

<p>COUNCILLOR PHIL DAVIES</p> <p>LEADER</p>	<p>INDIVIDUAL CABINET MEMBER/ LEADER DECISION REPORT 27 NOVEMBER 2017</p> <p>RE-COMMISSIONING OF HIGHWAY SERVICES FROM OCTOBER 2018</p>
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REPORT SUMMARY

The Council and contractor Bam Nuttall (BAMN) have recently agreed that the current strategic contract for Highway services will come to an end on 30th September 2018 after one six month extension to the original four year contract that commenced in April 2014.

As a result, there is a limited period of time to re-commission these services and a recent options appraisal exercise using the Highway Maintenance Efficiency Programme (HMEP) Procurement Route Choices Toolkit indicates the most viable way forward is to bring these services back under the direct control of the Council.

For these reasons, this report seeks approval to re-commission these services, including the commencement of the necessary procurement processes, based on the proposed 'direct control/ ownership' model. At the present time the most viable approach is for the contracted service to transfer back under Council control. However, transfer into a wholly-owned Council company covering a broader range of commercially viable services is also highlighted as a potential way forward though this would require further investigation if considered worthwhile.

There are no changes to service policies or standards associated with the re-commissioning of these services however this matter is considered to be a Key Decision based on financial value (BAMN contract around £6M p.a.). These services are delivered across all Wards.

In terms of Wirral Plan Pledges, these services directly contribute to the Transport and Technology Infrastructure Pledge which in turn plays a key role in supporting many of the outcomes under the Business and Environment themes in the Plan.

RECOMMENDATION/S

The Leader of the Council is requested to:

Approve the re-commissioning of Highway services, including the commencement of the necessary procurement processes and market engagement, based on the proposed 'direct control/ ownership' model outlined in this report

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Approval of the approach to re-commissioning these services and commencement of the necessary procurement processes and market engagement is necessary to ensure service delivery arrangements are in place for October 2018 when the current contract arrangement expires. This is especially important for the day-to-day routine work such as pothole and street lighting repairs that ensure the Council meets its statutory obligations as Highway Authority.
- 1.2 A 'direct control/ ownership' model is considered to be the most viable approach primarily based on the limited time available for re-commissioning but also influenced by commercial considerations such as the reduced value of work and lessons from previous contracts.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Officers from Commissioning Support have undertaken an assessment of available commissioning options via a Strategic Outline Case process. This was based on the industry best-practice Highway Maintenance Efficiency Programme (HMEP) Procurement Route Choices Toolkit and taking account of the following critical success factors:
- Strategic fit - aligns with strategic aims
 - Value for money – delivers value for money
 - Manageable/flexible – meets the level of service required
 - Affordable - delivered within budget
 - Achievable – delivered within timescale
- 2.2 This process concluded the most viable option is to re-commission these services based on a 'direct control/ ownership' model, with the contracted service transferring into Council control but this could be either into the Council organisation in the traditional manner (ie. become part of Delivery Services) or into a wholly-owned Council company.
- 2.3 Continuing with the Status Quo (ie. going out to tender with another single provider strategic contract) is considered to be unviable based on commercial considerations, the significant risk of not being able to achieve value-for-money and the challenging timeframe for re-commissioning a single provider model.
- 2.4 A large proportion of the work in this area relates to capital-funded structural/ specialist maintenance and by its nature this work has to be undertaken by specialist external contractors hence a full 'in-house' approach is also not possible.

3.0 BACKGROUND INFORMATION

- 3.1 Wirral's highway network, the Council's biggest asset, is currently worth £2.48 billion and consists of approximately 1,200 kilometres of road, which is currently maintained via the strategic contract with BAM Nuttall (BAMN).

The contract, which started in April 2014 and is worth around £6 million per year, will come to an end on 30th September 2018 having been extended for 6 months past the original four year term. The following service areas are covered by the current contract:

- Carriageways, footways
- Drainage, culverts and drains
- Street Lighting
- Signs and road markings
- Structures
- Winter maintenance
- Coastal protection infrastructure maintenance
- Minor highway improvements

- 3.2 In summary, the contract consists of two broad types of work:

- Routine/ reactive work – day-to-day revenue-funded activity such as pothole and street lighting repairs – traditionally undertaken by resources directly employed by the main contractor and crucial to enabling the Council to discharge its statutory responsibilities as Highway Authority; and
- Structural/ planned work – capital-funded activity such as 'plane out and resurface' schemes, specialist surface treatments and minor improvements – usually undertaken by specialist highway sub-contractors and instrumental in enabling the Council to achieve its overall highway condition performance indicators

4.0 PROPOSED 'DIRECT CONTROL/ OWNERSHIP' MODEL

- 4.1 The proposed model for re-commissioning these services involves the operational functions currently executed by contractor Bam Nuttall (BAMN) being brought back under the direct control of the Council. Client functions would continue to be discharged by staff in Highways Management (Commissioning Support Unit) as they are now, however the Strategic Outline Case process suggests contracting functions could be either brought into the Council's organisational structure in the traditional manner (ie. they would become part of Delivery Services) or they could transfer into a wholly-owned Council company (a Teckal company operating as a local authority trading company).

- 4.2 By bringing these contracting functions back under the direct control of the Council, it is anticipated there will be opportunities to improve the efficiency and quality of the Routine/ Reactive Works side by carrying out a holistic review of both 'client' and 'contractor' business processes – ie. the full journey from customer contact/ site inspection through to completion of work.

- 4.3 In terms of the Structural/ Planned side, this work will continue to be carried out by specialist private sector contractors and a framework of sub-contract arrangements will need to be put in place to cover this.
- 4.4 At the present time it is considered the most viable option is for contracting functions to transfer into the Council's organisational structure (ie. Delivery Services). This is because the limit of financial opportunities and cost of establishing the necessary company management and governance arrangements means that establishing a Trading Company for the delivery of Highway services alone would be a less efficient and effective option.
- 4.5 However, case studies have been identified where significant benefits beyond the traditional approach are being realised by local authorities that place a broader range of Council services, not just Highways, into a wholly-owned Council company enabling economies of scale to be realised and delivery in a more commercial and cost-effective manner.
- 4.6 Further work would be required at a cross-Council level to properly assess the opportunities and implications of such an approach if considered worthy of investigation. This work would also need to be progressed quickly to influence the final business case for the re-commissioning of these services.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The value of the current contract is around £6M p.a. consisting of approximately £1M p.a. revenue for Routine/ Reactive Works and £5M p.a. capital for Structural/ Planned Works. This excludes the cost of 'client' staffing functions.
- 5.2 It is anticipated that there will be financial efficiencies by bringing contracting functions back under the direct control of the Council especially on the Routine/ Reactive (revenue funded) side, however these are likely to be in the medium-long term and cannot be confirmed at this stage.
- 5.3 There will be one-off costs associated with the departure from the existing (BAMN) contract however these costs will be incurred regardless of which future commissioning model is chosen.

6.0 LEGAL IMPLICATIONS

- 6.1 The re-commissioning of these services is essential to enable the Council to fulfil its statutory obligations as Highway Authority, especially the Routine/ Reactive Works side which plays a key role in the Highways Act Section 58 Defence inspection and repair regime.
- 6.2 Section 41 of the Highways Act 1980 imposes a duty on the Council, as Highway Authority, to maintain highways at the public expense.
- 6.3 Discussed above is reference to a Teckal company, which is a means by which the Council can contract with itself via a separate legal personality. A

Teckal company is often used by local authorities in order to retain the business integrity of an enterprise and/or to allow an element of trading on the open market (up to 20% of the company's activity) that would not otherwise be permitted under procurement or local government law.

- 6.4 A Teckal body is defined under the Procurement Regulations 2015 as 'an award of contract to a controlled person', which is a legal person:
- (a) over which the Council exercises a control which is similar to that which it exercises over its own departments;
 - (b) where more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling Council (or by other legal persons controlled by that contracting authority); and
 - (c) there is no direct private capital participation
- 6.5 Trading (doing something for a commercial purpose) not otherwise expressly permitted in local government law may only be carried out by a Council through a company, which is established via the provisions of the Local Government and Housing Act 1989, the Companies Order 1995 and the Local Government Act 2003.

7.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 7.1 In terms of staffing, 28 BAM employees are being reassured that the service will continue in some form following the 30th September 2018 when the current arrangements cease and that the Transfer of Undertakings and Protection of Employment (TUPE) Regulations will apply to those that may be affected. Staff on the 'client' side (Commissioning Support Unit) are not directly affected by this re-commissioning exercise.
- 7.2 In terms of assets, the contract is currently delivered by the BAMN operation working out of Prenton Depot which is wholly owned by the Council and there may be the option to dispose of this asset or realise opportunities from the re-configuration of other Council operations/ depot sites.
- 7.3 Investment in new plant, vehicles and ICT will be likely to ensure a modern and efficient directly-controlled highways service.

8.0 RELEVANT RISKS

- 8.1 The Strategic Outline Case process has taken account of relevant risks at this stage.
- 8.2 The detailed approach to risk management will be developed as part of the next phase of the project.

9.0 ENGAGEMENT/CONSULTATION

- 9.1 As part of the necessary procurement processes, it is proposed that engagement with the service provider market will take place as an urgent priority to ensure the necessary arrangements are in place for October 2018.
- 9.2 Regular engagement and updates for trade union representatives and staff, both with the Council and with BAMN, will be an important aspect of this re-commissioning project and will continue over the next twelve months to ensure a smooth transition to the new arrangements.

10.0 EQUALITY IMPLICATIONS

An Equality Impact Assessment is attached - <https://www.wirral.gov.uk/communities-and-neighbourhoods/equalityimpact-assessments/equality-impact-assessments-2017-0>

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APPENDICES

None

REFERENCE MATERIAL

Strategic Outline Case (available from report author)

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
None	