



Cabinet
24 July 2017

**Report from the Strategic Director of
Regeneration and Environment**

Wards Affected: All

LoHAC Lump Sum – Variation of Contract

1.0 Summary

- 1.1 Brent entered into an eight year contract on 1st April 2013 to provide a range of highway services, including reactive maintenance works, through the London Highways Alliance Contract (LoHAC). The appointed contractor is Conway Aecom.
- 1.2 Officers regularly receive comments from residents and members alike regarding the consistency and responsiveness of service when reporting defects on the public highway. The current arrangement has an inherent source of tension, where the cost of repairing defects classed as high priority are included in the Lump Sum, but the Council has to pay extra for the repair of Medium priority defects. This can give rise to disputes if officers feel that a high priority defect has, in their opinion, been miscategorised as medium priority. This can at times take several months to resolve.
- 1.3 Bringing the inspection regime in-house and paying for the services through the Schedule of Rates, rather than Lump Sum will provide officers with more control to choose where and when repairs are ordered and enables a more responsive approach to dealing with members' reports and ordering multiple repairs within a specified area. The overall budget for this work will remain the same.
- 1.4 It should be noted that officers are also exploring innovative ways of addressing potholes through our planned maintenance programme. We will be investing £80,000 of our Carriageway Short Section budget to pilot a new approach that allows more potholes to be repaired in a shorter time to the traditional approach.
- 1.5 This report outlines the negotiations to date and proposed way forward to deliver reactive highway maintenance.

2.0 Recommendations

- 2.1 That Cabinet:
- 2.2 Approves the 'in principle' negotiated agreement for a variation of the existing Lump Sum as set out in section 4 of this report.

- 2.3 Delegate powers to the Strategic Director, Regeneration and Environment, in consultation with the Lead Member for Environment, to finalise negotiations, on agreement, on the terms for the Deed of Variation.

3.0 Background

Existing Lump Sum Agreement

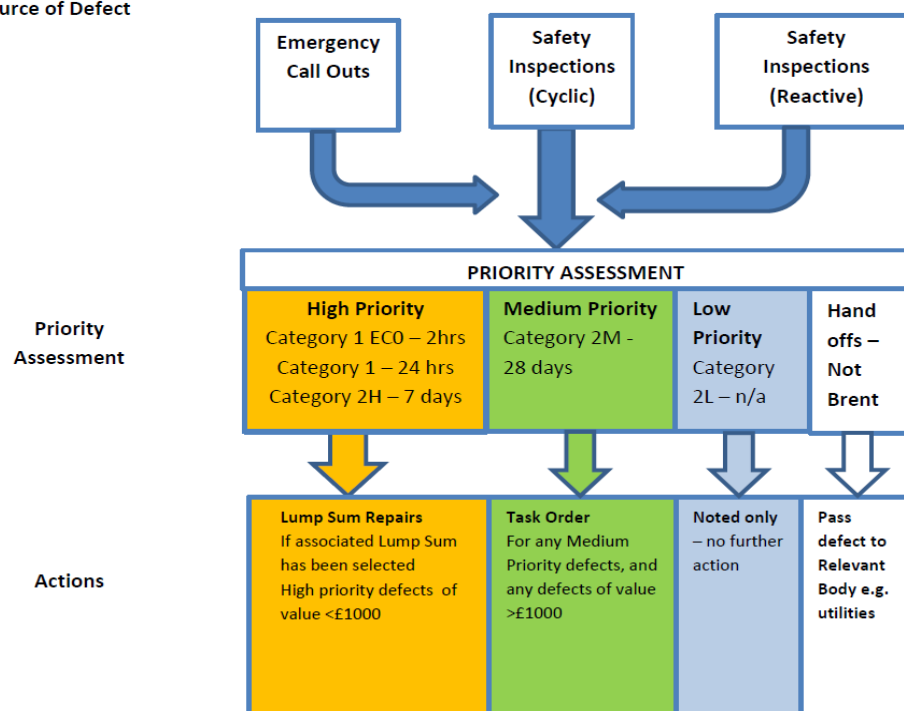
- 3.1 Under the London Highways Alliance Contract, the London Borough of Brent procured both cyclic and reactive safety inspection services, under a lump sum payment. A key feature of the contract is a “Find and Fix” mechanism where the contractor delivers the inspection service and rectifies defects identified as a result of the inspections, for defects that are under the value of £1,000 and are categorised as needing to be attended to within seven days or less, i.e. high priority defects:

Reactive Find and Fix

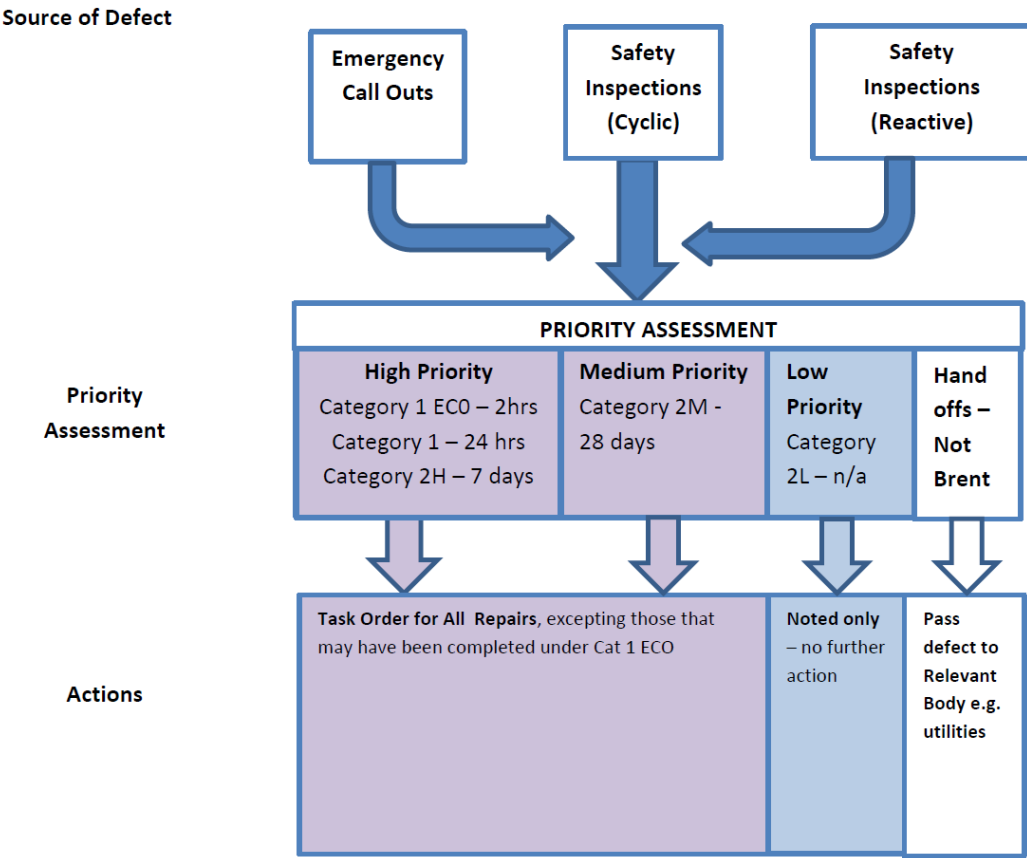
- Road pavements
- Kerbs, footways and paved areas
- Traffic signs
- Road markings
- Road restraint systems
- Earthworks
- Street furniture

- 3.2 The diagram below represents how the Find and Fix process works currently. Works are identified via one of three sources Emergency Call Outs; Cyclical Safety Inspections and Reactive Safety Inspections (e.g. from Customer Reports)

Source of Defect



- 3.3 The expected revised process is below, where a task order is required for all Repairs, except those that may have been completed under Category 1 Emergency Call Out. Priority assessments will be done in-house rather than by the contractor.



Brent Call offs

- 3.4 The London Borough of Brent called off a number of services from the core service menu. Please refer to Appendix I for the list of services.

4 Proposed Variation of Contract

- 4.1 Through negotiations with the contractor to date the following variation to move away from the existing Contract setup has been agreed in principle:

- a) **Cyclic & Reactive Inspections**
Remove the lump sums for Cyclic and Reactive Safety Inspections. Transfer two Cyclic Safety Inspectors plus one Reactive Safety Inspector from Conway Aecom to the London Borough of Brent via a TUPE process to allow the Highway Inspections to be carried out by the London Borough of Brent moving forward.
- b) **High Priority (Cat 1 & Cat 2H) Repairs**
Remove the lump sum for Cat 1 & Cat 2H repairs. Use the Contract Schedule of Rates item coverage with a percentage (amount to be negotiated) uplift for works of seven days or less to cover for the inefficiencies of this type of work.
- c) **Emergency Call outs**
A small annual fee to be agreed to cover a nominal contribution of the total Operational Control Room (OCR) service costs plus a Schedule of Rates item per callout (2 hours

duration) to cover plant, labour and consumables. Permanent materials may be covered by a works order.

d) **Cyclic Gully Cleansing**

After addressing performance issues experienced during the first two years of the contract, gully cleansing is now operating very effectively; on site monitoring scores now regularly achieve 100%. The cost of this service is considered competitive in the current market and it is therefore recommended to keep cyclic maintenance a lump sum item, as it is providing good value and a reliable service.

Over the last two years we have gathered data by measuring the build-up of silt levels between cleanses. This data enables us to review the current cyclic programme and target locations where the build-up of silt levels is greatest, whilst reducing cleanses at locations where silt levels remain low. If savings are identified through this work we will reinvest them in the repair of defects.

- 4.2 Recommendations made by Local Partnerships through the service review identified asset management as a priority, including the following recommendations this report will help address:

New Structure

- a) *“Consideration should be given bringing the Highways Inspectors back into Local Authority Control”.*

Comment: this is implicit in the proposals outlined in this report

New Strategy – Service Prioritisation

- b) *“Consider how resources within the contract can be allocated more effectively. Identify where savings can be made and balance budget, customer satisfaction and service outcomes to achieve the optimum solution across the Borough”*

Comment: Decisions as to when and where defects are repaired will be under the control of the council, so the process will be more responsive to customer needs. (See also (c) below)

Highways Services

- c) **Reactive not Proactive:** *“Concerns regarding the performance of the service are centred significantly towards reactive maintenance. Large majority of concerns over the performance of the service are concentrated on the issue of the treatment of defects (i.e. potholes). This accounts for around 5% of highways expenditure”.*

Comment: it is expected that with the removal of the commercial implication of the medium / high priority defect threshold, that the categorisation of defects will become more consistent and reliable, improving customer confidence in the process.

- d) **Commercial Strategy & Behaviours:** *“Brent have procured the delivery of the reactive maintenance service on the basis of a lump sum contract defined by a set of comprehensive intervention criteria. This has had the effect of encouraging behaviours within both parties which are unhelpful.”*

Comment: the removal of the commercial implication of the medium / high priority defect threshold will also remove this source of tension within the contractual relationship, and the requirement to monitor this aspect of the contract. This should free up both officers' and the contractor's time to add value elsewhere in the contract (for instance, to pursue implementation of a greater range of maintenance treatments)

- e) **Service Priorities & Real Life:** *"It is not always clear to members what the real consequences of the service's strategy is in practice. Defects which fall outside the lump sum with Conway [Aecom] are the responsibility of Brent to repair. Current funding allows for only 11% of these to be addressed."*

Comment: whilst the categorisation of defects will become more consistent and reliable, improving customer confidence in the process, there will still be a significant underfunding of the medium priority defects (on current figures).

- f) **Contractor Performance:** *"Performance of the contractor seems to have been deficient in some key areas (i.e. gully cleansing, highways inspection etc.). However other service issues may be due to other systemic factors"*.

Comment: should the inspection service come back in house, any future deficiency in inspections can be directly addressed by the Council. After addressing performance issues experienced during the first two years of the contract, gully cleansing is now operating very effectively

- g) **The Service, the Community & Place Making:** *"The inclusion of the Highways Inspection function into the contractor's scope has resulted in the day to day 'eyes and ears' of the service being lost. Officers risk being 'desk bound' and removed from the day to day experience of the service"*.

Comment: should the inspection service come back in house, this point will be specifically addressed.

5 Financial Implications

- 5.1 The value of the London Highways Alliance Contract (LoHAC) is approx. £8m per annum. This represents the total value of all works delivered through this contract by Conway Aecom. The proposed variation value of £0.562m is approx. 7% of the contract value.
- 5.2 As set out in paragraph 4.2 (b), providing an in-house service will enhance customer satisfaction by being more responsive to customer needs and having greater control of repairs. The cost of increasing staffing resource to provide the in-house service will be wholly funded by the reduced contractual spend with Conway, therefore no additional budget is required as a result of this proposal. If savings are realised through this process they will be reinvested in the repair of defects.

6 Legal Implications

- 6.1 Regulation 72 of the Public Contracts Regulations 2015 ('PCR 2015') provides that variations to existing contracts are permitted without commencing a new procurement in the certain circumstances. Regulation 72(f) provides that contracts may be varied where the value of the variation is below both the relevant EU procurement threshold and 10% of the initial contract value for service. The value of the variation as mentioned in paragraph 5 of this report in respect of the working arrangements and variance to the existing Lump

Sum payments will be contained within the existing Lump Sum budget. The variation is therefore permitted under regulation 72(f) of the PCR 2015.

- 6.2 If the Safety Inspections (cyclical and reactive) element of the contract with Conway Aecom is returned back in house, as mentioned in the body of this report, for the services to be delivered by the Council, the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') will apply in respect of the employment contracts of Conway Aecom staff currently employed to delivery that element of the contract. Those Conway Aecom staff's employment will transfer to the Council and the Council will inherit all rights, liabilities and obligations in relation to them as from the date of the transfer. TUPE implications will be considered by Officers as part of the negotiations and relevant consultation with the staff undertaken. The Council will also require employee liability information from Conway Aecom.
- 6.3 As mentioned in paragraph 2, Cabinet approval is required in respect of the 'in principle' negotiated agreement for the variation of the existing Lump Sum and Cabinet to delegate authority to the Strategic Director, Regeneration and Environment, in consultation with the Lead Member for Environment, to finalise the negotiations and to review investigation levels and vary them if appropriate.
- 6.4 The Council and Conway Aecom will be required, to enter into a Deed of Variation documenting the variations to the contract, once negotiations have been completed.

7 Diversity Implications

- 7.1 The proposals in this report have been subject to screening and there are considered to be no diversity implications that require full assessment. The proposed variation of contract does not have different outcomes for people in terms of race, gender, age, sexuality or belief.
- 7.2 The priority given to defects is dependent on a probability and risk score to ensure defects with greatest risk to safety will be prioritise for repair.

8.0 Staffing/Accommodation Implications

- 8.1 Highway inspections (both cyclic and reactive) are currently carried out by the contractor. Two inspectors carry out the cyclic inspections with one inspector responsible for reactive inspections.
- 8.2 The three staff listed above have been identified as potentially liable to transfer to Brent pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). These figures will be finalised during the detailed TUPE conversations that will take place subject to approval of the recommendations within this report.
- 8.3 Staff transferring from the contractor under TUPE will do so on their current terms and conditions of employment. Although pension rights do not transfer under TUPE, the Council is under a legal obligation to secure pension rights for its staff. Transferring staff will have the opportunity to join the Local Government Pension Scheme ("LGPS"),

Background Papers

The Executive award report – 10th December 2012

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