

CET/24/44

Corporate Infrastructure and Regulatory Services Scrutiny Committee

27 June 2024

Future Delivery Model for the Highway Maintenance Service

Report of the Director of Climate Change, Environment and Transport

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

1) Recommendation

That the Committee be asked to:

- a) Advise Cabinet of Members' ranking of the most important attributes of a Future Delivery Model for the Highway Maintenance Service
- b) Advise Cabinet of the Committee's views on the short list of 5 Delivery Model options

2) Background / Introduction

The County Council's Highway Term Maintenance Contract with Milestone Infrastructure terminates in March 2027 with no options to further extend the contract. The current contract through which the Council commissions routine, reactive, emergency, and some planned highway maintenance work, started in April 2017 and over its 10 years will have had a value of over £400 million. As such it is one of the largest contracts the County Council commissions.

The County Council's current Delivery Model for the Highway Maintenance Service is a combination of the Term Maintenance Contract, complementary Frameworks and Termed Contracts delivering planned works, and an In-House Design Service.

This report explains the work that has been undertaken on how the overall Highway Maintenance service could be delivered beyond March 2027, considers the short list of 5 Delivery Model options, and recommends that this Committee advises Cabinet of its views on the short list of options.

3) Option Assessment

Future Highways Research Group, FHRG (a research partnership between the Association of Directors of Environment, Economy, Planning and Transport, ADEPT and Proving Services, a management consultancy providing analysis and planning services) has identified a methodology and approach to rank potential future service delivery options and help formulate a short list of options. This methodology is being used widely by Local Highway Authorities nationally.

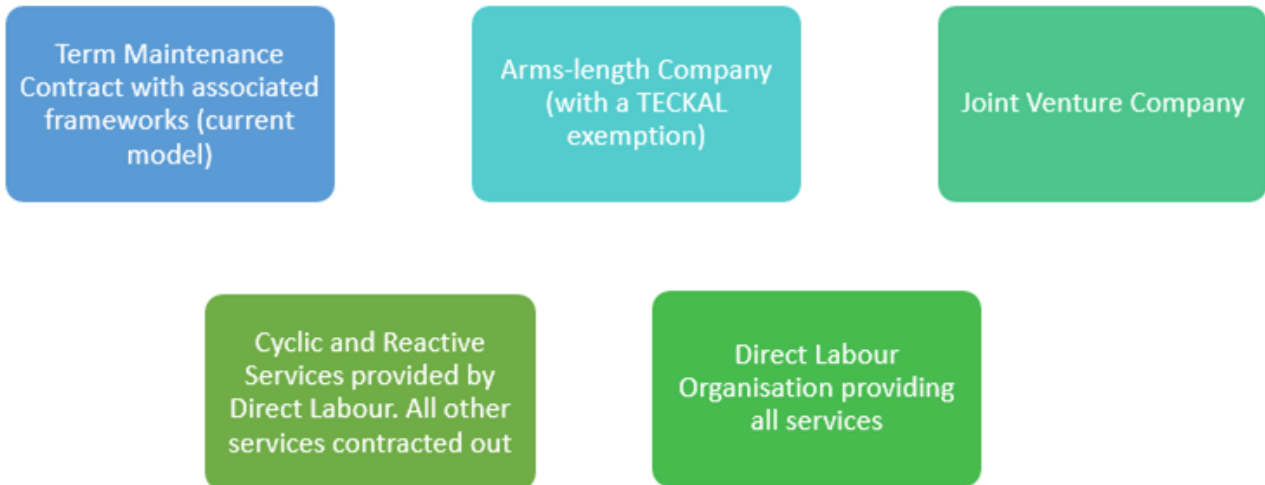
17 Delivery Model options have been assessed by County Council Highway and Procurement Managers in a series of workshops following the FHRG methodology. The options were scored on how each option would contribute to the delivery of the Service's 9 Strategic Goals, and how attractive (value for money) and achievable they are against 13

factors. The basis of scoring was to assess each option against the performance of the current County Council Delivery Model. Details are available in the Background Paper “Option Assessment Report”.

This work has identified a clear, short list of 5 Delivery Model options to be considered further.

4) Options / Alternatives

The identified short list of Delivery Model options is



The Teckal exemption is a legal principle that allows public authorities to award contracts to separate entities without following public procurement rules.

To continue the current Delivery Model option would entail competitively procuring a new **Term Maintenance Contract**, with complementary **Framework Contracts** for specialist and planned works. Alternatively, the County Council could form a legal **Joint Venture Company** with a contracting partner selected through competitive procurement and negotiation.

Options that would provide the County Council with full control and responsibility for delivery would be forming a Local Authority wholly owned and controlled **Arms–Length Company** or creating an In-House **Direct Labour Organisation** to deliver all of the Service.

A variation on the latter option would be for **Cyclic and Reactive Services** to provided In-House through a smaller **Direct Labour Organisation** with all other services contracted out through Framework agreements.

Through the option assessment workshops, liaison with other highway authorities, and advice from County Council support services, an assessment of the Strengths, Weaknesses, Opportunities and Threats of the 5 identified options has been made as summarised in Appendix 1.

The Committee is invited to advise Cabinet of its views on the short list of 5 Delivery Model options.

5) Consultations

A market engagement questionnaire has been made available to the supply chain, and promoted through the regional Contractors Association, to identify their views on issues including preferred type and length of contract, and the range of work they would like to see included, if it is decided to procure contracts for the service. The results of the survey are detailed in the Background Paper “Market Engagement Report” and will contribute to the development of any contractual procurement.

Exploratory discussions have been held with the highway authorities listed at Appendix 2. This includes authorities on similar contract timescales to Devon, and those operating the Delivery Models that are being considered in the short list.

A Scrutiny Members’ Masterclass was held on 18 April, to which all Members were invited, to explain the work that has taken place on the options appraisal, together with providing details and answering questions on the short list of Delivery Model options. To aid the discussion a short questionnaire was distributed in advance of the Masterclass for Members to indicate what they feel are the most important attributes of any future Delivery Model. There was clear indication that “Quality or Work” and “Value for Money” were important. Members also discussed their concerns regarding information on work programmes, and Members were advised there would be the opportunity to improve communications on planned works whichever option was chosen. However, Members were unclear about the scope of some of the other attributes and felt their voting was restricted. It was agreed a revised questionnaire would be circulated inviting Members to rank all attributes. The results of the updated survey are shown in Appendix 4. The Committee is invited to advise Cabinet of its ranking of the attributes.

6) Corporate Resource Considerations

Whichever option is chosen for the future Delivery Model there will be resource implications for corporate support services including Procurement, HR, Legal, ICT and Finance. Key issues identified have been included in the assessment of options at Appendix 1, and the impact on the corporate services is summarised at Appendix 3.

7) Strategic Plan

No specific considerations have been identified regarding the Strategic Plan priorities in assessing the Delivery Model options, as any decision on Delivery Model does not alter service levels or policies.

The Highway Asset Management Plan provides the guidance on the implementation of the County Council's Highway Maintenance service. The Council’s ‘Best Place’ priorities flow through this Plan, with ‘**Respond to the Climate Emergency**’ being a strong example of this. Through work with Exeter University a real-time reporting tool for construction work emissions is being developed. This will help to understand total emissions and identify carbon hotspots areas. In turn this will offer the information needed to make informed decisions on where to reduce emissions. A further example is how The Plan through its maintenance activities addresses the priority to ‘**Help Communities to be Safe, Connected and Resilient**’. In addition to the strong emphasis on Network Safety the Service is continuing to promote community self-help schemes and volunteering. This is

particularly important to enable a local response to highway needs that would otherwise not be addressed.

8) Financial Considerations

Delivery of the Highway Maintenance Service is funded from revenue and capital budgets. In 2023/24 the combined spend was £99.9m and the value of the work that has been delivered through the current Term Maintenance Contract was £52.5m.

Whichever Delivery Model is chosen there will be significant additional costs over the next 2 years preparing and procuring contracts or setting up companies / organisations. External legal and financial advice and staffing a project team will form a major part of these costs, which are estimated to be up to £2.3 million depending on the Delivery Model chosen. The funding for this will be considered for the latest revision of the Medium Term Financial Plan

9) Legal Considerations

The lawful implications/consequences of the Delivery Model options have been considered and taken into account in the preparation of this report. Whichever Delivery Model is chosen external legal advice and support will be required on preparing and procuring contracts and/or setting up a corporate vehicle.

10) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

In undertaking the Option Assessment detailed in section 3, the Delivery Model options were assessed on their contribution to the Service's Strategic Goals including: -

- Deliver our contribution to the climate change emergency.
- Protect and enhance our natural and historic environment.

However, no specific environmental considerations have been identified in considering the Delivery Model options, as any decision on Delivery Model does not alter service levels or policies.

11) Equality Considerations

There are no specific equality issues arising as a result of the assessment of Delivery Model options, as it is not proposed to alter service levels or policies.

Any contractor or organisation delivering the County Council's Highway Maintenance Service would be bound by standard equality clauses in their contract or agreement to ensure they do not discriminate against staff or service users unlawfully.

In progressing a recommended Delivery Model option to Cabinet for approval an Impact Assessment will be prepared for consideration by Cabinet.

12) Risk Management Considerations

The assessment of Delivery Model options in the short list has involved the identification and evaluation of risks in providing the future Highway Maintenance service. The significant risks are included in the assessment of each option at Appendix 1.

13) Summary

Following consultations and assessment in line with national guidance a short list of 5 Delivery Model options has been identified to deliver the County Council's Highway Maintenance Service beyond March 2027. This Committee is invited to advise Cabinet of its views on the options, and the most important attributes of a Future Delivery Model.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Divisions: All

Cabinet Member for Highway Management: Councillor Stuart Hughes

Local Government Act 1972: List of background papers

Background Paper	Option Assessment Report
Date	January 2024
File Reference	Option Assessment Report Link
Background Paper	Market Engagement Report
Date	February 2024
File Reference	Market Engagement Report Link

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Appendix 1 to CET/24/44 - Short list of Delivery Model options - Assessment

Joint Venture

Forming a legal Joint Venture Company with a contracting partner

Strength	Weakness
<p>Financial performance partnership.</p> <p>Sharing of profits.</p> <p>Contractor's commercial knowledge.</p>	<p>Not currently used nationally.</p> <p>Providers expressed little appetite.</p> <p>Sharing of risk.</p> <p>Legally complex and costly to set up and unwind.</p> <p>Complex procurement process.</p> <p>Complexity for communications and reputation management.</p>
Opportunity	Threat
<p>Close collaborative working</p> <p>Legal backing and buy in from partner.</p>	<p>Relationship with partner.</p> <p>Challenging to deliver within timescale and risk of failed procurement.</p> <p>Potential Corporation Tax liabilities with external advice needed.</p>

Appendix 1 to CET/24/44 - Short list of Delivery Model options - Assessment

All In-House

Creating an In-House Direct Labour Organisation for delivery of the Service, with nothing contracted out.

Strength	Weakness
<p>Performance within County Council control.</p> <p>Control of overhead costs and no profit element to fund.</p> <p>Could reuse existing IT with some enhancements.</p> <p>No procurement process or service agreement is required.</p>	<p>Complexity and cost of transition including TUPE considerations.</p> <p>LGPS employer contributions.</p> <p>County Council would take the burden of all risk.</p> <p>Need to strengthen commercial / contracting knowledge.</p>
Opportunity	Threat
<p>Ability to deliver strategically important aims.</p> <p>Flexibility to amend scope of work in delivery.</p>	<p>Significant increase in establishment.</p> <p>Recruitment of workforce and retention.</p> <p>Expanding into current specialist framework contract services.</p> <p>Ability to offer commercial incentive package.</p> <p>Lack of buying power.</p> <p>Ongoing procurement for plant, equipment, and supplies.</p> <p>Accounting rules prevent internal overhead costs being funded from capital. Potential substantial increase in revenue costs.</p>

Appendix 1 to CET/24/44 - Short list of Delivery Model options - Assessment

Cyclic and Reactive In-House

Cyclic and Reactive Services provided In-House.

All other services contracted out.

Strength	Weakness
Generally as “All In- House” plus Business for local construction market. Framework contracts are attractive.	Generally as “All In- House” plus More complex transition. More complex and demanding governance. Resilience to support varying demands across seasons and emergencies.
Opportunity	Threat
Generally as “All In- House” plus Expanding scope in future.	Generally as “All In- House”

Appendix 1 to CET/24/44 - Short list of Delivery Model options - Assessment

Arms-Length Company

Forming a Local Authority owned and controlled Arms–Length Company

Strength	Weakness
<p>Performance within County Council strategic control.</p> <p>Control of overhead costs and no profit element to fund.</p> <p>Market salary, benefits, and incentive packages.</p> <p>“Teckal” exemption from procurement.</p>	<p>Complexity and cost of transition including TUPE considerations.</p> <p>External legal and financial advice on set up.</p> <p>County Council would take the responsibility of all risk.</p> <p>Need to strengthen commercial / contracting knowledge.</p> <p>Most complicated from ICT perspective to implement and transition data.</p> <p>Complexity for communications and reputation management</p>
Opportunity	Threat
<p>Commercial opportunity for income.</p> <p>Options to include other marketable services.</p> <p>Market level pension contributions.</p> <p>Option of initially providing core services.</p>	<p>Limited evidence of model being used currently nationally.</p> <p>Disparity between pay and benefits package for client and delivery staff.</p> <p>Lack of buying power.</p> <p>Potential Corporation Tax liabilities.</p> <p>Possible ongoing procurement for plant, equipment, and supplies.</p> <p>Restricted by public procurement rules to purchase goods, services or works.</p>

Appendix 1 to CET/24/44 - Short list of Delivery Model options - Assessment

Current Delivery Model

Procuring a new Term Maintenance Contract supplemented by Framework Contracts

Strength	Weakness
<p>Tried and tested delivery model.</p> <p>Market interest.</p> <p>Balanced share of risks with contractor.</p> <p>Competitively procured.</p> <p>Business for local construction market.</p>	<p>Market pricing and include for risk, overheads, and profit.</p> <p>External legal support on procurement and contract.</p> <p>Procurement to be repeated at end of contract requiring significant resources.</p>
Opportunity	Threat
<p>Redevelop contract in line with current requirements.</p> <p>Contractor input to innovation and new technology.</p> <p>Buying power of large commercial organisation.</p>	<p>Long term competitiveness of contract price.</p> <p>Contract discourages flexibility.</p>

Appendix 2 to CET/24/44 - Local Authority discussions

Authority	Comment
Suffolk County Council	Extensive Term Maintenance Contract. Recently procured
Essex County Council	Integrated Service Provider Contract. Expires March 2027.
Dorset Council	Direct Labour Organisation plus Term Maintenance Contract for planned works. Expires March 2027
Torbay Council	Arms-Length Company. Includes waste collection, recycling and grounds maintenance.
Plymouth City Council	Term Maintenance Contract. Expires March 2027
Cornwall Council	Arms-Length Company. Includes grounds maintenance and design services.

Discussions have also taken place with WSP who have experience in mobilising and operating a Joint Venture Company

Appendix 3 to CET/24/44 - Impact on Support Services

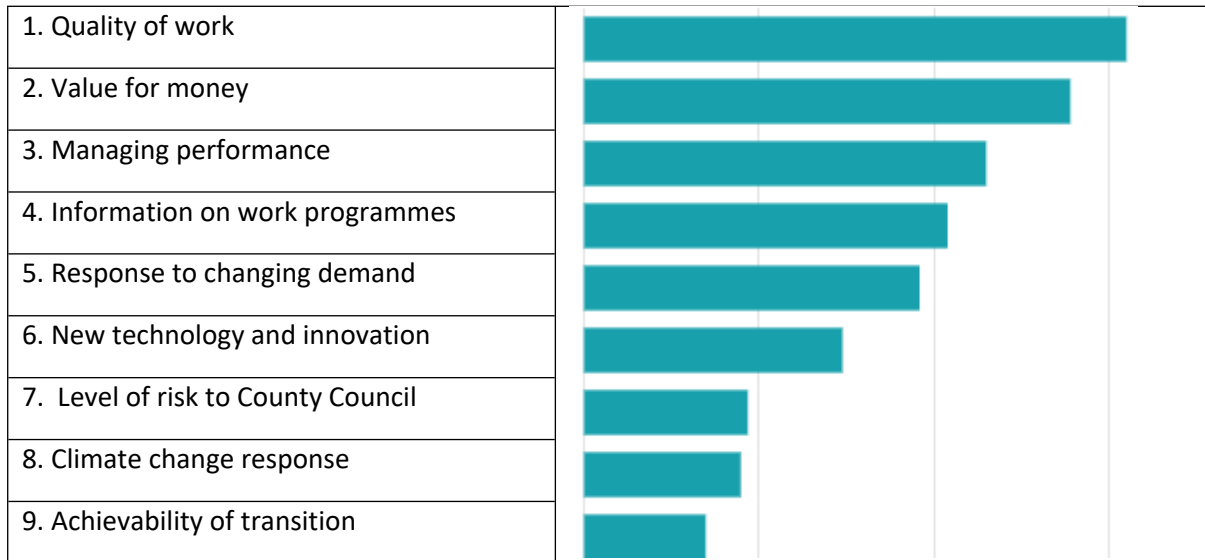
	HR	Legal	ICT	Finance	Procurement
Joint Venture	Little impact if Company uses own HR service	Significant external legal resource required for procurement negotiation and drafting contract.	Low to medium impact. Either party could provide the ICT but both options are a manageable risk.	Potentially complex tax considerations May require external support.	Significant resource for complex lengthy process to identify the best provider, followed by negotiation.
All In-House	Transferring of over 300 staff through TUPE, including enrolment in pension scheme, and ongoing support to additional staff.	Relatively limited legal support required for set up but there will be a need for more ongoing legal support.	Low risk and impact. Removes risk of data sharing, GDPR breaches, integration of systems with external partners.	Would significantly increase the number of invoices processed. Potential impact on cashflow considerations.	No procurement of delivery model, but ongoing procurement of plant, goods, and services
Cyclic and Reactive In-House	Similar to All In-House	Relatively limited legal support required for set up but need for more ongoing legal support.	Low to medium impact. Could mean 2 methods for delivery of ICT are required.	Would increase the number of invoices processed. Potential impact on cashflow considerations.	Procurement of new Framework Contracts and ongoing procurement as All In-House
Arms-Length Company	Transfer of some DCC staff to Company. Little other impact if Company uses own HR service	External legal resource required in setting up Company and drafting contract.	High to medium impact. ICT could be complex.	Potentially complex tax considerations May require external support.	No procurement of delivery model, but possible ongoing procurement of plant, goods, and services

Current Delivery Model	Little impact	External legal resource required for procurement negotiation and drafting contract.	Low to medium impact. Possible mobilisation investment setting up or integrating to new systems.	No material changes.	Significant resource for competitive procurement of new Term Contract and Framework Contracts
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There are also potential impacts for Communications and External Affairs from the Joint Venture and Arms-Length Company options

Appendix 4 to CET/24/44

Attributes of a Future Delivery Model ranked in order of importance to Members, with the most important at the top.



Analysis of the 18 responses received.