



Working for a brighter future together

Environment and Regeneration Overview and Scrutiny Committee

Date of Meeting: 16 March 2020

Report Title: Well Managed Highway Infrastructure Call in Response

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1. Introduction and Policy Context

- 1.1. On the 04/02/20 a paper 'Well-Managed Highway Infrastructure' was presented to Cabinet for consideration outlining proposed changes to the Highway Safety Inspection Policy, Highway Safety Inspection Code of Practice, The Winter and Adverse Weather Policy, The Adverse Weather Plan and the Resilient Network. Included in these proposals were proposed changes to the winter treatment network.
- 1.2. Figure 1 below outlines the policy context of the documents presented for consideration.

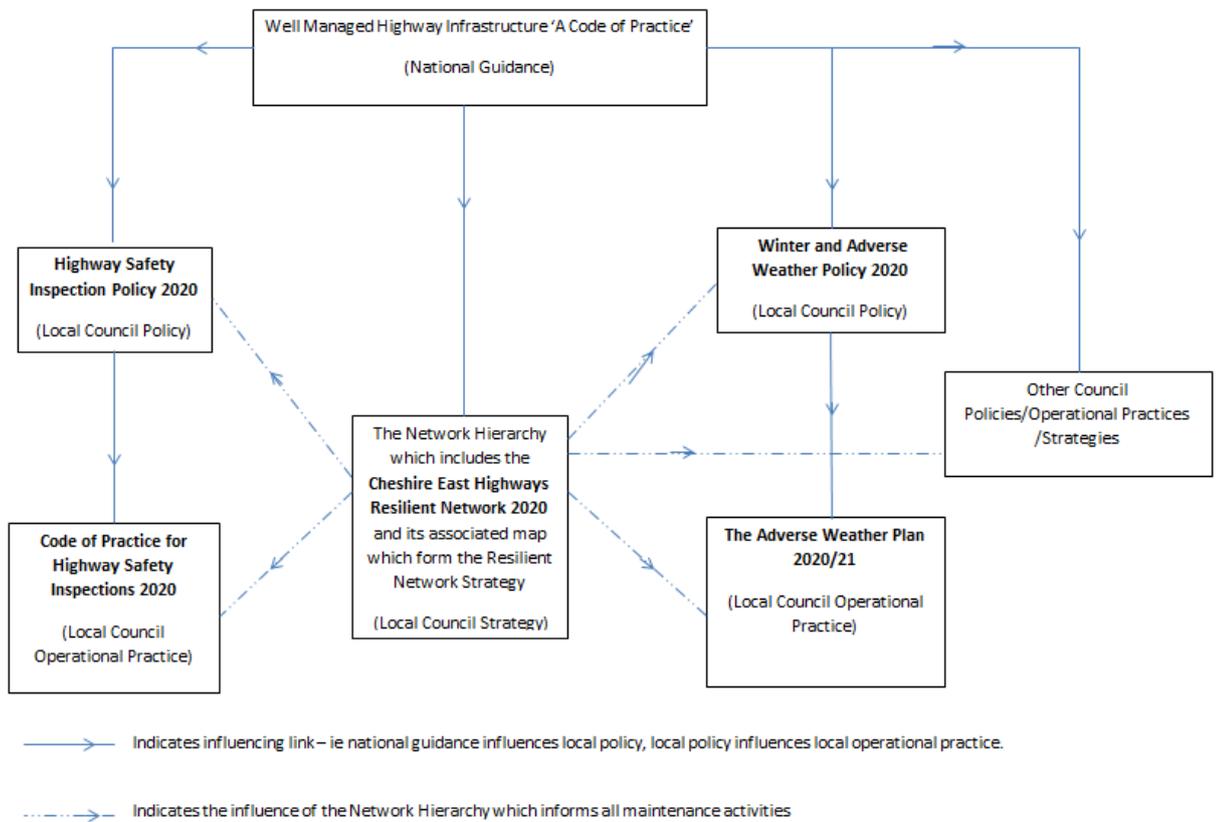


Figure 1 – Policy Context

- 1.3. At the meeting Cabinet approved the proposals in the paper; however, a call-in request has subsequently been received which is to be considered by the Environment and Regeneration Overview and Scrutiny Committee on 16 March 2020.

2. Background

- 2.1. During the discussions that were held in Cabinet, a number of members highlighted concerns with the levels of consultation that had been undertaken and the provision of winter service to primary schools, amongst other things.

3. Briefing Information

- 3.1. A public consultation was undertaken between 2nd July and 27th August 2018 (8 weeks) to seek the opinion of interested parties with regards to the Council's approach to Well Managed Highway Infrastructure (WMHI). Guidance on consultations suggests that a proportionate amount of time should be allowed, typically the Council allows between 4 and 12 weeks. In this instance 3.5 weeks of the consultation fell in schools term time.

- 3.2. The consultation was undertaken by the Council's Research and Consultation Team. All officers in the Research and Consultation Team are accredited members of the Consultation Institute and follow best practice consultation processes. The public consultation was designed to follow the Council's established processes, being published on the Council's website during the period that the consultation was live, utilising both paper and digital surveys alongside engagement directly with key statutory and non-statutory stakeholders as detailed in Appendix 1. Paper copies of the consultation documentation, freepost envelopes and questionnaires were made available in all libraries across Cheshire East and customer service desks in Crewe and Macclesfield, with supporting guidance for officers in those locations, and copies in large print or alternative languages also made available upon request.
- 3.3. The "Gunning" principles on consultation, along with others, have been followed during the policy formation process. The principles set out:
- Consultation should occur when proposals are at a formative stage. Case law has examined the phrase "formative stage" and determined that this is where the mind of the decision maker is open to change.
 - Consultation should give sufficient information or reasons for any proposal to permit intelligent consideration.
 - Consultations should allow adequate time for consideration and response.
- 3.4. As a result of the consultation 93 responses were received, with comments from members of the public, town and parish councils and school representatives.
- 3.5. A summary of the consultation results can now be found on the Councils' consultation results website and in Appendix 2.
- 3.6. Figure 2 below shows the consultation undertaken.

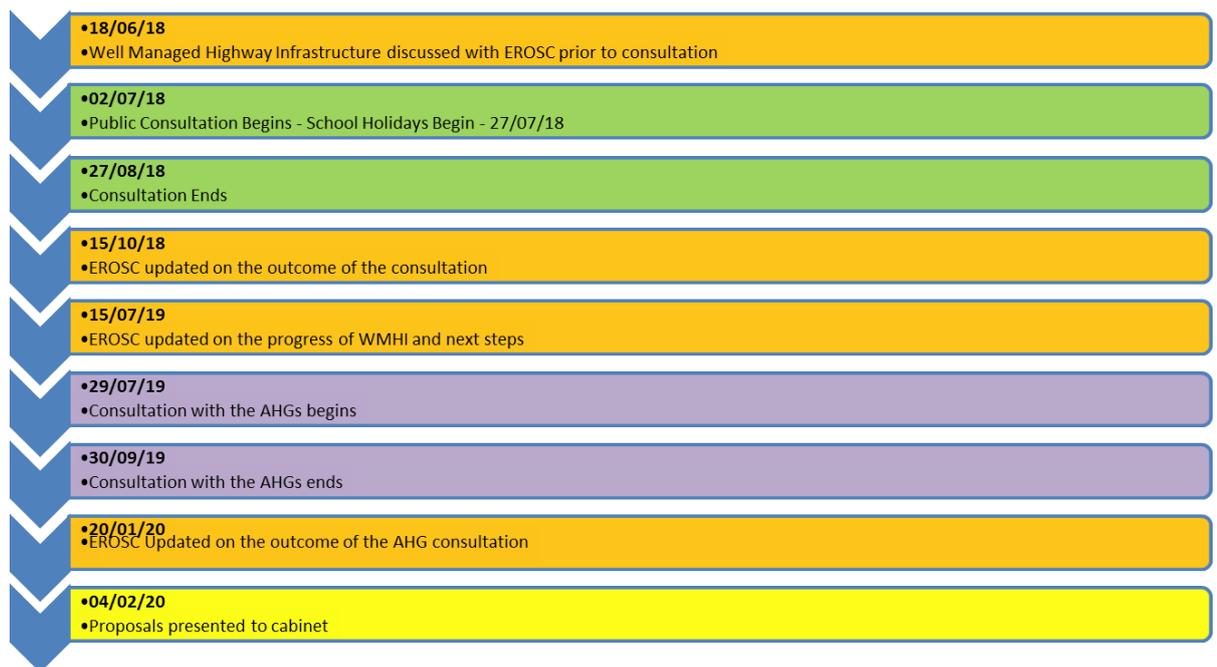


Figure 2– Consultation time line

The Highway Safety Inspection Policy 2020 and The Code of Practice for Highway Safety Inspections 2020.

- 3.7. The Highway Safety Inspection Policy 2020 sets out the principles overarching the Code of Practice for Highway Safety Inspections.
- 3.8. The Code of Practice for Highway Safety Inspections 2020 defines how the aspirations of the Highway Safety Inspection Policy 2020 will be operationally delivered.
- 3.9. These documents were consulted on through the Well Managed Highway Infrastructure Consultation.
- 3.10. The consultation included examples of the existing and proposed inspection regime.
- 3.11. As a result of the consultation, further consideration was given to cyclists and motorcyclist, and investigatory levels for on carriageway cycle lanes were revised from 40mm to 20mm.
- 3.12. The consultation results were discussed at length with Environment and Regeneration Overview and Scrutiny Committee on 15/10/18.

- 3.13. The consultation and the amendments made as a result of the consultation were discussed at length by the Environment and Regeneration Overview and Scrutiny Committee on 15/07/19.

The Winter and Adverse Weather Policy 2020 and The Adverse Weather Plan 2020/21

- 3.14. The Winter and Adverse Weather Policy 2020 sets out the principles overarching the Adverse Weather Plan 2020/21.
- 3.15. The Adverse Weather Plan 2020/21 defines how the aspirations of the Winter and Adverse Weather Policy 2020/21 will be operationally delivered.
- 3.16. As a consequence of the consultation and the feedback received, the Winter and Adverse Weather Policy 2020 and Adverse Weather Plan 2020/21 were amended and a scoring factor was added to the risk assessment process to consider the National Cycle Network.
- 3.17. In addition, the proposals outlined in the Cabinet paper were considered by the Environment and Regeneration Overview and Scrutiny Committee (EROSC) on the following dates: 18/06/18, 15/10/18, 15/07/19 and 20/01/20.
- 3.18. The consultation results were discussed at length with Environment and Regeneration Overview and Scrutiny Committee on 15/10/18.
- 3.19. At EROSC on 15/07/19 the proposals were discussed for approximately 2 hours and in depth detail was given with regards to the scoring matrix. At the request of EROSC, the proposals, including maps which showed the full extents of the proposed amendments and the scoring matrix were presented to the 7 Area Highway Groups (AHGs) between 29th July and 30th September 2019. From this further and comprehensive consultation, the AHGs suggested a number of roads for inclusion on the Winter Treatment Network. These suggested locations were re-analysed to take into consideration the local factors highlighted and a number were added to the proposed winter treatment network. A list of these roads can be found in Appendix 3.

The Cheshire East Highways Resilient Network 2020 & Map

- 3.20. The Cheshire East Highways Resilient Network 2020 & Map identify the roads in the Borough that are key to maintaining economic activity and access to key services during extreme weather.

- 3.21. This refresh aligns with the Department for Transport's (DfT) 2014 Transport Resilience Review and forms part of with the Council's proposed Network Hierarchy.
- 3.22. The requirement for a separate consultation to the main WMHI consultation was identified. For this consultation a specific stakeholder group was identified and steps were taken to engage with this stakeholder group.
- 3.23. As a result of the consultation, Highways England's Emergency Diversion routes were added to the Resilient Network.

Specific Issues Raised in the Call in

- 3.24. The call in raised a number of issues on the following grounds '4.28.2 Inadequate consultation relating to the decision.' and '4.28.3 relevant information not considered'.
- 3.25. The points raised in the call in are noted in bold, with a corresponding response below.
- 3.26. **4.28.2 Inadequate consultation relating to the decision**
- 3.27. **Our concerns focus specifically on the Consultation Processes conducted prior to the Cabinet Decision to approve the Well-Managed Highways Infrastructure Strategy and the impact on Cheshire East Gritting Polices.**
- 3.28. ***Highways gritting policy is alluded to in the Cheshire East Local Transport Plan (LTP) (Action 9.1.5, page 115) but was not included in the LTP consultation (1st May 2018 to 25th June 2018).***
- 3.29. The Local Transport Plan Action 9.1.5 states 'We will seek to ensure that the transport network is increasingly secure against extreme weather events and disruption.' Under the proposal outlined in the Cabinet report, the development of the Network Hierarchy helps to prioritise the network for resilience during extreme weather. This is further enhanced by the review and refresh of the Resilient Network which has been undertaken as part of this exercise.
- 3.30. ***This was followed by a consultation related to the Well Managed Highways Policy Infrastructure Strategy. This was conducted during the summer months (July/August 2018) therefore the prominence of the consultation was diminished.***
- 3.31. There is no guidance given on the timing of a consultation exercise or the impact this has on the effectiveness of a consultation. It could be

considered that undertaking a consultation in the winter is likely to be less successful as consultees may have greater difficulties accessing areas where consultation information is displayed. In addition, delaying the consultation exercise into the winter would have further delayed the implementation of best practice. To establish the prominence of the consultation in the local area, a Google search can be undertaken. This reveals that a number of parish council's made use of their own websites to promote the consultation and some of the first pages discovered following the search for 'WMHI consultation' relate to the Cheshire East Council WMHI consultation.

- 3.32. ***Consultation related to Winter and Adverse Weather would have been better served as a stand-alone engagement.***
- 3.33. Both the Highway Safety Inspection Policy 2020 and its associated Code of Practice and the Winter and Adverse Weather Policy 2020 and associated Plan are documents which cover highway safety and are heavily influenced by the Network Hierarchy. It was therefore considered better to review the highway safety inspection activities, winter service activities and the Resilient Network as a package.
- 3.34. ***NO record of any consultation related to Well Managed Highways Strategy (July/August 2018) or the results of such a survey has ever been up-loaded onto the relevant 'Consultation Results' page of the Cheshire East Council website for public scrutiny. This is contrary to CEC Policy.***
- 3.35. Although the consultation results were not initially published on the consultation results page, the results were published on the meetings page as part of a briefing report to the Environment and Regeneration Overview and Scrutiny Committee (EROSC) titled 'Well Managed Highway Infrastructure Public Consultation Feedback' which was discussed on 15/10/18, with the results included as an appendix to the briefing report. In addition, the results were included in the briefing to EROSC on 15/07/19 and as part of the report pack. This information is readily available on the Council's web page. There is no fixed policy relating to the publishing of consultations.
- 3.36. ***The Winter and Adverse Weather Policy (included as Appendix 6 on 04.02.2020) states: "Risk assessments are undertaken by CEH Winter Service staff to determine the inclusion of an element of the network into the Treated Network, with consideration to a number of factors"***
- 3.37. ***The risk assessment framework and associated results of this exercise should have been publicly available prior to the decision***

being taken. Insufficient weight was given to local knowledge with no acknowledgement or discussion of relevant feed-back.

- 3.38. The scoring matrix was discussed at length with EROSC on 15/07/19 and the scoring matrix was explained in detail with all the scoring factors explained. The proposed network was drawn up in consultation with Local Highway Officers and Highway Safety Inspectors who have an in depth knowledge of the network. Further to this the proposed routes were discussed with the Local Area Highway Groups (AHG) between 29th July and 30th September 2019. This AHG consultation process involved the risk matrix and maps relevant to each AHG being thoroughly explained and discussed. These maps showed roads which were to remain on the treated network, roads to be added to the treated network and roads to be removed from the treated network. As a result of this consultation, the AHGs highlighted roads which they thought should be considered for treatment. This resulted in a number of roads being included following a further risk assessment. The proposed treatment maps showing roads to remain on the treated network, roads to be added and roads to be removed were available to EROSC prior to the meeting on 20/01/20. At this meeting the AHG consultation and the amendments made to the proposals were discussed. The Cabinet report in paragraph 5.29 identifies that the risk scoring matrix can be made available upon request.
- 3.39. ***At the cabinet meeting of 04/02/20 Council Members, members of our teaching community, and members of the public expressed concerns about the removal of winter gritting to multiple routes throughout our borough; all agreed there had been poor communication since the Consultation in 2018.***
- 3.40. As outline above, extensive communication has been undertaken with EROSC and the AHGs who represent the electorate and as such it is felt that sufficient communication has been undertaken.
- 3.41. ***Under 100 respondents to the consultation from a population of 375,000 gives rise to the question how well did we promote the consultation?***

To put this level of response in context; 103 responses were received to the Councils' Budget Consultation 20/21, 94 responses were received to the HS2 Southern Link Road Bridge options consultation and 57 responses were received to the SEMMMS consultation. The WMHI consultation attracted 93 responses.

- 3.42. ***Only 1 school responded to the consultation.***
- 3.43. The consultation ran from 2nd July to the 27th August 2018, the school holidays ran from 27th July to 3rd September; hence this allowed time for the schools to comment. Under the proposals all secondary schools receive a treated route due to the large number of pupils and catchment areas. It isn't practicable that every primary school receives a treated route; the cost of providing a route to every primary school would be a minimum of £150,000-£200,000 during an average winter season. Given the range of risk factors identified, the proposed approach gives greater consideration to local roads in the vicinity of more of our primary schools.
- 3.44. ***Insufficient weight has been given to member feedback and their local knowledge.***
- 3.45. The proposals were extensively discussed with the AHGs and feedback was received and taken into consideration. As a result of this feedback a number of roads were added to the proposals, the details of which can be found in Appendix 3.
- 3.46. ***'No confidence in, or evidence given that the cabinet gave due consideration to Scrutiny's recommendations'***
- 3.47. As a result of EROSC recommendations the proposals were taken to the AHGs.
- 3.48. At EROSC on 20/01/20 no objection was raised to the proposals.
- 3.49. Both Cllrs Corcoran and Browne summarised the points that were raised during the meeting and offered commitment that further information would be made available and that the process would receive annual review. Further information was added to the Council's website on 19/02/20.
- 3.50. **The following points were raised under 4.28.3 of the call in process.**
- 3.51. ***No grit bin policy has been made available to support the decision. This is essential based on the significance of this policy.***
- 3.52. The placement of grit bins on the network will be determined through a risk assessment exercise; as outlined in the Cabinet report in paragraph 5.35, the pro-forma for this was available on request. This is now available on the Council's website.
- 3.53. ***The risk assessment scoring criteria that determines which roads are to be gritted(or not), were not made public in advance of Cabinets Decision.***

- 3.54. As previously stated this information was available upon request.
- 3.55. ***To date, this data has still not been published (12.02.20)***
- 3.56. This information was published on 19/02/20 and can be found via the below web link:
- 3.57. https://www.cheshireeast.gov.uk/highways_and_roads/road-maintenance/well-managed-highway-infrastructure.aspx
- 3.58. ***Cabinet were asked by Councillors and members of the public to reconsider or defer this decision, despite the lack of transparent information and limited historic consultation data, Cabinet proceeded to approve a policy which is unsatisfactory and potentially jeopardises the safety of our residents.***
- 3.59. In summarising the Cabinet's decision, Cllr Browne committed to publish the relevant information on the Council's website, this was undertaken on 19/02/20. The information relating to many of the areas discussed was available either as part of the Cabinet report pack or on request.

4. Implications

4.1. Legal Implications

- 4.1.1. As a result of the call in, all work on the proposals have stopped.
- 4.1.2. The recommendations of the Well Managed Highway Infrastructure 'The Code' are not statutory but provide highway authorities with guidance on highways management. Adoption of the recommendations within the Code is a matter for each highway authority, based on their own interpretation of local risks, needs and priorities. The Highways Act 1980 covers the legal elements of the management and operation of the road network within England and Wales and as such sets out the statutory duties of highway authorities. This includes the identification and rectification of defects and the provision of winter and adverse weather services. Further duties that the Highway Authority must address are covered under The Railways and Transport Safety Act 2003 and the Traffic Management Act 2004.
- 4.1.3. The implementation of a new way of working which is in accordance with WMHI should strengthen the Council's defence against third party claims under Section 58 Highways Act and would enable the Council to demonstrate that it is meeting its obligations relating to winter service under Section 41(1A) of the Highways Act 1980 (as amended by Section 111 of the Railways and Transport Safety Act 2003).

- 4.1.4. The delay in implementation increases legal risk to the Council under the Acts outlined above. A failure to adopt the Code will likely increase the number of successful claims against the Council along with associated costs.

4.2. **Financial Implications**

- 4.2.1. As a result of the call in, the costs to the service in the 2020/21 financial year will increase by approximately £230,000. This figure is split across highway safety inspections and winter service.
- 4.2.2. The £230,000 increase in costs is unbudgeted and as such is a financial pressure. Should the number of 3rd party claims against the Council increase, the cost to the authority will increase above £230,000.

4.3. **List of Appendices**

Appendix A – List of Consultees

Appendix B - WMHI Consultation Summary

Appendix C – AHG Responses

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