

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>Thursday, 23 July 2020</b>
<b>Title of report:</b>	<b>Allocation of Pothole and Challenge Fund 2020/2021 grant for highway maintenance.</b> <b>Reallocation of capital programme budgets for priority flood works.</b>
<b>Report by:</b>	<b>Cabinet member infrastructure and transport</b>

## **Classification**

Open

## **Decision type**

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned.

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 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

## **Wards affected**

(All Wards);

## **Purpose**

To approve the allocation of funding to enable priority flood damage repairs and as able works to enhance the resilience of the county's infrastructure.

The Bellwin scheme will not fund all repair needs following flooding in February 2020. With no further funding having been specifically made available by Government for recovery from Storm Dennis, the significant gap between what Bellwin provides and the cost of all necessary repairs

must be met from within the capital programme. This report sets out the funding options from across the capital programme and including the allocation of capital funding available following the announcement of Pothole and Challenge Fund allocations for 2020/21.

## **Recommendation(s)**

**That:**

- (a) Cabinet recommend to Council that the £7.674m (Pothole and Challenge Fund 2020/21 grant allocation) be added to the capital programme as a new programme;**
- (b) Subject to the decision taken at Council in regard to the Pothole and Challenge Fund 2020/21 grant allocation, authorisation be given to commit this funding to deliver highway maintenance works in the current financial year, as detailed in paragraph 23 of this report;**
- (c) The director of economy and place be authorised to agree, through the contract governance arrangements, adjustment to the programme and budget allocation in the public realm services contract annual plan to include programmes of work funded by the Pothole and Challenge Fund in 2020/21;**
- (d) Cabinet recommend to Council that the £4.027m (Priority Flood Repair Works) be added to the capital programme as a new programme;**
- (e) Cabinet recommends to Council that priority flood repair works totalling £4.027m, as set out in paragraph 24 of this report, are funded through the use of either extended borrowing (Option 1), the reallocation of existing capital programme budgets (Option 2), or the allocation of the Pothole and Challenge fund (Option 3); or (Option 4) combination thereof, as set out in Appendix 1;**
- (f) subject to the decision taken at Council confirming the changes to the capital programme, the director of economy and place be authorised to procure the priority flood repair works; and**
- (g) In the event that new funds are made available by Government specifically to address the priority flood repair works, then those funds would be added to the Priority Flood Repair Works programme.**

## **Alternative options**

1. In the absence of Government funds specifically to address the impairment in the highway asset as a consequence of Storm Dennis, the £7.674m made available through the pothole and challenge fund in 2020/21 could be directed towards the repair of all high priority flood damage. The balance of the pothole and challenge fund in 2020/21 would then be directed towards highway maintenance and improvement in network resilience. A review of priorities across all flood damage sites and the wider highway asset would determine the high priority flood damage works that will be progressed alongside a programme of highway maintenance funded by the pothole and challenge fund in 2020/21. This option is not recommended as its use in this way will divert much needed funding from the maintenance of the county's highway network. The pothole and challenge funding is needed to put the asset into a resilient (not perfect) condition. If these funds are not invested, as they are intended, in ensuring that our local roads and other highway assets are fit for the future, then deterioration in the condition of the asset will result. The consequently we will see a reduction

in local productivity, a deterioration in the environment by increased delays, and a less attractive environment for cycling and walking

2. All flood damage repairs are funded from a combination of the pothole and challenge funding received in 2020/21 and from elsewhere in the capital programme. This option would limit the negative impact on the delivery of existing capital programme projects, it is not recommended as insufficient priority would be given to the resilience of the highway asset making it more susceptible to damage as a consequence of future severe weather events.

## Key considerations

3. Storm Dennis hit Herefordshire during the weekend of 15 and 16 February 2020, resulting in significant damage and flooding, from both runoff and river overspill with many of the rivers reaching their highest levels in 200 years. The council successfully mobilised all resources to respond to the event, with the clean-up and recovery work commencing as soon as flooding had subsided with resources focussed on making safe the worst hit areas.
4. Government declared this storm was a major incident and made the Bellwin Scheme available to Herefordshire Council to fund the immediate action taken from 15 February 2020 to 28 March 2020, to safeguard life or property and to prevent suffering or severe inconvenience. The council has submitted £2.528m to the Bellwin Scheme as costs that have been incurred across the public realm that are eligible for funding through this scheme. Government has yet to provide these funds.
5. Of the 139 damage sites were identified across the county, 72 damage sites were cleared and restored to normal use by the 28 March 2020. The scale of the damage meaning that 67 sites could not be fully cleared or repaired by the end of March. Significant works remain to fully clear, investigate and repair all damage sites, including four significant schemes, two on the B4224 near Fownhope where the main highway into the village has resulted in community severance with limited alternative access. The B4399 Holme Lacy Causeway has been returned to use but remains susceptible to storm damage, a permanent solution is required. Instability in the banks of the flood plain to the River Wye that support the A438 at Whitney on Wye has resulted in temporary signal control being put in place, a permanent solution is required here also. The scale of the works that remain across the public realm for delivery beyond 28 March 2020 is estimated to be £9.1m, as the table below.
- 6.

All Flood Damage Works	£
<b>Capital Schemes</b>	
Fownhope Landslip	1,565,000
Fownhope Retaining Wall Collapse	1,000,000
Holme Lacy Causeway	2,000,000
Whitney on Wye Instability	500,000
Various damage Sites	962,047
<b>Sub Total</b>	<b>6,027,047</b>

<b>Revenue Works</b>	
Drainage Network clearance of blockages countywide.	2,850,000
Flood investigation costs (as required by Section 19 of the Flood and Water Management Act)	250,000
<b>Total</b>	<b>9,127,047</b>

7. The B4399 Holme Lacy Causeway referred to above has been returned to use but remains susceptible to storm damage. Whilst a permanent solution is desirable to ensure the flood resilience of this route this scheme could not be progressed to delivery in 2020/21. The remaining high priority capital repair schemes total an estimated £4.027m.
8. On 28 February 2020 the Leader of the Council wrote to the Prime Minister setting out the support that Herefordshire needed as a consequence of Storm Dennis. In that letter, we anticipate the bill for repairing the immediate impact of Storm Dennis on the public realm to be c£10 million, for which we have no provision. There has been an ongoing dialogue with Ministers following that letter. To date no funding has been available from Government specifically for Herefordshire's recovery from Storm Dennis, beyond that for action taken up until 28 March 2020. The Secretary of State for Environment, Food and Rural Affairs has, on 14 July 2020 announced its long term plan to tackle the impact of flooding, including investment of £5.2 billion to create around 2,000 new flood and coastal defences to better protect 336,000 properties in England by 2027, alongside support to help households and businesses get back on their feet more quickly after flooding <https://www.gov.uk/government/news/multi-billion-pound-investment-as-government-unveils-new-long-term-plan-to-tackle-flooding> . However, this too does not appear to identify any funding specifically for Herefordshire's recovery from the impact that Storm Dennis has had on its infrastructure.
9. On 14 May 2020, the Secretary of State for Transport, announced at the Number Ten daily briefing £1.7 billion funding allocated to Combined Authorities and Local Highway Authorities for 2020/21 through the newly created Transport Infrastructure Investment Fund. This Fund which is made up of a number of Department for Transport (DfT) spending programmes but includes the local highways maintenance capital block grant funding (which contains Challenge Fund and the Incentive Element), the integrated transport block funding and the Pothole Fund. The £1.7 billion is not new funding but includes all of elements as set out in the tables within DfT's Road Information Pack for 2020/21 which can be found at the following link and sets out the funding allocated by authority: <https://www.gov.uk/government/publications/roads-funding-information-pack/roads-funding-information-pack> . The funding for Potholes included is the £500m for 2020/21, as announced in the Budget 2020, from the £2.5bn Pothole Fund and £50m from the existing Pothole Action Fund for 2020/21, which is the last year of that Pothole Action Fund. With respect to the Challenge Fund element for 2020/21, Ministers decided that due to the ongoing COVID19 issues and related pressures on highway authorities, the competition for 2020/21 Challenge Fund funding (£100m) would not progress, as such DfT would be allocating this funding by formula to all highway authorities. This approach is intended to allow a focus on COVID19 recovery. In his announcement, the Secretary of State made it clear that in 2020/21 these funds can also be used by authorities to help repair flood damage that some areas of the country may have encountered over winter 2019/20. Whilst a letter is awaited formally confirming this additional funding, it is anticipated that conditions attached will be substantially as those confirmed in a letter already received in regard to

Local Transport Plan (LTP) Capital Grant funding for 2020/21. The sum allocated to Herefordshire from this announcement in the Pothole and Challenge Fund is £7.674m, bringing the total Capital Grant Allocation from DfT for Herefordshire to £19.946m.

10. In addition to the LTP Grant the council's capital programme contains three further funding lines for the maintenance of the public realm in 2020/21. They are: £2m for investment in C and U roads; £2m for investment in infrastructure assets; and £5.5m for highway asset management, though only £1.5m of this is funded from council borrowing, the remainder being conditional on successful bids for external grant funding. The 2020/21 annual plan for public realm services was approved on 29 April 2020 with an overall budget of up to £24.182m; made up of £6.41m of revenue and £17.722m of capital funding. This decision included for the allocation of all LTP grant funding available for the delivery of public realm schemes at 29 April 2020 (prior to the Secretary of State's announcement) and the aforementioned £1.5m of highway asset management funding. A further decision is due to be taken shortly to progress the £4m for investment in C and U roads and infrastructure assets also. This meaning that the Pothole and Challenge Fund (£7.674m) announced on 14 May 2020 is yet to be introduced to the 2020/21 delivery programme.
11. The council holds a revenue reserve of £1.2m as contingency for its response to the impact of severe weather. All capital funds received through the LTP Grant have been invested in the improvement and maintenance, hence resilience, of public realm assets. This along with challenge fund works and substantial investment of the council's own capital, totalling an additional c£30m of capital since 2013. This combined investment has in turn enabled us to make more than 30% savings in public realm revenue budgets, required in response to austerity, whilst also building and maintaining this revenue reserve. This reserve has been utilised to meet the Bellwin Scheme threshold in 2019/20 for Herefordshire of £279,161 (Under the Bellwin Scheme Government pay grant at a rate of 100% of eligible expenditure above this threshold. The council is required to have spent 0.2% of its calculated annual budget on works as eligible for grant. This amount is the authority's "threshold" and applies to the whole financial year, not to each incident within the financial year.) In addition to communicating the bill anticipated for repairing the immediate impact of Storm Dennis, the Leader, in his letter to the Prime Minister, also expressed Herefordshire's needs in respect to the resilience of our infrastructure. With £336 million of accumulated depreciation (this is the value of the works needed to return the highway asset to a good condition throughout) in our highways, the sums received for its maintenance need to increase by c£10m per annum if the County's local roads are to be sustained in a not perfect, but resilient state. The addition of £7.674m for the combined award of the Pothole and Challenge Fund together with the council's own capital will plug this funding gap in 2020/21. Further, in line with the £2.5bn Pothole Fund as announced in the Budget 2020, Herefordshire might reasonably expect to see annual investment levels sustained by an additional c£6m per annum over the coming 4 years. Whilst the funding profile and distribution of this Pothole Fund has yet to be confirmed by DfT, this funding is anticipated to meet 60% of the funding gap going forward beyond 2020/21. If all such funding is available for the maintenance of our highway asset, then this should result in a significant improvement in network resilience.
12. Whilst the use of the Pothole and Challenge fund grant to fund storm damage repair works would enable the priority flood damage works to progress, it will redirect much needed funding from the maintenance of the County's highway network.
13. Any single local highway authority such as Herefordshire Council could not be expected to hold sufficient reserves to deal with the impact of an event such as Storm Dennis, particularly when combined with the impact of all other named storms experienced during the 2019/20 winter period.

14. The addition of £7.674m of the pothole and challenge fund to the capital programme will allow its investment in the highway asset through programmes of work prioritised using our robust asset management approach.
15. With the pothole and challenge fund grant allocated to highways maintenance, funding for high priority flood damage must be found to ensure that work can also be completed.
16. The remaining flood damage comprises of 67 sites that could not be fully cleared or repaired by the end of March 2020. This includes the significant schemes on the B4224 near Fownhope to address the community severance and also a solution to also the instability on the A438 at Whitney on Wye has resulted in temporary signal control being put in place. The B4399 Holme Lacy Causeway referred to above has been returned to use but remains susceptible to storm damage and whilst a permanent solution is desirable to ensure the flood resilience of this route this scheme could not be delivered in 2020/21. As such the remaining high priority repair capital schemes total an estimated £4.027m. These priority storm damage repair works will need to be funded and can be from: either existing capital programme budgets; extending borrowing; the pothole and challenge fund; or a combination of both. The capital programme can be reallocated where no spend or commitments has been incurred on a project, with the project being removed from the programme. Further if a project has been completed and delivered at an underspend, that underspend can be reallocated towards these priority flood repairs. The four funding options are set out in further detail in Appendix 1, which includes a list of capital projects from which funds might be reallocated.

## **Community impact**

17. These highway maintenance and flood repair works will contribute to the county plan ambitions by protecting the environment, safe communities and providing infrastructure that supports our economy. The investment will ensure the network is resilient to the extremes of weather and ensure the safety and availability of the infrastructure for our public and users of Herefordshire's highway network.

## **Equality duty**

18. 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.
19. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. This decision will have a positive impact on communities, including those that have been impacted by Storm Dennis and the damage that it caused in February 2020.

## Resource implications

20. No funding has been made available by Government specifically to address the impairment in the highway asset as a consequence of Storm Dennis.
21. £7.674m has been made available through the Pothole and Challenge Fund. If these funds were directed towards storm damage repair works then it will consequently curtail the improvement to the resilience of our infrastructure that might have been made in 2020/21.
22. The wider maintenance demand, arising from the effects of weather and usage over time, along with the impact of asset age, must be balanced across all components of the asset against the repair need arising from this single storm event. Whilst we will have to address all damage to the public realm over time, provided sites are safe, full repair may be delayed if other works must take priority. Similarly needs must be balanced across the capital programme.
23. The addition of £7.674m of the pothole and challenge fund to the capital programme will allow investment in the existing highway asset in priorities established using our robust asset management approach as follows:

<b>Programmes</b>		
Carriageway Works	£	2,604,000
Structures and Stability	£	3,160,000
Footways & Cycleway	£	400,000
Countywide Drainage Improvements	£	760,000
Signal, Roadmaking, Signs & Safety Barriers	£	750,000
<b>Total</b>	<b>£</b>	<b>7,674,000</b>

24. The estimated costs of the priority capital flood repairs excluding the Holme Lacy Causeway are as follows:

<b>Schemes</b>		
Fownhope Landslip	£	1,565,000
Fownhope Retaining Wall Collapse	£	1,000,000
Whitney on Wye Instability	£	500,000
Various damage Sites	£	962,000
<b>Total</b>	<b>£</b>	<b>4,027,000</b>

25. As a consequence of such reallocation the capital programme would be adjusted to include the following alongside other agreed adjustments:

Capital cost of project	2020/2021	2021/22	2022/23	Future Years	Total
Highway Maintenance Works (Paragraph 23 above)	7,674	0	0	0	7,674
Priority Flood Works (Paragraph 24 above)	4,027	0	0	0	4,027
<b>TOTAL</b>	<b>11,701</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11,701</b>

Funding streams	2020/2021	2021/22	2022/23	Future Years	Total
	£'000	£'000	£'000	£'000	£'000
Pothole Challenge Fund Grant 2020/21	7,674	TBC	TBC	TBC	7,674
Reallocated Capital Programme or extended borrowing	4,027	0	0	0	4,027
<b>TOTAL</b>	<b>11,701</b>	<b>TBC</b>	<b>TBC</b>	<b>TBC</b>	<b>11,701</b>

26. Further, as part of its recommendations to council, cabinet might consider the removal of £7.25m from the current Highways Asset Management capital budget £7.25m as approved at Council in February 2019. This £7.25m was dependent on a successful challenge fund bid and included a £1m corporately funded borrowing as match from the council to support that bid. As challenge fund bids have been suspended, it seems sensible to now remove this budget from the capital programme, allowing any future submissions to be added when they are made. This will release £1m of funded borrowing that can be used in line with the decision taken at Council.
27. The current capital forecast spend in 2020/21 at £66.678m is less than the capital budget of £75.042m, this would permit a decision to be taken to reallocate borrowing earmarked from a capital budget forecasting an underspend to fund the £4.027m flood repair works. This would mean that the £4.027m would be funded from borrowing and the borrowing requirement in 2020/21 would not change. However the capital budget reduced would need to be revisited to determine if a bid is required to replenish this reduction in the 2021/22 budget setting process.
28. To increase the capital budget funded from borrowing by £1.477m. This represents the £4.027m flood repair works cost less the reduced capital budget on the completed Hillside scheme of £2.550m. The cost of repaying this additional borrowing at £0.090m pa will require funding from future years revenue budget.
29. If further funding for the repair of damage as a consequence of Storm Dennis is forthcoming from Government, then those funds can be directed to meet the costs incurred in the delivery of the priority flood damage works, consequently investment can be reinstated across the capital programme, subject to the appropriate governance.

## Legal implications

30. The council has significant responsibilities under the Highways Act 1980 and other related legislation to ensure that the highways and the public realm more generally is maintained.
31. The public realm services contract with Balfour Beatty Living Places (BBLP), which was put in place through a competitively tendered process and the council will ensure its duty to secure best value is met through scrutiny of the cost and quality of the works commissioned with these funds. All works highway maintenance and priority flood repair work needed are in the scope of the public realm services contract as part of its core services.

## Risk management

32. Funding all priority highway repairs, including those needed as a consequence of Storm Dennis, will ensure that the council is meeting its duty to maintain the highway network as section 41 of the Highways Act.
33. In all cases, the alternative to the use of the public realm services contract is to progress to procure some or all of the works and services required through open tender or the use of a suitable framework agreement. The various work packages would need to be developed as part of the review of priorities. All procurement must accord with the contract procedure rules and the procurement process followed will depend on the approach taken to work packages.
34. If works were are taken to the market as a single work package and this value of work exceeds the EU threshold of £4,733,252 for works contracts and an EU compliant procurement process will have to be followed. If the work packages are split, it is almost certainly the case that all packages will exceed £75k in value, as such open tendering procedures must be followed. The table below sets out the likely timeline for procurement.

<b>Procurement Actions</b>	<b>Time (weeks)</b>
Preparation and approval of tender documentation	4
OJEU Publication	0.5
Issue tender notice and allow time for tender submission	6
Evaluation Process	4
Bidders notified and standstill period	2
Decision making process	2
Execute the Contract	1
<b>Total</b>	<b>19.5</b>

35. Alternatively, a suitable framework agreement might be used. If this approach were taken works can be procured using a compliantly let framework agreement. Such agreements allow the client to invite tenders for contracts on a call off basis as and when required. The

framework contract documents will define the scope and delivery locations for the works or services to be delivered during its term. Each framework will have set rules for its use and processes, which must be adhered to, when undertaking call-offs and further competitions. There would still be the need to prepare the tender documentation and call-off contracts, and allow sufficient time for bidders to respond. It is likely that the timeframe for procurement could only reduce by 3-4 weeks from that for an open tender process.

## **Consultees**

36. Political groups have been consulted via email correspondence to all members on 7 July 2020 asking them to advise group leaders of their comments by 13 July 2020 for response by political group's by 14 July 2020. No comments or objections have been received.

## **Appendices**

Appendix 1 - Options for funding £4.027m of Priority Flood Works from the Capital Programme at July 2020

## **Background papers**

None identified