

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	29 th April 2014
Report of:	Public Rights of Way Manager
Subject/Title:	Notice of Motion – Public Rights of Way
Portfolio Holder:	Cllr David Topping, Environment

1.0 Report Summary

- 1.1. Council resolved at its meeting on 27th February 2014 that a motion made in relation to the governance and management of Public Rights of Way be referred to Cabinet. The motion is set out in paragraph 10.2. This report addresses the motion.
- 1.2. The Public Rights of Way function of the Council is not part of the first tranche of services to be placed in Alternative Service Delivery Vehicles. For the short term it will remain in the Council and continue to provide an excellent level of service to residents and visitors alike whilst being subject to an options appraisal to determine how it should be delivered in the long term. Whilst Public Rights of Way are very dissimilar to highways in their usage by the public and the objectives and outcomes of management, they are administered under the same legislation and are a statutory function.

Recommendations

- 2.1. That Cabinet consider the merits of the motion set out in paragraph 10.2.
- 2.2. That Cabinet respond to the merits of the motion as considered below, and refer the matter to the Executive Director of Strategic Commissioning to undertake an options appraisal for the future delivery of the Public Rights of Way functions.

3. Reasons for Recommendations

- 3.1 To enable Cabinet to consider the matter raised in the motion, and to propose further actions that Cabinet may feel is appropriate.

4. Wards Affected

- 4.1 All wards

5.0 Local Ward Members

- 5.1 All Ward Members

6.0 Policy Implications

- 6.1 Policies in respect of Public rights of Way are drawn from the Service Business Plan 2013/ 2016 and reflect corporate outcomes.
- 6.2 To ensure that the rights of way network for Cheshire East is correctly recorded on the Definitive Map for Cheshire in line with statutory duties - Corporate Outcome 4 - Cheshire East is a Green and Sustainable Place.
- 6.3 To ensure that the network is available and easy to use and free from obstructions in order to fulfill statutory duties and to deliver health and wellbeing, social, economic and environmental benefits - Corporate Outcomes 4 and 5 - Cheshire East is a Green and Sustainable Place / Local People Live Well and for Longer.
- 6.4 To ensure that Local Transport Plan/Rights of Way Improvement Plan projects are processed in line with the Cheshire East ROWIP to fulfill community identified needs to support health and wellbeing, communication and sustainable travel needs - Corporate Outcome 4 - Cheshire East is a Green and Sustainable Place.

7.0 Financial Implications

- 7.1 In order to meet stringent financial targets the Council has detailed cost savings across all council services as part of the 3-year business plan.
- 7.2 The savings anticipated for Public Rights of Way for the financial year 2014/ 2015 amount to £23,000 or 6% of operational budget.
- 7.3 More significant savings comprising 12% of the operational budget had been anticipated although an element of this was removed at the full Council budget setting meeting of 27 February 2014.
- 7.4 Since 2009 the Public Rights of Way revenue budgets have seen reductions of 34%.

8.0 Legal Implications

- 8.1 The Council has a statutory duty to maintain and protect those Public Rights of Way that are maintainable at public expense. In practice this means virtually all the 1968 km network.

- 8.2 Inspection of the network on a regular basis can provide a statutory defence to claims for negligence causing injury and damage to users of the network. Highways Act 1980 S58.
- 8.3 The Council has a statutory duty to keep the Definitive Map and Statement of Public Rights of Way up to date. This means that it must investigate and act upon claims from the public with regard to inaccuracies on the Definitive Map.
- 8.4 The Council has a statutory duty to facilitate, manage and run a Local Access forum that acts as a statutory advisory body to the Council on matters associated with access to the countryside and particularly Public Rights of Way.
- 8.5 The Council has a statutory duty to produce a Rights of Way Improvement Plan Strategy and update it on a 15 year cycle.

9.0 Risk Management

- 9.1 There are a number of risks associated with failure to carry out the duties set out above in section 8.1 to 8.5, all of which can lead to resource and reputational consequences for the Council.
- 9.2 Members of the public may challenge the Council through the courts if they believe that either of those duties are not being fulfilled, by means of provisions in Highways Act 1980 s56 for alleged failures to maintain and under provisions of Highways Act S130A for alleged failures to protect, (remove obstructions from the network).
- 9.3 Members of the public may submit claims against the Council for injury and damages caused by alleged defects to the network due to inadequate maintenance.
- 9.4 Members of the public can make use of the checks and balances in legislation associated with Public Path Orders and Definitive Map Orders to challenge the Order making decisions of the Council potentially leading to a public enquiry.

10. Background and Options

- 10.1 A motion titled “Public Rights of Way” was proposed to Council at its meeting on 27^h February 2014, by Councillor K Edwards and seconded by Councillor S Corcoran.
- 10.2 The content of the motion was as follows:

“Cheshire East Council acknowledges that one of its most significant tourist assets is the magnificent scenery and the access to that scenery given by the extensive Public Rights of Way network.

Therefore they call upon the administration to ensure that in any future arrangements for the governance and management of Public Rights of Way that may be commissioned in exercise of the Council's statutory responsibilities the following principles will be adhered to:

- a) There will be appropriate arrangements made to maintain and where necessary to improve and extend signage, and safe access.
- b) There will be consultative arrangements to enable members of the public to be aware of and involved in any proposed changes to Public Rights of Way
- c) There will be a continually updated Rights of Way Improvement Plan
- d) There will be an appropriate programme of inspection to ensure safety for users.
- e) There will a budget allocated to carry out the above responsibilities.
- f) Work on completing the Definitive Map of all designated rights of way will be completed."

- 10.3. In accordance with the Council Procedure Rules within the Constitution, Council resolved that the matter stand referred to Cabinet.
- 10.4. *There will be appropriate arrangements made to maintain and where necessary to improve and extend signage, and safe access.* Signage and safe access is a product of maintenance intervention. The level of maintenance capability is directly controlled by resources. The current level of resources allows the Council to maintain levels of signage and safety to a satisfactory standard. Currently this is reflected by an ease of use statistic of the network of 83% which is in the highest quartile nationally.
- 10.5. *There will be consultative arrangements to enable members of the public to be aware of and involved in any proposed changes to Public Rights of Way.* Given the public facing nature of the service and the interest in this area of work it is not believed that it would be in the interests of the Council to do anything other than fully consult our various partners.
- 10.6. *There will be continually updated Rights of Way Improvement Plan.* This is a statutory duty, thus the council is obliged to continue to update the ROWIP at the statutory periods. Furthermore it has a duty to maintain the local Access Forum which has a fundamental interest in monitoring progress with the ROWIP.
- 10.7. *There will be an appropriate programme of inspection to ensure safety for users.* An inspection of 5% of the network is undertaken annually

as part of the random survey to determine the ease of use statistic and hence the Council's performance level. The Service is also developing a survey scheme with volunteers which will operate on a parish by parish basis and eventually provide a complete picture of the 1968km network. However both are primarily for accessibility monitoring, not to detect and record defects. Neither would fulfill the requirements of Highways Act 1980 s58 and provide a defence in action against a highway authority for damages for non repair of a highway. The Public Rights of Way Team inspects the stock of rights of way bridges on a two yearly cycle due to the high risks associated with defects in the bridge stock. The Highways Service operates an inspection regime for both the road network and those urban paths on their list for maintenance. The Council currently has no formal regular inspection regime in place for the remainder of the predominantly rural network. Within the current resource level it is not possible to undertake a regular survey. It is believed that risks are lower if resources are devoted to maintenance rather than diverting an element of scarce resource to inspection in lieu of maintenance.

- 10.8. *There will a budget allocated to carry out the above responsibilities. As the response for point 10.4 above with regard to maintenance and safety.*
- 10.9. *Work on completing the Definitive Map of all designated rights of way will be completed.* This is also a statutory duty although government has never placed a timescale on the target for completion. The rate of progress towards completion is, like maintenance, a direct product of resources. Work is having to increase in this area and is likely to do so in the next 12 years with the introduction by the government of a cut-off date of 2026 for the acceptance of applications for additions of routes to the Definitive Map based on historical documentary evidence. Thus any reduction of resources leading up to this date will have an impact on the Council's ability to respond to any increase in applications from the public.

11.0 Access to Information

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

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