

<b>Decision maker:</b>	<b>Cabinet member transport and roads</b>
<b>Decision date:</b>	<b>Monday, 30 October 2017</b>
<b>Title of report:</b>	<b>Highway Maintenance Challenge Fund Works - Mitigation of impact due to exceptional periods of road closure</b>
<b>Report by:</b>	<b>Head of highways and community services</b>

## **Classification**

Open

## **Decision type**

Key

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 11 (Cases of Special Urgency) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

## **Wards affected**

County-wide

## **Purpose and summary**

To consider the impact on Herefordshire's small businesses as a consequence of the road closures that are required to deliver the successful bid to the Departments for Transport's Tranche 2A of the Local Highways Maintenance Challenge Fund, the options by which that impact can be mitigated and decide on the action that shall be taken to mitigate the impact of these closures.

The Challenge Fund works are an £8 million project being delivered before the end of March 2018, to improve road conditions on strategic A roads in the county, including the A4103, A465 and the A438. The funding enables the resurfacing of 37 miles of road on key transport

routes.

It is impossible to safely deliver the resurfacing solution selected for many sites without the road being closed for the duration of the operation, resulting in exceptionally long periods of part time road closures on these A road routes.

Concerns have been raised by local businesses that long periods of road closures are having a material impact on the viability of their businesses.

The council does not wish to cause undue levels of distress to small businesses as a consequence of these unprecedented and extensive resurfacing works which, as a condition of grant funding, must be completed by the end of the current financial year. As such these works can legitimately be considered as a special case and two options (A and B) for a scheme of targeted support is detailed in Appendix 1. A targeted small business support scheme as detailed in option B is recommended as providing the most appropriate way of providing support without placing a significant additional administrative burden on either the Council or the affected local businesses.

As there is no statutory right for compensation for highway works, the council's liability under this voluntary support scheme will be limited to £150,000. Due to the unique circumstances for the delivery of this additional programme of major maintenance works during the second half of the current financial year, the introduction of a voluntary targeted support scheme in this case does not set a precedent in relation to future programmes of work.

## Recommendation(s)

That:

- (a) **The works progress as planned; and**
- (b) **a targeted support scheme be implemented in accordance with the terms detailed in Appendix 1B to provide financial support to small businesses in Herefordshire, of a type that may experience a material reduction in passing trade as a direct consequence of limited access during their normal business hours due to road closures associated with the delivery of the Highways Maintenance Challenge Fund works up to a maximum total compensation for all successful applications of £150,000.**

## Alternative options

1. The following alternative options to mitigate the impact of these works are considered:
  - Do nothing – continue to deliver the best surfacing solution as quickly and safely as possible. Whilst continuing to deliver the current programme of works is recommended, the addition of a voluntary compensation scheme for small businesses affected by the works is recommended to mitigate the impact on the local economy during the works and ensure that the overall economic benefits are achieved;
  - Alter works to enable the road to be kept open – necessitating a reduction in

surfacing specification. This is not recommended as it would result in a lower standard of maintenance and significantly increase the whole life cost of maintaining the highway asset. It would also be contrary to the terms of the grant award from the Department for Transport.

- A compensation scheme, as set out at appendix 1A that mirrors the Gas (Street Works) (Compensation of Small Businesses) Regulations 1996. This option would compensate for significant and proven loss, up to a cap derived on the basis of maximum rateable value for a business premises to be considered as a premises for a small business. Whilst the available funds would be distributed to those who can prove loss, this option is not recommended as its operation will place an additional administrative burden on both business and the council.

## Key considerations

2. The highway service secured £5 million from the Department for Transport towards an £8 million project to improve road conditions on strategic 'A' roads in the county. The announcement was made on the 1st August 2017.
3. This work will support economic growth in the region by investing in transport routes leading to Herefordshire's Skylon Park Enterprise Zone and the Midlands Connect strategic economic corridors which include the A4103 Hereford to Worcester road, the A465 Hereford to Abergavenny road and the A438 Hereford to Brecon road. The funding enables the resurfacing of 37 miles of road on key transport routes.
4. The council's bid to the challenge fund is based on a detailed business case that covers the economic, safety and environmental benefits of the investment over a 30year period. The works will enable £146m of benefit to the local economy as a whole.
5. The works are to entire routes and use a variety of resurfacing and surface treatments. All treatments have been designed, based on the current condition of these roads, to return them to a good condition throughout and to maximise their service life, thereby providing a solution that minimises the whole life cost of maintenance. This maximising the value for money achieved from this major investment in Herefordshire's roads.
6. The resurfacing works include the use of hot rolled asphalt and pre coated chippings (HRA). HRA is a premium surfacing solution that can achieve a service life in excess of 20 years. The process of laying HRA is, in summary, as follows: the existing road surface is planned off as required and any repairs to the layers beneath implemented; then a hot asphalt mat is laid by machine across the entire lane width; this operation is immediately followed by the application of coated chippings across the road surface, which are then rolled into the asphalt mat.
7. The machinery that is used to lay the asphalt mat is necessarily the entire width of the lane and as the chippings have to be spread across entire lane of freshly laid asphalt, the machinery that spreads the chippings has to be wider than the lane (to straddle the freshly laid material), further the chipping spreader must be fed with chippings and there is no option but to feed this machines from the side of the operation. This as the asphalt is being laid at the head of the operation and the asphalt and chippings are being hot rolled at the tail of the operation. By necessity the chipping spreader is therefore wider than a lane's width and as such intrudes into the adjacent lane of the carriageway. A safe

working zone must also be maintained around the operation to ensure that both the operatives performing the resurfacing work and the public who may be passing the works are not placed at undue risk of harm. The consequences of this are that for most two lane carriageways it is impossible to safely deliver this premium resurfacing solution without the road being closed for the duration of the operation.

8. The resurfacing works on the A4103 have therefore required road closures along the route over the course of 8 weeks to enable the completion of all the HRA resurfacing required to address the condition of this route. Road closures have been in operation during each weekday, the road being re-opened to through traffic overnight and at weekends. All statutory noticing and communication involved with these works has been completed as required. The resurfacing works and road closures began on the 18th of September and are scheduled to continue through until the 31st October. This programme is weather dependent.
9. This work restoring both the structural condition of the carriageway i.e. pothole free and the surface texture i.e. the skid resistance, to a good condition and one that will be maintained without further substantial intervention for a 20 plus year service life. Further, through planned interventions with timely surface treatments, the service life of the carriageway can be further extended. Effective lifecycle planning will further reduce the whole life cost of maintaining these roads.
10. Concerns have been raised by local businesses that the necessarily long duration of the road closures required to complete these resurfacing works are having a material impact on the viability of their businesses. This report considers the options to mitigate the impact of these works on small businesses.

### **Description of Options**

11. The following outlines a description of the options that might realistically be taken to mitigate the negative impact that long periods of road closures might have on small businesses located along the routes that are closed to through traffic:

#### **Option 1**

12. Product – HRA continues to be laid as it will secure the best carriageway performance, providing a safe surface over a service life of 20 plus years.
13. Programme – By way of example, A4103 programme of works commenced 18th September 2017 and is expected to run through until the 30th October 2017.
14. Working Times –8am till 6pm Monday to Friday.
15. Traffic Management – A road closure in place whilst working.
16. Costs – By way of example, at 30 September 2017 the cost of remaining HRA surfacing works on the A4103 is c£900k.

#### **Option 2**

17. Product – Alternative surfacing products such as stone mastic asphalts (SMA) are used in place of HRA. The life span of the product laid will be reduced to c10 years and may not provide a durable solution in all instances, given the evolved nature of these roads

(meaning that their entire construction has evolved over time, they were not designed and built as a single construction project, as is usually the case for motorways). SMAs do not require chippings to be spread over the asphalt mat as part of the surfacing operation. The chippings are included as part of the mix, as such the width of the resurfacing operation is reduced to the lane width plus a safety zone. This reduction in width can enable a safe running lane to operate beside the works at most locations. This provided that traffic speeds are kept down by convoy traffic management under traffic lights.

18. Programme – By way of example on the A4103, due to the changes to planned works, a new notice would have to be issued to ensure compliance with the requirements of the New Roads and Street Works Act. This would require a minimum of 1 month to implement. The duration of the works would extend by 4 weeks due to the reduced productivity under convoy working. As a result, this programme would have to be delivered in the period between February and March 2018, thereby avoiding the winter period when temperatures and weather conditions are not conducive to successful resurfacing works, regardless of the product used.
19. Working Times –8am till 6pm Monday to Friday.
20. Traffic Management – Works would be delivered under convoy traffic management arrangements, enabling single lane traffic flow at reduced speeds.
21. Costs – As per the above example, at 30 September 2017 the cost of remaining surfacing works on the A 4103 would be c£900k but with the addition of demobilisation and remobilisation costs which are estimated to be c£12k. Due to the reduced design life of this alternative approach the whole life cost will double to c£1.8m.

### **Option 3**

22. Works continue as outlined in option 1 but with a package of targeted support provided to eligible small businesses in the form of either compensation (option A) or a support grant (option B). These options are detailed in Appendix 1. In summary:
  - The general rule is that there is no compensation if a business is affected by road works. The council has entered into this scheme voluntarily. No businesses have the right in law to any particular given level of passing trade, and that traders must take the risk of loss due to temporary disruption of traffic flows along with all the other various risks of running a business. There is no statutory provision for compensation by the highway authority if a business is affected by road works.
  - However, the council does not wish to cause undue levels of distress to small business as a consequence of these unprecedented and extensive resurfacing works. As such these works can legitimately be considered as a special case and the scheme(s), as proposed, would only apply to the circumstance of to the works described in the Council's successful bid to the Departments for Transport's Tranche 2A of the Local Highway Maintenance Challenge Fund.
  - The scheme will only be available for small businesses in Herefordshire that front or are accessed by their passing customers via a side road from a point located within 500m of the road that is closed for a period longer than 28 days as part of these challenge fund works.
  - Given that the scheme is voluntary the council's total liability to all small businesses who apply under either option is limited to £150,000.

### **Option A - Compensation**

- This option mirrors many of the arrangements in the Gas (Street Works) (Compensation of Small Businesses) Regulations 1996, which are regulations aimed at compensating small business for the impact of significant works by a statutory undertaker. Whilst those regulations are not directly applicable, they could be used as a reasonable basis for the council's voluntary scheme.
- This option compensates for significant and proven loss, up to a cap derived on the basis of maximum rateable value for a business premises to be considered as a premises for a small business.
- The scheme provides an option for an advance payment to provide urgent assistance to those small businesses who will qualify for the scheme.
- In this option the available funds would be distributed to those small businesses who can prove loss. However, the administrative burden and accountancy resources required, by any business to support the submission and by the council to process all submissions, will be higher than in option B.

### **Option B – Support Grant**

- This option is inspired by grant arrangements that have previously been put in place to support those who have suffered loss following severe weather events (i.e. flood).
- In this option a grant, the sum of which is derived on the basis of the rateable value for a business' premises is provided to all eligible businesses.
- Small businesses that operate from premises classified as shops, food and drink; or hotels and hostels will be eligible, as these businesses will have a higher dependency on passing trade. Other classifications such as financial and professional services, or industrial will be less reliant on passing trade and have a greater dependency on their on-line presence, or managed supply and distribution networks, all of which will have been able to gain access throughout the closures, albeit via alternative routes.
- No payment would be made in the circumstance that businesses have the facility to mitigate the impact of these closures through an application to their business interruption insurance.
- Payment would be made as soon as practicable following confirmation of eligibility.
- In this option all funds can be distributed quicker, with a minimal accountancy support. However, the scale of the grant available to individual businesses may not meet the scale of their true loss, or in some cases may exceed any loss. The sums distributed would provide a level of support to all eligible businesses.

23. The business case for the council's investment in A road routes is founded on the importance of supporting the local economy and improving access to Hereford and the Enterprise Zone. The allocation of government funding part way through the year has required a compressed programme of works to ensure works are carried out during the current financial year, in accordance with grant conditions. The works are weather dependent which means that it is not appropriate to schedule them during the worst of the winter weather. In addition, the council's highway policies require that only emergency works are carried out during a "Christmas Embargo" period to avoid disruption during peak retail periods during November and December. The scale of works required as such that, for the reasons outlined above it is recommended that option 3 be adopted to allow the works to proceed and to mitigate, as far as is reasonably possible, any adverse impact on small businesses within the vicinity. The support grant

(option B) is recommended to allow funds to be distributed quicker, enabling recovery, with a minimal accountancy and administrative support.

## **Community impact**

24. The successful delivery of the Challenge Fund works will benefit the county's economy, support economic growth in the region and improve road conditions for those who travel across the county via these routes. The works will enable £146m of benefit to the local economy as a whole.
25. An ongoing package of communication through signage, letters to frontagers, press, website and social media is in place and will continue throughout these Challenge Fund works. All with the aim of keeping the community informed of all work, the benefit of those works and enabling all to plan their travel arrangements and avoid disruptive periods and/or use alternative routes wherever possible. A key message in these communications is that businesses are open and accessible (though often via an alternative route) wherever this can be safely achieved.

## **Equality duty**

26. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

27. This decision is regarding the impact on small businesses and not on individuals then as far as our Equality duty goes there is no negative impact.

## **Resource implications**

28. The council's total liability to all small businesses who claim under this scheme is limited to £150,000.
29. As a cost incurred is not a statutory requirement, and as such is not a required part of the delivery of a systems of works that will enhance the value and life of the highway asset, this sum cannot legitimately be accounted for as capital expenditure and will have to be met from revenue budgets. The scheme will be funded from the economy, communities & corporate directorate reserve.

## **Legal implications**

30. There is no requirement for the council to provide compensation if a business is affected by road works. The council would have to utilise the general power of competence under the Localism Act 2011 to provide for such a scheme in these exceptional circumstances

## Risk management

31. A number of key risks have been identified which are set out in the following options appraisal:

	<b>Additional Whole Life Cost</b> <b>£,000</b>	<b>Benefit in Relieving Business Concerns</b>	<b>Risks Associated with Option Selection</b>
<b>Option 1</b>	Nil	<ul style="list-style-type: none"> <li>Works have been programmed to minimise road closures times</li> </ul>	<ul style="list-style-type: none"> <li>Businesses suffer losses which threaten the viability of the business</li> </ul>
<b>Option 2</b>	900	<ul style="list-style-type: none"> <li>Works will be immediately ceased reopening the road to passing traffic.</li> <li>Works in the spring will proceed under convoy maintaining passing traffic.</li> </ul>	<ul style="list-style-type: none"> <li>Unable to deliver the full £8m programme by March 2018.</li> <li>There may be a challenge to the change in specification, requesting that the investment case be re-calculated.</li> <li>Road deterioration will be accelerated.</li> <li>Diversion routes will still have to advise traffic to avoid the new traffic management arrangement reducing passing traffic.</li> <li>Business will be impacted twice during the lifecycle of the road.</li> </ul>
<b>Option 3</b>	Up to 150	<ul style="list-style-type: none"> <li>Where eligible, small businesses will receive support.</li> </ul>	<ul style="list-style-type: none"> <li>Any scheme may set a precedent that exposes the council to further claims.</li> </ul>

## Consultees

32. None

## Appendices

33. Appendix 1 – Proposed Targeted Support Schemes – Challenge Fund Works
34. Appendix 2 - Equality Analysis - Highway Maintenance Challenge Fund Works – Small Business Support Schemes



## **Background papers**

35. House of Commons Library Standard Note SN/BT/200