

Title of report: Future Delivery of Public Rights of Way (PROW) & Traffic Regulation Orders (TRO)

Meeting: Cabinet

Meeting date: Monday 31 January 2022

Report by: Cabinet member infrastructure and transport

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. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

All wards

Purpose

To recommend approval of the insourcing of the Public Rights of Way (PROW) and Traffic Regulation Order (TRO) now to be known as Traffic Management (TM) Services from the Public Realm Contract delivered by Balfour Beatty Living Places (BBLP) which will involve the necessary TUPE staff transfer process.

Recommendation(s)

That:

- a) **That the Public Rights of Way (PROW) and Traffic Management (TM) Services currently delivered by BBLP on behalf of the Council as part of the Public Realm Contract, be**

insourced to Herefordshire Council for delivery as Phase 1 of a transformation of services project;

- b) That the Public Realm contract currently delivered by Balfour Beatty Living Place be varied accordingly to enable the insourcing of PROW and TM Services to the Council;**
- c) That staff within the Public Rights of Way and Traffic Management Services be transferred to Herefordshire Council in line with Transfer of Undertakings (Protection of Employment) regulations (TUPE);**
- d) That a Service Level Agreement (SLA) be entered into with Hoople for the delivery of all revenue maintenance activities for PROW.**
- e) A formal review of the PROW/TM service is undertaken post April 2022 as Phase two and any outputs and recommendations are presented in a further report for Cabinet Member approval by November 2022; and**
- f) That all operational and budgetary decisions regarding this transfer be made by the Interim Service Director Environment, Highways and Waste following consultation with the s151 Officer;**

Alternative options

1. The Public Rights of Way (PROW) and Traffic Management (TM) Services could remain within the Public Realm Contract to be delivered by Balfour Beatty Living Places (BBLP) without triggering TUPE. This is not an option as BBLP have already provided formal notice to the council of the intention to transfer those services back to the council.
2. The PROW/TM services could be procured through an alternative provider (involving either the TUPE transfer of staff or utilising their own staff). This is not recommended as it would not meet the aims and objectives of the transfer and is likely to have further increased cost and time implications.
3. The entire PROW/TM services could be transferred to Hoople with a Service Level Agreement. This is not recommended as the Council is the Local Highway Authority and has structures in place which are best suited to deliver PROW and TM services and insourcing the teams into the Economy and Environment Directorate will better meet the aims and objectives of this project.
4. The revenue maintenance activities for PROW could also be brought back and delivered directly by the Council. This is not recommended as Herefordshire Council do not currently have any other direct labour and it would be safer and more efficient to deliver this area of service via Hoople through a service level agreement (SLA).

Key considerations

5. Balfour Beatty Living Places are commissioned by Herefordshire Council to deliver the Public Realm Contract. This includes delivering services on behalf of the Council relating to the management, administration and maintenance of the PROW network and the management and administration of TM.
6. Public Rights of Way and Traffic Management services are currently provided through the Public Realm Contract by Balfour Beatty Living Places. However, it is the Council's aim to review and adapt the PROW and TM services to allow the council the flexibility to deliver the service to meet changing requirements and the future service vision. BBLP have provided an opportunity for the

insourcing of the services and TUPE of staff by writing to the Council offering the services and staff back to the Council.

7. Phase 1 of this project includes the transfer of the PROW and TM services to allow the Council to directly deliver those services and appropriate governance is required to approve the insourcing of those services back into the Council and for a corresponding variation of the Public Realm Contract.
8. The insourcing of the PROW and TM services to the Council will require the transfer of approximately 10 staff under the Transfer of Undertakings (Protection of Employment) regulations and the transfer of goods, data and budgets for these services. The Public Realm Contract will require a corresponding budget reduction to align with the budget transferred back to the Council for these two services.
9. It is recommended that it would be safer and more efficient to deliver the revenue maintenance of PROW via Hoople through a service level agreement (SLA), as the Council do not currently have any other comparable direct labour or depot facilities to provide the service in house. It is considered to be more expedient and efficient as Hoople already provide a direct labour force for the council.
10. It has been identified that initially the services will require extra revenue resourcing to ensure that the current functionality will remain once the transfer is made as detailed in paragraphs 19 and 20. Once the service has been insourced a formal review of the service will be undertaken as phase 2 of this project. This will consider the scope of the service including opportunities for partnership working with Parish Councils, The Ramblers Association and community groups to deliver the improvement aspirations of members. A further report will be provided to the Cabinet Member for Infrastructure and Transport following this work to set out a clear strategy with recommendations, timescales and budget implications to allow due consideration as part of the 2023/24 budget process.
11. All decisions with regard to budget, process and implementation of stage 1 will be delegated to Interim Service Director Environment, Highways and Waste in consultation with the s151 Officer.

Community impact

12. Public rights of way are important for the physical and mental well-being of the public through outdoor exercise and indirectly through mental stimulation as recognised in Herefordshire Council's Local Plan Core Strategy 2011-2031.
13. TM and PROW Services are important to the council's Core Strategy of reducing the need to travel and lessen the harmful impacts from traffic growth, promoting active travel and quality of life. They also contribute to Herefordshire Council's Corporate ambitions of:
 - a. protecting and promoting our heritage, culture and natural beauty to increase tourism and
 - b. attracting new businesses and improving and extending travel options throughout the county.
 - c. Create environments that make wellbeing inevitable
14. Stakeholders including PROW user groups and parish councils will be consulted on the future requirements of both PROW and TM services to ensure that communities are included to provide for their needs. This will be carried out as part of Phase 2 of the project.

15. The aims of the project to transform the services will ensure that they are contributing to the Council's ambitions in the most effective manner.

Environmental Impact

16. PROW and TM contribute to the delivery of Herefordshire Council's [environmental policy commitments](#) and aligns to the following success measures in the County Plan.
 - Reduce the council's carbon emissions
 - Work in partnership with others to reduce county carbon emissions
 - Improve the air quality within Herefordshire
 - Improve residents' access to green space in Herefordshire
 - Increase the number of short distance trips being done by sustainable modes of travel – walking, cycling, public transport

Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

Equality duty

17. 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.
18. 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.
19. As Phase 1 of the project is the TUPE transfer of staff and the insourcing of the staff and their existing functions into the Council (ie no change), it is not considered that an Equality Impact Assessment is required.
20. As part of Phase 2 of the project, an Equality Impact Assessment will be taken into consideration.

Resource implications

21. By insourcing these services, the efficiencies of running them alongside other Public Realm maintenance functions will be lost. The Council will need to recruit an additional operative so that there are 2 PROW operatives and a dedicated PROW inspector together with appropriate plant, equipment and IT. The estimated cost and shortfall of insourcing the services are detailed in table 1 below:

Table 1

| | Revenue | Capital |
|------------------------------------|----------------|----------------|
| Cost of Council Operation | £493,402 | £275,809 |
| Budgets currently agreed with BBLP | £388,307 | £265,494 |
| Potential Shortfall | £105,095 | £10,315 |

22. Negotiations are currently ongoing with BBLP to identify additional budgets within the Annual Plan which are associated with the provision of the PROW and TM functions and the implications on other services of transferring these back to the council. It is anticipated that the shortfalls may reduce as a result of these negotiations but at this current time it is considered prudent to budget for an additional £105,000 in the 2022/23 budget and one off provision for this is made in the Councils MTFS report elsewhere on this agenda.
23. The insourcing of these two services will have an impact on internal resources. By bringing these services back, the overall establishment of the council will be increased.
24. Following the conclusion of detailed negotiations and the final detail of the budgets has been agreed the Public Realm contract currently delivered by BBLP be varied accordingly.
25. Once the service is transferred to the council, costs and efficiency savings will be established for future years under the secondary 'transformation phase' of the service.

Legal implications

26. The Council as the Local Highway and Traffic Authority is responsible for exercising statutory duties and functions in relation to public rights of way and traffic management. BBLP are commissioned on behalf of Herefordshire Council to manage and deliver the PROW and TM services relating to the Council's traffic management and public rights of way duties, functions and powers through a Public Realm Contract.
27. As BBLP have agreed to the transfer of this service back to the council a variation to the existing contract will be required.

Risk management

28. There is a risk that the services are likely to require an increased budget due to transformation ambitions this has been identified (as described above) and included in budgets for Economy and Environment for 2022/23.
29. To ensure that all TUPE timescales are met and ICT etc set up for 1 April 2022, Cabinet is required to agree the recommendation at the meeting on 27 January.
30. All risks associated with the project will be managed within the Project Board and within the project management system (Verto) to ensure that risks are tracked and escalated appropriately.

31. All decisions with regard to risk are delegated to Director of Economy and Environment

Consultees

32. The following consultation has taken place:

| Consultation | Date | Feedback |
|---|--|---|
| PROW/TM Insourcing Project Board | Numerous meetings in 2021 – 2022 | Lead the development of the recommendations through the process. |
| Cabinet Member | Numerous briefing meetings Nov 2021-2022 | Provide aims and objectives for the project and develop recommendations. |
| Directorate Management Team | 15.12.21 | |
| Cabinet Portfolio Briefing | 20.12.21 | Cllr Harrington raised concerns with HC personnel working within BBLP offices. Options of a work base were discussed, team will need a yard. Further talks are ongoing with BBLP and HC including timings and costings. Confirmed that P3 (parish partnership) would need to come back in house. Presently there is no funding and no definitive role. |
| Political groups consultation on a key decision | 19.01.22 | Cllr Milln - in favour of bringing the PROW and TRO functions back in house. However there was concern about Hoople taking on revenue maintenance activities and whether they would have a depot/facilities. Cllr Milln was provided with info that Hoople do have a depot and carry out maintenance activities for BM&C SLA already. Cllr Milln also favoured the return of section 142 of the Highways Act 1980 to be brought back in house to enhance green infrastructure across the public realm. This is outside of the current project scope. Cllr Norman - was very supportive of this move and |

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| | | considered that it would have the support of most Members. Cllr Matthews - The True Independents fully support these proposals. |
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Appendices

None

Background papers

None identified.

Report Reviewers Used for appraising this report:

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|---|------------------------|-----------------|
| | | |
| Governance | Claire Ward | Date 21/01/2022 |
| Finance | Louise Devlin | Date 19/01/2022 |
| Legal | Sharon Bennet-Matthews | Date 20/01/2022 |
| Communications | Luenne featherstone | Date 18/01/2022 |
| Equality Duty | Carol Trachonitis | Date 20/01/2022 |
| Risk | Kevin Lloyd | Date 19/01/2022 |
| Approved by Neil Taylor, Director for Economy and Place Date 21/01/2022 | | |

Please include a glossary of terms, abbreviations and acronyms used in this report.

PROW **Public Rights of Way**
TM **Traffic Management**
BBLP **Balfour Beatty Living Places**
SLA **Service Level Agreement**