above decision for the reasons identified in Appendix 1

9.2 In accordance with Scrutiny Procedure Rule 12.6 the Committee has two options in respect of any further action. The Committee may decide to offer no advice, in which case the decision may be implemented. Alternatively, the Committee may decide to offer advice, in which case, the matter must be referred to the decision maker, in this case the Cabinet, in order for a decision to be made upon it. In accordance with Scrutiny Procedure Rule 12.8, the decision maker is not bound to accept any advice offered and will have sole discretion on any further action to be taken. Such action may include:

(1) Confirming with or without amendment the original decision; or

(2) Deferring the matter pending further consideration; or

(3) Making a different decision.

9.3 Where the Scrutiny Committee decides to offer advice, this must be clearly documented in the minutes

9.4 If the Scrutiny Committee decides not to offer any advice, then the decision of the Cabinet can be implemented immediately.

9.5 Full details of the Call-In Procedure can be found at Scrutiny Procedure Rule 12

9.6 The Cabinet Member for Environment and relevant officers will attend the meeting to explain the background and reasons for the decision and to answer any questions the Committee may have.

9.7 The following records the decision of the Cabinet of 17 September 2012:

1. That, subject to no challenge being received during the Voluntary Ex-ante Transparency Notice period commonly referred to as the VEAT notice, approval be given to extending the scope of the Highways Services Contract to include Streetscape and Parking Maintenance activities as outlined in 10.2 and 10.6 of the report.
2. That approval be given to the publication of a procurement VEAT Notice
3. That approval be given to the development of a detailed activity programme that will engage with elected members, existing employees and their Trade Union representatives, with a view to achieving a commencement date of 1 January 2013 for the new service delivery arrangements.

9.8 The Report of the Strategic Director, Places and Organisational Capacity considered by the Cabinet is attached at Appendix 2.

9.9 A response to the issues raised in the Call-In Notice is attached at Appendix 3 (report to follow).

10.0 **Appendices**

Appendix 1 – Call In Notice

Appendix 2 – Report of the Strategic Director, Places and Organisational Capacity

Appendix 3 – Response to the issues raised in the Call-in Notice (To Follow)

For further information:-

Officer: Katie Smith

Tel No: 01270 686465

Email: katie.smith@cheshireeast.gov.uk

Background Documents:-

Documents are available for inspection at:

Legal and Democratic Services, Westfields, Middlewich Road, Sandbach, CW11 1HZ

This page is intentionally left blank

Appendix 1

**Call-in of Key Decision CE12/13-18 Call-in of Key Decision CE12/13-18
Inclusion of Streetscape and Parking Maintenance Activities within the
Highway Services Contract**

The 9 councillors listed below have called in the decision of the Cabinet on the grounds:

Streetscape works well, perhaps excellently. Highways contract is unproven and insufficient evidence is available to show that the service will not deteriorate or even to make the decision to change. Also:

- Professional advice was not taken from officers or not duly considered.
- The decision was taken in the absence of adequate evidence.
- There was inadequate consultation relating to the decision.
- Viable alternatives were not considered.

Councillor D Brickhill

Councillor S Hogben

Councillor B Murphy

Councillor A Moran

Councillor S Jones

Councillor M Grant

Councillor R Fletcher

Councillor B Burkhill

Councillor M Parsons

This page is intentionally left blank

CHESHIRE EAST COUNCIL

CABINET

Date of Meeting:	17 September 2012
Report of:	Strategic Director – Places and Organisational Capacity
Subject/Title:	Inclusion of Streetscape and Parking Maintenance Activities Within the Highway Services Contract
Portfolio Holder:	Cllr Rod Menlove

1.0 Report Summary

- 1.1 This report seeks Cabinet approval to extend the scope of the Highways Services Contract by the inclusion of existing Streetscape and Parking Maintenance (excluding parking enforcement) activities that are currently undertaken directly by the Council (refer to 10.2 and 10.6 for full details). The activities being considered are those that are predominantly undertaken within the highway boundaries or those activities (such as grounds maintenance) that are similar in nature to cyclical and routine activities undertaken within the scope of the Highways Services Contract currently managed by Ringway Jacobs. The report outlines the benefits and risks of extending the scope of the Highways Services Contract. The report also seeks delegated authority to commence discussions with Ringway Jacobs that will ultimately aim to result in the new service arrangements commencing on 1 January 2013.
- 1.2 It is anticipated that the increased contract scope will realise immediate savings in the last quarter of 2012-2013 in excess of £50,000, increasing to a full-year saving of over £250,000 during 2013/14 on existing annual revenue budgets within Streetscape, rising to a value of circa £450,000 per annum from 1 April 2014 after the first full year of operation, without any reduction in existing service standards and any compromise on ongoing initiatives. Parking Maintenance will see efficiencies generated from combining the management activities with those undertaken within the Highways Team, seeing works associated with Traffic Regulation Orders and maintenance activities that are common to both areas being combined as one operational team activity without a reduction in service standards. It is anticipated that after the first full year of operation, efficiencies generated will be in excess 7.5% of current operating costs.
- 1.3 Members attention is drawn to paragraph 10.13 which describes how these proposals are intended to be complimentary to the Council's localism agenda.

2.0 Decision Requested

- 2.1 Cabinet is requested to approve the (subject to no challenge being received during the Voluntary Ex-ante Transparency Notice period commonly referred to as the VEAT notice) extension of the scope of the Highways Services Contract to include Streetscape and Parking Maintenance activities as outlined in 10.2 and 10.6 below.
- 2.2 To approve the publication of a procurement VEAT Notice
- 2.3 To approve the development of a detailed activity programme that will engage with elected members, existing employees and their Trade Union representatives with a view to achieving a commencement date of 1 January 2013 for the new service delivery arrangements.
- 2.4 To note that extending the scope of the Highways Services Contract will trigger the automatic application of the TUPE Regulations which will affect a transfer of a number of existing Council employees within the Streetscape, Parking and Fleet Services to Ringway Jacobs.

3.0 Reasons for Recommendations

- 3.1 Due to the ever increasing financial pressures that the Council is facing, new and innovative ways of service delivery are required that will allow the Council to achieve 'more for less', ensuring that existing service provision continues to the same high standards as delivered previously whilst being sustainable in future years.

4.0 Wards Affected

- 4.1 All Wards are affected by the proposal.

5.0 Local Ward Members

- 5.1 All Ward Members are affected by the proposal.

**6.0 Policy Implications including – Carbon Reduction
- Health**

- 6.1 The existing Highways Services Contract requires Ringway Jacobs to carry out the services in a manner that achieves greater value for money for the Council, year on year, by reducing costs and delivering the Services more efficiently whilst seeking to maximise the achievement of the Council's Strategic Objectives throughout the contract period. Our Strategic Objectives include 'limiting carbon emissions', which ensures that Ringway

Jacobs are required to demonstrate that they are achieving this. Additionally, in support of this, Ringway Jacobs must also maximise the 'achievement of the objectives set out in the Local Transport Plan'. The Local Transport Plan includes Priority Policies that work towards carbon reduction, through for example, minimising the future need to travel and through encouraging technological development in transport services in partnership with operators.

- 6.2 Ringway Jacobs have already embraced the Council's objectives associated with well being and carbon reduction and in the short time they have been in operation, have become an integrated member of the Carbon Reduction Group. The same approach will apply to all services included within the increased scope of contract.
- 6.3 An existing performance framework exists which requires Ringway Jacobs to measure performance in this area with challenging targets established for energy reduction.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 The services which are included within the scope of works for the Highways Services Contract and undertaken by Ringway Jacobs as core services have an annual value of around £14 million (capital and revenue).
- 7.2 The current 2012-13 annual combined value of the Streetscape services associated with Grounds Maintenance and Street Cleansing activities is around £5.5 million.
- 7.3 The new arrangement will deliver immediate savings in the last quarter of 2012/13 in excess of £50,000, increasing to a full year saving of over £250,000 during 2013/14 on existing annual revenue budgets within Streetscape, rising to a value of circa £450,000 per annum from 1 April 2014 after the first full year of operation when compared to existing Service costs. This will be achieved through the removal of existing casual/agency staff combined with operational efficiencies secured during the first full year of operation, generating savings of around 7.5% as per the contractual commitment contained within the Highways Services Contract. In addition to these initial savings, future year-on-year savings of 3% per annum will be secured from innovation and efficiency gains. The potential additional 2013/14 & 14/15 savings referred to above (circa £400,000), over and above the £50,000 savings already secured against the approved 2012/13 budgets, will be reported as part of the Business Planning process for 2013/14 onwards and will be clarified after the detailed work associated with increasing the Contract scope is completed (as referred to in 7.2 above).
- 7.4 Parking Maintenance will benefit from efficiencies generated from combining the Parking Maintenance activities with those similar activities

undertaken by Ringway Jacobs as part of the Highway Services Contract. Over the course of the first full year of operation, the Council will benefit from efficiency improvements that will see a reduction in running costs without any reduction in service standards. It is anticipated that after the first full year of operation, efficiencies generated from service delivery will reduce the current financial pressure across the Service by around 7.5% combined with a further year on year reduction of 3% per annum associated with future innovation and efficiency gains. Again, additional future savings referred to above, the approved 2012/13 budgets, will be reported as part of the Business Planning process for 2013/14 onwards and will be clarified after the detailed work associated with increasing the Contract scope is completed (as referred to in 7.2 above).

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Council has entered into the Highways Services Contract (the Contract) with Ringway Jacobs. The term of the Contract is five years with the opportunity to extend for a further two years (depending on performance and at the Council's ultimate discretion). The Contract commenced early October 2011.
- 8.2 The Council, as Highway Authority for the Cheshire East area, has numerous powers and duties under the Highways Act 1980 to carry out highway associated activities including maintenance, improvement and repair work on the highway network all of which were included within the original contract scope as set out in the OJEU Procurement Notice (the Notice) for the Contract. None of the duties discharged by Ringway Jacobs on behalf of the Council relieve the Council of those powers and duties and the Contract contains contractual remedies that can be exercised in the event that Cheshire East Highway's fails to discharge the functions.
- 8.3 The Highways Services Contract sets out very clearly the statutory obligations of the Council the performance of which, are delegated to Ringway Jacobs along with the protocol for the discharge of other statutory obligations of the Council.

Substantially amending the scope of a contract post award of tender can lead to a breach of the procurement rules. A substantial change in scope could amount to an award of a new contract which could then be challenged as an unlawful award of contract. Some elements of the increased service e.g. verge and hedge management are specifically within the scope of the Contract. However other elements, namely street cleansing and grounds maintenance activities in parks and open spaces amount to a technical breach of the Notice. Although the wording within the Contract was widely drafted with a catch all phrase of 'any additional services as may be requested by the Employer from time to time' this would be legally construed in the light of the overall content of the Notice and the categories of services included within that Notice. Although adding the services to the Contract would not result in the value of the Contract exceeding the estimated financial contract value given in the Notice this is not the only

issue to consider when interpreting if a change in scope amounts to an award of a new contract that could be challenged as an unlawful award of contract.

- 8.4 Advice was sought from Bevan Brittan, the external solicitors involved in the procurement of the Highway's Contract, as to the potential risk of a challenge that could result from any perceived change in the scope and value of the contract. Bevan Brittan has provided clear advice as to what is unequivocally within scope and what is in strict legal terms was outside scope. A commercial view was proffered as to the risk of challenge by the unsuccessful tenderers; this was considered to be low. However, a challenge can be brought by anyone, in practical terms only parties that might stand to benefit bring claims, however in the given situation the Council needs to consider the Unions and Members and would be unwise to proceed in the event that there was not universal support for the action. Although it is envisaged that the risk of challenge from both internal and external sources is minimal, the proposed increased scope of activities will result in a variation to the existing arrangement that is sufficiently material to fall beyond the scope of works originally advertised and with hindsight should have been included on the original published OJEU Notice. It is not only original tenderers that could challenge the award organisations that are able to provide street cleansing and/or park maintenance might also wish to challenge, any one could raise a complaint with the EU Commission which would pursue the Council of its own volition.
- 8.5 It has been suggested that prior to the Council extending the scope of the Contract it could protect its position by issuing a VEAT Notice. Provision is made for the VEAT Notice in the Public Procurement Regulations to be used to advertise to the market an intention to award a contract directly without making a call for competition. However these direct awards can only be made where explicit justification is given. The permissible justifications are set out in regulation 14 as follows:
- (1) A contracting authority may use the negotiated procedure without the prior publication of a contract notice in accordance with regulation 17(3) in the following circumstances-
- (a) in the case of a public contract-
- (i) when a contracting authority is using the negotiated procedure in accordance with regulation 13(a) and invites to negotiate the contract every economic operator which submitted a tender following an invitation made during the course of the discontinued open procedure or restricted procedure or competitive dialogue (not being a tender which was excluded in accordance with regulation 15(11), 16(7) or 18(10)); and
- (ii) subject to paragraph (2), in the absence of tenders, suitable tenders or applications in response to an invitation to tender by the contracting authority using the open procedure or the restricted procedure but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;

(iii) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator;

(iv) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the contracting authority, the time limits specified in-

(aa) regulation 15 for the open procedure;

(bb) regulation 16 for the restricted procedure; or

(cc) regulation 17 for the negotiated procedure;

The Council does not fit comfortably within these justifications, however as Bevan Brittan has advised issuing the VEAT is a way of flushing out potential challenges and would protect the Council's position.

Although the publication of the VEAT notice in itself can encourage a challenge, in practice since the introduction of the New Directive Remedies these notices are being used across the EU to resolve the changing needs of long-term arrangements.

A challenge can be received anytime during the first six months of a Contract but by following the VEAT Notice approach identified above, will reduce the risk of any challenge being made.

- 8.6 It must also be noted that extending the scope of the Contract will trigger the automatic application of the TUPE Regulations which will affect a transfer of a number of existing Council employees within the Streetscape, Parking and Fleet Services to Ringway Jacobs.

9.0 Risk Management

- 9.1 The potential risks to the Council of a procurement challenge are dealt with in paragraph 8.5 above.
- 9.2 The Council is at the forefront of pursuing devolution of services and the objectives of the Localism Act 2011 with its Town and Parish Councils. Currently a 'Pathfinder' is underway with Congleton Town Council. The Pathfinder has been conducting trials on local delivery of services and is currently considering the benefits of devolving services from Cheshire East Council to the Town Council of Congleton. Other Town and Parish Councils are also considering similar service delivery models. The extended Contract with Ringway Jacobs will not prevent or delay such initiatives and is flexible enough to accommodate future delivery needs.
- 9.3 Achieving the target date of 1 January 2013 for the commencement of service delivery under the revised scope of contract is dependant upon the successful completion of 2 key activities, namely, concluding the terms of

the extension with Ringway Jacobs and liaising with staff and trade unions in relation to TUPE transfer.

- 9.4 The Council has recently introduced a requirement for all major projects and programmes to be reviewed by a new corporate quality assurance group called the Executive Monitoring Board (EMB) before they can proceed. Major projects and programmes are defined where there is a total cost in excess of £250k and/or where there is significant risk. The project arising from this report will therefore need to be reviewed by the EMB prior to any approval to proceed being given.

10.0 Background and Options

Grounds Maintenance and Street Cleansing Existing Arrangements

- 10.1 There are currently 143.3 full-time equivalent (FTE) Council employees employed on Grounds Maintenance, Street Cleansing and related Fleet activities, along with 17 FTE agency employees. These 138.3 members of staff within the Streetscape Service (operatives, apprentices and a mixture of office-based staff) along with 5 employees who work within Fleet Services, maintaining vehicles and plant. The exact numbers of staff eligible for TUPE transfer will be determined as scope of the contract extension is finalised.
- 10.2 Services to be included within the revised scope of contract :
- All highway verges (Already included within scope of works for Ringway Jacobs);
 - Grounds maintenance activities in parks and open spaces;
 - Horticultural activities;
 - Tree Management;
 - Street Cleansing activities; and
 - Litter & dog bin emptying;
- 10.3 Services to be excluded from the revised scope of contract:
- Allotments;
 - Public Conveniences;
 - Markets; and
 - Bereavement Services
- 10.4 The operation is currently undertaken from nine discrete sites across the borough. Locations are determined by the key work locations and the mobility of the equipment used during maintenance operations.

Car Parks and Parking Services Existing Arrangements

- 10.5 There are currently 2 Council employees employed directly working on Parking Maintenance activities that have been identified eligible for transfer.
- 10.6 Services to be included within the revised scope of contract:
- Maintenance and management of all off-street and on-street parking facilities.
- 10.7 Services to be excluded from the revised scope of contract:
- Civil parking enforcement activities
 - All other services within Community Services.
- 10.8 Although the existing service provision is predominantly focussed upon parking enforcement issues, all activities associated with Parking Maintenance and management are common to highway management activities, requiring the same resources and management/maintenance regimes to deliver the service. These common practices will allow future efficiencies to be generated.
- 10.9 The operation is currently managed within Community Services.

Management Arrangements – Highways Services Contract

- 10.10 Ringway Jacobs are the service provider for the Councils Highways Services Contract.
- 10.11 A 'Thin Client Team' has been established to oversee the Contract. The Thin Client is responsible for ensuring that Ringway Jacobs work in accordance with the Council's objectives and achieves all the performance standards contained within the Contract and complies with all the financial controls required for a contract of this size and complexity.
- 10.12 It is intended that the additional service provision identified above in 10.1 and 10.5 will be managed in accordance with the existing Contract. The size of Thin Client Team may need to be slightly increased to oversee the additional contract elements and this will be determined prior to service commencement.

Key Priorities - Addressing Localism

- 10.13 This is a key objective of the Council and considerable focus has been given to ensuring that Ringway Jacobs' solutions address localism. The Council is at the forefront of enabling its Town and Parish Councils to have a greater say on the way services are delivered in their areas.
- A greater focus upon localism has the potential to increase the reputation of both Cheshire East and the local Towns and Parish

Councils. This approach may also gain national recognition for enabling local working, reducing the amount of complaints received, and increasing the quality of the services, whilst still achieving the necessary efficiency savings over the long term.

- Ringway Jacobs are committed to working closely with the Council to achieve any objectives associated with localised devolution opportunities whilst also embracing any changes resulting from the introduction of the Localism Act 2011; and Engaging with existing Town and Parish Councils to form part of the decision making process.
- The Council has for some time been working with Congleton Town Council on a Pathfinder project that, if agreed will see a range of services being provided by the Town Council. This arrangement would result in a number of employees being transferred to Congleton Town Council with responsibility for the provision of plant and other equipment remaining with the Council and managed via the Highways Services Contract. It is expected that the financial implications of this arrangement will provide at least the same value for money as those provided through the Ringway Jacobs contract.
- Should other Town and Parish Councils wish to pursue similar initiatives the Contract with Ringway Jacobs is flexible enough to accommodate this along with other local requirements such as the 'Parish Compact Agreements' (arrangement that allows small budget allocations to be paid directly to Town and Parish Councils to facilitate self delivery of some services. A number of Parish Compacts remain in place following their previous use by Crewe and Nantwich District Councils. The arrangements are expected to continue and may provide a model for further future devolution subject to the requirement that these arrangements provide at least the same value for money as those provided through the Ringway Jacobs contract.
- Whilst the Congleton Pathfinder and Parish Compacts illustrate 2 forms of service devolution it is recognised that others models may develop over time. The Contract extension with Ringway Jacobs will be developed in such a manner that supports this subject to the overall value for money considerations set out above.

Key Priorities - Innovation and Efficiencies

- 10.14 A key focus under the Highways Services Contract is to improve the efficiency of the provision of services provided. Ringway Jacobs has produced a schedule of the potential efficiencies and are currently working towards achieving them over the agreed timescale. Budgets have already been adjusted to reflect these improvements.
- 10.15 Ringway Jacobs (Ringway Jacobs) operates similar contracts across the UK; this allows them to bring their knowledge and innovation from elsewhere to benefit Cheshire East.

Key Priorities – Trade Union and Staff Engagement

10.16 Ringway Jacobs have already demonstrated their ability to work closely with all employees that are eligible to transfer from the Council. During the Highways Services procurement, over 140 eligible staff from both the Council and the existing term maintenance contractor (BAM Nuttall) transferred to Ringway Jacobs. A Staff Stakeholder Group was created and was active throughout the transfer process. A new Stakeholder Group will be established during the proposed change in scope of the Highways Services Contract. The group will facilitate employee engagement and cascade information to colleagues as things progress. The group includes union representatives and allows all issues and concerns to be raised and discussed on behalf of the wider employee group.

10.17 Key issues and concerns raised during previous meetings have been:

- Pension issues;
- TUPE issues, when will information be released to staff;
- Depot/accommodation strategy – ‘Where will I be based’; and
- Programme – timeline of events;

Mobilisation and Contract Commencement

10.18 Unlike the Highways Services Contract the speed at which the existing Contract scope could be varied and TUPE arrangements progressed could be completed within a very short period of around twelve weeks. The target date for new service arrangements commencing is 1 January 2012.

11.0 Access to information

11.1 The background papers relating to this report can be inspected by contacting the report writer:

Name: Kevin Melling
Designation: Head of Highways and Transport
Tel No: 07825 935258
Email: Kevin.melling@Cheshireeast.gov.uk