

Wiltshire Council

**Cabinet
10 November 2015**

**Environment Select Committee
27 October 2015**

**Contract Task Group
15 October 2015**

Subject: Highways and Streetscene Contract

Cabinet Member: Councillor Philip Whitehead – Highways and Transport

Key Decision: Yes

Executive Summary

The Council's highways service has primarily been delivered through the Highways and Streetscene Contract since June 2013, when the contract with Balfour Beatty Living Places (BBLP) started.

The contract brought together the Council's previous highways, street lighting and streetscene contracts and operations into one contract. The scope of the contract was the subject of considerable discussion, prior to inviting tenders, with the involvement of the Environment Select Committee throughout the process.

The BBLP contract has been operating for just over two years, and was originally for five years, with a potential extension for a further two years. In financial terms the contract has provided substantial benefits to the Council, initially through cost savings made through the tender process, and subsequently through the efficiency savings that BBLP undertook to deliver in connection with the contract.

BBLP has been reviewing its operations across all of its contracts, both nationally and internationally, in order to ensure ongoing viability of the business. As a result, BBLP approached the Council with a view to discussing the potential early termination of its Highways and Streetscene Contract with this Council.

The early termination of the contract with BBLP has some benefits for the Council, but the transfer of services has had to be carefully managed so that the potentially significant financial, legal, reputational and operational risks to the Council are avoided as far as possible. The matter was considered by Cabinet on 21 July 2015 when approval was agreed to termination of the contract, subject to suitable terms being agreed.

Arrangements have been made for the Council to take over existing sub-contracts between BBLP and specialist suppliers in key service areas, including grass cutting, litter picking and major resurfacing. These arrangements became effective from

1 September 2015 following an agreement with BBLP to end the existing Highways and Streetscene Contract.

A procurement exercise is being undertaken for a new Wiltshire Highways Contract which is anticipated to start in April 2016. The new contract will also be open to Swindon Borough Council to use. This will have benefits in terms of widening the scale of the contract and making it more attractive to bidders.

It is intended that there should be an independent review of the highways service through the Highways Maintenance Efficiency Programme (HMEP) Strategic Peer Review process. Arrangements will be made for the review shortly and the outcome will be reported in due course.

The peer review proposed is a challenge and review process where officers and members from other authorities help an authority's highways service identify more radical opportunities for improvement, greater efficiencies and change. The objectives of the review are to:

- enhance the process of improving highways delivery to realise transformational efficiencies and change
- allow an authority to understand potential improvements set within the wider strategic context of Council operations
- inform decision-making and provides (re)assurance from fellow professionals or 'peers'
- encourage engagement, collaboration and commitment to action across the Council and service provider
- promote the sharing of good practice through peer-to-peer engagement as well as empowering individuals to collaborate across authorities

A number of lessons have been learnt which will be applied to the new contract. There will be a greater emphasis on quality with the future contract award, the contractors will need to demonstrate a commitment to a stable management team, and some changes to specifications and methods of measurements will be incorporated. The effects of reducing revenue budgets and the wider effects on the highways service will need to be considered.

The streetscene service has moved towards a resource lead service as the current budget does not allow the high specification service which was originally envisaged to be delivered through the Highways and Streetscene Contract. The current service levels are described in **Appendix 1**.

Proposals

It is recommended that:

- (i) The termination of the existing Highways and Streetscene Contract with BBLP is noted.
- (ii) The arrangement for delivery of grass cutting, litter picking, major road resurfacing using former BBLP sub-contractors is noted.

- (iii) The procurement exercise currently being undertaken for a new Wiltshire Highways Contract should be the subject of a future report when tenders are received.
- (iv) The financial, reputational, legal and operational risks associated with these contract changes are noted.
- (v) It is noted that no compensatory payments have been made to BBLP in connection with the termination of the contract.

Reason for Proposals

The early termination of the Highways and Streetscene Contract with BBLP has provided the opportunity to remove significant financial risks and resolve operational issues, which would become more challenging with expected future budget reductions.

The transfer of BBLP's existing sub-contracts to the Council has benefits in terms of potentially greater flexibility and providing a more responsive service compared to what has been possible under the existing contract. It also ensures continuity of delivery in these key areas. There are operational benefits to the Council in being able to plan and co-ordinate work directly with the sub-contractors.

There are risks associated with changes to the service, and the procurement of a new contract which need to be carefully managed. However, it provides the opportunity to help to manage anticipated future budget restrictions more effectively.

Dr. Carlton Brand
Corporate Director

Wiltshire Council

Cabinet

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Contract Task Group

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Subject: Highways and Streetscene Contract

Cabinet Member: Councillor Philip Whitehead – Highways and Transport

Key Decision: Yes

Purpose of Report

1. To report on the early termination of the Highways and Streetscene Contract with Balfour Beatty Living Places (BBLP), and the alternative arrangements for service delivery being put in place.

Relevance to the Council's Business Plan

2. The Council's Highways and Streetscene Contract helps meet the priorities of the Council's Business Plan, including:
 - Outcome 2 – People in Wiltshire work together to solve problems locally and participate in decisions that affect them
 - Outcome 6 – People are as protected from harm as possible and feel safe

Background

3. The Council's highways service has been primarily delivered through the Highways and Streetscene Contract, which was awarded to BBLP on 18 December 2012. The contract started on 1 June 2013 and brought together the previous highways, street lighting and streetscene contracts and operations into one contract.
4. The scope and extent of the contract was the subject of considerable discussion, prior to inviting tenders, with the involvement of the Environment Select Committee throughout the process. Consideration was given to in-house provision of the services and to various contract arrangements. Following consideration by the Environment Select Committee and Cabinet in September 2011 it was agreed to invite tenders for a single works contract to include the former District Council streetscene activities and the former County Council highways services.

5. Tenders were invited from five companies and were assessed in terms of quality and price. On 18 December 2012 Cabinet resolved to award the contract to BBLP in accordance with the assessment methodology set out in the tender documents. The bids were evaluated on a 70/30 Price/Quality basis in order to reflect the relative importance of these two aspects. The tender from BBLP scored the best overall, and was the best in terms of price, and the second best in terms of quality.

Main Considerations for the Council

6. The value of work carried out under the contract has been over £37 million (revenue and capital) in 2014/15. This is more than had been anticipated originally because of the increased highways capital expenditure in connection with the 'Local Highways Investment Fund 2014 – 2020' agreed by Cabinet in October 2013. In financial terms, the contract has provided substantial benefits to the Council, initially through cost savings made through the tender process, and subsequently through the efficiency savings that BBLP undertook to deliver in connection with the contract. The cost savings with the contract were £2 million compared to the rates in the previous contract and a further £1 million delivered in efficiency savings totalling £3 million per year. These have benefited the Council's budgets for other services, whilst generally avoiding major reductions to the highways service.
7. The contract has been operating for just over two years now, and performance has been reported regularly to the Environment Select Committee and a Task Group set up to monitor performance. On 10 December 2013 a rapid scrutiny exercise was undertaken of the operation of the contract, and the group met on 27 March 2014 to review the work undertaken in connection with the contract. This was the subject of a report to the Environment Select Committee on 15 April 2014 and Cabinet on 24 July 2014.
8. There were some widely reported performance issues at the start of the contract in connection with grass cutting in some urban areas, and which reoccurred the following year. There were also issues with delivery of works in connection with structures, integrated transport and related works where scheme delivery was not progressing.
9. Considerable effort was made to monitor and manage BBLP operations by the Council's staff. This included the development of an Action List which was monitored weekly by senior management of the Council and BBLP, and was reported regularly to Carlton Brand, Corporate Director and Philip Whitehead, Portfolio holder. There have also been regular meetings with the Contract Task Group established by the Environment Select Committee to monitor progress.
10. The performance issues with the BBLP contract had been largely resolved, especially following the sub-contracting of grass cutting operations earlier this year, and generally delivery had improved considerably. The performance scores by service area for the end of June indicate that the Local Highways and Streetscene service was the only area with serious performance issues. The grounds maintenance element, which caused the most performance issues, represented about 7% of the contract value, but is an important element to our citizens.

Service Area	Score
Highways Major Maintenance	7.2
Drainage Works	7.0
Integrated Transport (inc CATG)	6.3
Local Highways and Streetscene	3.1
Major Schemes	7.4
Street Lighting Maintenance	7.9
Street Lighting Improvements	7.9

(Scores out of 10 when 10=Excellent
Target acceptable minimum=7)

11. The Highways and Streetscene Contract was the subject of audits by the South West Audit Partnership. The first audit considered the handover from the previous contractor Ringway to the current contractor BBLP, and included a review of the tender evaluation process and subsequent award of the contract. The audit received partial assurance and a follow up audit was undertaken in March 2014.
12. The first phase of the follow up audit focussed on the Local Highways and Community Services which was a particular concern at the time because of the issues with grass cutting. It also received partial assurance, and reported that evidence suggested that much work has gone into setting up appropriate processes to engage with BBLP, and a number of monitoring tools were implemented to ensure BBLP delivered the community services effectively. However, it did consider that there were still a number of improvements in processes required.
13. There were a number of innovative operations introduced in the Highway and Streetscene Contract. These proved successful in some cases, but were a challenge in others. The Community Days never achieved their desired levels, and the concept of generic working was proved more difficult to implement than anticipated from the initial trials carried out as part of the systems thinking work with the previous contractor. There were achievements, including the introduction of the My Wiltshire App, mobile instant electronic reporting by operatives, and a single point of contact for service delivery.
14. Measures have already been put in place to make better use of the My Wiltshire app to address the issues identified in the Local Highways audit. The termination of the BBLP contract and the changes following novation of the sub-contracts, have changed the situation, but the lessons learned from the audit are being applied to the new contract for which bids will be invited shortly.
15. It was apparent that a number of contracts awarded by other authorities at around the same time also had issues. It is likely that at the time when tenders were being invited prices were low and there was stiff competition for work. However, subsequently the economy improved and private development and infrastructure investment increased nationally. This created shortages of staff and resources, and consequent pressures on prices. As a result, attracting sub-contractors and skilled operatives became increasingly difficult.

16. BBLP has been reviewing its operations across all its contracts, both nationally and internationally, in order to ensure ongoing viability of the business. As a result, BBLP approached the Council with a view to discussing the early termination of its Highways and Streetscene Contract with this Council, which had over two years to run, and had the potential to be extended for a further two years.
17. The streetscene service has moved towards a resource based service as the current budget does not allow the high specification service which was originally planned to be delivered through the Highways and Streetscene Contract. The current service levels are described in **Appendix 1**. The delivery of the service will become more reactive, and respond to demand rather than carry out work on a strict programme, which can be less efficient and cost more.

Options Considered

18. The Council could have continued to operate the contract with BBLP, and managed the continuing financial disputes, including referral to the adjudicator as necessary. Many of the performance difficulties experienced at the start of the contract have been resolved, and performance by many of the sub-contractors involved in delivery of the contract has been good. Problems with grass cutting were experienced in the first two years of the contract, but following the award of the sub-contract by BBLP to TLG these were largely avoided this year. The delivery of structures and integrated transport schemes has increased considerably this year.
19. The Council could have terminated the contract itself without the agreement of BBLP, but this would result in the Council potentially having to meet substantial costs in connection with ending the contract early. The performance issues to date would not have justified this approach.
20. Whilst BBLP would have found it very difficult to terminate the contract without the Council's agreement, it should be noted that continuing with the contract against its wishes would have been likely to result in poor performance, further contractual disputes and claims. There were already a number of substantial claims against the Council by BBLP which were potential liabilities.
21. Immediate termination of the whole contract was not considered to be feasible because of the timescale involved in re-procurement. It was in both parties' interest that if termination took place, it should happen at the earliest practical opportunity. This was the main objective of the exercise for BBLP as it restructures its business.
22. It was concluded that in the circumstances there would be potential benefits for the contract to be terminated with the agreement of both parties. For the Council, continuity of service delivery was vital, and the financial and risk implications were given careful consideration.

Benefits of termination of contract

23. There are potential benefits to the Council in the early termination of the contract with BBLP. However, in order to realise those benefits it has been necessary to ensure that appropriate management processes and measures are put in place to manage the existing service suppliers and the transition to the new arrangements.

24. Establishing direct relationships with the key sub-contractors has the potential to improve service delivery and provide a more responsive and flexible service than has been possible under the current contract to date. The sub-contractors involved are currently performing well.
25. The early termination of the contract has the potential to accommodate the transfer of assets and local services to other organisations where appropriate, including the transfer to Salisbury City Council currently under discussion. Early termination could provide an opportunity to better manage these changes, and potentially reduce the cost implications of the changes.
26. The termination of the contract has closed the current commercial disputes between the Council and BBLP, which have a value of several million pounds, with no certainty of the outcome at this stage. The contract is not profitable for BBLP, and this has caused commercial issues which have resulted in submission of substantial compensation events under the contract. These are not considered to be justified, but they do require considerable resources from the Council to deal with and manage.
27. In order to end the contract with minimum risk to the Council, careful consideration was given to the transition, reprocurement and management of the changes.

Novation of sub-contracts

28. It has been possible to end some parts of the service immediately by transferring the existing contracts between BBLP and its main sub-contractors so that the contracts would be between the Council and the sub-contractor. This novation of contracts had the benefit of ensuring continuity of delivery, and ensuring that resources being used on the contract continued to be available.
29. The form of contract used for the Highways and Streetscene Contract ensured that the sub-contracts reflected the same terms and conditions as the main contract. This has made the change easier than would have been the case with other forms of contract. The novated contracts use the same specification and method of measurement as the Highways and Streetscene Contract, which has proved to be effective.
30. Discussions were held with the two main sub-contractors who indicated they were willing to enter into such an arrangement, with the new agreements at the original rates BBLP was paying its sub-contractors. This has benefits for the Council as, especially with the surfacing contract, it gives access to rates that could probably not be obtained by a separate contract in current market conditions.
31. The sub-contract for grass cutting and litter picking with The Landscape Group (TLG) was novated on 1 September 2015 following discussions about the service level required in the future. This service is funded from revenue budgets and is likely to be subject to particular financial pressures in the future. The new arrangement provides greater flexibility for dealing with these issues.

32. The performance of TLG, since they entered into the sub-contract with BBLP earlier this year, has been good, and the problems experienced in previous grass cutting seasons have been avoided. In order to provide long-term stability in terms of delivery and for the workforce the current arrangement is for four years.
33. The BBLP sub-contract with Tarmac (formerly Lafarge Tarmac) for road resurfacing was also novated to the Council on 1 September 2015. There is a substantial workload, especially as a result of the Local Highways Investment fund 2014–2020, which is delivering a major investment in road maintenance across the county.
34. The sub-contract with Tarmac has financial benefits for the Council as the removal of BBLP on-costs and overheads reduces costs, and the Council still has the benefits of rates negotiated by BBLP as part of their national agreements. Delivery by Tarmac has been good, but has been constrained in some respects because of the need to work and communicate with the Council through BBLP. The new arrangement is already enabling firm programmes to be developed, which should avoid the programme changes and delays to surfacing schemes experienced recently.
35. There are a number of other sub-contracts for specialist services, including rural grass cutting, carriageway surface dressing, tree maintenance, and some construction services could also be novated to the Council, where there are benefits doing so. These will be explored in more detail with BBLP and the relevant service suppliers.

New Wiltshire Highways Contract

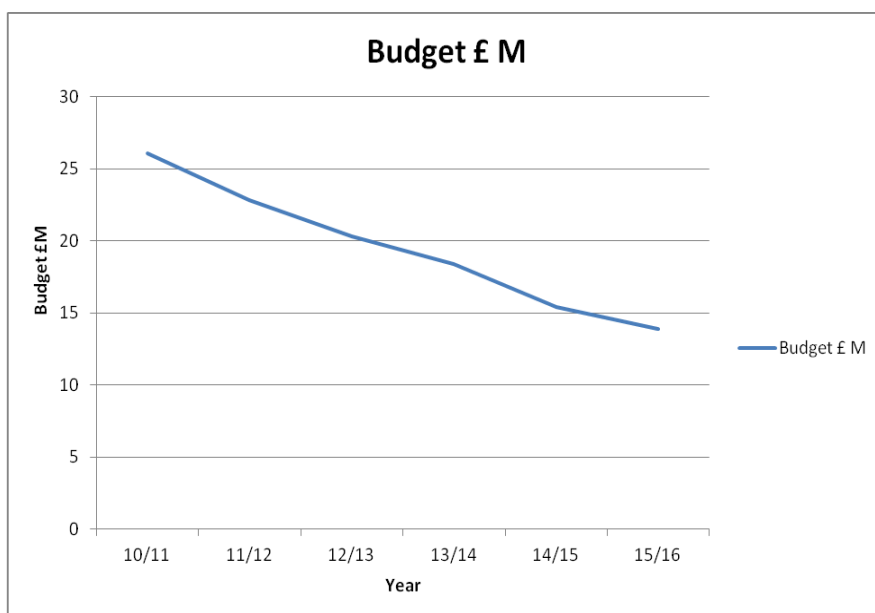
36. There are directly employed operatives with BBLP who could not easily be transferred to other employers immediately. The relevant staff and operatives would have TUPE rights to transfer to the new provider. This was the arrangement at the start of this contract when staff transferred to BBLP from the previous supplier. In the meantime BBLP will continue to operate these services until the replacement contract is in place.
37. The procurement process has started for a replacement contract to deliver these highways services not covered by the novated sub-contracts. Procurement will be through the usual procedures, including OJEU notices, and it is anticipated that the new contract will be in place by April 2016, subject to satisfactory progress through the procurement process. Democratic Services will be consulted regarding the best means of involving Scrutiny in the tender assessment process.
38. The new Wiltshire Highways Contract will include the provision of the following services:
 - Local Highways Service
 - Parish Stewards
 - Masonry Gangs
 - Annual Weed Spraying
 - Drainage Cleansing and gully emptying
 - Pothole Repairs
 - Emergency response gangs

- Reactive grass cutting
 - Road marking and signs
 - Reactive road sweeping
 - Street lighting maintenance and renewal
 - Integrated Transport Schemes
 - CATG schemes
 - Minor Bridge Repairs
 - Drainage investigations and repairs
 - Winter Gritting
 - Weather emergencies
 - Out of Hours Service
 - Traffic management
39. Tenders are being invited for the new contract which will have a value of about £12 million annually and will be for five years, with a possible extension of two years subject to performance. The tender will be awarded on the basis of 60% price and 40% quality, which places a higher emphasis on quality than was the case with the existing contract.
40. The new contract will be open to Swindon Borough Council (SBC) to use. This will have benefits in terms of widening the scale of the contract and making it more attractive to bidders. It is envisaged that SBC will be likely to use it for Integrated Transport schemes and to top up existing delivery arrangements. The arrangements will involve separate management of the contracts to avoid sharing financial risks, and will be subject to the approval of the Cabinets of Wiltshire Council and Swindon Borough Council. The inclusion of another authority in the contract will help demonstrate the procurement collaboration requirement in connection with the incentive funding for DfT maintenance funding which will become increasingly important in future years.
41. It is anticipated that a report will be considered by Cabinet in January 2016 on the award of a contract, with the new contract starting in April 2016. This represents a comparatively short timescale, but is considered to be realistic.

Lessons learnt

42. There were separate Streetscene and Highways Assistant Directors at the time of contract development and procurement, and considerable time was spent considering options rather than making better use of the time available to prepare the tender and contract documents in more detail. Some of the details of the grounds maintenance aspects were not fully identified at the start of the contract, which added to the problems with the contractor's grass cutting operations. The current management of these services by one Associate Director has resolved these issues.
43. The use of a 70/30 Price/Quality division used to assess the submitted tenders meant there was an emphasis on the cheapest price, with a consequent implication for quality. This did not affect the selection of the contractor in this case, but may have influenced the way that bidders prepared their tenders. The low prices had advantages for the Council, but clearly caused problems for the contractor when the economy improved. It is proposed that the new contract should have a 60/40 Price/Quality division.

44. An issue which created problems with the operation of the contract was the turnover in BBLP's senior management staff during the contract. This made it difficult for them to take a consistent approach to resolve issues, and added to the frustration and difficulties of Council officers who had to manage the contract. It will be important for the new contractor to demonstrate that a stable management team will be in place.
45. There have been lessons learnt from the existing contract, especially with regard to specifications and item descriptions in order to reduce the scope for commercial disagreements. The previous contract documentation has been reviewed and is considered to be suitable with minor updating and revisions. The contract was the subject of adjudication and was tested through that process. It was found to be suitably robust.
46. One of the aims of the existing contract was to bring together many practices and arrangements in amenities and grounds maintenance services of the ex-District Councils into one consistent service. A systems thinking review was carried out which recommended creation of community teams consisting of multi-skilled operatives covering highways and amenities work.
47. Although the new contract successfully replaced many different arrangements in the county with one overarching service, creation of the community teams proved challenging. The main reasons are that both the supply chain and management skills supporting these functions are separate. Also productivity of operatives can be compromised by the amount of training required to learn many necessary skills. The new contracts will keep the highways and amenities functions separate.
48. In the last five years, the substantial reductions in the Council's funding have been achieved through reductions in service budgets. The highways revenue budget has decreased year on year, with the 2015/16 budget 47% less than in 2010/11 (see graph below). Adding inflation and growth for energy, materials and construction would mean the reduction is 60% since 2010/11.



49. In some areas of the highways and amenities service, the reduction in funding was not reflected in the service levels specified in the contract. This resulted in unrealistic expectations in some areas which could not be delivered for the available funding. This has been addressed in the novation of sub-contracts and with the procurement of the new contract, through adjustment of the specifications.

Termination of the contract

50. In order to end the contract with BBLP it was important that all outstanding issues were resolved as both parties were keen to avoid a protracted legal dispute after the end of the contract. This meant that discussions took place to ensure there was a clear understanding of the process which would be followed and the obligations of the parties.
51. The relationship between BBLP and the Council has not always been easy. Continuous changes in senior management at BBLP during the contract have not helped to establish partnership working as envisaged by the form of contract used, which should have encouraged collaboration, and commercial pressures have clearly influenced behaviour.
52. The willingness of both parties to work towards the same end was apparent with regard to the termination negotiations which, although difficult, were constructive, with the teams working together to resolve issues.
53. A clear understanding and commitment with regard to the services BBLP will continue to provide in the short term was established, together with processes to ensure that the issues that have affected the contract to date do not continue or reoccur during the transition period.
54. The negotiations with BBLP have required clarification of a number of issues and agreement of practical measures. This has required a high level of co-operation between the parties, which has not always been apparent to date. The indications are that both parties are working well together to end the contract and ensure a smooth transition to the new arrangements.

Highways Service Peer Review

55. It is intended that there should be an independent review of the highways service through the Highways Maintenance Efficiency Programme (HMEP) Strategic Peer Review process. HMEP is a Department for Transport funded and highways sector led transformation programme.
56. The peer review proposed is a challenge and review process where officers and members from other authorities help an authority's highways service identify more radical opportunities for improvement, greater efficiencies and change. The objectives of the review are to:
- enhance the process of improving highways delivery to realise transformational efficiencies and change
 - allow an authority to understand potential improvements set within the wider strategic context of Council operations

- inform decision-making and provides (re)assurance from fellow professionals or 'peers'
- encourage engagement, collaboration and commitment to action across the Council and service provider
- promote the sharing of good practice through peer-to-peer engagement as well as empowering individuals to collaborate across authorities

57. Arrangements are being made for the review to be undertaken shortly and the outcome will be reported in due course.

Safeguarding Implications

58. None.

Public Health Implications

59. The condition of roads and related infrastructure can have serious safety implications, especially with regard to skid resistance and condition of highways and the contribution they can make to reducing accidents. The arrangements for ending the contract should ensure continuing delivery of services in these key areas.

Corporate Procurement Implications

60. The termination of the Highways and Streetscene Contract requires the immediate procurement of some of the services provided under the contract. In the longer term reprocurement of those services provided under novated sub-contracts will also be required, with the exact timing subject to the performance of the existing suppliers.

61. The procurement of the new Wiltshire Highways Contract has started. The contract will include routine maintenance operations, pothole repairs and winter maintenance. In order to progress the procurement of a replacement Highways Contract it has been necessary to put in hand the procurement procedures immediately, including notices in OJEU.

62. The scope and details of the new contract take into account a number of factors, including revenue funding pressures, public expectations, winter maintenance requirements and legal obligations to maintain the highways network. The development of a package of works for tender has been undertaken in parallel with the transfer of other parts of the service by agreement.

63. In order to manage the procurement process of the contract a Project Board has been established, which includes the relevant Cabinet and Portfolio holders and senior officers of the Council, supported by relevant finance, HR and procurement officers.

Equalities Impact of the Proposal

64. The new highways contract will result in existing employees of current contractors and sub-contractors having rights under TUPE legislation. The Council is working with contractors and sub-contractors to determine whether TUPE is applicable and to make the appropriate arrangement to meet any legal obligations.
65. The successful tenderer would be required to demonstrate good practice in terms of employment policies and practices, and conform to the Council's standards and behaviours framework. The tenderers' employment policies will be taken into account in assessing the tenders.
66. Meetings with the representatives of the trade unions have been held, and a union representative will be invited to sit on the project team for procurement of any replacement contract.
67. Continuity in delivery of the highways contract is of particular significance to those people with the disability protected characteristic as they are likely to be adversely impacted should there be an interruption in the maintenance of highways and associated infrastructure.

Environmental and Climate Change Considerations

68. The effects of climate change are likely to have significant effects on the highways network as was seen in the flooding of 2014, and the consequent damage to the roads, footways and drainage systems. Having contractors in place will enable robust maintenance strategies to be implemented to deal with immediate problems and to improve the condition of the network to help build improved resilience into the infrastructure.
69. The maintenance of highways, verges, landscaped areas and watercourses carried out by the highways services can have an important influence on the local ecology and environment in Wiltshire, and this will be reflected in future arrangements for the provision of these services.
70. Some winters in recent years have been particularly severe, and have emphasised the importance of the precautionary salting and snow clearing which would be operated by the new highways contractor, but in the meantime will be managed in conjunction with the existing service supplier.
71. The duties of the Council as Lead Local Flood Authority will increase the importance of responding to emergencies. The new contract will provide for an immediate response to flooding incidents in the county, with resources being increased in response to events. It is likely that flood alleviation and community protection works will increase in importance during the life of the future contract.
72. The tender assessment process for a new highways contract would take into account the environmental implications of the bids in the quality assessments.

Risk Assessment

73. There are significant risks associated with the Council's highways operations, especially in terms of health and safety, and in financial and reputational risks to the Council. There are also legal and other risks which are discussed below.
74. There are risks connected with the termination of the existing contract, the transfer of contract responsibilities, and the procurement of a replacement contract. These are being managed through the Project Board and are being regularly reported to the relevant Corporate Director and Portfolio Holder.

Risks that may arise if the proposed decision and related work is not taken

75. The risks associated with continuing the current contract with BBLP were predominantly financial and were mainly in connection with the compensation events already submitted under the contract. The claims for additional payment in connection with community teams, fleet maintenance and flow of works information alone totalled several million pounds.
76. The results of the adjudication on the first community team claim did not result in additional payments by the Council, but there can be no certainty that this would have been the case with the others, despite the Council's view that it has a robust case with each of them. There were considerable potential legal and other costs associated with defending and dealing with these claims.
77. There was a risk that further compensation claims would be submitted if the existing contract continued. Even if not successful, there would be legal costs and resources diverted to deal with these, which would inevitably have had an adverse effect on the management and operation of the contract.
78. There is a risk that if the contract continued, and the financial pressures on the contractor remained, that performance would deteriorate. The effects of a poor standard of grass cutting have already been experienced, and these had an adverse effect on the public's perception of the Council.
79. There is a risk of increased accidents, claims and public dissatisfaction if highway maintenance is not delivered, or is delayed as a result of contractual disputes. These may arise if the contractor is unwilling to continue to provide the services to the level required by the contract. At present, with the current arrangement, these seem unlikely, but the situation will continue to be monitored.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

80. The termination of the existing contract with BBLP involves risks to the Council which have to be managed. Ensuring continuity of service is essential in order to make sure the Council's legal obligations are met. The early novation of the main contracts with sub-contractors has enabled arrangements to be made to ensure continuation of most of the main elements of work currently delivered under the contract.

81. An immediate termination of the whole contract was not feasible because of the timescale required to appoint a replacement supplier. It is necessary to maintain a good working relationship with BBLP to deliver a number of services and schemes until the new contract is in place, which is likely to be April 2016. There is a risk that relations could deteriorate during this period with consequent contractual disputes and claims. The agreement with BBLP and the processes put in place to manage the transition should reduce this risk.
82. Previously, there was a single supplier responsible for managing a large number of sub-contractors and suppliers. For the Council, this had the benefit of a single point of contact. Under the new arrangements there are an increasing number of suppliers for the Council to manage, some of which are smaller companies without the financial and management support expected with a larger company, and potentially without the high health and safety standards currently experienced. This issue is likely to require additional input from the Council to manage.
83. Delivery of key services, including winter maintenance and emergency response, would require special consideration if the operatives and staff providing the current service are employed by different employers. Arrangements for the maintenance of the gritter fleet are especially important and this has required early action in order to ensure it is ready for this winter.
84. There are always reputational risks in connection with transferring services, procuring new contracts and the TUPE transfer of staff. An effective management team and communications strategy has been agreed with BBLP and key suppliers in order to ensure a smooth transition.
85. There is a risk of unrealistic expectations about improvements in service following the termination of the contract. Whilst BBLP performance issues with regard to grass cutting at the start of the contract for example have been widely reported, the underlying lack of funding for this service has not been apparent. It is possible that service level reductions in revenue funded services will be required to meet budget constraints in the future.

Financial Implications

86. Highways budgets nationally have been under severe pressure in recent years. This has been especially the case for revenue funding which funds routine maintenance, including grass cutting, gully emptying, litter collection and day-to-day operations on the network. The award of the Highways and Streetscene Contract and the efficiency savings it has delivered have been instrumental in reducing this impact in Wiltshire in the last two years and allowing the Council to contribute to savings required from highways revenue budgets.
87. The novation of the TLG and Tarmac sub-contracts to the Council provides a degree of financial certainty with regard to these parts of the service in the future. The costs are known and the services can be managed in order to reduce the financial risks.

88. There has been significant capital funding for highways maintenance and improvement in recent years, despite the difficult financial situation. It is not anticipated there would be significant problems with major maintenance work under the proposed new arrangements, and it is likely that there would be operational and cost benefits. However, for some of the smaller Integrated Transport schemes, including CATG schemes, it is possible that there could be increased costs, which could result in fewer schemes affordable.
89. In agreeing a position to terminate the current contract with BBLP, there have been no compensatory payments made by the Council to allow it and BBLP to end contractual arrangements. The details of the financial aspects of the agreement are included in a Part 2 item to be considered by Cabinet.

New Highway Contract

90. The risks associated with the reprocurement of a new highways contract are less well defined at this early stage. The original contract was tendered in 2012 and since then market conditions and risk associated with private sector firms delivering a service will have changed; this would be reflected in the new prices and potentially inflation on current costs. BBLP was unable to deliver service at the price tendered (hence moving towards contract termination). Current budgets are configured around BBLP rates with savings being banked in previous years. The real risk is that budgets available do not provide the current service provision under a re-procured model.
91. The financial risks and implications will have to be reviewed when tenders for the new contract are returned, and will be reported as part of the contract award process.

Legal Implications

92. The Council has a duty to maintain the highways network and related infrastructure. The proposed arrangements and a new highways contract will deliver important aspects of the highways service, and help ensure that the Council meets its obligations under the Highways Act and other legislation. The new contract and the appointment of a suitable supplier will help ensure that the services are provided to the standard necessary for the Council to fulfil its statutory duties.
93. The transfer of staff under TUPE from the existing service suppliers and the Council to any new supplier will be managed, with appropriate legal advice, as part of the contract transition process. This will include the protection of pension rights of transferring staff through either access to the Local Government Pension Scheme or other appropriate scheme, details of which will be negotiated with the new supplier.
94. It is important that the procurement process and contract award follow the correct processes in order to avoid legal challenges during the process which could delay or prevent the start of any new arrangements.

Options Considered

95. It has been possible for the Council to terminate its contract with BBLP early with the agreement of both parties. This has required the terms and details to be agreed between the parties and for the financial and risk implications to be actively managed.
96. The Council could have terminated the contract itself without the agreement of BBLP, but this would have resulted in the Council potentially having to meet substantial costs in connection with ending the contract early. This was not considered a viable option in the circumstances.
97. Continuing with the contract with BBLP against its wishes would have been likely to result in poor performance, further contractual disputes and claims. There were already a number of substantial claims against the Council which BBLP was not actively pursuing at present, but which remained as potential liabilities.

Conclusions

98. The early termination of the Council's Highways and Streetscene Contract with BBLP has benefits for the Council. The termination and transfer of services has had to be managed so that the financial, legal, reputational and operational risks to the Council are minimised.
99. The early transfer of BBLP's sub-contracts to the Council had benefits in terms of removing some financial risks, potentially providing greater flexibility and a more responsive service than has been possible under the existing contract in some service areas. The financial risks associated with such measures have had to be carefully managed, but it should help manage anticipated future budget restrictions more effectively.
100. The termination has offered the opportunity to remove significant financial risks in connection with outstanding commercial claims against the Council, and should reduce the possibility of future claims under the replacement arrangements.
101. There is the possibility of cost increases associated with continuing delivery of services, or with the reprocurement of services in the longer term, especially in view of the current market conditions. This is likely to be an issue with the local highways service, where financial pressures are currently particularly severe.

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Background Papers

The following documents have been relied on in the preparation of this report:

None

Appendices

Appendix 1 - Local Highways Service Levels