

Public Realm Services Future Operating Model

Meeting: Cabinet

Meeting date: Thursday 2 March 2023

Report by: Cabinet Member – Commissioning, Procurement and Assets

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.

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 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

A review has determined that the council's current public realm services and contracting arrangements will not deliver the council's medium to long term aspirations.

The council's vision is to design and deliver new public realm services that are fit for the future embracing technology and digital innovation, a transition to electric plant, vehicles and new materials to meet net zero carbon by 2030, investment in our people that support development and innovation enabling the service to continually improve, maximising resources and opportunities to best meet the needs of local residents and communities.

To achieve this vision the council, working in partnership with the Public Realm Service Contractor, seek approval to select and develop a Future Operating Model that has been determined as the best model to deliver this vision while minimising service and financial risks during this period of change.

Recommendation(s)

That:

- a) **Cabinet note the outcome of the midpoint review of the public realm services contract;**
- b) **Cabinet approve the selection and development of Future Operating Model Five being “In house client and technical staff with existing provider (single contract) for top up professional services and works”;**
- c) **Cabinet note and support the commitments and initiatives in paragraph 28 a-h to be developed between the council working in partnership with the Public Realm Services Contractor; and**
- d) **Cabinet delegate the design and development of Future Operating Model Five to the Corporate Director of Economy & Environment in consultation with the s151 Officer and the three Cabinet Members for Infrastructure and Transport, Commissioning, Procurement and Assets and Finance, Corporate Services and Planning.**

Alternative options

1. To support the council’s selection of the public realm services Future Operating Model (FOM), engagement took place during 2022 with officers, Group Leaders, cross party Members and the three Cabinet Members for Infrastructure and Transport, Commissioning, Procurement and Assets and Finance, Corporate Services and Planning to understand what was important to the council regarding these services, and what had been learnt from the current operating model that had commenced in 2013.
2. From this engagement eight Key Objectives were derived.

| Key Objective | Description of what the Council would like to achieve |
|----------------------|---|
| Assurance | The council seeks a level of assurance regarding the operation of the service, where technical staff are directed by council employed staff who commission the services, manage the network, develop the annual plans, provide technical expertise and provide adequate levels of scrutiny, challenge and assurance to services being delivered by the contractors. |
| Flexibility | The new arrangements need to be able to flex to deliver seasonal workload fluctuations, changes to budgets (up and down) and resilience to deliver the council’s annual works programme, infrastructure projects and support with civil emergencies. |
| Environment | The future arrangements must be aligned with the council’s commitments to carbon net zero and wider environmental requirements. |
| Customer | The services must be focussed on delivering excellent customer services where the quality of service, digital reporting and access to information (CRM) and speed of response are key factors. |
| Expertise | To deliver the broad range of public realm services, the council will require access to industry expertise, best practice (what is working well in other areas) and innovation to develop and improve services continually. |

| | |
|--------------|---|
| VFM | Any contracted services resulting from the model selected must be attractive to the market to ensure interest and competition. The model selected must promote continual improvement, innovation and efficiencies and evolve during its term. |
| Risk | The future arrangements and any supporting contracts must place an appropriate balance of risk between the council and any providers, in the knowledge the council will ultimately pay for risk held by the provider. |
| Social Value | Social Value refers to the wider financial and nonfinancial value created by an organisation through its day to day activities in terms of the wellbeing of individuals and communities, social capital created and the environment. |

3. In 2013 the government promoted “Highways Maintenance Efficiency Programme” and developed a procurement toolkit which aimed to deliver efficiency savings through the delivery of highway maintenance services procured by local highway authorities. The toolkit recommended the models provided in figure 1, below, should be considered by local authorities while considering service provision.

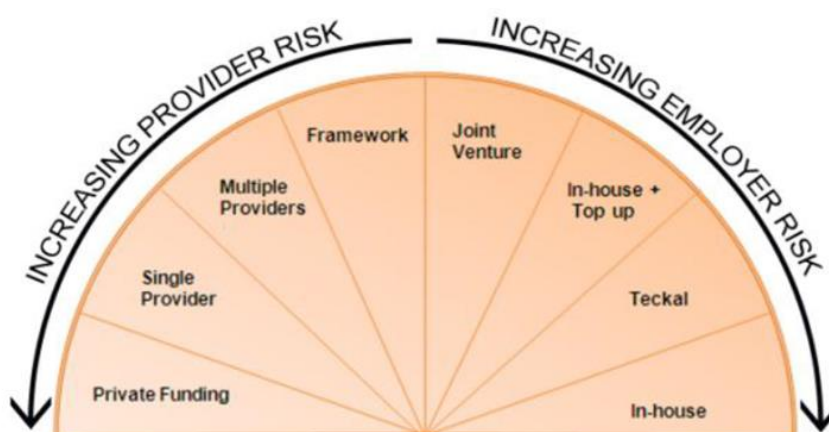


Figure 1 - Extract from the HMEP Toolkit and a link to the HMEP procurement toolkit providing more detailed information is provided in the supporting documents section of this report.

4. Aligned with national best practice the council used this HMEP model as a starting position for development of the FOM. From this six operating models well known and understood in the industry were shortlisted, that could potentially deliver the council’s objectives were selected. These six models were then assessed and scored against the council’s Key Objectives.

| Model No. | Model Type |
|-----------|---|
| 1 | Council deliver all services in house |
| 2 | Council core services and works delivered in house, with contracts for specialist top up services and major works |
| 3 | In house client and technical staff with framework for top up professional services and multiple contracts for works |
| 4 | In house client and technical staff with framework for top up professional services and single contract for works |
| 5 | In house client and technical staff with existing provider (single contract) for top up professional services and works |
| 6 | Thin client with sole integrated contract for professional services and all works |

5. Model Six being *Thin client with sole integrated contract for professional services and all works* is the model of the current contract with BBLP, that has been in operation since 2013. Thin clients with high levels of outsourcing as per this model, can be effective and provide VFM where both Members and officers are comfortable with the high level of delivery sitting with the contractor. Although the council retain ownership of the policy, for this model to be successful the contractor is required to deal directly with customers including residents and Members, without cross referral to council officers to efficiently manage operational matters. Where this form of relationship is successful and efficient, a high level of trust and collaboration is established and maintained between the client and the contractor.
6. The output of the options appraisal with reasoning for the scoring is provided in Appendix A, which demonstrates Model Five was the FOM that would best meet the council's Key Objectives being *In house client and technical staff with existing provider (single contract) for top up professional services and works*. This model is explained later in the report.

Key considerations

Background

7. The council's public realm term service contract with Balfour Beatty Living Places (BBLP) was awarded in 2013, and was scoped to deliver services including highways, asset management, traffic management, network management, public rights of way, parks and open spaces, street cleaning and street lighting.
8. Procurement for the contract set out to achieve the following objectives:
 - a) *Ensuring our roads, public open spaces and streets are accessible, safe, clean and well-maintained*
 - b) *Maintaining the delivery of essential services*
 - c) *Achieving value for money, facilitated by process improvement and transparency through open book accounting*
 - d) *Achieving service delivery which is efficient and responsive to local needs and priorities*
 - e) *Contributing to the regeneration of the economy and social capital in Herefordshire*
9. The contract commenced on 31 August 2013, with an initial term of 10 years. Single year contract extensions are subject to satisfactory performance under the contract. A one year extension was granted by the council, which means the current end date for the contract is the 31 August 2024. Subsequent provisional evaluation of performance information has shown thresholds have been achieved in accordance with the contract terms. Upon completion of the evaluation that is currently underway, the council will consider a contract extension to 31 August 2026, something that legal advice states the council should not unreasonably withhold, irrespective of the council's development of the FOM.
10. The maximum allowance for contract extensions was 10 years in total meaning the contract could be extended to 31 August 2033.
11. The contract has a two-year no-fault termination clause which can be enacted either by the council or BBLP should either party choose to terminate the contract.
12. The 2013 contract was heavily out-sourced with the council only retaining a small client and contract management function delivered by council staff.
13. The council negotiated with BBLP and brought the public rights of way and traffic management services back in house in April 2022, including the TUPE transfer of a small number of staff

from BBLP to the council, as it was concluded by the council these services, which included some statutory duties, would be better delivered by the council.

14. The contract is managed by council held roles as detailed in the organogram provided in Appendix B.
15. Performance of the contract is measured via performance indicators and the November 2022 output summary is provided in Appendix C. The appendix demonstrates BBLP are meeting their performance requirements as set out under the contract.
16. Audits of the public realm contract undertaken by PWC and subsequently by Grant Thornton in Summer 2021 resulted in concerns being raised regarding performance, contract management, compliance and value for money (VFM). In response to the audits a Major Contract Improvement Plan was developed by the service, and continues to be progressed to improve the current arrangements, and seeks to develop processes and procedures that can also be adopted in a FOM. The Major Contract Improvement Plan was closed out in 2022, and is provided as a background paper to this report. The remaining issues identified for completion will be concluded during 2023/24.
17. In addition to the insourcing of the public rights of way and traffic management services mentioned in paragraph 13, a bolstered Contract Management Team has been established during the last 18 months that is responsible for issuing service orders, early warnings, checking of the works and providing increased assurance for the contract performance of BBLP. Further a Highways and Traffic team has been established that is responsible for commissioning, the setting of the service standards and budgets. The two teams work closely together to ensure that works are effectively commissioned and managed on the network. Previously the distinct split between commissioning and managing had been blurred by the functions being dealt with by a single team.
18. Additional interim resources have also been employed, the focus of their work being to provide the council with the assurance it seeks regarding the contract. This has seen the introduction of a more robust approach being applied to the council's relationship with the contractor. The additional cost to deliver this new function has been found from existing resources, but is not sustainable in the long term. These teams and interim resources will ensure that revised processes including those from the Major Contract Improvement Plan are applied to the existing contract, with these same processes also being incorporated into any new relationship and FOM.
19. The annual budget for the public realm services contract with BBLP is currently the region of £6M Revenue and £15-20M Capital. It should be noted that the service delivery budgets excluding capital projects are considerably reduced from the budget that was intended for the contract when it was awarded in 2013, which has led to some challenges relating to service delivery for both the council and BBLP.
20. Further revenue savings are required from the public realm services, and discussions have been ongoing with BBLP and Members for some time regarding how best this requirement can be realised, minimising any impact on service delivery ahead of the new financial year from April 2023. Further revenue savings are likely in future years which will need to be considered as part of the development of the FOM and reducing contract value. For the avoidance of doubt the council commission the services through the contract, and both the current and FOM provide the flexibility the council require to adapt to in year and longer term service pressures and funding opportunities. For major infrastructure works the council have currently, and will retain the option to deliver major projects through the contract, use regional frameworks or undertake independent procurement processes. These procurement decisions are made depending upon value, complexity, market appetite and time, in the knowledge an independent procurement process can take 6-12 months, and the procurement process is an additional cost that needs factoring into such decisions by the council.

21. Despite these improvements the current operating model and contracting arrangements are not considered by Members to be delivering the council's service expectations for the residents of Herefordshire. Concerns have generally been fed back anecdotally, and often relate to individual service orders rather than the broader service itself. The contractor is also sometimes criticised for non-delivery of issues that are outside of the scope of the current service orders. However concerns have been raised, and continue to be raised relating to:
- a) Client control
 - b) Commissioning of works
 - c) Planning of works
 - d) Assurance
 - e) Quality of work
 - f) Responsiveness
 - g) Flexibility
 - h) Value for money
 - i) Customer service
 - j) Reputation
22. In terms of customer feedback the council participates in the annual National Highways and Transport Network (NHT) Customer Satisfaction survey. The NHT Network is a service improvement organisation providing a range of benchmarking services for the Highways & Transport sector, available on a subscription basis to Local Authorities and their delivery partners in England. The 2021 annual survey return places customer satisfaction with the Highway Service firmly in the bottom quartile, however this data does need to be considered in the context of the council's spend per km, also being in the bottom quartile of comparable local authorities in England. Further information is available in the background paper section to this report.
23. To better understand the views of Members, and concerns with the current model, engagement took place with the Group Leaders, resulting in the establishment of a cross party Member Group in October 2022. The group met frequently until December 2022 capturing Members' views of the current services, and agreeing what Members would like to see and consider important in any FOM. A summary of these views is provided in Appendix D, which was used to derive the Key Objectives detailed earlier in the report, which in turn were used to score the various models as part of the options appraisal.

The Future Operating Model

24. As detailed in the Alternative Options section at the top of the report, the options appraisal selected Model Five being *In house client and technical staff with existing provider (single contract) for top up professional services and works* was determined as the preferred model that would best meet the council's Key Objectives.
25. Model Six being *Thin client with sole integrated contract for professional services and all works* is the model of the current contract with BBLP, that has been in operation since 2013. This model scored in fourth place from the six models that were subject to the options appraisal. This ranking concludes that this model will not deliver the council's Key Objectives over the medium to long term.

26. Model five, being the preferred model to be developed, requires the transfer of technical and professional staff from the contractor BBLP into the council, which is best delivered under TUPE. This transfer will increase the council's clienting ability including a higher level of contract management, commissioning of works, owning and delivering asset management and the annual plan. This model will also provide the council an increased ability to own, check and challenge the works and projects delivered by the council. The various works packages including public open space, litter, street cleansing, highway maintenance, drainage, street lighting and minor capital schemes will be retained by the contractor, where they benefit from the 2013 contract tender pricing, economies of scale being from a single Tier One provider, established works practices and established supply chains for labour, plant and materials.
27. Model Five, as selected, is proposed to be developed closely aligned to the council's eight Key Objectives that were derived from engagement, then utilised in the options appraisal to select this model.
28. Following agreement from Members, council officers engaged with BBLP from December 2022 to seek assurances that BBLP would be willing to work in partnership with the council to deliver the FOM and its Key Objectives. Initial engagement has been positive and has resulted in the following assurances in response to each of the eight objectives a-h.

- a. *Assurance- The council seeks a level of assurance regarding the operation of the service, where technical staff are directed by council employed staff who commission the services, manage the network, develop the annual plans, provide technical expertise and provide adequate levels of scrutiny, challenge and assurance to services being delivered by the contractors.*

The council and BBLP have committed to work together to review the technical and professional services workforce currently provided through the contract, and agree which of those services and staff would be better delivered by the council directly, to deliver the assurance and model the council are seeking.

- b. *Flexibility- The new arrangements need to be able to flex to deliver seasonal workload fluctuations, changes to budgets (up and down) and resilience to deliver the council's annual works programme, infrastructure projects and support with civil emergencies.*

Retaining the works delivery with a single Tier One contractor, BBLP will ensure through the established workforce and supply chain arrangements, the service is well placed to deliver flexibility and respond to civil emergencies.

- c. *Environment - The future arrangements must be aligned with the council's commitments to carbon net zero and wider environmental requirements.*

BBLP as an organisation are aligned to the council's Net Zero Carbon 2030 target, and further information is provided in Appendix E.

- d. *Customer - The services must be focussed on delivering excellent customer services where the quality of service, digital reporting and access to information (CRM) and speed of response are key factors.*

BBLP have committed to supporting the council's emerging Digital and Customer Strategy, and examples where BBLP have been successfully developing and implementing similar systems with other councils are provided in Appendix F.

- e. *Expertise - To deliver the broad range of public realm services, the council will require access to industry expertise, best practice (what is working well in other areas) and innovation to develop and improve services continually.*

The Tier One contractor BBLP with multiple local authority contracts, partnerships and established supply chains including with professional services providers will ensure the council

has access to industry expertise. This will be a focus of the new arrangements and partnership working between the council and BBLP.

- f. *VFM - Any contracted services resulting from the model selected must be attractive to the market to ensure interest and competition. The model selected must promote continual improvement, innovation and efficiencies and evolve during its term.*

Retaining and extending the contract that was tendered in 2013 reduces inflationary risks to the council in this period of uncertainty and high inflation. The review and adaption of the contract with BBLP will seek out efficiencies and with a greater degree of assurance and scrutiny, ensuring VFM for the services delivered.

- g. *Risk - The future arrangements and any supporting contracts must place an appropriate balance of risk between the council and any providers, in the knowledge the council will ultimately pay for risk held by the provider.*

The apportionment of risk will be reviewed and re-priced to support the variations to the existing contract.

- h. *Social Value - Social Value refers to the wider financial and nonfinancial value created by an organisation through its day to day activities in terms of the wellbeing of individuals and communities, social capital created and the environment.*

BBLP are committed to delivering the council's requirements to social value over the remaining term of the contract, and further information of how BBLP have been delivering Social Value elsewhere is provided in Appendix G.

- 29. Development of the FOM is proposed during 2023. This early design phase will enable both the council and BBLP to develop the model, and to understand the benefits, opportunities, costs and risks arising from the proposed move to the FOM. This will be worked up into a business case, to support a further Cabinet Recommendation proposed in November 2023, which will seek permission to complete the detailed design of the FOM in 2024, and delegate the implementation of the new model to go live from 1 April 2025.

- 30. The FOM requires significant investment including but not limited to:

- a) Modernisation of IT to facilitate new ways of working and efficiencies
- b) Digital enhancements including for customer service
- c) Review, rationalisation and modernisation of accommodation and depots including EV charging points
- d) Deliver Carbon Net Zero by 2030 commitments including electric plant and vehicles
- e) Enhanced commitments to Social Value, including setting up training programmes

- 31. A contract extension to 2030 is being considered to support the move to the FOM, as it will facilitate a reasonable return period on the investment required.

- 32. A contract extension to 2030 also retains the incentive of the further three year contract extension to 2033, which the council would need to make during 2028.

- 33. To implement the FOM, adaption of the contract will need to be agreed between both parties unilaterally during 2024 in the form of a contract Deed of Variation. This would be the time when both the council and BBLP contractually commit to the FOM, and the contract extension could be granted to facilitate the investment.

34. The contract has a two year no fault termination clause which both parties can enact at any time, which is proposed to be retained.
35. In terms of measuring performance in the FOM, the council and BBLP have committed to review and implement a new performance management framework, that will ensure that along with the operational Key Performance Indicators currently reported under the contract as detailed in Appendix C, new performance measures will be implemented to ensure the contract delivers the objectives and requirements of the new model that will be subject to periodic review and enhancement over the life of the contract extension. These new performance measures will ensure continual improvement over the life of the contract, including promoting efficiencies, new ways of working, embracing new technology and pursuing opportunities for commercialisation.

Key Considerations

36. FOM Five as selected requires a transfer of technical and professional services staff from BBLP to the council. There are currently in the region of 80 technical staff provided within the contract delivering the following services.
 - a) Asset Management
 - b) Structures
 - c) Locality stewards and highway inspectors
 - d) Streetworks & Network Management
 - e) Customer service
 - f) Design and project management
 - g) Commercial and finance
 - h) CDM Co-ordination
 - i) Programme management

The BBLP structure charts to show the current formation of these teams is provided in Appendix H.

37. The proposed transfer of staff will be determined in discussion with BBLP. The council is unable to act unilaterally in this regard under the contract, and will benefit from the expertise of BBLP who have experience of delivering multiple contracts in various forms with other local authorities.
38. Staff identified to be transferred into the council from BBLP, will be granted rights under TUPE transfer which ensure those transferred remain on the terms and conditions and benefits that they are currently provided.
39. Staff and their costs transferred directly to the council will be exempt from the Contract Fee, however primarily due to the council's more generous Local Government Pensions Scheme employer contributions that would be offered to any staff transferring to the council, the net additional cost for staff of transferring into the council is estimated up to an additional three percent with the exact figure being determined on a person by person basis determined by their current terms and conditions, pension contributions and wider benefits such as works vehicles.
40. Transitional arrangements, if required, could be delivered under a "Partnership Agreement" between the council and BBLP.

41. As the services and staff identified for transfer are identified, both organisations will review and agree new structures, including a review of the management structures to ensure they are proportionate for the services being delivered, and aim to improve how the parties work together, aligned to the new model, delivering efficiencies and ensuring VFM.
42. Any additional costs borne by the council from the TUPE transfer of staff from BBLP, will be offset by the design and implementation of new structures, development and implementation of more efficient working practices including improvements in IT and digital technology, to ensure the overall public realm service costs to the council are cost neutral.
43. Both BBLP and the council are willing to invest in the design and delivery of the FOM. This investment, and which party is best placed to undertake the investment is still to be determined. However investment will be considered for improvements in IT and digital transformation, the customer journey, accommodation and depots, a move the electric plant and fleet plus any mobilisation costs associated with implementing the new model. These investment costs will be designed into a business case to support the FOM, and include whether the costs are most economically provided by the council, BBLP or recovered during the contract term.
44. External legal advice obtained by the council during 2022 has advised that if adaption of the contract is considered to be “substantial” or in excess of 10% change in value from the original OJEU notice that set out the original contract framework in 2013, then the council will be required to post a Notice on Find a Tender to satisfy the Public Contracts Regulations 2015, setting out the changes. If required, this will be undertaken once the council and BBLP have clarity on the scale and value of changes required to deliver the FOM.
45. Once changes have been agreed between both parties, any changes to the contract will be secured by a Contract Deed of Variation, which would commit both organisations contractually, after which the council could issue the contract extension.
46. The contract has a two year no fault termination clause which both parties can enact at any time, which is proposed to be retained.
47. Early engagement has been undertaken with the council and BBLP’s respective HR and communications teams regarding the move to the FOM, and this has confirmed that any changes will be subject to consultation(s) and engagement with BBLPs staff liaison parties and trade unions, as the proposals are being developed.

Implementation & Timescales

48. The council has set up a Public Realm Project Implementation Group since Summer 2022 comprising of the public realm service leads, project and programme management, support services including assets, estates, IT, procurement, legal, finance, HR and comms. The group has been meeting regularly to ensure the council is fully informed in terms of a realistic delivery timescale and how best to manage and mitigate any associated risks.
49. From BBLP engagement, both parties are confident that the following high level timeline is realistic for design and implementation of the FOM.

| Activity | Start Date | Finish Date |
|--|---------------|---------------|
| Preliminary FOM Design and assess impacts | April 2023 | October 2023 |
| Approval of FOM Business Case | November 2023 | |
| Cabinet Approval of FOM | November 2023 | |
| Secured Council funding for implementation of FOM | November 2023 | February 2024 |
| Project planning with Project Implementation Group | January 2024 | June 2024 |

| | | |
|--|------------------------|----------------|
| Consult (over any staffing changes / TUPE) | June 2024 | September 2024 |
| Agree Heads of Terms for Contract (Deed of Variation) | September 2024 | |
| Complete Contract Deed of Variation | October 2024 | |
| Grant Contract Extension to 2030 | October 2024 | |
| Procure/secure IT/fleet/accommodation/depot improvements | October 2024 | December 2024 |
| Implement FOM | January 2025 | March 2025 |
| Future Operating Model Operational | 1 April 2025 | |
| Monitoring new services, refinement & change management | April 2025 | September 2025 |
| Consult over any refinement & changes (if required) | October 2025 | |
| Implementation of changes (if required) | November 2025 | |
| Future Operating Model- FINAL | 1 December 2025 | |
| Refine, embed FOM & provide Change Management support | 1 December 2025 | 31 March 2026 |

Community impact

50. Public realm services are vital to communities as they include maintaining and developing infrastructure, maintaining green areas, providing effective drainage, lighting the highway and enabling safe and reliable travel by all modes of transport, and access for business and leisure. The council priorities for this service area are:

51. County Plan 2020-2024

- a) *Environment - Protect and enhance our environment and keep Herefordshire a great place to live*
- b) *Community - Strengthen communities to ensure that everyone lives well and safely together*
- c) *Economy - Support an economy which builds on the county's strengths and resources*

52. Local Transport Plan 2016-2031

- a) *Enable economic growth - by building new roads linking new developments to the transport network and by reducing short distance car journeys*
- b) *Provide a good quality transport network for all users – by being proactive in our asset management and by working closely with the public, Highways England and rail and bus companies*
- c) *Promote healthy lifestyles – by making sure new developments maximise healthier and less polluting forms of transport by delivering and promoting active travel schemes and by reducing short distance single occupant car journeys on our roads*
- d) *Make journeys easier and safer – by making bus and rail tickets compatible and easier to buy and use, by providing 'real time' information at well-equipped transport hubs, by improving signage to walking and cycling routes and by helping people feel safe during their journeys*

- e) *Ensure access to services for those living in rural areas – by improving the resilience of our road network and by working closely with all transport operators to deliver a range of transport options particularly for those without a car*
- f) The Department for Transport has asked all local transport authorities to refresh their Local Transport Plans, this piece of work will be ready for implementation in April 2024. The council awaits the delivery of the notes for guidance for producing the new Local Transport Plan, and is expecting a renewed emphasis to be placed on active and sustainable traffic measures.

53. Herefordshire Transport Asset Management Strategy 2016

- a) *Major investment targeted to fix roads that are in the greatest need of repair and have the greatest value to our local communities.*
- b) *Sustained investment over the whole life of the highway asset - an on-going programme of works that is targeted at treating roads as they are showing signs of deterioration, fixing roads before they need larger, more costly repairs, a “just in time” approach*
- c) *Reduce the need for reactive 'temporary' pothole repairs as a response to safety defects. We will aim to deliver a high proportion of our routine pothole repairs using permanent fixes that not only make the road safe, but improve the condition of the road and extends its useful life*
- d) *Shift our routine resources further towards preventative activities, such as the clearance of drainage. Well-drained roads decline at a slower rate and are more resilient to damage from severe weather*
- e) *Provide the support that enables routine maintenance work to be delivered locally*

54. Herefordshire Delivery Plan 2022-2023

- a) *Improve the sustainability, connectivity and wellbeing of our county by strengthening our communities, by creating a thriving local economy and by protecting and enhancing our environment*
- b) *Connectivity*
- c) *We will boost different travel choices through new walking and cycling routes and widen other transport options whilst creating a long term travel plan for the county.*
- d) *We will continue to extend digital connection for households and businesses, and make the most of digital technology to improve service delivery options.*
- e) *We will support businesses and skills development to aid economic growth, along with investing in our town and city centres and promoting the county as a vibrant place to live, work and visit*

55. The FOM will include wider engagement with community groups and parish councils to seek out efficiencies, and where local communities would like the service enhanced, the FOM will allow for top up voluntary and paid services to be provided.

56. The FOM and supporting contracting arrangements will ensure a commitment to social value as outlined in Appendix G that will be refined to meet the council's expectations in relation to social value including meeting obligations of the “corporate parent” with a collective responsibility of the council, elected members, employees, and partner agencies such as

BBLP, for providing the best possible care and safeguarding for children who are looked after by the council.

Environmental Impact

57. The Public realm services FOM will be fully aligned to meet the council's environmental objectives that will support the council meeting its net zero ambitions including:

- a) *Improve drainage and increase flood resilience*
- b) *Reduce the council's carbon emissions*
- c) *Work in partnership with others to reduce carbon emissions*
- d) *Improve the air quality*
- e) *Improve residents' access to green space*
- f) *Increase the number of short distance trips being done by sustainable modes of travel including walking, cycling and use public transport*

58. As detailed in Appendix E, BBLP's corporate Net Zero ambition is set to be achieved by 2030, aligned with the council's 2030 target. Following engagement both organisations are committed to work in partnership to meet these requirements.

Equality duty

59. 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 –

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

60. The public sector equality duty (specific duty) requires the council to consider how it can positively contribute to the advancement of equality and good relations, and demonstrate that the council are paying 'due regard' in its decision making in the design of policies and in the delivery of services.

61. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race;

religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.

62. Although the new model represents adaption of an existing contract, the new service and any impacts on the workforce of both the council and BBLP have been subject to Equality Impact Assessments that are provided in Appendix I for the impacts of the services and Appendix J for impacts on the workforce.
63. Both Equality Impact Assessments demonstrate that this decision and implementation of the FOM will not result in detrimental impact on any group with a protected characteristic.

Resource implications

64. Initial development of the FOM has resulted in the formation of the Public Realm Project Implementation Group since Summer 2022 comprising of the public realm service leads, project and programme management, support services including estates, IT, procurement, legal, finance, HR and comms.
65. The group has been meeting regularly to ensure the council are fully informed in terms of a realistic delivery timescale and how best to manage and mitigate any associated risks.
66. To design and implement the FOM the council will need to work closely and in partnership with BBLP, and set up the following sub-groups/workstreams to manage and oversee the development and implementation of the various components that combined will deliver the FOM.
 - a) People/structures/HR
 - b) Partnership & collaboration
 - c) Review of services/Annexes
 - d) Review of performance framework
 - e) Contract and Deed of Variation (legal support required)
 - f) Procurement (eg supporting IT/vehicles/EV charge points)
 - g) IT/Digital and Customer Service
 - h) Accommodation
 - i) Fleet
 - j) Depots (Dilapidation Surveys?)
 - k) Environmental and Carbon Net Zero
 - l) Social Value
 - m) Re-branding and comms

67. Development of this model, and the supporting business case will be undertaken by October 2023. After which a further report will be brought back to Cabinet to approve the model in detail, including detailed project costings and identifying investment.
68. There may be a high level of support required from the council and BBLP HR services, depending on the number of staff identified to be transferred from BBLP to the Council. This will also require staff engagement, comms and engagement with staff liaison and trade unions, although the impact on council staff will be lower than the BBLP workforce.
69. As detailed earlier in the report any additional costs borne in the FOM from the TUPE of staff from BBLP to the Council will be mitigated by review and management structures and staff restructures within both the council and BBLP, and recover from efficiency measures, in part realised by the initial investment proposed, one example being the improvements in IT aligned to the council's Customer and Digital Strategy.
70. At this early stage the FOM is proposed to be delivered on a cost neutral service basis, with exception of the design and implementation costs of the model which have been estimated at £185,000 in the year 2023/24 and to be determined and secured for 2024/25.

| Revenue or Capital cost of project (indicate R or C) | 2022/23 | 2023/24 | 2024/25 | Future Years | Total |
|--|---------|---------|---------|--------------|-------|
| | £000 | £000 | £000 | £000 | £000 |
| <i>Project Implementation</i> | 0 | 185 | 0 | 0 | 185 |
| | | | | | |
| TOTAL | 0 | 185 | 0 | 0 | 185 |

| Funding streams (indicate whether base budget / external / grant / capital borrowing) | 2022/23 | 2023/24 | 2024/25 | Future Years | Total |
|---|---------|---------|---------|--------------|-------|
| | £000 | £000 | £000 | £000 | £000 |
| <i>Revenue funding allocated from H&T services</i> | 0 | 185 | 0 | 0 | 185 |
| | | | | | |
| TOTAL | 0 | 185 | 0 | 0 | 185 |

| Revenue budget implications | 2022/23 | 2023/24 | 2024/25 | Future Years | Total |
|-----------------------------|---------|---------|---------|--------------|-------|
| | £000 | £000 | £000 | £000 | £000 |
| <i>None</i> | 0 | 0 | 0 | 0 | 0 |
| | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 |

Legal implications

71. External legal advice has been obtained by the council during 2022 relating to contract and employment law associated with the FOM proposed.
72. Provided that BBLP meets the performance requirements, the Council is allowed to extend the contract under clause 31 of the Public Realm Services Contract.
73. The Council should be aware that if the contract value is increased by 10% or more of the original OJEU notice that set out the original contract framework in 2013, it will trigger the Public Contracts Regulations 2015 and the Council will have to comply with said regulations.
74. Legal should be updated on the extent of the scope and increase in value of the contract to provide comprehensive advice and outline the procedure to be followed.
75. The Legal team will deal with the preparation and completion of all necessary legal documentation.

Risk management

76. The key risks and opportunities associated with the move to the public realm services FOM and contract adaption are provided in Appendix K. Managing the risks and securing the opportunities are proposed to be undertaken within the Project Implementation Group, which benefits from a broad level of expertise, along with PMO support.

Consultees

Officer Project Implementation Group
Cabinet Member for Finance, Corporate Services and Planning
Cabinet Member for Commissioning, Procurement and Assets
Cabinet Member for Infrastructure and Transport
Group Leaders
Public Realm Services Future Operating Model Member Working Group (established October 2022)
Political Groups Consultation 24 January 2023
Connected Communities Scrutiny Report and Minutes dated 13 February 2023

Appendices

Appendix A: Options Appraisal for selection of Future Operating Model
Appendix B: Council's Contract Management organogram
Appendix C: Contractor performance report for November 2022
Appendix D: Member Working Group Summary Views
Appendix E: Net Zero Carbon 2030
Appendix F: Development of Customer and Digital IT systems
Appendix G: Commitments to Social Value
Appendix H: BBLP Technical Services organogram
Appendix I: Equality Impact Assessment for Future Operating Model for impact on the services
Appendix J: Equality Impact Assessment for Future Operating Model for impact on the workforce
Appendix K: Risk and Opportunities Register

Background papers

Connected Communities Scrutiny Committee Report and Minutes dated 14 October 2022
<https://councillors.herefordshire.gov.uk/ieListDocuments.aspx?CId=1157&MId=8824&Ver=4>

Connected Communities Scrutiny Report and Minutes dated 13 February 2023
<https://councillors.herefordshire.gov.uk/ieListMeetings.aspx?CId=1157&Year=0>

County Plan 2020-2024
<https://www.herefordshire.gov.uk/council/herefordshire-council/3>

Herefordshire Transport Asset Management Strategy
<https://www.herefordshire.gov.uk/roads-1/highway-asset-management-maintenance>

HMEP Procurement Toolkit
<https://www.theihe.org/wp-content/uploads/2020/07/Procurement-Route-Choices-Toolkit-PDF-90pages-147MB.pdf>

Local Transport Plan 2016-2031
<https://www.herefordshire.gov.uk/directory-record/5547/local-transport-plan>

Major Contract Improvement Plan
<https://www.herefordshire.gov.uk/downloads/file/23747/major-contract-performance-improvement-plan>

National Highways & Transport Network Public Satisfaction Survey Results
<https://nhtnetwork.org/wp-content/uploads/2021/01/2020-NHT-Survey-Executive-Overview.pdf>

Glossary of terms, abbreviations and acronyms used in this report.

Balfour Beatty Living Places (BBLP)
National Highways and Transport Network (NHT)
Price Waterhouse Coopers (PWC)
Public Realm Future Operating Model (FOM)
Small and medium-sized enterprises (SME)
Value for Money (VFM)